A

DIGEST OF INDIAN LAW CASES

CONTAINING

HIGH COURT REPORTS

AND

PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA, FROM 1910 TO 1921, INCLUSIVE.

BEING A SUPPLEMENT TO THE CONSOLIDATED DIGEST OF INDIAN LAW CASES 1836 1909

COMPILED UNDER THE ORDERS OF THE GOVERNMENT OF INDIA

BY

S WEBB JOHNSON, LL B (Hons)

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to recover Rs 3 330 4 0 as arrears of *palni* rent the defendants pleaded that Rs 15 had been claimed in excess and that this sum was in the nature of an *abuab* and not recoverable The *kabuliyat* on which this suit was based provided that an annual rent of Rs 3 315 4 0 should be paid by 12 monthly instalments In a subsequent clause it stipulated that in the month of *Bhadra* every year a further sum of Rs 15 should be paid as *mamuli* for the *Ismcar Thakur* at the lessor s house and then went on to state that if the lessee failed to pay the said sum of Rs 15 amicably the lessor should deduct the same from the money remitted by the lessee as rent or sue for the amount along with or separately from the arrears of rent and the lessee would not take objections thereto *Held* that the sum of Rs 15 was not intended by the parties to be part of the consideration for the use and occupation of the land or as part of the rent It did not form part of the rent nor was it treated as part of the rent and was not recoverable *Held* also that s 3 of Regulation V of 1812 referred only to the amount which was by the contract fixed as the rent payable to the landlord *Per* SANDERSON *C J* The rule which has been followed in this Court is that each case must depend upon the proper construction of the contract before the Court and if upon a fair interpretation of the contract it can be seen that a particular sum is specified in the contract or agreed to be paid as the lawful consideration for the use and occupation of the land *i e* if it is really part of the rent although not described as such the landlord can recover it *Per* CHATTERJEA *J* It is only the rent and not any other sum though not indefinite and though agreed upon to be paid in the written engagement which can be recovered In determining whether an item does or does not form part of the rent the fact that it has been stipulated to be paid separately from the rent and also the fact that it is not included in the instalments of rent have an important bearing on the question *Upendra Lal Gupta* v *Meheraj Bibi 21 C W N 108* explained BIJOY SINGHA DUDHURIA v KRISHNA BEHARI BISWAS (1917)
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——— *Order regarding possession of following acquittal in case under ss 411 and 406 of the Penal Code property of* The accused were tried for offences under ss 411 and 406 Indian Penal Code for having cut and removed some bamboos from a bamboo clump alleged by the complainant to be his The trying Magistrate acquitted the accused but directed that the complainant was to retain possession of the bamboo clump until ousted by the Civil Court The High Court set aside the order so far as it contained the direction about the bamboo clump RADHA KANTA GUIN v KARTIK GUIN (1910)
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——— *Impartible property—Transfer whether subject to right of maintenance* A transfer of impartible property is not subject to rights of maintenance claimed by younger members of the family of the transferor unless a family custom to that effect is established *Thakur Debendro Nath Shah Deo* v *Deonandan Singh* (1918) 3 Pat L J 648

——— *Alienation beyond alienors life time validity of—Custom of inalienability effect of—Regulation XXV of 1802* In the absence of proof of a special custom of inalienability the zamindar of an impartible zamin has power to alienate the zamin for a legitimate family or other necessary purpose beyond his life time The estate held by him is not analogous to that of an estate tail as it originally stood upon the Statute *de Donis* [Statute of Westminster II (1285) 13 Edw I c 1] The law relating to estates held in impartible zamindaris reviewed Where the subject of a court sale was stated to be the right title and interest of the zamindar there is no presumption that what was intended to be sold was merely the life interest of the zamindar in the zamin VALLAPPA NAICKER v MURUGAPPA CHETTIAR (1913) I L R 36 Mad 395

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by the Nawab of the Carnatic in 1775 for the upkeep of a mosque the performance of services and ceremonies therein and the feeding of travellers and the poor was confirmed by the British Government permanently so long as the service was performed. Owing to persistent misappropriation of the income by the grantee s successors and alienations by some of them of two of the villages included in the inam one on a usufructuary mortgage in 1883 for thirty years and the other on a long lease of twelve years in 1891 for purposes not binding on the charity the Government resumed the inam in 1903 and credited the assessment to its general revenues It appeared however that the mosque was maintained in good repair services and ceremonies were regularly performed there though on a smaller scale The present trustee disputing the power of the Government to resume the inam sued in 1913 the Secretary of State for India in Council for a declaration that the resumption was invalid and for recovery of possession of the inam villages the latter contended that the resumption was valid and that the suit was in any event barred by limitation under Art 14 of the Limitation Act. *Held* (i) that as the charity did not fail altogether the performance of the charity was not wholly discontinued and the alienations (mortgage and lease) did not *permanently* deprive the charity of the use of the property the Government was not authorized under the terms of the grant to resume the inam in the circumstances of this case and (ii) that the resumption being a nullity and the suit being one for possession it was not barred by limitation as Art 144 and not Art 14 of the Limitation Act applied to the case On a reasonable construction of the words of the grant any default in the performance of services of however minor a character would not entitle the Government to resume the grant but what was contemplated was that if the charity failed altogether or substantially as through the disappearance of the mosque or of persons who would resort to the institution for prayers etc or if the charity was entirely discontinued then the Government would be entitled to resume the grant SECRETARY OF STATE FOR INDIA v GULAM MAHABOOB KHAN SAHIB (1919) I L R 42 Mad 673

——— *Instrument not produced—Grant if to be presumed as of Government revenue only—Reg XXI of 1802—Estate meaning of—Madras Rent Recovery Act (Mad I of 1908) s 3 (2) (d)—Kudivaram and melavaram meaning of—Allegation by tenant of fraud and undue influence not substantiated by evidence* There is no presumption of law that the grant of an *inam* (in the absence of the *inam* grant under which it was held) was of the Royal share of the revenue only In respect of an *inam* grant of 1373 the grant itself could not be produced but it was recorded in Mr Oakes Inam Register kept under s 15 of Reg XXXI of 1802 *Held* that this was conclusive evidence that the grant was not only of the revenue but of the soil of the village and was not an estate within s 3 sub s 2 (d) of the Madras Estates Land Act (I of 1908 Mad.) A grant of a village by or on behalf of the Crown under the British rule is in law to be presumed to be subject to such rights of occupancy if any as the cultivators at the time of the grant may have had. *Kudivaram* literally signifies a cultivator s share in the produce of land held by him as distinguished from the landlord s share of the produce received by him as rent sometimes designated *melvaram* Where it was alleged that the documents under which tenants held land under temporary tenures were not willingly executed by them or their predecessors or with knowledge of their provisions *Held* that the allegations amounted to saying that the landlord had by fraud and the exercise of undue influence procured the execution by the tenants of the agreements of tenancy under which the latter held the lands occupied by them allegations which in the absence of any evidence to suggest that there was any foundation of truth for them must be dismissed from consideration as unfounded ADUSUMILLI SURYANARAYANA v ACHUTA POTHANNA (1918) 23 C W N 273

——— *Shrotriyam—Construction of grant—Conveyance of Minerals—Enfranchisement effect of—Royalties on quarried stone—Mad Act VIII of 1869* A village was granted as a shrotriyam inam in A D 1750 by the Nawab of the Carnatic The grant the terms of which appeared from a translation produced from a Government register provided that its purpose was that the grantee having appropriated to his own use the produce of the seasons each year might pay for the prosperity of the Empire and that he should pay a fixed yearly sum to the sirkar The Inam was enfranchised in 1865 there being given to the inamdars title deeds which purported to convert the tenure into a permanent freehold upon payment of a quit rent After the enfranchisement the Madras Government requiring stones acquired part of the village from the shrotriyamdars under the Land Acquisition Act. In or about 1905 the Madras Government imposed and levied upon the shrotriyamdars royalties in respect of stone which they had quarried in the village *Held* (1) that upon the true construction of the grant the full right to the quarries and minerals did not pass to the grantee (2) that terms of the grant being in evidence neither the inam title deeds nor the land acquisition proceedings were evidence as to its effect (3) that having regard to Madras Act VIII of 1869 the inam title deed could not vest in the inamdars a subject matter not vested in them by the grant (4) that consequently the Government was entitled to impose royalties on stone quarried in the village An inam grant may be no more than an assignment of revenue and even where it is or includes a grant of land, what interest in the land passed must depend on the language of the instrument and the circumstances of the case THE SECRETARY OF STATE FOR INDIA IN COUNCIL v SRINIVASA CHARIAR (1921) I L R 40 Mad 268
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———— *Karnam service lands—Enfranchisement—Inam title deed—Confirmation on the holder—Nature of title* The karnam of a village in Madras occupies his office not by hereditary or family right but as a personal appointee although the appointment is primarily made of a suitable person who is a member of a particular family When karnam service lands have been enfranchised, a quit rent being imposed in lieu of the service and an inam title deed is granted confirming the lands to the holder of the office his representatives and assigns, the lands are his separate property and are not subject to any claim to partition by other members of the family *Venkata v Rama (1885) I L R 8 Mad 249 (F B)* approved *Cunnayyan v Kamakshi Ayyar (1903) I L R 26 Mad* ... and *Pingala Lakshmipathi v Ammanoolla Chalamayya (1907) I L R 30 Mad 434 (F B)* disapproved VENKATA JAGANNADHA *v* VEERABHADRAYYA (1921)
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See MADRAS ESTATES LAND ACT (I OF 1908) s 8 ETC I L R 38 Mad 608

———— and Ryot—

See MADRAS ESTATES LAND ACT (I OF 1908) I L R 33 Mad 33

———— Right to levy mamul dues—

See BOMBAY LAND REVENUE ACT 1879 ss 216 and 217
I L R 45 Bom 1260

INAMDAR—contd

1 ———— *Jodi payable to Government—Right of Government to a first charge—Assignment of jodi by Government—Right of assignee to a charge—Assignment of jodi to a zamindar or mittadar under permanent sanad—Right of zamindar or mittadar to a charge* Jodi payable by an inamdar to the Government where it has not been assigned is recoverable by the Government as revenue and is a first charge on the interest of the inamdar A zamindar or mittadar who under his sanad has a right to collect jodi payable by an inamdar to the Government has no charge for arrears of jodi on the interest of the inamdar *Per* WALLIS *C J*—Where the Government assigned its revenue to an inamdar the latter did not acquire a charge upon the land but was left to recover rent from the occupiers under the Madras Rent Recovery Act (VIII of 1865) *Per* SESHAGIRI AYYAR *J* If the Government assigned the right to collect jodi or other revenue *as such* the assignee would have a first charge he would be entitled to the security which the Government had although he might not be entitled to all the statutory remedies which the assignor had. Case law on the subject reviewed SUBBAROYA GOUNDAN *v* PANGANADA MUDALIAR (1915)
I L R 40 Mad 93

2 ———— *Suit to recover assessment from tenant—Tenant's liability to pay customary rent—Judi—Limitation Act (IX of 1908) Sch I Art 131—Recurring right—Limitation—Demand and refusal* Lands situated in Inam villages not being in the actual possession of Inamdars themselves and falling under the calculation of Government Judi are liable in turn to pay customary rent assuming that there has been no survey and assessment or contractual rent agreed upon to the Inamdars who are directly liable to Government for the Judi The payment of assessment is a recurring right falling within the contemplation and language of Art 131 of the first Schedule of the Limitation Act (IX of 1908) In order that such a recurring right should be time barred it is necessary for the defendant to show that there has been a definite demand and refusal Mere omission on the part of the person having such right to exercise it will not start a period of adverse possession under the Article GANESH VINAYAK *v* SITABAI (1916)
I L R 41 Bom 159

INAM LAND

See LANDLORD AND TENANT
I L R 38 Mad 155

See LAND REVENUE CODE (BOM ACT V OF 1879) ss 3 (11) 217
I L R 34 Bom 686

———— acquisition of—

See RIGHT OF SUIT
I L R 36 Mad 373

———— *Regulation XVII of 1827—Bombay Act XI of 1483 s 2—Summary Settlement Act (Bom Act II of 1863) s 12—Hereditary Offices Act (Bom Act III of 1874)—Civil Procedure Code (Act V of 1908) ss 11 and 15—Service inam land—Summary settlement—Alienation—Will—Probate—Decision of Probate Court not to be destroyed by adjudication in a regular suit—Res judicata* The title of the family of Navalgund Desai came into existence in the time of the Bijapur Monarchs in

INCOME-TAX ACT (VII OF 1918)—contd

acquainted with the progress of the business and occasionally issues general instruction is not liable to be taxed under the Act where the income from such business is not remitted to British India On a reference by the Board of Revenue under s. 51 of the Income tax Act the assessee and not the Board has the right to begin BOARD OF REVENUE MADRAS v RAMANADHAN CHETTY (1920)
I L R 43 Mad 75

——— ss. 4 and 2— Agricultural Income —Application under s 51—Right to begin In a reference by the Revenue Authorities under the Indian Income tax Act (VII of 1918) s. 51 sub s (1) on a question whether the income from a tea garden, where tea was grown and made ready for the market by mechanical process was assessable Held that the income was to be apportioned and so much of it as was obtained by the manufacturing process was assessable *Commissioners of Inland Revenue* v *Ransom* [1918] 2 K B 709 and *Commissioners of Inland Revenue* v *Marse* [1919] 1 K B 61 followed *Held* also that the counsel for the company was to begin *Marquis of Chandos* v *Inland Revenue Commissioners* 6 Ex h 464 followed. KILLING VALLEY TEA COMPANY LD v SECRETARY OF STATE FOR INDIA (1920)
I L R 48 Calc 161

——— ss 5 9 and 11—Income derived from the rent and Royalties of Collieries does not come within income derived from business within the meaning of s 5 (iv) but within income from other sources of sub s (vi) and in assessing such a income tax the amount paid in respect of Road Cess should not be deducted *In the matter of the* RAJA JYOTI PRASAD SINGH DEO OF KASHIPUR
6 Pat. L J 62

———ss. 8, 9 and 11—*Income tax—Kinds of property assessable—Allowance in respect of annual value of business premises owned by firm— House property* Held by KNOX and GOKUL PRASAD J J (PIGGOTT J, *dubitante*) that as Act No VII of 1918 (the Indian Income tax Act) now stands the allowance on account of the annual value of business premises owned and occupied by a firm is not liable to assessment at all *Per* PIGGOTT J *Sed quære* whether such business premises would not fall within the purview of section 8 of Act No VII of 1918 as being house property *In the matter of* A JOHN AND COMPANY
I L R 43 All 139

——— s. 9 cl. 2 sub-cl. (ix)—*Joint Stock Company—Increase of capital—Issue of new shares —Commission paid to underwriters whether allowable deduction—Assessment* Where a joint stock company increases its capital by the issue of new shares for which it pays commission to the underwriters of the shares the *amount of the* commission so paid cannot be allowed as an item of expenditure under section 9 clause 2 sub clause (ix) of the Indian Income Tax Act (VII of 1918) TATA IRON AND STEEL COMPANY LIMITED In re
I L R 45 Bom 1306

——— ss 24, 39 (d) 40 and 41—*Failure to produce accounts—Prosecution under s 39 (d)—Penal assessment—Levy of whether a bar to prosecution—Bar under s 24 proviso 2 whether applicable.* Section 24 proviso 2 of the Indian Income-tax Act, does not bar the prosecution of

INCOME-TAX ACT (VII OF 1918)—contd

an accused for an offence under s 39 (d) of the Act for failure to produce accounts when penal assessment had been levied on him under s 24 in consequence of his making a false return of his income KING EMPEROR v HOOSAINALLY & Co (1920)
I L R 43 Mad 498

——— ss 31, 33 and 34—*Liability to super tax as agent of principal non resident in British India—Agent who is— Agent if must be in receipt of income on behalf of principal* The applicant Company was assessed to super tax as agent for six share holders in the Company all of whom were non residents of British India in regard to the dividends payable to them by the Company *Held per* WOODROFFE and GREAVES J J That ss 31 and 34 of the Indian Income tax Act are to be read together the latter section merely defining who may be included as an agent under s 31 That being so the agent must be in receipt of income within the terms of s 31 and the Company was not in receipt of income on behalf of the share holders within the meaning of s 31 That even if the two sections be read disjointly the Company was not in the circumstances of the case an agent within the terms of the Act That in this view no question as to the propriety of assessment to super tax as agent arose THE IMPERIAL TOBACCO COMPANY OF INDIA LIMITED v THE SECRETARY OF STATE.
26 C W N 745

——— s 43—*Rule I framed by Government of Madras under s 43 (2)—Company incorporated in England with branches in India and elsewhere— Total profits —Whether income tax and excess profits duty payable in England and income tax payable elsewhere to be excluded* Rule 2 framed by the Government of Madras under s 43 (2) (c) of the Income tax Act provides that the profits of the Indian Branch of a foreign company may be assumed for income-tax purposes to bear the same proportion to the total profits of the company as its receipts bear to the total receipts A company incorporated in England with branches in India and elsewhere cannot in calculating the total profits for the purposes of this rule claim deduction of the excess profits duty and the income tax payable by it in England and elsewhere CHIEF COMMISSIONER OF INCOME TAX MADRAS v THE EASTERN EXTENSION AUSTRALASIA AND CHINA TELEGRAPH CO LTD (1921)
I L R 44 Mad 489

——— S 51—
See 4 — I L R 48 Calc. 160
See EXCESS PROFITS DUTY ACT 1919—
s 3 — I L R 45 Bom 1064
6 — I L R 45 Bom. 881

——— Held that interest which accrues due to a money lending firm in the year of account is not assessable under s 9 as profits of business unless received or realised in the year of account Secretary of State v Arunachalam Chettiar
I L R 44 Mad 65

——— ss 51 (1) 52 106 (2) of the Government of India Act 5 and 6 George V Chapter 61— S 45 (h) of the Specific Relief Act (I of 1877)— English decisions on English Income tax Act guides to interpret Indian Income tax Act Where a person who was assessed to income tax appealed to the Board of Revenue and the Board while dismissing the appeal refused to refer the

INCOME-TAX ACT (VII OF 1918)—*contd*

matter to the High Court under s. 51 of the Income-tax Act though requested to do so *Held* that s. 106 (?) of the Government of India Act and s. 52 of the Income-tax Act prohibited the High Court from entertaining any application under s. 45 in the nature of a mandamus for the purpose of compelling the Revenue Board to refer the matter to the High Court under s. 51 of the Income tax Act *Spooner v Juddow (1850) 4 M I A 353* followed Issuing an order under s. 45 of the Specific Relief Act in the nature of a mandamus is an exercise of original jurisdiction within s 106 (?) of the Government of India Act An application under s. 45 of the Specific Relief Act against the Board is a proceeding within s 52 of the Income tax Act *In re Orward Building Society [1891] 2 Q B 463* applied Anything done in s. 52 includes anything omitted to be done. *Joliffe v Wallasey Local Board (1873) L. P 9 C P 62* followed English decisions are not decisions of Foreign Courts and as the Income tax Act of India generally follows the lines of the English Income tax Act the decisions of English Courts on the latter Act are the best guides to the interpretation of the Indian Act The meaning of unnecessary in s 51 of the Income tax Act considered CHIEF COMMISSIONER OF INCOME TAX v NORTH ANANTAPUR GOLD MINES LIMITED (1921) I L R 44 Mad 718

INCOME-TAX COLLECTOR

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 195 CLS (*b*) AND (*c*) I L R 38 Bom 642

INCORPORATED COMPANY

tax *See* COMPANY

See SALE I L R 43 Calc 790

INCORPOREAL RIGHTS

See EASEMENTS

—— —————— *Incorporeal rights enjoyment of for less than the statutory period—Person in such enjoyment entitled to protection against trespassers* It is well settled law that a trespasser in enjoyment of land for less than the statutory period, is entitled to be maintained in possession against all persons except the true owner The same principle is applicable to incorporeal rights such as rights to light and water courses A person in enjoyment of a water course for less than 20 years is entitled to protection in such enjoyment against persons who have no right to such water-course KONDAPA PAJAM NAIDU v DEVARAKONDA SURYANARAYAN (1910) I L R 34 Mad 173

Cf EASEMENT I L P 38 Mad 280

INCRIMINATING ARTICLES

———— possession of—

See DACOITY I L R 41 Calc 350

INCRIMINATING STATEMENTS IN CROSS EXAMINATION

See FALSE EVIDENCE. I L R 37 Calc 878

INCUMBRANCE

See BENGAL TENANCY ACT s 86 14 C W N 229

See HOMESTEAD LAND I L R 42 Calc 638

See LANDLORD AND TENANT I L R 39 Calc 138
I L R 45 Calc 756

See MORTGAGE I L R 38 Calc 923

See SALE FOR ARREARS OF REVENUE 14 C W N 677
I L R 43 Calc 779

———— avoidance of—

See REVENUE SALE I L R 37 Calc 559

———— by non occupancy raiyat—

See LANDLORD AND TENANT I L P 37 Calc 709

———————— *Putni Tenure—Customary right to cut and appropriate tree whether an incumbrance—Putni Regulation (VIII of 1819) s 11—Right of an auction purchaser at a sale held under the Putni Regulation to avoid such incumbrance—Bona fide engagement made by the defaulting proprietor with resident and hereditary cultivators effect of* A customary right to cut and appropriate trees is an incumbrance within the meaning of s. 11 of Regulation VIII of 1819 A purchaser of a *putni taluq* at a *sale* held under Regulation VIII of 1819 is not entitled to hold the property free from a customary right or a right recognised by usage which has grown up during the subsistence of the *putni* and under which occupancy raiyats are entitled to appropriate and convert to their own use such trees as they have the right to cut down inasmuch as he is not entitled to cancel a *bona fide* engagement made by the defaulting proprietor with the resident and hereditary cultivators PRADYOTE KUMAR TAGORE v GOPI KRISHNA MANDAL (1910) I L R 37 Calc 322

———————— *Absolute sale—Unregistered purchaser of portion of patni tenure interest of whether an incumbrance—Bengal Tenancy Act (VIII of 1885) ss 161 167—Civil Procedure Code (Act V of 1908) s 98 Per* JENKINS *C J* and N R CHATTERJEA *J* (MULLICK *J* dissenting) The interest of an unregistered purchaser of a portion of a patni tenure is not an incumbrance within the meaning of s 161 of the Bengal Tenancy Act *Chundra Sakai v Kalli Prosanno Chuckerbutty I L R 23 Calc 254* distinguished A purchaser of a tenure at a sale held in execution of a rent decree is not therefore required to annul such an interest (*i e* of an unregistered purchaser of a portion of a patni) under the provisions of s 167 in order to get a clear title ABDUL RAHMAN CHOWDHURI v AHMADAR RAHMAN (1915) I L R 43 Calc 558

INCURABILITY

See HINDU LAW—INHERITANCE I L R 38 Mad 250

INDEMNITY

See CONTRACT ACT s 124

See HINDU LAW (MITAKSHARA) 3 Pat L J 396

See SALE I L R 35 All 168

——— *Suit to recover money payable under an indemnity bond—Decree passed against plaintiff but money not actually paid—Suit maintainable* It is not necessary that before a suit on an indemnity bond can be filed the plaintiff should have already been compelled to make the payment in respect of which he is seeking to be indemnified It is sufficient that a decree has been passed against him for such payment *British Union and National Insurance Co v Rawson [1916] 2 Ch D 476* and *Tota Das v Babu Ganesh Prasad* (unreported) *Civil Revision No 79 of 1907* decided on January 31st 1910 referred to CHIRANJI LALL v NARAINI (1919) I L R 41 All 395

——— *Custody of—Mother parting with child under agreement not to take it back it loses her right to custody—Circumstances in which restoration will be refused* It is well settled that a mother cannot be deprived of her natural right of absolute control over her own child by any agreement by which she makes over

INFANT—*contd*

the child to another to be brought up as the latter's own even though she might have definitely stipulated never to claim back the child But there may be circumstances in a particular case which would render it undesirable in the interests of the infant that she would resume her rights when she has once made over the child to another and associations or expectations have been created on the part of the infant The mother of a posthumous boy made him over when two or three months old to her sister to be brought up as her own in order that she might go and have herself trained as a nurse and be thereby in a position to bring up her children of whom there were four others who were placed in various charitable institutions. When the boy whom the aunt was bringing up as her own child and for whom she had much affection was 7½ years old the mother being now in a position to maintain and bring up the child asked for the custody of the child *Held*—That in the circumstances of the case the child should be restored to the mother FANNY EMMELINE PETERSON v EARNEST HENRY SHAVE 24 C W N 711

INFERENCE

———— from facts which are not evidence—

See EVIDENCE ACT (I OF 1872) s 58 I L R 42 Bom 352

———— of Law—

See RENT I L R 38 Calc 278

INFORMANT

See FALSE INFORMATION TO POLICE I L R 46 Calc 807

See SANCTION FOR PROSECUTION I L R 44 Calc 650

INFORMATION

———— *Criminal Procedure Code s 250—Information meaning of—Compensation—Order if can be made against servant for information given on behalf of master—Information subsequent to the original complaint* The question whether a servant can be held responsible under s 250 Criminal Procedure Code for an information lodged on behalf of his master is a question of fact and depends on the question whether the servant is merely the mouthpiece of the master and is merely giving expression to his master's accusation or whether he joins personally in the accusation himself In the former case no order of compensation should be made against the servants under s 250 Criminal Procedure Code Information referred to in s 250 Criminal Procedure Code need not necessarily be the information on which the case is instituted Where a person making a complaint against an accused person subsequently gives information leading to the accusation of others in the case he may be dealt with under s 250 Criminal Procedure Code in respect of his subsequent information The words from information received in s 157 Criminal Procedure Code refers to the information given in s 154 Criminal Procedure Code JAGDAMI PERSHAD SINGH v MAHADEO KANDOO (1909) 1 C W N 326

INFRINGEMENT

See JUDGMENT I L R 46 Calc 978

See SEARCH WARRANT I L R 47 Calc 164

———— of rules—

See MUNICIPAL ELECTION I L R 47 Calc 524

———— of Trade-mark—

See TRADE MARK I L R 37 All 204 and 446; I L R 38 Calc 110

INHERENT JURISDICTION

See CIVIL PROCEDURE CODE 1908 s 151 AND O XLI r 19 I L R 45 Bom 648

See HIGH COURT JURISDICTION OF

See REMAND I L R 44 Calc 929

INHERENT POWER

See APPEAL I L R 42 Calc 433

See CIVIL PROCEDURE CODE 1908—

s 144 I L R 35 Bom 255

141 and 151 I L R 1 Lah 339

O I r 8 I L R 1 Lah 58?

O I r 10 I L R 35 Bom 393

O IX rr 8 AND 9 s 151 I L R 34 All 426

See DECREE AMENDMENT OF I L R 39 Calc 265

See EXECUTION OF DECREE 14 C W N 836

See HIGH COURT POWER OF

See PRACTICE I L R 34 Bom 408

See STAY OF EXECUTION I L R 40 Calc 955

———— criminal Court to release attachment—

See CRIMINAL PROCEDURE CODE 1898 ss 145 AND 146 I L R 1 Lah 451

———— to amend decree—

See PRACTICE I L R 37 Calc 649

———— to restore application for execution dismissed for default—

See CIVIL PROCEDURE CODE 1908 s 141 AND 151 I L R 2 Lah 66

INHERITANCE

See ALIYASANTANA LAW I L R 39 Mad 12

See BURMESE LAW
I L R 41 Calc 887
I L R 44 Calc 379

See CUSTOM
I L R 39 Calc 418
I L R 44 Calc 749
I L R 45 Calc 450

See HINDU LAW—INHERITANCE

See HINDU LAW—STRIDHAN
I L R 40 Calc 82
I L R 43 Calc 64

1 ——— Restraining execution of a decree obtained in a previous suit—*Against the plaintiff—Specific Relief Act (I of 1877) ss.*

INJUNCTION—contd

54 of (e). Where the defendant has not invaded or threatened to invade the plaintiff's right to or enjoyment of any property and there is no apprehension of a multiplicity of judicial proceedings to which the plaintiff need be subjected for the purpose of establishing or safeguarding his right or for preventing the acquisition of rights of the defendant —*Held* that s. 56 of the Specific Relief Act constitutes a manifest bar in the way of the plaintiff's suit for a declaration that the defendant had no title to lands in suit and for perpetual injunction restraining the defendant from taking possession of the lands by executing his decree. *Dharo idhar Sen* v. *Agra Bank I L R 4 Calc 380* followed in principle. *Appa* v *Ponan I L R 14 Mad 4 5* not followed. KARNADHAR HALDER v. HARIPRASAD ROY CHAUDHURI (1910) I L R 37 Calc 731

2 ———— Cases where injunction might be granted—*Plaintiff out of possession—Prima facie claim to the disputed property—Irreparable injury* Where the plaintiff is out of possession and claims possession the Court will refuse to interfere by grant of injunction against the defendant in possession under a claim of right but where the threatened injury will be irreparable an injunction will lie at the instance of a complainant out of possession. No injunction should be granted in a case where there is no foundation for any suggestion that the defendants are about to commit an act in the nature of waste. Where the plaintiff has another adequate remedy and where if an injunction were granted it would be of the vaguest description no injunction ought to be granted in such cases. KESHO PRASAD SINGH v. SRINIBASH PRASAD SINGH (1911)

I L R 38 Calc 791

3 ———— Jurisdiction—*Restraint of proceedings in subordinate Court outside the jurisdiction of High Court—Injunction in personam* The High Court can restrain proceedings in a Court outside its jurisdiction only if the party sought to be restrained is within its jurisdiction and it is not sufficient that the party should have property within the jurisdiction. *Bengal Iron Works* v *Bishumbhar Prosad I L R 36 Calc 235* followed. *The Carron Iron Co* v. *Maclaren 5 H L C 416* referred to. *Mungle Chand* v *Gopal Ram I L R 34 Calc 101* not followed. JUMNA DASS v. HARCHARAN DAS (1910)

I L R 38 Calc 405

4 ———— Suit against Secretary of State for India—*Injunction suit for—Civil Procedure Code (Act XIV of 1882) s 424—Notice—Inam—Resumption* The plaintiff an inamdar of a village was called upon by the Collector to hand over the management of the village to Government officials on the ground that in the events that had happened the *inam* had become resumable by Government. The plaintiff thereupon without giving the notice required by s 424 of the Civil Procedure Code (Act XIV of 1882) filed a suit against the Secretary of State for India in Council for a declaration that he was entitled to hold the village inam and for a permanent injunction restraining the defendant from resuming the village. *Held* that the suit was bad in absence of notice required by s 424 of the Civil Procedure Code (Act XIV of 188). The term act used in s 424 of the Civil Procedure Code of 1882 relates only to the public officers not to the Secretary of State. The expression no suit shall be instituted against the Secretary of State in Council is wide enough to include suits for every kind whether for injunction or otherwise. *Per* HEATON J —Where there is a serious injury so imminent that it can only be prevented by an immediate injunction a Court will not be debarred from entertaining the suit and issuing the injunction though the section requires previous notice if it is owing to the immediate need of the injunction that the plaintiff has come to the Court for relief before giving the required notice. *Flower* v *Local Board of Law Leyton 5 Ch D 347* followed. SECRETARY OF STATE v. GAJANAN KRISHNARAO (1911) I L R 35 Bom 362

5 ———— Temporary—*Order by Revenue Court suit for setting aside—Competency of Civil Court to grant injunction—Temporary injunction if may be granted when perpetual injunction not sought for—Civil Procedure Code (Act V of 1908) O XXXIX r 2—Bengal Tenancy Act (VIII of 1885) s 0* Although a decree may have been passed by a Revenue Court when it is under execution in a Civil Court proceedings may be stayed by the Civil Court if a suit has been brought for a declaration that the decree was obtained by fraud or was made without jurisdiction and for a perpetual injunction to restrain the decree holder from executing the decree. In granting a temporary injunction the Court acts in aid of the legal right so that the property may be preserved in *status quo*. Where the plaintiffs sued for a declaration that a certain order by the Revenue Court was without jurisdiction but did not ask for a perpetual injunction it was not competent to them to ask for a temporary injunction during the pendency of the suit. JITLAL SINGH v. KAMALESWARI PROSAD (1912) 18 C W N 92

6 ———— Wrongfully obtained—*Suit for damages if lies—Limitation* No suit lies for damages against a defendant for maliciously and without reasonable and probable cause obtaining a perpetual injunction which has been subsequently dissolved on appeal. A temporary injunction granted in such a suit is *ipso facto* dissolved by the Court's decree granting a perpetual injunction. In a suit for damages in respect of the temporary injunction limitation would therefore run from the date when the temporary injunction was dissolved by the decree granting perpetual injunction. *Per* FLETCHER J Nothing in the Limitation Act can give a party a right of suit unless such right exists independent of the Limitation Act. *Nand Kumar Shaha* v *Gour Sunkur 13 W R 305* is questionable authority in so far as it decides that a plaintiff can maintain a suit for damages against a defendant for maliciously and without probable cause obtaining an interlocutory injunction. An allegation by the plaintiff that the defendants were actuated by malice and that their suit for perpetual injunction ultimately proved unsuccessful when the decree of the High Court in their favour was set aside by His Majesty in Council was not a sufficient allegation of want of reasonable and probable cause. Want of probable cause is not to be inferred because of mere evidence of malice. *Turner* v *Ambler 10 Q B 252* referred to. *Per* RICHARDSON J S 95 Civil Procedure Code seems to contemplate the possibility of a suit being brought to recover compensation in respect of a temporary injunction applied for on insufficient

INJUNCTION—*contd*

grounds or in a suit instituted without rea onable or probable cause It is at le t doubtful whether such a suit is maintinable in the ab ence of an undertaking to pay compensation A party is not liable in damages for procuring an erroneous dec ion *Dhurmo Narain v Sreemutty Dos ee 18 W P 440* referred to MOHINI MOHAN MISSER v SURENDRA NARAYAN SINGH (1914)

I L R 42 Calc 550
18 C W N 1189

8 ——— Temporary—*Stat is q o main tenance of—Indian High Courts Act (24 and 5 Vict c 104) s 15—Jurisdiction of the High Court to interfere* The plaintiffs were some of superior landords of the disputed property which consisted of two plots of land and claimed to have been in direct possession of about one third of the property The defendants who were in occupa tion of the remainder being alleged to have obtained a permanent lease from some of the co sharers of the plaintiffs commenced to dig the foundations for an extension of their factory house The plaintiffs sued for partition and applied for a temporary injunction The defend ants notwithstanding notice of the application for injunction expedited the erection of the build ing It appeared that on partition the plaintiffs could not conveniently be allowed any share of one of the plots but must be limited to an allot ment out of the other plot *Held* that there was a substantial question in controversy between the parties and pending its determination the *status quo* should be maintained to the nec es ary extent That it was desirable that the plot a share of which only could be allotted to the plain tiff on partition should be retained in *status quo* so that the Court mi ht be free to grant such relief as it might think prop r and an injunction should be granted restraining the defendants from building on this plot for a period of one month during which the partition suit was to be tried out That it was open to the High Court to give the necessary directions under s 15 of the Indian High Courts Act and in a case of this description it was essential that the High Court should inter fere to prevent what might otherwise place one of the litigating parties in an unfairly advanta geous position and thus turn out in the end to be the cause of an irremediable inju tice to the other HEMANTA KUMAR ROY v BARANAGORE JUTE FACTORY CO (1914) 19 C W N 442

9 ——— *Temporary in junction in mandatory form—Power of Indian Courts to grant under O XXXIX r 2 Civil Procedure Code (Act V of 1908)* Courts in India can under O XXXIX r 2 Civil Procedure Code issue temporary injunctions in a mandatory form *Israil v Shamser Rahman I L R 41 Calc 436* and *Champsey Bhimji & Co v Jamna Flour Mills & Co 16 Bom L R 566* referred to The view of BEAMAN J in *Rasul Karim v Pirubhai Amirbhai I L R 38 Bom 381* not followed KANDASWAMI v SUBRAMANYA (1917)

I L R 41 Mad 208

10 ——— Mandatory and prohibitory injunct ons—*Decree for injunction—Mode of en forcement—Execut on—Civil Procedure Code (Act V of 1908) s 47 O XXI r 32 cls (1) (5) —Limitation Act (IX of 1908) Sch I Arts 181 182* Where in a suit for declaration of title to land the plaintiff contended that the defendant by raising a wall had disobeyed a permanent injunction embodied in a decree dated September 1895 and prayed for the demolition of the wall so far as it was above the height limited by the aforesaid injunction —*Held* that the remedy lay by way of execution under O XXI r 32 and the enforcement of an injunction being a question relating to the execution discharge or satisfaction of the decree by which it was awarded a separate suit was prohibited under s 47 of the Civil Pro cedure Code 1908 *Salarlal Jaswantrai v Bai Parvatibai I L R 26 Bom 283 Durga Das Nandi v Deoraj Agarwala I L R 33 Calc 306 Jamsetji Manekji v Hari Dayal I L R 32 Bom 181* referred to *Per* RICHARDSON J O XXI r 32 *cls (1)* and *(5)* clearly applied to injunctions both mandatory and prohibitory The expres ion the act required to be done in cl *(5)* meant what had to be done to enforce the injunction SACHI PRASAD MUKHERJEE v AMARNATH ROY CHOWDHURY (1918) I L R 46 Calc 103

11 ——— Jurisdiction of single Judge *of a High Court to issue—Notice of—Disobedience to—Power of High Court to punish for contempt a person who is a party before it but does not reside within its jurisdiction—Civil Procedure Code 1908 O XXXIX r 2—Rules of Court of the 18th January 1898 rr 1 and 4* *Held* (1) that a Judge of the High Court sitting singly has jurisdiction to issue an injunction to a party before the Court re training such party from alienating his property subject to certain condi tions (2) that when such an injunction has been ordered in open Court in the presence of counsel for both partie it may be presumed that the Court s order was communicated to the party affected thereby and it is not sufficient excu e for disobedience thereto that a formal notice of the injunction has not been served upon him personally (3) that the High Court has power to punish disobedience to such an injunction whether under O XXXIX r 2 of the Code of Civil Procedure or by virtue of its inherent juris diction to puni h contempts of its own orders and this power where the order in question has been passed against a party to a proceeding before it is not confined to persons living within the limits of its territorial jurisdiction *Mungle Chand v Gopal Ram I L R 34 Calc 101* and *Vulcan Iron Works v Bishumbhur Prasad I L R 36 Calc 233* referred to RAM PRASAD SINGH v THE BENARES BANK LTD

I L R 42 All 98

12 ——— Arbitration pro ceedings—*Declaratory suit—Contract the subj ct matter of the arbitration denied—Competency of the Court to grant injunction—Question of com petency rais d for the first time on appeal—Specific Relief Act (I of 1877) s 52 53 54 and 56* The Court of Appeal cannot avoid the decision of a pure question of law which does not depend on the determination of a question of fact and which goes to the root of the matter and raises the ques tion whether the Court was competent to grant the injunction sought for by the plaintiffs *Meen akshi Naidoo v Subramaniya Sastri I L R 11 Mad 26 L R 14 I A 160* and *Connecticut Fire Insurance Company v Kavanagh [1892] A C 473* referred to Where there is a breach of an existing legal right which is vested in the applicants the breach thereof may be restrained

INJUNCTION—*contd*

by injunction *Imperial Gas Light and Coke Company v Broadbent* H L C 600 referred to In a suit for declaration that a certain contract entered into between the plaintiffs and the defendants was not binding on the plaintiffs inasmuch as they did not enter into such a contract and that they were accordingly entitled to an injunction to restrain arbitration *Held* that no injunction could be claimed under s 54 of the Specific Relief Act *Held* also that the injunction claimed should not be granted in view of the provision of cl (1) of s 56 which laid down that an injunction could not be granted when equally efficacious relief could certainly be obtained by any other usual mode of proceeding (except in case of breach of trust) *Held* also that if the plaintiffs case that they did not enter into the alleged contract were well founded the arbitration proceedings before the Bengal Chamber of Commerce even if they resulted in an award could only terminate in an award which would be a nullity and could not possibly affect the rights of the plaintiffs if the arbitrators made an award in favour of the defendants (which itself was doubtful) the plaintiffs would have ample opportunity to protect themselves by an appropriate proceeding *Held* also that s 54 and 56 must be read together as supplementing each other and it would be an erroneous construction of the statute to hold that the right to an injunction should be determined independently of the provision of ss 54 and 56 by reference to *the terms of s 57* RAM KISSEN JOINDOYAL v LOORAN MULL (1920) **I L R 47 Calc 733**

13 ———— **Device—Right as sole importer and seller**—*Misrepresentation effect of—Cycles sold as being made by a Company not in existence whether amounts to misrepresentation—Injunction whether could be granted when there was misrepresentation* The Plaintiff (Respondent) who was the agent of the Veloce Limited of Birmingham for the sale of the Veloce Cycles arranged with them for the manufacture and sale in India of a cheap quality cycle and the name or transfer of Warrior Cycle was adopted Lists were circulated by the plaintiff in India about December 1910 containing Warrior specification and were issued in the name of Warrior Cycle Company Birmingham and described the Plaintiff as their agent in India There was no warrior Cycle Company Birmingham but the name was adopted by the Veloce Limited to keep the two qualities separate In December 1910 the Plaintiff also ordered the supply of Warrior Cycle with the same Warrior Transfer and specification from the Victoria Motor Cycle Company Limited Glasgow and these arrived in July 1911 In September 1911 the Plaintiff s agency with the Veloce Limited came to an end and the sole agency was placed with Levetus & Co New lists were prepared upon which the Defendants (Appellants) were described as import agents In October 1911 Veloce Limited registered in England the word Warrior as a trade mark in connection with cycles The plaintiff claimed the exclusive use in India of the Warrior Transfer as being one employed by him and understood by the dealers and purchasers as indicating importation and sale by himself and asked for an injunction restraining the Defendants from passing off cycles not imported by the plaintiff with the same transfer on them for delivery of cycles in their custody and for other reliefs *Held*—That the plaintiff had failed to prove that he was the owner of the mark or transfer or that he had a right to use the same alone in India *Held also*—That as there was no Warrior Cycle Company in Birmingham there was a material misrepresentation on the part of the Plaintiff and so he was not entitled to the relief asked for SEN AND PANDIT v L S OAKES **24 C W N 155**

14 ———— **For stay of suit**—*On the ground of suit relating to same matter in foreign Court—Principle regulating such injunction—Suit in Calcutta by Plaintiff and suit by the Defendant against Plaintiff about same subject matter in a foreign Court—Plaintiff s application for injunction and principle regulating it* The very sound principle laid down in *Hyman* v *Helm 24 Ch D 531 (1883)* and *Vardapulo* v *Vardapulo 25 T L R 518 (1909)* is that a Defendant in a pending suit here should not be restrained from commencing and prosecuting proceedings in a foreign Court to enforce rights which he acquired within the jurisdiction of the foreign Court against the Plaintiff under the law of that foreign country should not be impaired In an application for an injunction to restrain the Defendant in a pending suit from prosecuting an action in a foreign Court about the same subject matter it is an essential condition that it should be applied for very promptly and that it should not be applied for after a considerable amount of time and trouble has been expended in the foreign suit TICUMCHAND SAUTOKECHAND v SAUTOKECHAND SINGHEE **24 C W N 735**

15 ———— **To restrain defendant from officiating as priest**—*In certain houses maintainability of* Where in a suit between priests for enforcement of a partition both of the family *jaqirs* and of the family *birt* the court granted the plaintiff an injunction restraining the defendants from trespassing on certain areas within which the plaintiffs were by the terms of the partition deed entitled to sole control over the *jajmans held* that neither the injunction nor an order directing the ascertainment of the defendants earnings from the specified area during the three years prior to the suit could be maintained LUTAN PANDEY v PRAYAG PANDEY (1918) **4 Pat L J 53**

INJUNCTION IN PERSONAM

See INJUNCTION **I L R 38 Calc 405**

INJURED PERSON

See SPECIFIC RELIEF ACT (I OF 1877) s 45 **I L R 40 Mad 125**

INJURY

See CRIMINAL PROCEDURE CODE ss 345 AND 439 **I L R 37 All 419**

See TRADE NAME **I L R 40 Calc 570**

———— **irreparable—**

See INJUNCTION **I L R 38 Calc 791**

———— **to health—**

See DIVORCE **I L R 39 Calc 395**

See NUISANCE **I L R 38 Calc 296**

INJURY—*contd*

——— to house—

See PROHIBITORY ORDER
I L R 38 Calc 876

IN PARI DELICTO

See KHOTI SETTLEMENT ACT (BOM ACT I OF 1880) ss 9 10
I L R 38 Bom 709

INQUIRY

See CRIMINAL PROCEDURE CODE ss 107 AND 117 I L R 37 All 30

See MAGISTRATE TRANSFER OF
I L R 37 Calc 812

——— by District Magistrate—

See CRIMINAL TRIBES
I L R 47 Calc 843

——— delegation of—

See SURETY I L R 46 Calc 1024

——— order passed without—

See LIMITATION ACT (IX OF 1908) s 28 ART 47 I L R 38 Mad 432

INQUISITION

See LUNACY I L R 48 Calc 577

INSANITY

See CRIMINAL PROCEDURE CODE—

ss 14 15 164 161 ETC
3 Pat L J 291

ss 464 AND 465 I L R 42 All 137

See HINDU LAW—MARRIAGE
I L R 38 Calc 700

INSOLVENCY

See BANKRUPTCY

See CIVIL PROCEDURE CODE 1882 CH XX s 351 14 C W N 143
I L R 35 All 402

See CIVIL PROCEDURE CODE 1908 O XXII R 10 I L R 39 Bom 568

See CONTRACT ACT s 247
I L R 42 All 515

See COSTS I L R 46 Calc 156

See EXECUTION OF DECREE
I L R 41 Calc 50

See FORFEITURE I L R 39 Calc 1048

See INDIAN INSOLVENCY ACT

See INSOLVENT

See LIMITATION ACT (XV OF 1877 SCH II ART 179
I L R 39 Bom 20

See LIMITATION ACT 1908 s 19
I L R 35 Bom 383

See MINOR I L R 42 Calc 225

See OFFICIAL RECEIVER
I L R 46 Calc 887

See PRESIDENCY TOWNS INSOLVENCY ACT) 1909—

See PROVINCIAL INSOLVENCY ACT (III) OF 1907)—

See RECEIVER I L R 40 Calc 678

INSOLVENCY—*contd*

See TRANSFER OF PROPERTY ACT 1882 s 56 I L R 42 All 336

——— of Hindu in Singapore —

See BANKRUPTCY I L R 40 Mad 581

——— of partner—

See MINOR I L R 42 Calc 225

——— of purchaser—

See SALE OF GOODS
I L R 40 Calc 523

——— Rules (Calcutta)—

See INSOLVENCY I L R 47 Calc 721

——— transfer of petition for—

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909) s 90
I L R 38 Mad 472

1 ——— Ad interim protection—*Provincial Insolvency Act (III of 1907) s … sub s 1 cl (g) 47 46 16 (6) 13 18—High Court if may grant interim protection and appoint receiver pending appeal—Inherent jurisdiction—Civil Procedure Code (Act V of 1908) s 151* Where an appeal has been preferred against an order refusing the appellant s application to be declared an insolvent the High Court has power in the exercise of its inherent jurisdiction as a Court of appeal to make an *ad interim* order for protection of the appellant and for the appointment of a receiver of his assets during the pendency of the appeal. *Panchanan Singha v Dwarka Nath Roy 3 C L J 29 Hukum Chand Boid v Kamalanand Singh 3 C L J 67* relied on As there appeared to be substantial points in controversy in the case which required consideration the High Court granted *ad interim* protection pending appeal to the appellant and also appointed a receiver of his assets ABDUL RAJAK v BASIRUDDIN AHMED (1910) 14 C W N 586

2 ——— Punjab Laws Act (IV of 1872) s 27—*Order of Insolvent Estates Court at Amritsar declaring debtors insolvents and appointing a Receiver—Subsequent order of High Court Bombay under 11 and 12 Vict (Indian Insolvency Act) declaring some debtors insolvent and vesting their property in Official Assignee Bombay* By the provisions of the Punjab Laws Act (IV of 1872) as to the property in the Punjab of debtors who have by an order under the Act been declared insolvents the Court is entrusted (by s 27) with merely administrative powers with regard to it and no transfer of the property takes place *Held* therefore by the Judicial Committee (reversing the decision of the Chief Court) that where such an order had been made by the Insolvent Estates Court at Amritsar in respect of certain debtors carrying on business at (amongst other places) Amritsar and Bombay and a Receiver of their property had been appointed by the Court a subsequent order of the High Court of Bombay in its Insolvency Jurisdiction made under the Indian Insolvency Act II (and 12 Vict c 21) declaring the same debtors insolvents and vesting their property in the Official Assignee of Bombay had the effect notwithstanding that it was of later date than the order of the Punjab Court of vesting all the property of the debtors including that in the Punjab in the Official Assignee of Bombay The High Court had rightly held that the Insolvent debtor sections of the Civil Procedure Code (Act

INSOLVENCY—*contd*

XIV of 1882) were not applicable to the case OFFICIAL ASSIGNEE, BOMBAY *v.* JUDGE, SMALL CAUSE COURT, AMRITSAR (1910) I. L. R. 37 Calc 418

3. ———— Insolvency in foreign jurisdiction—*Effect of, in other jurisdiction—Discharge of debts—Burden of proof.* Insolvency does not of itself operate as a discharge of debts in all jurisdictions. In the absence of authority that insolvency does so operate in a particular jurisdiction the Court is not entitled to assume in favour of a defendant that the debt is discharged by his insolvency in that jurisdiction. LANGASWAMI PADAYACHI *v.* NARAYANASWAMI PADAYACHI (1910) I. L. R. 34 Mad 247

4 ———— Adjudication in England—*Trustee in Bankruptcy—Petition to the Indian Court to act in aid of, and to be auxiliary to, the English Court—Exercise of powers—Jurisdiction—Bankruptcy Act 1883 (46 and 47 Vict. c. 52), s. 118—Presidency Towns Insolvency Act (III of 1909), s. 126.* The firm of L. King & Co. carrying on business in London as well as in Calcutta was adjudicated bankrupt in England and a Trustee in Bankruptcy of the property of the firm was appointed by the English Court. On an application of the Trustee in Bankruptcy to that Court it was ordered that the High Court of Judicature in Bengal be requested to act in aid of and be auxiliary to it. The Trustee in Bankruptcy thereupon petitioned the High Court in Bengal presenting the order of the English Court and seeking the assistance of the High Court in and about the said insolvency. He obtained an order that the High Court of Judicature in Bengal and its officers do act in aid and be auxiliary to the High Court of Justice in England and further that James, the Manager in Calcutta of the firm of L. King & Co. do personally attend before this Court to be examined before it. Upon James appearing on the date fixed for his examination and objecting that he ought not to be examined because the order ought not to have been made:— *Held* that to get the jurisdiction to examine James as a witness, there must be a request from the English Court asking this Court to act in aid and a letter of request from the one Court to the other ought to have been sent and that the order of the English Court presented by the Trustee in Bankruptcy was not sufficient to give this Court jurisdiction. *In re* L. KING & CO. BANKRUPTS (1911) I. L. R. 38 Calc 542

5 ———— Banker and customer—*Money held by banker in suspense account—Fiduciary relationship.* Certain monies were held by A. & Co. bankers in suspense on the claimant's account. Pending negotiations as to its investment the bankers failed:—*Held per* MILLER & MUNRO JJ. (ABDUR RAHIM J. dissenting) that the money was not held in a fiduciary capacity and the relationship of banker and customer existed between the parties. *Per* MILLER J.—When a man pays money into a bank whether he is a customer or not the presumption in the absence of other evidence will be that he pays the money in to be held by the banker as bankers ordinarily hold the moneys of their customers. *Official Assignee* v. *Smith* I. L. R. 32 *Mad* 68 followed. *Per* ABDUR RAHIM J.—Money held by a banker to a suspense account does not amount to payment to the banker. *Commercial Bank of Australia* v. *Official Assignee of the Estate of Wilson & Co.* [1893] A. C. 181 followed. OFFICIAL ASSIGNEE OF MADRAS *v.* MUTTARANGANATHA SATYAJANA SAHAYA NIDHI (1910) I. L. R. 34 Mad 125

6 ———— Insolvency in Presidency Towns—*Appeal under the Letters Patent, s. 15—Indian Insolvency Act (11 & 12 Vict. Cl. 21)—High Court Act (24 & 25 Vict. Ch. 104)—Banker and customer relationship of—Fiduciary capacity money held in.* A further appeal lies under s. 15 of the Letters Patent from the judgment of two Judges of the High Court who differ in opinion in an appeal from the Commissioner in Insolvency. Under s. 11 of the High Court Act 24 & 25 Vict. Ch. 104 the Indian Insolvency Act s. 73 is not applicable to the High Court, it being inconsistent with s. 15 of the Letters Patent. A customer instructed his banker to purchase a Government Promissory note with moneys standing to his credit with the banker. Before doing so the banker failed. On a motion by the customer to have his amount paid in full:—*Held per* MILLER J.—A mere direction by a customer to a banker to apply money at credit of the former's account in a particular way does not alter the relationship between banker and customer. *Per* MUNRO J. (dissenting from his judgment in the same case reported in *I. L. R. 33 Mad. at p. 116*). The bare undertaking of the banker to purchase a note could not have the effect of transferring the ownership of the sum of money necessary for the purchase from the banker to the customer. OFFICIAL ASSIGNEE OF MADRAS *v.* RUPPIAH (1910) I. L. R. 34 Mad 121

7 ———— Effect of adjudication order—*Property situate at Delhi attached by order of District Court of Delhi—Title of Official Assignee—Presidency Towns Insolvency Act (III of 1909), s. 17, 126—Auxiliary aid—Provincial Insolvency Act (III of 1907), s. 50.* Under s. 17 of the Presidency Towns Insolvency Act on the making of an order of adjudication by this Court the property of the insolvent situate in every part of British India vests in the Official Assignee of Bengal. *Official Assignee, Bombay* v. *Judge, Small Cause Court, Amritsar* I. L. R. 37 *Calc* 418 I. L. R. I. A. 86 followed. Where prior to the order of adjudication by this Court certain properties at Delhi belonging to the insolvent were attached under decrees of the District Court of Delhi and the subsequent application of the Official Assignee of Bengal for realisation of the insolvent's assets so attached was refused by the District Judge and the properties were thereafter sold in execution, and the sale proceeds brought into the District Court, an order was made under s. 126 of the Presidency Towns Insolvency Act requesting the District Judge of Delhi to act in aid under s. 50 of the Provincial Insolvency Act. *In re* JIWANDAS JHAWAR (1912) I. L. R. 40 Calc 78

8 ———— Title of official Assignee—*Attachment under Mortgage decree and order for sale of mortgaged property—Vesting order under s. 7 of Insolvency Act (11 & 12 Vict. c. 21) effect of—Sale after vesting order—Sale by Official Assignee to plaintiff—Title of purchaser from Official Assignee as against judgment creditor purchasing at sale in execution of his own decree—Notice.* An attachment in execution of a money decree on a mortgage of land followed by an order

INSOLVENCY—*contd*

for sale of the interest of the judgment debtor does not create any charge on the land *Sarkies v Bundhoo Baee 1 N W P 172* referred to An attachment prevents and avoids any private alienation but does not invalidate an alienation by operation of law such as is effected by a vesting order under the Indian Insolvency Act (11 & 12 Vict c 21) and an order for sale though it binds the parties does not confer title Previous to the 8th September 1904 a colliery leased to the judgment debtors was attached under a mortgage decree by the respondents (judgment creditors) and an order for sale on th September was made but at the request of the judgment debtors the sale was postponed until the 10th On 8th September the judgment debtors filed their petition in the Insolvency Court in Calcutta and the usual vesting order was made on the same day On 19th September the execution proceedings were stayed After issue of notice on the application of the respondent to the Official Assignee to show cause why he should not be substituted in the place of the judgment debtors the Subordinate Judge on 10th January 1905 finding that the notice had been duly served made the order for substitution and fixed the sale for 6th March 1905 on which day the property was sold and purchased by the respondents who in June were put into possession Meanwhile on 23rd May 1905 the Official Assignee with leave from the Insolvency Court in March 1908 sold the property to a purchaser who on 24th June 1908 sold it to the plaintiffs by whom on 16th July 1908 the present suit was brought for possession of the colliery *Held* (reversing the decision of the High Court) that the notice calling on the Official Assignee to show cause why he should not be substituted for the judgment debtors was not a proper notice under s 248 of the Civil Procedure Code 1882 A notice under that section should have called on him to show cause why the decree should not be executed against him But assuming the notice to have been duly served (which was denied) the sale was altogether irregular and inoperative The property having vested in the Official Assignee it was wrong to allow the sale to proceed at all The judgment creditors had no charge on the land and the Court could not properly give them such a charge at the expense of the other creditors of the insolvents In the second place no proper steps had been taken to bring the Official Assignee before the Court and obtain an order binding on him and accordingly he was not bound by anything which had been done In the third place the judgment debtors had at the time of the sale no right title or interest which could be sold to or vested in a purchaser and consequently the respondents acquired no title to the property *Mallarjun v Narhari I L R 25 Bom 337 L R 27 I A 216* distinguished No proper notice was served under s 248 of the Civil Procedure Code and the respondent had full notice and were responsible for the irregularities of the procedure adopted RAGHUNATH DAS *v* SUNDAR DAS KHETRI (1914)
I L R 42 Calc 72

9 ———— **Interim Receiver**—*Insolvent s money attachment of before the adjudication order—Provincial Insolvency Act (III of 1907) s 13 cl (2) s 16 cl (6) s 34 cl (1)—Bankruptcy Act of 1883 (46 & 47 Vict c 52) s 40* An interim receiver is appointed for the protection of the estate of the debtor for the benefit of the entire body of creditors *Ex parte For L R 17 Q B D 4* referred to Cl (1) of s 34 of the Provincial Insolvency Act restricts the operation of s. 16 cl. (6) thereof, A creditor who had attached a sum of money due to the insolvent before his estate vested in the receiver appointed after the adjudication order is entitled to apply it exclusively in satisfaction of his debt MADHU SARDAR *v* KHITISH CHANDRA BANERJEE (1914)
I L R 42 Calc 289

10 ———— **Practice**—*Presidency Towns Insolvency Act (III of 1909) s 36 (4) (5) whether applicable to contentious matters* S 36 (4) and (5) of the Presidency Towns Insolvency Act 1909 is intended to provide a summary procedure for ordering payment of debts due and delivery of property belonging to an insolvent where there is no dispute it is not intended for contentious matters or for following property the subject of fraudulent preference or dishonest concealment *In re* J M LUCAS AND ANOTHER (1914)
I L R 42 Calc 109

11 ———— **Infant**—*Whether can be adjudicated an insolvent*—An infant cannot be adjudicated an insolvent under any circumstances *Ex parte Jones L R 18 Ch D 109* followed SITAL PRASAD AND OTHERS *I e* (1916)
I L R 43 Calc 1157

12 ———— **Security for costs**—*Appeal—Jurisdiction—Presidency Towns Insolvency Act (III of 1909) s 8 (2) (b) Civil Procedure Code (Act V of 1908) ss 117 151 and O XLI r 10—Practice* On an application to the Court of Appeal for security for costs in an appeal from an order of a Judge in insolvency —*Held* that the Court has jurisdiction to entertain the application under s 117 and O XLI r 10 of the Code of Civil Procedure read with s. 8 (2) (b) of the Presidency Towns Insolvency Act *Sesha Ayyar v Nagarathna Lala I L R 3 Mad 121* not followed LAKHIPRIYA DASI *v* RAIKISHORI DASI (1915)
I L R 43 Calc 243

13 ———— **Application to wrong Court**—*Limitation Act (IX of 1908) s 14 inapplicability of to insolvency proceedings—Appeal notice of only to interested parties* S 14 of the Limitation Act does not apply to proceedings under the Provincial Insolvency Act Hence an application filed in a wrong Court to declare a debtor an insolvent and re presented to a right Court can be said to be presented only on the date of its re presentation and if on such date of its re presentation the application is not maintainable for any reason such as that the act of fraudulent preference as in this case having occurred more than three months before the date of re presentation it is liable to be rejected In an appeal by a creditor in insolvency proceedings it is sufficient if notice is given of the appeal only to the parties directly affected by the order of the lower Court and not to all creditors who may have any remote or possible interest in the result of the appeal TRASI DEVA RAO *v* PARAMESHWARAYA (1914)
I L R 39 Mad 74

14 ———— **Debtor presenting his own petition**—*Application for discharge—Abuse of process of Court —Jurisdiction to annual adjudication—Presidency Towns Insolvency Act (III of 1909) ss 14 15 21 38—Rules of the Insolvency*

INSOLVENCY—*contd*

Act [illegible] *s* *11* (*a*) Where debtors were adjudicated insolvent and an order for annulment of that adjudication was made and the debtors subsequently presented their petition to be again adjudicated insolvent on the same materials and in respect of the same debt and the same creditors as in the prior application for adjudication *Held* that the subsequent application to be adjudged insolvents was an abuse of the process of the Court and that the Court had jurisdiction to annul the later adjudication [illegible] *Ex parte* [illegible] [illegible] *In re* [illegible] [illegible] *In re Hercock* [illegible] *In re* [illegible] [illegible] *v* [illegible] *C* [illegible] *445* [illegible] *Cl* [illegible] *v Narayana* [illegible] *Mad* [illegible] *545* [illegible] [illegible] *All* [illegible] [illegible] referred to MALCHAND *v* GOPAL CHANDRA GHOSAL (1916)

I L R 44 Calc 899

15 ——————— Order of administration—*Attachment by creditor prior to order—Sale after order—*[illegible] *of attaching creditor—Insolvency Towns Insolvency Act* (*III of 1909*) *ss 53* (*1*) *108 109* S 53 (*1*) of the Presidency Towns Insolvency Act does not apply to an administration of the insolvent estate of a deceased person under s 108 and 109 of the Act but as an attachment in this country only prevents alienation and does not confer any title or create any charge or lien on the attached property such as attaches in England upon seizure under a writ of *fi fa* a creditor who has attached property in execution of a decree has no rights therein prior to sale and upon the making of an administration order before the property is sold the property vests in the Official Assignee and the attaching creditor is relegated to the same position as the other creditors and the sale proceeds are distributable rateably *Peacock v Madan Gopal I L R 29 Calc 428 Raghunath Das v Sundar Das Khetri I L R 42 Calc 72 L R 41 I A* [illegible] followed *Hasluck v Clark* [*1899*] *2 Q B* [illegible] [*1899*] *1 Q B 699 Johnson v Pickers g* [*1908*] *1 K B 1 In re Clark* [*1898*] *1 Ch 336 Ex parte Williams In re Davies 7 Ch 314 Slater v Pinder 6 Exch 236 7 Exch 95* considered *In re* PREM LAL DHAR (1917)

I L R 44 Calc 1016

16 ——————— Presidency Towns Insolvency Act 1909 s 36—*Whether applications under may be made ex parte—S 112 rules framed there under—Rr 17 18 19* and *20* According to the rules framed by the Calcutta High Court under s 112 of the Presidency Towns Insolvency Act applications under s 36 may be and are intended to be made *ex parte* KISSORY MOHAN ROY *In re* (1916)

I L R 44 Calc 286

17 ——————— Presidency Towns Insolvency Act 1909 ss 33 to 37 43——*Examination of persons under s 36—Application for examination what should contain—Order if may be made after insolvent s discharge—Prospect of litigation with Official Assignee no ground for refusing order* An application for examination of a person under s 36 of the Presidency Towns Insolvency Act should state shortly the nature of the information likely to be given by the person sought to be examined and the dealings or properties of the insolvent to which such information will relate The Court can in a proper case even after the discharge of the insolvent make an order for the examination of a person under s 36 There is nothing in the Insolvency Act to limit the powers of the Court under that section to the period before the insolvent s discharge though having regard to s 43 it may be that the provisions of s 36 will not be applicable to the insolvent himself after his discharge An order for examination under s 36 should not be refused merely because litigation may ultimately ensue between the Official Assignee and the person sought to be examined *In re* HARIPADA LAKSHIT *Ex parte* BINODINI DASSEE (1916) I L R 44 Calc 374

18 ——————— Provincial Insolvency Act 1907 ss 5 6 15 and 16—*Petition by debtor—Debtor* [illegible] *of adjudication where all the requirements of the Act have been fulfilled—Dismissal of petition as an abuse of process of Court as a matter to be dealt with on application for discharge* On an application under the Provincial Insolvency Act (III of 1907) by a debtor to be declared an insolvent where all the conditions specified in the Act have admittedly been satisfied he is entitled to an order of adjudication This does not depend on the discretion of the Court but is a statutory right of which he cannot be deprived by the Court on the ground that his petition is an abuse of the process of the Court To this effect there is a current of authority in India that the stage at which to visit with it due consequences any misconduct of a debtor is when his application for discharge comes before the Court and not on the initial proceeding CHHATRAPAT SINGH DUGAR *v* KHARAG SINGH LACHMIRAM (1916) I L R 44 Calc 535

19 ——————— Adjudication date of taking effect of—*Creditors claims of—Provincial Insolvency Act* (*III of 1907*) *ss 16* (*6*) *36* The provisions of s 36 of the Provincial Insolvency Act are to be read with s 16 (6) of that Act An order of adjudication relates back to and takes effect from the date of the presentation of the petition for the purpose of making the properties of the insolvent liable to the claims of the creditors RAKHAL CHANDRA PURKAIT *v* SUDHINDRA NATH BOSE (1919) I L R 46 Calc 991

20 ——————— Annulment of insolvency—*Suit by receivers commenced before annulment—Suit maintainable after annulment* *Held* that a suit brought by the receivers in insolvency with the object of ascertaining the factum and extent of indebtedness of the defendants to the insolvents did not necessarily abate on the insolvency being annulled but might be carried on by the late insolvents themselves if not by the receivers MANNU LAL *v* NALIN KUMAR MUKERJI (1918)

I L R 41 All 200

21 ——————— Position of mortgagee of insolvent—*Whether mortgagee entitled to receive interest at contractual rate up to date of payment* A mortgagee from a person adjudicated an insolvent under the Provincial Insolvency Act 1907 is entitled as a secured creditor to receive out of the proceeds of the sale of the mortgaged property his principal interest and costs and he is entitled to interest up to the date of payment JUGAL KISHORE *v* BANKIM CHANDRA (1919)

I L R 41 All 481

22 ——————— Rights of judgment creditor—*—Of insolvent as against the receiver in respect*

INSOLVENCY—*contd*

of execution of his decree before and after adjudication In 1914 one *B P* attached in execution of his own decree a decree held by his judgment debtors against other parties In the same year a petition in insolvency was filed against the judgment debtors and in 1915 an *interim* receiver was appointed The judgment debtors deposited the amount due under the attached decree in Court to the credit of *B P* who proceeded to draw out a considerable part of it After this the judgment debtors were declared insolvents and subsequently to the adjudication *B P* assigned his rights under the attached decree to one *M S* *Held* that the receiver had no right to recover the money realized by *B P* prior to the adjudication but in respect of any balance of the decretal money remaining due after the date of the adjudication the assignee might prove his claim as against the insolvents The assignee would however be bound to account for any part of the decretal money which he might have realized after the adjudication *Sri Chand* v *Murari Lal I L R 34 All 628* and *Dambar Singh* v *Munawar Ali Khan I L R 40 All 86* referred to MUHAMMAD SHARIF v RADHA MOHAN (1918) I L R 41 All 274

23 ———— Jurisdiction—*Order by Registrar in Insolvency appeal from—Limitation—Reference under Sch II s 18 of Act III of 1909—Validity of mortgage question of—Consent of parties—Presidency Towns Insolvency Act (III of 1909) ss 6 101 Sch II s 18—The Calcutta Insolvency Rule 1910 r 5* The period of limitation prescribed by s 101 of the Presidency Towns Insolvency Act (III of 1909) for an appeal from an order made by the Registrar in Insolvency shall be computed not as from the date when the findings of the Registrar are signed or filed but as from the date when the report is signed by the Registrar and the matter is thereby completed Upon application by certain persons claiming to be mortgagees of an insolvent s estate an order was made by the Court directing them to prove their mortgage before the Registrar in Insolvency under s 18 of the second schedule of the Presidency Towns Insolvency Act (III of 1909) *Held* that under such reference to him the Registrar had no jurisdiction to deal with the question of the validity or otherwise of the mortgage even with the consent of the parties before him so as to affect the interest of infants adversely by his decision LALBIHARI SHAH *In re* (1920) I L R 47 Calc 721

24 ———— Procedure and Practice—*Contempt—Verbal order by the Official Assignee to attend—Disobedience of order—Motion to commit—Notice of application—Service of affidavits—Irregularity—Waiver—Presidency Towns Insolvency Act (III of 1909) s 33 (2) (c) (e) and (4)—Insolvency Rules Nos 36 and 37* Having regard to the terms of s 33 (2) (c) of the Presidency Towns Insolvency Act there is no need for the Official Assignee to apply to the Court for an order for the insolvent s attendance nor any need for the Courts order to be in writing to be served personally on the insolvent and to contain a notice that unless the insolvent complied with it he would be committed for contempt An order given by the Official Assignee to attend his office in pursuance of s 33 (2) (c) of the Presidency Towns Insolvency Act need not necessarily be in writing If an order is given by him verbally it is valid and there is a duty upon the insolvent to comply therewith Non compliance with such order will render the insolvent liable to be punished for contempt of Court There is no express provision that affidavits in support of the application for contempt should be served at the same time as the notice of application *Per* CURIAM In future if the Official Assignee intends to apply for a committal order for contempt of Court he will be well advised to put his order into writing and have it served on the persons intended to be proceeded against with a notice that if the order is not complied with proceedings for contempt will be taken Further it is eminently desirable from all points of view that the procedure laid down by the Rules should be strictly complied with. BHURAMULL BANKA v THE OFFICIAL ASSIGNEE OF BENGAL (1919) I L R 47 Calc 56

25 ———— Appeal by a creditor—Receiver made party—*Respondent—Appeal if incompetent because other creditors not made parties* In an appeal by one of the creditor against an order overruling his contention that he was in the position of a secured creditor the Appellant joined as party Respondent the Receiver Two of the creditors appeared by leave to support the order appealed against but other creditors who did not appear to contest the Appellant s case in the lower Court were not made parties to the appeal *Held*—That the appeal was competent and it was not necessary to make the last mentioned creditors parties to it THE EAST INDIA CIGARETTE MANUFACTURING CO LD v ANANDA MOHAN BASAK 24 C W N 401

26 ———— Person who claims title to property attached by the Insolvency Court *as belonging to the insolvent—whether competent to bring a regular suit to establish his rights after the Insolvency Court has rejected his application to have the property released—Provincial Insolvency Act III of 1907—Punjab Laws Act IV of 1872* *Held* that the plaintiffs who claimed title to certain property attached by the Insolvency Court as belonging to an insolvent were competent to bring a regular suit to establish their rights and that the order of the Insolvency Court rejecting their application for the removal of the attachment was no bar to such suit whether the case was governed by the provisions of the Provincial Insolvency Act or of the Punjab Laws Act *Duni Chand* v *Muhammad Hussain (22 P R 1917)* *Naginlal Chunilal* v *Official Assignee (I L R 35 Bom 473)* *Barlow* v *Cochrane (2 Beng L R O C 56)* *Satya Kumar* v *Manager Benares Bank Ltd (22 Calc W N 700)* and *Irshad Hussain* v *Gopi Nath (I L R 41 All 378)* referred to *Abdul Lathef* v *Official Assignee of Madras (I L R 40 Mad 113)* *Official Assignee of Madras* v *Mangayar Karasu (47 Indian Cases 298)* and *Pita Ram* v *Jujhar Singh (I L R 39 All 626)* dissented from RAM PYARA v PHANA MAL I L R 2 Lah 147

27 ———— Member of an agricultural tribe—*Whether Insolvency Court can proceed against the land of the insolvent by making a temporary alienation without the intervention of the Collector—Provincial Insolvency Act III of 1907 ss 16 (2) (a) and 21 (2)—Punjab Alienation of Land Act XIII of 1900 s 16—Civil Procedure Code Act V of 1908 ss 60 68 and 72* *Held*

INSOLVENCY—*contd*

that an Insolvency Court is competent to proceed against the land of an insolvent who is a member of an agricultural tribe and effect a temporary alienation and it is not necessary that the receiver or the Court should proceed through the Collector *Fadr Din v. I ra Mal (4 P. R. 1903)* referred to also Punjab Alienation of Land Act s. 16 and Provincial Insolvency Act ss. 16 (2) (a) and 21 Provisions which trench on the usual jurisdiction of a Civil Court to execute its decrees or orders must be strictly construed. *Sar ... Dhar ... Farz v. Imam Fizan (I. L. R. I. Lahore 19?) (F. B.)* followed. *Held also* that a Court or receiver proceeding under the Insolvency Act should proceed as far as possible on the same lines as a Court acting in execution of a decree under s. 21 (?) of the Provincial Insolvency Act—and that consequently a farm or mortgage made of the Insolvent's land should not be for a term exceeding 20 years and should be automatically redeemed by the profits the debt being in either case extinguished MANJI *v.* GIRDHARI LAL

I L R 2 Lah 78

28 ————Whether sons of deceased insolvent have locus standi—*Insolvency proceedings—Provincial Insolvency Act (III of 1907) ss. 4, 27 4* On general principles as well as on the express provisions in s. 24 (3) read with the further provisions in s. 47 of the Provincial Insolvency Act it is incumbent on the Court to permit the representatives of the insolvent to appear at the enquiry held with a view to framing the schedule under s. 24 of the Act *Quære* Whether the representatives of the insolvent have *locus standi* to submit a proposal for composition? SRIPAT SINGH AND ANOTHER *v.* INDUBAT KUMAR TAGORE (1920) I L R 48 Calc. 87

29 ————Application for examination of witness—*Presidency Towns Insolvency Act (III of 1909) s. 36—Appeal*—Under the rules of the High Court an application for examination of a witness under s. 36 of the Presidency Towns Insolvency Act (III of 1909) should be made *ex parte* *In re* KISSORY MOHAN ROY 6 C W N 1153 referred to ALBERT FELIX SELDANA *Re* SUKHLAL KARNANI *v.* THE OFFICIAL ASSIGNEE (1921)

I L R 48 Calc 1089

INSOLVENCY ACT (11 & 12 VICT c 21)

See INDIAN INSOLVENCY ACT

See INSOLVENCY I L R 42 Calc 72

See PRESIDENCY TOWNS INSOLVENCY ACT 1909 s. 6 I L R 37 Bom 464

———— s. 7—

See INSOLVENCY I L R 42 Calc 72

———— ss 7 27 49—*Salary earned by Insolvent after vesting order and before discharge vests in Official Assignee who however must get an order under s. 27* The earnings of an insolvent including salary after his insolvency and before his discharge vest in the Official Assignee under s 7 of the Insolvency Act The effect of s. 27 of the Act is not to cut down the operation of s 7 but to require the Official Assignee before obtaining payment of any salary due to insolvent to obtain an Order of Court as to the amount necessary for the maintenance of the insolvent A judgment creditor of the insolvent who is aware of the insolvency and whose judgment debt is included in the schedule cannot attach such salary without the giving Official Assignee an opportunity of obtaining an order under s 27 The insolvent debtor has the right to object to such attachment as it is open to him to show that property attached as his belongs to another RANGANATHA I ... *v.* ANANDA CHARIAR (1910)

I L R 34 Mad 183

INSOLVENCY ACT—*contd*

———— ss. 7, 27 49—*contd*

———— s 24—

See TRUSTEE I L R 35 Mad 712

———— s 39—Set off—*Right of set off exists against Official Assignee in respect of bills discounted before and dishonoured after insolvency* Under ss. 39 and 40 of the Indian Insolvency Act anything can be set off in India which can be set off in England under the Bankruptcy law in force for the time being Mutual credits which may be set off include credits which have a natural tendency to terminate in debt and not merely credits which must terminate in debts. Claims in respect of bills discounted for the insolvent before insolvency and dishonoured by the makers after insolvency can be set off under s. 39 of the Indian Insolvency Act. *Miller v. National Bank of India I L R 19 Calc 149* dissented from *Young v. Bank of Bengal 1 Moo I A 87* referred to and explained *Alsager v. Currie 12 M & W 751* followed. *In the matter of* CANTHOM & Co (1909) I L R 33 Mad 53

———— ss 39 40—Mutual credits'—*Relate to date of vesting order—Presidency Small Cause Courts Act s 69—Money deposited as security under section does not become the property of the decree holder—Right to set off claims for unliquidated damages* Money deposited in Court under s. 69 of the Small Cause Courts Acts does not become the property of the decree holder Before the date of the vesting order an insolvent had obtained two decrees against a debtor In the case of one of the decrees, the debtor applied for a reference under s. 69 of the Presidency Small Cause Courts Act and the amount deposited by him remained in Court on the date of the vesting order The High Court declining to express an opinion on the reference the decree became absolute and the money was paid to the Official Assignee Before the date of the vesting order the debtor had brought a suit against the insolvent and a decree was passed therein against the insolvent after the vesting order *Held* that the debtor was entitled under s. 39 of the Insolvency Act to set off against the amount of the two decrees obtained against him the amount due by the insolvent under the decree obtained by the debtor The decree in respect of which the deposit was made remained unsatisfied in law on the date of the vesting order and was an item of credit within the meaning of s 39 on such date The subsequent payment to the Official Assignees did not deprive the debtor of his right of set off *Per* KRISHNASWAMY AYYAR *J*—Claims for unliquidated damages cannot be the subject of set off as mutual credits under s 39 of the Indian Insolvency Act. Such claims are however mutual dealings within s 38 of the English Acts of 1869 and 1883 and can form the subject of set off under s 40 of the Indian Insolvency Act which makes the provisions of the subsequent English Acts applicable to the proof of claims under the Indian Insolvency Act CHANGALVARAYA MUDALY *v.* THE OFFICIAL ASSIGNEE OF MADRAS (1910)

I L R 33 Mad 467

INSOLVENCY ACT —*concld*

——— s 73—'Person aggrieved'—*Who is—Official Assignee right of to appeal as person aggrieved—Fiduciary relationship—Effect of Demand by creditor in creating fiduciary relation ship between him and debtor* A person aggrieved within the meaning of s 73 of the Indian Insolvency Act is a person against whom a decision has been pronounced which has wrongly refused him something which he had a right to demand Where a debtor whose claim to be paid in full was rejected by the Official Assignee moved the Insolvency Court making the Official Assignee a party and obtained an order directing payment in full the Official Assignee is a person aggrieved within the meaning of s 73 of the Act and is entitled to appeal against such order *Ex parte Sidebottam in re Sidebottam 14 Ch D 458 165* referred to *In re Lamb Ex parte Board of Trade,* [1894] 2 *Q B 805* referred to The Official Assignee in refusing the creditor s claim does not act judicially and the notice of motion to Court cannot be considered as an appeal against a judicial or quasi judicial proceeding of the Assignee Where a person pays money into a Bank without giving any directions the money becomes the property of the Bank and the relation between the Bank and the person paying is that of debtor and creditor *Per* MUNRO J —Where the person paying money without any directions makes a proper demand for payment after the money has become payable the debtor is bound to remit at once such money to the creditor and the debtor thereafter holds such money in a fiduciary capacity just as if the creditor had received payment and deposited it with directions to remit *Per* ABDUR RAHIM J —It is not competent to a creditor by making a demand upon his debtor to convert the latter into a trustee in respect of the amount due Such a change in the relationship can be brought about only by the debtor agreeing to accept the altered position and by his doing something towards effectuating the trust OFFICIAL ASSIGNEE OF MADRAS *v* RAMACHANDRA IYER (1909)

I L R 33 Mad 134

——— s 86—*Judgment entered up under the above section—Insolvent absent* After due notice being served by the Official Assignee an insol vent failed to appear at the hearing Judgment was entered up against the insolvent under s 86 of the Indian Insolvents Act *In re* BALCHAND SURANA (1914) 19 C W N 433

INSOLVENCY ACT (III OF 1909)

See PRESIDENCY TOWNS INSOLVENCY ACT

INSOLVENCY COURT

See CIVIL PROCEDURE CODE (1908) s 11 I L R 39 All 626

——— sanction of—

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909) ss 17 103 AND 104 I L R 35 Bom 63

INSOLVENCY PROCEEDINGS

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 195 (1) (c) I L R 37 Mad 107

——— *Attachment before judg ment of sum due to debtor—Order directing payment to decree holder—Injunction restraining payment validity of—Provincial Insolvency Act (III of 1907), ss 34 35 and 47— Assets realised —Code of Civil Procedure (Act V of 1908) s 151 and O XXXIX r 1—Injunction* A instituted a suit against B in August 1916 and on 25th Septem ber 1916 attached in anticipation of judgment, a certain sum of money in the hands of the District Board which was due to B On the 12th April 1917 B filed an insolvency petition before the District Judge On the 2nd June 1917 A got his decree and on the 6th the executing Court issued a precept to the District Board to pay to the decree holder the amount in deposit at the credit of B On the 17th B made an application to the District Judge asking for an injunction directing the District Board to stop payment The injunction was issued *Held* (1) that the District Judge had no power to issue an injunction upon the District Board as the District Board was not a party before him (2) That the District Judge had no power to issue an injunction on A as it did not appear that the conditions enumerated in O XXXIX r 1 of the Code of Civil Procedure 1908 existed (3) That the facts of the case did not indicate that justice equity and good cons cience required that the decree holder who ins tituted his suit before the insolvency petition was filed should be kept out of his money (4) That the case was not affected by ss. 34 and 35 of the Provincial Insolvency Act 1907 as there had been no adjudication of insolvency and no receiver had been appointed (5) That from the 2nd June the amount in dispute became the decree holder s money and the District Board were merely trus tees on his behalf (6) That in this case the assets were realized within the meaning of s 34 of the Provincial Insolvency Act 1907 RAM SUNDER RAI *v* RAM DHYHAN RAM (1918)

3 Pat L J 456

——— *Order disallowing a claim to goods seized by the Official Assignee after adjudi cation—Suit to set aside the order maintainability of* No suit lies to set aside an order made by the Insolvent Court dismissing on the merits a claim to goods seized by the Official Assignee after adjudication. Followed in *The Official Assignee of Madras* v *Mangayarkarasu Ammal I L R 40 Mad 117*. ABDUL LATHEEF *v* THE OFFICIAL ASSIGNEE OF MADRAS (1912)

I L R 40 Mad 1173

——— Whether sons of deceased insolvent have *locus standi in insolvency proceedings—Provincial Insolvency Act (III of 1907) ss 21 27 47* On general principle as well as on the express provisions in s 24 (3) read with the further provisions in s. 47 of the Provincial In solvency Act it is incumbent on the Court to per mit the representatives of the insolvent to appear at the enquiry held, with a view to framing the schedule under s 24 of the Act *Quere* Whether the representatives of the insolvent have *locus standi* to submit a proposal for composition ? SRIPAT SINGH AND ANOTHER *v* PRODYAT KUMAR TAGORE (1920) I L R 48 Calc 87

INSOLVENCY RULES

——— rule 37— (Bom)

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909) ss 6 27 36 AND 121

I L R. 37 Bom 464

—— criminal proceedings against—

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909), s. 1 [illegible]

I. L. R. 25 Bom. 62

—— execution of fictitious sale-deed by—

See PROVINCIAL INSOLVENCY ACT (III OF 1907), s. 18 I. L. R. 29 All. 623

1. —————— *Insolvent* [illegible] *discharged suit by—Security for cost—Cause of action accruing after the order of adjudication—The amount claimed in excess of the debts proveable in insolvency—Intervention of the Official Assignee—Nominal plaintiff—Civil Procedure Code (Act V of 1908) s.* [illegible] An undischarged insolvent brought an action for the recovery of a sum due in respect of brokerage from the defendant and earned by him subsequent to his adjudication the amount claimed being in excess of the amount of his debts proveable in insolvency. The defendant applied for an order that the plaintiff be directed to give security for the costs of the suit. *Held* that the plaintiff was not a *nominal* plaintiff suing merely for the benefit of the Official Assignee and so no order for security for costs should be made. That the application is not covered by any provision in the Code of Civil Procedure but that Code is not exhaustive and it must be dealt with under the general law. That it is well settled in English law that a cause of action which accrues to a bankrupt subsequent to the adjudication in

[illegible] At the trial on each charge [illegible] the [illegible] taken under [illegible] of the Presidency Towns Insolvency Act was [illegible] *Held* that [illegible] of the [illegible] Act [illegible] *Assignee* [illegible] *Ingham* [illegible] [illegible] v. THE OFFICIAL ASSIGNEE OF CALCUTTA (1919) I. L. R. 47 Calc. 251

5. —————— *Presidency Towns Insolvency Act (III of 1909)* [illegible] *the Insolvency Court in Bombay* [illegible] *filing suit against insolvent after discharge in foreign Court—Foreign Court decreeing claim of opposing creditor—Insolvent applying to Court granting discharge to restrain opposing creditor from proceeding with his suit or executing the decree—Jurisdiction of the Insolvency Court to restrain proceedings in foreign Court—Order of discharge of Insolvency Court in Bombay not binding on foreign Courts in the absence of reciprocity—Insolvent Court not restrain opposing creditor from taking proc*

INSOLVENT—*contd*

ings in a foreign State if the Official Assignee is unable to recover insolvent s property in that State—Equitable Jurisdiction to act in personam—Practice. On 27th November 1914 the appellant applied for insolvency in Bombay under the Presidency Towns Insolvency Act 1909 The respondent was one of the opposing creditors and his debt mentioned in the schedule was in respect of costs awarded to him by the High Court in a suit filed against him by the appellant. On 1st October 1918 the insolvency proceedings terminated and the appellant was granted his discharge Thereafter the respondent *sued the* appellant for the amount of his debt in the Court of Sirohi State and obtained a decree for Rs 2 834-4 0 The appellant thereupon took out a rule in the Insolvency Court at Bombay calling upon the respondent to show cause why he should not be restrained from proceeding in the suit filed against the appellant in the Sirohi Court and from executing the decree in the said suit. The respondent contended that the appellant had property in the Sirohi State which the State refused to hand over to the Official Assignee in Bombay and that under s 45 of the Presidency Towns Insolvency Act the Court had no jurisdiction to restrain the respondent from taking proceedings in the Sirohi State to recover his debt from the insolvent s property The Trial Court discharged the rule on the respondent undertaking not to arrest the insolvent personally and to give notice to other creditors mentioned in the schedule of any property or money received in execution of the decree to enable them to claim rateable distribution On appeal *held* confirming the order of the trial Court (1) that though an order of discharge granted by the Insolvency Court in Bombay would be recognised by all Courts in the *British Empire still there would be no obligation* on Courts outside British India to recognise the order of discharge as a complete release from debts mentioned in the order (2) that if the appellant insolvent has assets in the Sirohi State which the Official Assignee was unable to get hold of the respondent ought not to be restrained from taking proceedings in that State to recover his debt from any property of the insolvent situate in that State Equitable jurisdiction of the Court to restrain a party before it from proceeding in an action in a foreign Court discussed *Per* MACLEOD C J — It would be contrary to all ideas of equity that a party trading and incurring debts in Bombay and having property in foreign territory which the Official Assignee could not get hold of should be able to completely get rid of all his liabilities as regards his creditors inside British India and then proceed to enjoy his property outside British India free from all those liabilities *Tenechand v Lakhmichand Manekchand (1919) 44 Bom 272* and *Carron Iron Company v Maclaren (1855) 5 H L C 416* referred to LAKHMIRAM KEVALRAM v POONAMCHAND PITAMBER (1920)

I L R 45 Bom 550

———— *Creditor causing seizure of property as that of an insolvent—Suit by real owner for damages—Liability of creditor* Where property is taken possession of as the property of an insolvent by the receiver in insolvency acting under orders of the court and loss is caused thereby to the real owner of the property it is not the receiver who is liable in respect of such loss but the person at whose instance the court directed the receiver to take possession of the property *Abdul Rahim v Sital Prasad I L R 41 All.* 658 followed BINDA PRASAD v RAM CHANDAR I L R 43 All. 452

INSOLVENT PLAINTIFF

See COSTS I L R 46 Calc 156

INSPECTION OF DOCUMENTS

See CIVIL PROCEDURE CODE (V OF 1908) O XI R. 14 14 C W N 147

See DISCOVERY I L R 38 Calc 428

See SOLICITOR S LIEN FOR COSTS I L R 35 Bom 352

———— made of—

See SUMMONS TO PRODUCE DOCUMENTS I L R 47 Calc 647

INSTALMENT

See CIVIL PROCEDURE CODE (1908) O XXXIV I L R 38 Bom 32

See DEKKHAN AGRICULTURISTS RELIEF ACT (XVII OF 1879) s. 15B I L R 35 Bom 190 310

See LIMITATION ACT (IX OF 1908) SCH I ART 75 I L R 35 All 455 I L R 41 All 104

ART 2 13 I L R 43 All. 671

———— default in payment of—

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 48 I L P 39 Bom 256

———— payment by—

See DEKKHAN AGRICULTURISTS RELIEF ACT (XVII OF 1879) s. 15B I L R 40 Bom 492

———— power to grant—

See DEKKHAN AGRICULTURISTS RELIEF ACT (XVII OF 1879) s. 20 I L R 37 Bom 486

———— *Contract—Default in payment of instalments—Waiver—Effect of the waiver* The plaintiff agreed to sell certain lands to the defendants for R1 000 in 1901 and put the *latter in possession thereof the same day* The material stipulations in the contract were as follows —(i) that the purchase money should be paid annually by instalments of R100 each on a certain day fixed in the contract (ii) that in case of default in the payment of the first instalment on the due date the plaintiff should be entitled to recover it as rent and sue for possession of the lands (iii) that in case of default in the payment of any three or four subsequent instalments on the due dates the plaintiff should be entitled to recover possession of the lands and claim the unpaid instalments as rent and (iv) that on payment of all the instalments the title to the lands should be treated as having passed to the respondent by sale but that in the meanwhile the plaintiff should continue owner thereof In 1908 the plaintiff filed the present suit to recover possession of the lands, alleging default in the payment of the instalments which became due in 1904 1905 and 1906 The lower Courts dismissed the suit on the

INSTALMENT—contd

ground that the plaintiff had waived the payment of the first two instalments and probably the third also. On appeal —*Held* confirming the decree that as to the first three instalments the plaintiff dealt with the defendant in such a way as to show that he did not insist on payment on the dates fixed in the contract that therefore after that course of conduct he was not warranted in law in enforcing payment according to the strict terms of the contract without previous intimation to the defendant to that effect *Cornwall v Henson* [1900] 2 Ch 298 followed. CHINA AN r SUKA VALAD BAPU (1911)
I L R 35 Bom 511

INSTALMENT BOND

See CIVIL PROCEDURE CODE, 1908 O XXXIV R. 14
I L R 44 Bom 981

See DECREE I L R. 44 Bom 840

See INTEREST I L R 44 Bom 775

See LIMITATION I L R 38 Mad 374

See LIMITATION ACT (IX OF 1908)
I L R 36 Mad 66

SCH I ART 74

SCH. I ART 132 I L R 37 All 400
I L R 43 All. 596

———— *Consent not to sue on failure to pay instalment if would amount to waiver —Limitation Act (IX of 1908) Sch. I Art 75* Waiver is consent to dispense with or forego some thing to which a person is entitled. Where it was proved that demand was made in three successive years in respect of three instalments due upon an instalment bond but the plaintiff consented not to sue for the whole amount as he was entitled to do under the bond for default on the first two occasions but refused to consent on the third *Held* that this amounted to a waiver of the payment of the two earlier instalments. When the instalment bond was executed on the 6th of November 1908 and provided payment of Rs 10 000 by annual instalments of Rs. 400 commencing from the 30th of September 1909 and further that in case of default the whole amount payable on the bond was to fall due and the plaintiff waived the payment of the first two instalments as aforesaid and filed a suit for the recovery of the whole amount on the 12th of November 1914 *Held* that this suit was not barred by limitation and it was decreed for Rs 9 200 RAM CHUNDER BANKA v PAWATMULL (1915)
19 C W N 1172

INSTALMENT DECREE

See CIVIL PROCEDURE CODE (1908) O XXI R 2 O XXXIV RR. 4 8
I L R 39 All 532

See DECREE I L R 42 Bom 728

———— *Penalty clause—Failure to pay two instalments making the whole decree payable at once—First instalment not paid on due date but paid up before the second one fell due—Second instalment not paid on due date—Penalty clause not becoming operative.* A decree payable by instalments provided that the instalments were to be paid on certain fixed dates and that on failure to pay any two instalments at the period fixed, the whole amount of the decree remaining unsatisfied was to be paid up at once. The first instalment was not paid on the date fixed but was paid some time afterwards and before the second instalment fell due. On failure to pay the second instalment on the due date the decree holder applied for execution of the whole amount of the decree which remained unsatisfied *Held* dismissing the application that the real intention of the parties was that before the penalty could be enforced two instalments must be in arrears together whereas in the present case only one instalment was in arrears. SUBRAYA VENKAPPA v SUBRAYA (1918) I L R 42 Bom 304

INSTIGATION

See ABETMENT OF AN ABETMENT
I L R 46 Calc 607

INSTRUCTIONS TO COUNSEL

See BARRISTER I L. R 44 Calc 741

See COUNSEL I L R 47 Calc 828

———— *Charges of misconduct by Counsel—Reasonable grounds—Privilege against Court—Disciplinary action against Counsel* The Court is entitled to ask counsel who during the conduct of a case makes charges of misconduct whether he makes the charges on instructions and if so on whose It is not sufficient to plead instruction Counsel have responsibility in the matter and are not justified in making serious charges of fraud and crime unless they are personally satisfied that there are reasonable grounds for putting them forward Instructions to counsel are only privileged in the sense of being protected from disclosure to the opponent. There is no privilege as against the Court The latter cannot use them as evidence in the case and for the purpose of the trial would have to treat them as confidential but they could be called for then and there and be used after the trial for determining whether disciplinary action should be taken against counsel by the Full Court WESTON AND OTHERS v PEARY MOHAN DASS (1912)
I L R 40 Calc 898

INSTRUMENT

See ATTESTATION OF INSTRUMENT
I L R 37 All 350

INSTRUMENTS OF GAMING

See BOMBAY PREVENTION OF GAMBLING ACT (BOM IV OF 1887) s 3
I L R 40 Bom 263

See COTTON GAMBLING
I L R 39 Calc 968

See PUBLIC GAMBLING ACT 1867 ss 3 AND 10 I L R 42 All 470

INSTRUMENT OF TITLE

See RAILWAY RECEIPT
I L R 40 Bom 630

INSURABLE INTEREST

See INSURANCE I L R 36 Bom 484

INSURANCE

See CONTRACT ACT (IX OF 1872) s. 28
I L R 38 Bom 344

See JUTE I L R 44 Calc 98

See LIFE INSURANCE

See LIFE INSURANCE COMPANY

See MARRIED WOMEN'S PROPERTY ACT (III OF 1874) s 6
I L R 37 Mad 483

See SALE OF GOODS
I L R 40 Bom 11

See TRANSFER OF PROPERTY ACT (IV OF 1882 AS AMENDED BY ACT II OF 1900) s 130 I L R 37 Bom 198

——— **Marine insurance**—*Insurable interest of agent in goods of principal—Effect of a Mahajan's Majur—Local custom when enforced—Duties and rights of ensurer and policy holder in case of total loss* The plaintiffs as commission agents shipped certain goods on behalf of constituents on board the ship *Ali Madut* in the year 1899 The plaintiffs were instructed by their principals *to insure these goods* and accordingly by a policy dated February 7th 1899 the plaintiffs ensured the goods with the defendants subject as stated in the policy to the custom of the port of Cutch Mandvi The ship *Ali Madut* was wrecked off the coast of German East Africa and the wreck and the remains of the cargo was sold by the local authorities and the proceeds handed over to the owner of the vessel. The plaintiffs sued the defendants to recover Rs 3,000 as the value of the goods. The defendants besides certain other objections to the plaint objected that the plaintiffs as agents had *no insurable interest in the goods* that by the custom of the port of Cutch Mandvi the claim of the plaintiffs could not be established without the production of a Mahajan's *Majur* and that the defendants were in any event entitled to credit for the sale proceeds of the wreck and cargo *Held* that an agent who has authority from his principles express implied or ratified, can effect insurances on the goods of his principals that the custom of the port of Cutch Mandvi must be construed in a reasonable manner and that under it a Mahajan's *Majur* could not be required in the case of total loss that the policy holder's duty was only to give intimation of total loss at the earliest possible opportunity to the insurer and that it was for the insurer to protect his interest and to recover whatever was left as the net balance of the sale proceeds of the cargo *Pansordas Bhogilal v Kesrising Mohanlal 1 Bom H C 229* referred to KANJI DWARKADAS v HARIDAS PURSHOTTAM (1911)
I L R 36 Bom 484

——— *Policy of Marine insurance—Perils of the sea—Wear and tear not included within the words* Where a boat was insured against the perils of the sea and it was proved that it sank in fair weather and smooth water without any assignable cause and where it was not proved that the bottom plates had sprung a leak in consequence of the alleged bumping of the boat and where also there was some evidence of the boat having been deliberately scuttled, which if not accepted would lead to the inference that the bottom plates had corroded in consequence of age and ordinary wear and tear *Held* that the case was not covered by the terms of the policy

INSURANCE—*contd*

The term perils of the sea refers only to fortuitous accidents or casualties of the sea. The words do not cover every loss of which the sea is the immediate cause and so wear and tear do not come within the meaning of those words There must be some casualty something which could not be foreseen as one of the necessary accidents of adventure The *Xantho L R 12 A C 503 509* followed *Anderson v Morice 10 Com Pleas 58 Blackburn v The Liverpool and Brazil River Plate Steam Navigation Co [1902] 1 K B 290* distinguished. W STEWART v THE NEW ZEALAND INSURANCE CO LD (1912)
16 C W N 991

——— **Fire**—*Damage by fire—Possession of Insurance Company and their acts after fire is extinguished—Damage to machinery of mill by water used to extinguish fire—Omission to protect or clean machinery—Arbitration—Evidence taken by arbitrators alleged to be outside scope of reference—Petition to Court to revoke submission—Arbitration Act (IX of 1890) s 10* The provisions in virtue of which under the conditions of a policy an Insurance Company takes and holds possession of premises damaged by a fire are for the purpose of enabling it to minimise the damage As it has to bear the loss it is more than anyone directly interested in doing everything for the best not as a duty to the insured but in its own interest. Its powers are of the nature of a privilege to do that which is most for its own benefit under the circumstances so as to reduce the loss After a fire in October 1906 at the Victory Mills Bombay which then belonged to the appellant he sent in his claim to the respondents who took possession of the premises under powers reserved to them in that behalf in the policy and retained possession for a considerable period for salvage purposes The assessment of the damages was disputed and the matter was in accordance with the terms of the policy referred to arbitration in the course of which the appellant tendered evidence to prove that the machinery was seriously damaged not only by the actual fire but owing to the water used to extinguish the fire being allowed to remain on it the injury in that way being progressive The evidence was objected to on the ground that damage so caused to the machinery did not come within the loss insured against in the policy but that the liability for damage to the property ceased when the fire was extinguished. The arbitrators admitted the evidence whereupon the respondents petitioned the High Court to revoke the submission to arbitration on the ground that the arbitrators had exceeded their jurisdiction in admitting evidence which would only relate to damage from some tortious act of the respondents which was outside the reference to arbitration The Judge of the High Court before whom the matter came made no order on the petition being of opinion that the arbitrators had decided nothing by admitting the evidence and that there was no reason to interfere with their action. The respondents appealed and the appeal was allowed the appellate Bench of the High Court expressing in its decree an opinion that the jurisdiction of the arbitrators extended only to the dispute relating to loss and damage from fire under the policy and not to the question of any loss or damage alleged to have arisen from the neglect of the respondents to take care of the machinery after the fire had been extinguished and the respondents to have

INSURANCE—*contd*

entered into possession of the premises. *Held* (reversing the decision of the Appellate High Court and restoring that of the Original Court) that the finding that the loss was to be estimated from the condition of the machinery at the time the fire was extinguished, was erroneous. There was no question of tort on the part of the respondents. They may have thought it was not worthwhile to spend money in drying the machinery but right or wrong they unquestionably had full power to take the course which in fact they did take. But having taken possession of the premises and done what in their opinion was wisest to minimise the damage they could not say that the actual damage done was not the natural and direct consequence of the fire. AHMEDBHOY HARIBHOY *v* BOMBAY FIRE AND MARINE INSURANCE COMPANY I. L. R 37 Bom 183

——— *Warning that premises would be set on fire—Insurance in consequence of warning—Duty of assured to disclose facts affecting risk and premium—Defective declaration under O XXX r 2 Civil Procedure Code its effect* It is the duty of a person who receives information or warning that his premises will be set on fire in consequence of which he insures his premises to disclose to the insurer the information so received If he fails to do so the insurer is discharged from liability *Greet v Citizens Insurance Co Tupper's R (U C) 596 C A* followed. *Kelly v Hochelaga Fire Insurance Co 24 L. Can Jur 298* distinguished Every circumstance which would influence or be likely to influence the judgment of a prudent insurer in fixing the premium and in determining whether he will take the risk or not, should be disclosed. There is a duty to disclose to the insurer all facts which bear upon their being a possibility of a fire greater than usual and which might indicate the motive of the assured in effecting the insurance. There is no obligation on an assured to disclose matters already known to the insurer A suit need not be dismissed for incomplete disclosure of the names of partners according to the provisions of O XXX r 2 Civil Procedure Code It is a defect which may be allowed to be corrected *Abrahams & Co v Dunlop Pneumatic Tyre Co [1905] 1 K B 46* referred to IMPERIAL PRESSING CO *v* BRITISH CROWN ASSURANCE CORPORATION LD (1913) I L R 41 Calc 581

——— *Liability of Company for further loss Per* CHANDAVARKAR, *J*—The loss or damage by fire which is insured against in a policy of insurance cannot include loss caused by deterioration of the property insured consequent on neglect (if any) of the Insurance Companies to take care of it if they have taken possession A loss so caused is not an inevitable or direct consequence of the mischief by fire It is only where mischief arises from fire (in fire insurance cases) and from perils of the sea (in marine insurance cases) and the natural and almost inevitable consequence of that mischief is to create further mischievous results that underwriters become responsible for the further mischief so incurred. *Montoya v London Assurance Company 6 Ex 451 458* referred to *Per* BATCHELOR, *J*—The loss insured against is limited to the loss by fire (which includes the loss by water in extinguishing the fire) and cannot conveniently embrace all possible damages however remote which could by ingenuity be traced up to some connection with the fire as the ultimate *causa sine qua non* It is impossible to hold that damages arising from the alleged negligence of Insurance Companies while in possession are properly claimable in pursuance of the contract of insurance for whereas this contract refers only to loss by fire those damages would arise from an origin totally different and wholly distinct and separable from the fire namely a neglect of some duty imposed on the companies after the loss by fire or water had become an accomplished fact. ATLAS ASSURANCE COMPANY LIMITED *v* AHMEDBHOY HABIBHOY (1908) I L R 34 Bom 1

INSURANCE COMPANY

See TRADE NAME I L R 40 Calc 570

INSURANCE POLICY

See COMMON CARRIER, LIABILITIES OF I L R 38 Calc 28

INTANGIBLE PROPERTY

See PALAS OR TURNS OF WORSHIP I L R 42 Calc 455

INTENT AND KNOWLEDGE

See PENAL CODE (ACT XLV OF 1860) s. 86 I L R 38 Mad 479

INTENTION

See CAUSE OF ACTION I L R 41 Calc 825

See CONSTRUCTION OF DOCUMENT I L R 37 Mad 480

See FORFEITURE I L R 41 Calc 466

See FRAUDULENT PREFERENCE I L R 43 Calc 640

See HIGH COURT I L R 34 Bom 378

See LURKING HOUSE TRESPASS I L R 44 Calc 358

See PENAL CODE ACT (XLV OF 1860)
s 260 I L R 40 All 84
ss 300 AND 325 I L R 35 All 329
s 302 I L R 40 All 360
ss 304 AND 325 I L R 40 All 103
s 456 I L R 38 All 517
I L R 47 All 395

See PRINTING PRESS AND NEWSPAPERS ACT (XXV OF 1867) ss 4 AND 5 I L R 35 Bom 55

See SECURITY TO KEEP THE PEACE I L R 43 Calc 671

——— evidence of—

See FORGERY I L R 43 Calc 783

——— materiality of—

See FORFEITURE I L R 47 Calc 190

——— necessity of—

See SECURITY FOR GOOD BEHAVIOUR. I L R 43 Calc 591

——— of writer—

See PRESS ACT (I OF 1910) ss 3 (1) 4 (1) 17 19 20 AND 22 I L R 39 Mad 1085

——— to cause death—

See MURDER I L R 37 Calc 315

INTEREST—*contd.*

——— power of Court to grant—
See CIVIL PROCEDURE CODE 1908 s. 34
I. L. R. 2 Lah. 25

——— right to depend on contract or statute—
See PRIVY COUNCIL (PRACTICE)
I. L. R 43 All. 497

1. ——— *Civil Procedure Code (Act V of 1908) s 144—Decree—Interest award of—Decision of Court—Land Acquisition Act (I of 1894)—Court determining the amount of compensation—Payment of the amount to claimant—Subsequent reduction in amount on appeal—Interest over the excess—Inherent powers of the Court* A sum of money by way of compensation awarded under the Land Acquisition Act (I of 1894) and paid into Court was taken out by the claimant. Subsequently on appeal the High Court reduced the amount of compensation payable to him but made no order as to interest. Government then applied to recover from the claimant interest over the excess drawn by the claimant from the Court. *Held* that the interest claimed should be awarded inasmuch as the claimant had had the benefit of the money belonging to Government in excess of that to which the High Court held him to be entitled and the benefit was represented not only by the excess wrongly taken by the claimant from the District Court but also the amount of interest which the excess carried. *Moolchand Lal Lal v Mahomed Sami Meah I L R 14 Calc. 481 486 Mahomed Sami Ia an v Sakharam Ramchandra I L R 3 Bom 49* referred to. COLLECTOR OF AHMEDABAD v. LAVJI MULJI (1911)
I. L. R 35 Bom. 255

——— *Interest right to claim till payment or legal tender—Tender or agreement to waive tender must be of an ascertained sum—Valid tender must be unconditional* At common law where interest is payable by the terms of a contract it runs ordinarily up to the date of payment. A valid tender must be an unconditional offer to pay a specific and ascertained sum. An offer to pay such amount as may be found due on a settlement of accounts if the payee would execute an indemnity bond in accordance with law is not a valid tender. There can not be a tender or an agreement to waive tender of an unascertained sum. *Garuda Peddi v Gudi Janakayya Garu 1 Mad H C R 124* distinguished. *Pandurang Krishnaji and another v Dadabhoy Nowroji I L R 26 Bom 643* distinguished. PAI BATCHA SAHIB v APPOO NARAINASWAMI MUDALIYAR (1910)
I L R 34 Mad 320

——— *Usufructuary mortgage—Interest not stipulated for—Charge in the nature of mortgage must be in writing and registered* Where no interest is stipulated for in a mortgage bond no interest is recoverable. A charge in the nature of mortgage whether for principal or interest must be expressed in writing and registered and cannot be raised by implication. *Kutti umma v Madhava Menon 11 Mad L J 156* followed. *Imdad Hasan v Badri Prasad I L R 20 All 401* distinguished. MAKBUL ALI v ALI AHMAD (1913)
I L R 40 Calc 514

——— *Arrears of rent—Rate of interest—Evidence of admissible to explain kabuliyat* Where a document recites that interest is to be paid by the tenant upon rent in arrears at the rate of one anna per rupee but does not expressly state whether interest at this rate is payable monthly or annually evidence is not admissible to show what was really intended. *Monmotha Nath Chowdhury v Nobin Chandra Sanyal 14 C W N 1100* discussed. *Mahomed Sum would en v Moonshee Abdul Huq (1864) W R 379* not followed. Evidence to construe the terms of a contract is not inadmissible in certain cases. PRATAP CHANDRA SHAHA v MAHOMMED ALI SARKAR (1913)
I L R 41 Calc 342

——— *Contract Act (IX of 1872) ss 16 74—Undue influence presumption of—Penalty—Excessive and usurious interest—Duty of the Court* Where there is ample security the exaction of excessive and usurious interest in itself raises a presumption of undue influence which it requires very little evidence to substantiate. The attempt to conceal the real rate of interest by describing it as one pice in the rupee per mensem or as in the present case R 5 per mensem is evidence of an intention to get the better of the debtor. The law lays down that there must be a footing of complete equality between debtor and creditor and they must be so to speak at arms length to make a bargain which is in itself harsh and unconscionable enforcible at law. *Carrington Ld v Smith [1906] 1 K B 79 In re a Debtor [1903] 1 K B 705* referred to. Where there is ample security an excessive rate of interest has been held to be anything over ten per cent. Where there is no security no rate of interest can be considered excessive. There can be no standard rate on personal loans and where the parties are reasonably on terms of equality a Judge cannot do better than adopt what they themselves have agreed on though of course when that is not the case he has to judge what is reasonable as best he can and under all the circumstances. Where the contract is for a temporary accommodation the stipulation that interest is to run at R 5 a month is one which necessitates the payment of interest not at 60 per cent per annum but at R 5 in each month and a stipulation that in default of 12 months instalments of interest compound interest would begin to run is in the nature of a penalty. However technical this may be it is the duty of the Courts in India to enforce the letter of the law against obviously harsh and unconscionable bargains of this nature. The exploitation of the necessitous of the careless and inexperienced is a trade to be extirpated in the interest of the whole community as contrary to individual morality as well as to public policy. *Muthu Krishna Iyer v Sankaralingam Pillai I L R 36 Mad 229 Samuel v Newbold [1906] A C 461 Kesavulu Naidu v Arithulai Ammal I L R 36 Mad 533* referred to. ABDUL MAJEED v KHIRODE CHANDRA PAL (1914)
I L R 42 Calc 690

——— *Stipulation in mortgage bond for interest at 75 per cent per annum whether penalty—Liquidated damages—Undue Influence—Unconscionable bargain—Contract Act (IX of 1872) ss 16 74 illus (j) as amended by Act VI of 1899 s 4 (1)—Act XXVIII of 1855 s 2 Per* MOOKERJEE J (BEACHCROFT J agreeing to as to penalty) Notwithstanding the small group of cases where a restricted view was taken of the authority of the Court to relieve against a penalty the tide has turned back and the more modern cases repudiate the doctrine that any rate of interest however exorbitant cannot be deemed

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penal *Motoji* v *Sheik Hasain 6 Bom H C 8 Para* v *Govind 10 Bom H C 382* followed. *Arjan Bibi* v *Asgar Ali I L R 13 Calc. 200 Gokul Chand* v *Khaja Ali (1890) Punj Rec 32 Sankaranarayana Vadhyar* v *Sankaranarayana Ayyar I L R 25 Mad 343 Chinna* v *Pedda I L R 26 Mad 445 Periasuami* v *Subramanian 14 Mad L J 146* not followed This principle is fairly deducible from the modern decisions that the Court is competent to grant relief whenever the rate of interest appears to the Court to be penal. *Mirajan Patari* v *Abdul Jubbar 10 C W N 1020 Velchand* v *Flagg I L R 36 Bom 164 14 Bom L R 18 Ganapathi* v *Sundara 22 Mad L J 354 Muthukrishna* v *Sankaralingam I L R 36 Mad 229* followed Although s 74 of the Contract Act was originally framed to deal with the doctrine of penalty and liquidated damages as understood in the law of England it is in its present form comprehensive enough to include the type of cases before the Court because it covers all cases where the contract contains *any stipulation by way of penalty* It is obvious that each case must be treated on its own circumstances. The test is was the agreement to pay damages for the breach of contract unconscionable and extravagant such as no Court ought to allow to be entered into *Webster* v *Bosanquet [1912] A C 394* referred to You are to consider whether it is extravagant exorbitant or unconscionable *at the time when* the stipulation is made—that is to say in regard to any possible amount of damages which may be conceived to have been within the contemplation of the parties when they made the contract *Clydebank Engineering Co* v *Don Jose Castaneda [1905] A C 6* referred to A stipulation for merely accelerating payment of the whole debt in default of payment of one or more instalments is not by itself by way of penalty *Ex parte Burden 16 Ch D 675 Sterne* v *Beck 1 DeG J & S 595 Wallingford* v *Mutual Society 5 App Cas 685* referred to But when the entire sum which the creditor had agreed to receive in instalments without interest is not only repayable in one sum but is also made to carry interest at an unusual rate the Court may in view of all the circumstances of the case regard the stipulation for payment of interest at an exorbitant rate as penalty When (on an account originally made up very largely of interest at an exorbitant rate) the stipulation was made in the mortgage bond (no interest being payable up to due date) that upon default of payment of one or two instalments not only would the whole balance due become forthwith payable, but would carry interest at the rate of 75 per cent per annum *Held* that the covenant for payment of interest at this rate was a *penalty* i e. it did not represent the damages which the creditors were likely to suffer by reason of the default of the debtors but was rather intended as an effective means to secure punctual performance of the contract *Per* MOOKERJEE J Where the facts make it clear that the creditors were in a position to take advantage of the embarrassment of their debtors and the bargain they made was unconscionable there is a concurrence of the two elements which must combine to attract the operation of s 16 of the Contract Act *Davis* v *Maung Shwe Goh I L R 38 Calc 805 L R 38 I A 1 Kesavulu Naidu* v *Arithulai Ammal I L R 36 Mad 533* followed KHAGARAM DAS v RAMSANKAR DAS PRAMANIK (1914)

I L R 42 Calc 652

———— *Power of Court to grant relief where interest unconscionable—Creditor when his improper act or omission delays payment of debt* Where delay in the payment of the principal debt is caused by some improper act or omission of the creditors the accrual of interest will be suspended during such period as the debtor is so prevented *Edwards* v *Warden 1 App Cas 281 Merry* v *Ryves 1 Eden 1 Marlborough* v *Strong 4 Brown P C 539 Cameron* v *Smith 2 B & Ald 305 Bann* v *Dal el Moo & M 228 Anderson* v *Arrowsmith 2 P & D 408 Laing* v *Stone 2 Man & Ry 561 Moo & M 229 London Chatham and Dover Railway Company* v *South Eastern Railway [1891] 1 Ch. 120* and *Webster* v *British Empire Mutual Life Assurance Co 15 Ch D 169* referred to A Court is competent to grant relief where the rate of interest appears to the Court to be of a penal character that is so unconscionable and extravagant that no Court should allow it *Khagaram Das* v *Ramsankar Das I L R 42 Calc 652 Abdul Majeed* v *Khirode Chandra Pal I L R. 42 Calc. 690 Bouwang* v *Banga Behari Sen 22 C L J 311 20 C W N 408* referred to GOPESHWAR SAHA *v* JADAV CHANDRA CHANDRA (1915) **I L R 43 Calc 632**

———— Interest not contracted for and not recoverable under the Interest Act (XXXII of 1839) allowed as damages KHETRO MOHAN PODDAR *v* NISHI KUMAR SAHA (1917)

22 C W N 488

———— *Compound interest—Court's power to give relief when money lender not shown to have taken undue advantage of his position* It is difficult for a Court of Justice to give relief on grounds of simply hardship in the absence of any evidence to show that the money lender had unduly taken advantage of his position even when the transaction appeared to be undoubtedly improvident The opinion of the Chief Court affirming that of the Divisional Judge that the plaintiff in a redemption suit was bound by the mortgagor's contract to pay compound interest at 25 per cent per annum was upheld. AZIZ KHAN *v* DUNI CHAND (1918) **23 C W N 130**

———— *Bond—Consideration—Interest in advance added to principal—Total amount made payable by instalments—Scheme of the bond providing in effect for progressive increase in the rate of interest—Transaction substantially unfair within the meaning of the Usurious Loans Act (X of 1918) s 3 (1)—Jurisdiction of Court to consider the transaction in an ex parte suit* On the 7th September 1918 the defendant executed a bond for Rs 8 400 in favour of the plaintiff a professional money lender The consideration of the bond was a cash advance of Rs 5 000 by the plaintiff and Rs 3 400 interest thereon which was calculated in advance *for thirty four months* at the rate of 2 per cent per mensem. The total amount of Rs 8 400 was made payable under the bond in thirty four instalments The first three instalments had been recovered by the plaintiff by a suit instituted in the Court of Small Causes, Bombay The defendant having made default in respect of the next six instalments from January to June 1919 the plaintiff sued to recover Rs 1 500 the amount due under the same. The defendant did not appear *Held* (1) that though the suit was *ex parte* the Court had under s. 3 (1) of the Usu

INTEREST—*contd.*

rious Loans Act, 1918, jurisdiction to consider the merits of the transaction between the parties; (2) that inasmuch as the scheme of the bond was that the interest on the whole sum of Rs. 000 should be continued to be paid though the principal was being progressively discharged by instalments, the interest charged in the bond was excessive and the transaction substantially unfair" within the meaning of s. 3 (1) (a) and (b) of the Usurious Loans Act, 1918; (3) that the plaintiff was not entitled to claim interest on sums which he actually received and which accordingly went towards part-satisfaction of the principal amount. *Samuel v. Newbold [1906] A C 461* referred to. KESHO HUKUMCHAND & Co. v. BAYLEY (1919)
I. L. R. 44 Bom 775

——— *Mortgage—Hard and unconscionable bargain—Court when should reduce stipulated interest.* In a suit on a mortgage executed by a Hindu lady which provided for interest at 15 per cent. with quarterly rests the trial Court allowed interest at 15 per cent. up to date of suit only. *Held*—That unless it can be shown that undue advantage had been taken the Court could not come to the conclusion that the transaction was hard and unconscionable. In appeal the High Court allowed interest at the contract rate up to the date fixed for payment and thereafter at 6 per cent. BEJOY KUMAR ADDY v. SATISH CHANDRA GHOSH **24 C W N 444**

——— **Bengal Tenancy Act (VIII of 1885)** s 67—*Kabuliyat rate of interest mentioned in—Purchaser at auction sale liability of to pay interest—Interest whether penal and unconscionable* The purchaser of a raiyati holding at fixed rates in execution of his own mortgage decree buys it subject to the terms and conditions of the subsisting lease of which he had notice and is liable to pay interest at the rate and pay rent in accordance with the instalments provided for in the kabuliyat. *Lal Gopal Dutt Chowdhury v. Manmatha Lal Dutt Chowdhury I L R 3 Calc 208* followed *Alim v. Satish Chandra Chakravarty I L R 24 Calc 37* distinguished. In the absence of evidence that any undue advantage was taken by the landlord of his position the rate of interest mentioned in the contract cannot be interfered with *Upendra Lal Gupta v. Mehraj Bibi 21 C W N 108* not followed *Lala Balla Mal v. Ahad Shah 23 C W N 233 Azi Khan v. Dhuni Chand 23 C W N 130* and *Bejoy Kumar Addya v. Satish Chandra Ghosh 24 C W N 411* referred to BHUT NATH CHATTERJEE v. RAMA NATH NASKAR (1920) **I L R 48 Calc 93**

INTEREST ACT (XXXII OF 1839)

——— *Debt payable in kind—Interest allowable* A debt which is specially expressed as payable in certain fixed measures of grain and payable at a specified time is a debt *certain* within the meaning of Act XXXII of 1839 and interest is allowable on the same *Juggomohun Ghose v. Manickchand 7 Moo I A 263* referred to *Narayan v. Nagappa 12 Bom L R 831* dissented from GOVINDAN NAIR v. CHERAL (1913) **I L R 38 Mad 464**

——— *Award of interest as damages apart from the Act* The Interest Act (XXXII of 1839) is not exhaustive of all cases where interest is allowable The Act while specifically allowing interest in all cases of debts or sums certain payable at a certain time or otherwise saves by its proviso other cases in which it is legally allowable. Where the suit was for a sum of money which would be payable to the plaintiff (a Muhammadan lady) as for her share on taking accounts of the business which was carried on by her father while he was alive and which was continued by her brothers, the defendants, after his death wherein the amount due to the plaintiff was utilized by her brothers. *Held* (i) that the proviso in the Interest Act applied to the case and (ii) that 6 per cent. interest was payable as damages on the amount due to the plaintiff *Miller v. Barlow L R 3 P C 733* and *Hurro Persaud Roy v. Shama Persaud Roy I L R 3 Calc 654* followed *Kamalammal v. Peeru Meera Levvai Rowthen I L R 20 Mad 481 Subramania Aiyar v. Subramania Aiyar and others I L R 31 Mad 250* and *Kalyan Das v. Maqbul Ahmad I L R 40 All 497* distinguished ABDUL SATTUR ROWTHEN v. HAMIDA BIVI AMMAL (1919) **I L R 42 Mad 661**

——— A principal is not entitled to interest on moneys detained by an agent on his behalf in the absence of a contract to its contrary LALMAN v. CHINTAMAN
I L R 41 All 254

INTEREST POST DIEM

See MORTGAGE **I L R 35 All 534**

INTERFERENCE

——— **by High Court—**

See PRACTICE **I L R 40 Bom 220**

INTERIM ORDERS

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909) s 20
I L R 35 Bom 47

INTERIM RECEIVER

See INSOLVENCY **I L R 42 Calc 289**

INTERLOCUTORY INJUNCTION

——— **breach of—**

See EASEMENT **I L R 39 Calc 59**

INTERLOCUTORY ORDER

See CIVIL PROCEDURE CODE 1908—

s 47	**I L R 34 All 530**
ss 104 and 115	
s 109	**I L R 42 All 174 176**
s 115	**15 C W N 682 848**
	I L R 34 All 592
	I L R 44 Bom 619
	5 Pat L J 550 400
O XI r 14	**14 C W N 147**
O XX r 18	**I L R 35 All 159**
O XXXIX r. 7	**15 C W N 353**

See JURISDICTION **I L R 42 Calc 926**

See LAND ACQUISITION
I L R 38 Calc 230

INTER MARRIAGE

See HINDU LAW—MARRIAGE
I L R 48 Calc 926

——— According to law and custom prevalent in Bengal a marriage between a Kayastha

INTER MARRIAGE—contd

and a Tunte both belonging to sub division of the Sudra caste is valid in the absence of any special custom rendering such marriage invalid Biswanath Dass Ghosh v Sreemati Sarasibala Dasi and others 25 C W N 639

INTERNATIONAL LAW

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 86 I L R 38 Mad 635

See JURISDICTION I L R 39 Mad 661

INTERNMENT

——— object of—

See ALIEN ENEMY SUIT AGAINST I L R 43 Calc 1140

——— order for—

See HABEAS CORPUS I L R 44 Calc 459

INTERPLEADER

——— An interpleader suit with a prayer for declaration of the titles of the several sets of defendants in the disputed land by the tenant against the landlords in whose favour he has executed separate Kabuliyats is not maintainable SHELLEY BONNERJEE v PAI CHANDRA DUTTA I L R 37 Calc 552
14 C W N 784

INTERPRETATION

See INTERPRETATION OF STATUTES

——— principle of—

See LIMITATION ACT IX OF 1908 SCH I ART 182 I L R 39 Mad 923

See REMAND I L R 41 Calc 108

INTERPRETATION OF STATUTES

See BENGAL TENANCY ACT 1885 s 11 25 C W N 9

See COMPANY I L R 43 Mad 550

See CONSTRUCTION OF STATUTES

See CRIMINAL PROCEDURE CODE s 14 3 Pat L J 291

S 5?4 5 Pat L J 321

See LAND ACQUISITION I L R 44 Calc 219

See RAILWAYS ACT 1890 s 75 I L R 42 All 76

See NON OCCUPANCY RAIYAT I. L R 44 Calc. 267

See NON OCCUPANCY RIGHT 3 Pat. L. J 1

See PRESS ACT 1910 s 4 I L R 42 All 233
4 Pat L J 174

——— Rules effect of—

See REMAND I L R 41 Calc 108

——— Heading of chapter may be looked at—

See NON OCCUPANCY RIGHT I. L. R 44 Calc 267

——— Illustrations cannot control the plain meaning—

See NOTE OF HAND 14 C W N 414

INTERPRETATION OF STATUTES—contd

——— Proviso—

See PRE ACT, 1910 s 3 I L R 39 Mad. 1164

See LAND IMPROVEMENT ACT 1883 I L R 41 Mad. 691

——— The word and may be read as or when necessary to carry out the obvious intention of the legislature KUNHALOOR PUTHEA VEETEL PAYARAPPA v PASKURM PUNNISERI KELAPPA I L R 40 Mad 594

——— When a particular section of an Act which has received judicial construction has been reenacted it must be treated as a legislation recognition of that construction. JOGENDRA CHANDRA ROY v SYAMDAS I L R 36 Calc 543

INTERROGATORIES

See DISCOVERY I L R 41 Calc 6

——— *Admissibility of interrogatories—Inadmissibility of certain questions as interrogatories though admissible in cross examination—Interrogatories obviously designed to assist in fishing up a case—Defence of wagering—Inadmissibility of interrogatories by the party raising defence of wagering as to the general business transactions of the opponent apart from the particular transactions in suit* The mere fact that questions would be admissible in cross examination of a witness does not make them good as interrogatories Interrogatories must not be exhibited unreasonably or vexatiously nor be prolix oppressive unnecessary or scandalous Nor should interrogatories be allowed which are sought to be administered obviously for the purpose of fishing out a case The Court will in cases where the defence of wagering is set up refuse to allow the party setting up this defence to interrogate his opponent generally as to his business transactions apart from the particular transactions in suit on the ground that it is manifestly unfair to compel a man to disclose his general dealings on the chance that thereby his opponent may discover something that will support his case BHAGWANDAS PARASHRAM v BURJORJI PUTTONJI (1912) I L R 37 Bom 347

——— *Method of administration—Disclosure of assets by affidavit in probate proceedings You obtained—Civil Procedure Code (Act V of 1908) O XI r 2—Probate and Administration Act (V of 1881) s 55* O XI of the present Code of Civil Procedure applies to proceedings in probate (vide s 55 of the Probate and Administration Act) Under that Order there are only two methods of discovery one by interrogatories and the other by an order directing discovery of documents in the possession of power of the other side An affidavit of assets actually received can therefore be obtained in probate proceedings by interrogatories only Under r 2 of O XI in India as in England the Judge has not any power to settle interrogatories but he can only decide what should be administered The *dicta* in English cases with regard to the more extensive powers of Courts in matters of probate seem to imply that the strictest relevancy may not be required in interrogatories therein. ANILABALA DASI v RAJENDRANATH DALAL (1915) I L R 43 Calc 303

INTESTACY

S Hindu Law
I L R 38 Calc 708

INUNDATED LANDS

See Custom I L R 45 Calc 475

INVENTIONS AND DESIGNS ACT (V OF 1888)

———— s 29—*Suit for infringement of patent* —Inventor ... The patent ... patented a process of manufacture ... a new ... crucial preparation made by calcining ... of the ... plant of which the essential features were the treatment of the substance at a red heat with sulphuric acid in ... a closed crucible or retort made ... of earthenware The advantages claimed were (a) no iron or other metal being used in the composition of the crucible there was no danger of any ... on the part of the fumes of the acid upon the metal ... (b) the retort or crucible was entirely closed from the time when the acid was added until the process of calcination was complete so that no ... fumes escaped into the air and the result was that the substance prepared was both purer and cheaper than that prepared in the old iron pan *Held* that the process was a new combination of admittedly old materials and as such was a good subject matter for a patent. *Harrison v The ... Foundry Company L R ... Hinton v Howl ... and Hampton v Spiller L R 6 Ch D 41 referred to* LAKHPAT ... v ... DAS (1918)
I L R. 41 All 68

INVENTORY

S Administration
L R 40 I A 236

See Court Fees Amendment Act (XI of 1899) s 19 H
I L R 41 Calc 556

———— preparation of—

S Civil Procedure Code 1908 O XXXIX r 7 15 C W N 353

INVESTIGATION

See Fraud I L R 38 Calc 936

See Valuation of Suit
I L R 43 Calc 225

IRREGULARITY

See Auction purchaser
I L R 38 Calc 622

See Civil Procedure Code (Act V of 1908) O XXIII r 1
I L R 37 Bom 682

See Criminal Procedure Code,
ss 145, 5 2 I L R 37 All 654
ss 250 537 I L R 36 All 132
ss 439 422 423
I L R 39 Mad 505

See Decree I L R 38 Calc 125

See Demolition of Building
I L R 37 Calc 585

See Jurisdiction of Criminal Court
I L R 40 Calc 360

IRREGULARITY—*contd*

See Receiver 14 C W N 560

See Sale for Arrears of Revenue.
I L R 37 Calc 407
I L R 42 Calc 765

See Sale in Execution of Decree.
I L R. 39 Calc 28

See Withdrawal of Suit
I L R 41 Calc 632

———————— *Trial by ... parties to a suit and relying on ... evidence ... —Decision of suit on statements by parties when confronted in the witness box after the case had ... and judgment reserved—Propriety of such procedure—De novo trial ordered by High Court* Where in a Small Cause Court suit the Judge after the close of the evidence and argument and having reserved judgment sent for the parties and ordered them to argue with each other in his presence about the merits of their respective cases which they did and he decided the suit upon the evidence and also the statements made by them when confronted in the witness box in the above manner and which statements were not recorded —*Held* that the procedure adopted by the Judge was very irregular and a *de novo* trial of the suit was ordered. AZIMUDDIN BEWA v ASIMUDDIN ... 25 C W N 593

IRRELEVANT EVIDENCE

See Evidence Act 1872 s. 5
5 Pat L J 410

IRRIGATION

See Easement 15 C W N 259

IRRIGATION BY PERCOLATION

See Madras Irrigation Cess Act (VII of 1865) s 1 (2)
I L R 40 Mad 58

IRRIGATION ACT (BOM VII OF 1879)

———————— *District Municipal Act (Bom Act III of 1901) s 50—Drainage cut—Drainage channel—Neglect of proper repairs by local bodies—Flow of water across the road into plaintiff's field—Damage—Liability of local bodies—Non feasance—Neglect of highways* Where drainage water passing along a certain drainage cut owing to some default instead of flowing along the assigned channel flowed across the road into the plaintiff s field and caused damage to the plaintiffs and the damage was found to be due not to the authorized drainage work but to the neglect of the drainage channel which the Municipality was bound to repair —*Held* that the Municipality was liable to the plaintiffs in damages *Per* CURIAM —The exemption from liability of local bodies on the ground of non feasance is confined to neglect of highways and does not apply to drainage works carried out by the local bodies for their convenience which they are bound to maintain in a proper state of repairs so that they shall not be a nuisance to the neighbouring owners. *Borough of Bathurst* v *Macpherson L R 4 App Cas 256 Municipality of Pictou* v *Geldert* [1893] *A C 524* referred to DHOLKA TOWN MUNICIPALITY v PATEL DESAIBHAI (1913)
I L R 38 Bom 116

IRRIGATION CESS ACT (MAD VII OF 1865)

See MADRAS IRRIGATION CESS ACT

——————— *Conditions necessary to entitle Government to levy water-cess—Extent of right to water—Engagement by land holder with Government* In this case the decision in *Prasad Row* v *The Secretary of State for India I L R 40 Mad 886* was followed on the admission of the respondent that the rights of the parties were governed by it AMBALAVANA PANDARA SANNADHI v THE SECRETARY OF STATE FOR INDIA (1917)

I L R 40 Mad 909

——————— s 1 (b)—*Opinion of Collector that irrigation is beneficial not a judicial one revisable by Courts— Irrigation by percolation covers irrigation by subsoil water* Construing s 1 (b) of the Madras Irrigation Cess Act (VII of 1865) the Full Bench *held* —(a) that it is not obligatory on the Collector to certify under s 1 (b) of the Act that the irrigation is beneficial and (b) that the words irrigation by percolation mean not only irrigation by means of water flowing on the surface of the land irrigated, but cover also cases where sub soil water is taken by the roots of trees *Held* also that the opinion of the Collector that the irrigation in any particular case is beneficial to the land is not a judicial one capable of being revised by a Civil Court *Secretary of State for India* v *Swami Naratheeswarar I L R 34 Mad 21* approved THE SECRETARY OF STATE FOR INDIA v MAHADEVA SASTRIGAL (1916)

I L R 40 Mad 58

——————— s 1 provs 1 and 2—*As amended by Madras Act V of 1900—Right of Government to levy cess for irrigation purposes—Zamindaris settled at Permanent Settlement—Sanads construction of—Cultivation extended and crop grown not customary at date of sanad—Engagement by zamindar with Government—Right to flowing water—Madras Land Encroachment Act III of 1905* The appellants sought to recover from the Secretary of State for India the respondent sums of money paid under protest in respect of water cesses levied by the Government of India under Madras Act VII of 1865 (as amended by Madras Act V of 1900) the portions applicable to the case being s 1 and pros. 1 and 2 The lands in suit were contiguous to the river Vamsadhara and sometime prior to the Permanent Settlement extensive works had been carried out to supply the district with water from the river and the water was distributed throughout the district by means of branch channels and subsidiary channels ending in many instances in village tanks and reservoirs The Government carved out of the land four zamindaris on each of which they assessed a permanent revenue or *jumma* and had them put up to public auction, and each purchaser received a sanad. These sanads did not mention any water rights They contained (*inter alia*) agreements by the zamindars to encourage their ryots to improve and extend the cultivation of the land Subject to his observing the conditions of the sanad each zamindar was authorized to hold the zamindari in perpetuity for himself and his heirs One of the four zamindaris (Urlam) was purchased by the appellant s predecessors in title at a sale for arrears of revenue and the other three were brought at various times by the Government The sluices of only one of the channels were on the appellant s lands but he used for irrigation purposes water from the river through all the four channels *Held* that the

IRRIGATION CESS ACT (MAD VII OF 1865) —*contd*

——————— s 1 provs 1, and 2—*contd*

Permanent Settlement was an engagement with the Government within the meaning of pro 1 of s 1 of the Act VII of 1865 That the effect of the Permanent Settlement was to vest the channel with their head sluices and branch and subsidiary channels and the tanks or reservoirs in the zamindars through or within whose zamindaris the same respectively passed or were situate and to give the zamindar the right or easement of taking water from the river for irrigation purposes That the zamindar on whose estate the head sluices and initial portions of each of the four channels in question were situate obtained under his sanad the right to take water from the river (assuming that it belonged to Government) and such rights was to be measured by the size of the channel, or the nature and extent of the sluices and weirs governing the amount of water which entered the channel and not by the purposes for which the grantor or his tenants had been accustomed to use water from the channel prior to the date of the grant. That after the water was lawfully taken into the channel the Government had no further rights in it except as owners of the other zamindaris. That the zamindars in whose favour the sanads were made took subject to the customary rights of the ryot cultivators and the rights of all holders of inams under existing inam grants and in other respects the rights *inter se* of the several zamindars under the sanads were analogous to the rights of upper and lower riparian owners on a natural stream. That there being no evidence that more water was being taken from the river than would be justified by the sanads as construed the cesses were wrongly levied on the appellants The law of the Madras Presidency as to rivers and streams certainly differs in some respects from the English law and it is quite possible that it recognizes some proprietary rights on the part of Government in the water flowing in rivers and streams PRASAD ROW v THE SECRETARY OF STATE FOR INDIA (1917)

I L R 40 Mad 886

IRRIGATION CESS AMENDMENT ACT (MAD V OF 1900)

See IRRIGATION CESS ACT (MAD VII OF 1865) s 1 PROVS 1 AND 2

I L R 40 Mad 886

IRRIGATION CHANNEL

——————— right to obstruct flow of rain water into—

See ESTATES LAND ACT (MAD ACT I OF 1908) ss. 4 27 73 AND 143

I L R 40 Mad 640

IRRIGATION WORKS

——————— *Government liability of for not repairing irrigation works—No duty of Government to repair irrigation works* In India the Government is under no obligation with regard to each individual ryot to repair irrigation works whenever they require repair *Madras Railway Company* v *Zemindar of Carvetnagaram, L. R 1 I A 364* distinguished. The rule derivable from English cases is that where statutory powers have been conferred and statutory duties imposed on persons or corporations, no liability for non feasance in regard to individuals arises in the absence of such liability under the common law

IRRIGATION WORKS—*contd*

merely because such duty is imposed. The statute must impose the liability expressly or by clear implication. *Sankara Vadivelu Pillai* v. *Secretary of State for India, I. L. R. 2? Mad ??* referred to. The rights and obligations of Government in regard to irrigation works in this country have to be ascertained from unrecorded custom and practice, and no custom or practice recorded or unrecorded gives the ryot, in case of non-repair, compensation measured by the value of the crops lost by defects in irrigation works commanding his land arising from such non-repair. There is no contract between a ryot and the Government, by which the latter is bound to maintain a supply of water for the irrigation of lands belonging to the former. The irrigation rights of ryotwari owners are not rights *personam*, but rather partake of the nature of rights *in rem*. *Chinnappa Mudaliar* v. *Salla Naidu, I. L. R. ?? Mad ??* doubted. SECRETARY OF STATE FOR INDIA *v.* MUTHUVEERAMA REDDY (1910) I. L. R. 34 Mad 62

ISSUES

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 11 I. L. R. 37 Bom 563

See LIBEL I. L. R. 37 Calc 760

See PRELIMINARY DECREE I. L. R. 37 Bom 60

———— *Issues raising of—Practice.* The practice of raising a number of issues which do not state the main questions in the suit but only various subsidiary matters of fact upon which there is not agreement between the parties is very embarrassing. Issues should be confined to questions of law arising on the pleadings and such questions of fact as it would be necessary for the Judge to frame for decision by the jury in a jury trial at *nisi prius* in England. WEST END WATCH COMPANY *v.* BERNA WATCH COMPANY (1910) I. L. R. 35 Bom 425

———— *Several issues should not be tried together.* The practice of trying all the issues in a case together defeats the object of the law in requiring the various issues to be kept separate and distinct and cannot but lead to confusion. RAJANI KANT MUKERJEE *v.* RAM DULAL DAS (1912) 17 C W N 65

———— *Not exactly framed but no surprise.* *Held* that High Court was right in treating question in respect of which no express issue was framed as an issue upon which the parties had in fact gone to trial and was entitled to look at the evidence recorded. *Held* that the appointment by the head of a Mutt of a successor to avoid criminal prosecution was not *bona fide* and was invalid. NATARAJA TAMBIRAN *v.* KAILASAM PILLAI 25 C W N 145

ITMAM

See PATNI REGULATION 25 C W N 857

———— *Taluk—what it imports—Mofaldars' receipts if conclusively show tenure to be non-transferable—Settlement Reports and District Gazetteer if admissible in evidence—Written instrument—terms of—inconsistent with ordinary implication of an expression—effect of—Grant for an indefinite period—nature of—Condition restraining alienation with no clause of re-entry—Transfer notwithstanding such condition if opera*

ITMAM—*contd*

tive—Evidence Act (I of 1872), s. 35. The word "itmam" imports a permanent heritable and transferable tenure when applied to a tenure in the permanently settled parts of Chittagong. *Mohabat Ali Chowdhury* v. *Jogesh Chandra Roy ?3 C. W. N. 915* referred to. The word "taluk" primarily imports permanency. *Syeda Kaniz Zohra* v. *Allah Prasad Roy ?1 C. W. N. 913* and *Upendra Lal Gupta* v. *Jogesh Chandra Roy ?? C. W. N. ?3* followed. The fact that rent receipts have been granted *mafidars* in the name of the original grantee does not necessarily show that a tenure is not transferable. There can be no objection to referring to Settlement Reports or District Gazetteers, whether they are strictly speaking, evidence or not, under s. 35 of the Evidence Act. *Gourasathee Iswan of* v. *Supernathee ? Iswari I. L. R. ?3 ?? ?? I. A. ?? 238* referred to. If a grant be made to a man for an indefinite period it enures, generally speaking, for his lifetime and passes no interest to his heirs, unless there are some words showing an intention to grant an hereditary interest. But that rule of construction does not apply if the term for which the grant is made is fixed or can be definitely ascertained. *Lakhan Roy* v. *Kunhya Singh I. L. R. 3 Cal 210 L. R. 4 I. A. ?3* referred to. A condition against transfer does not without more render an assignment or transfer of the lease inoperative. Such a condition is often inserted merely as a foundation for a claim to *nazar* (or premium). *Sal Madhab Saha* v. *Narattam Saha I. L. R. 17 Calc 3?6* and *Basarat Ali Khan* v. *Manirulla I. L. R. ?? Calc 745* referred to. JOGESH CHANDRA ROY *v.* MAKBUL ALI (1920) I L R 47 Calc 979

J

JAGIR

See BOMBAY REVENUE JURISDICTION ACT 18?? s 12. I L R 45 Bom 464

See POLICE JAGIR 2 Pat L J 725

See SANAD I L R 36 Bom 639

See SETTLEMENT CONSTRUCTION OF I L R 39 Calc 1

———— whether Land is held on Political Tenure—

See BOMBAY REVENUE JURISDICTION ACT, 1876 s 2 I L R 45 Bom 464

———— *Sanad construction of—Tenure created by document—Custom—Life estate—Use of the words putra poutradi—Absolute and heritable estate—Regulation XXXVIII of 1793 s 15.* A grant of a *jaigir* is a grant for life only but in the absence of any custom to the contrary the addition of the words *putra poutradi* in the grant implies an absolute and heritable estate and passes an estate of inheritance. Under a *sanad patta* the ancestor of the plaintiff granted a *jaigir* in the district of Hazaribagh to the grantee and his *putra poutradi*. On the death of the grantee and of his sons without any male issue the plaintiff finding that the tenants of the *jaigir* stopped paying him the rents brought a suit for resumption of the *jaigir* on the ground that according to custom the grant was a service grant and resumable by the grantor and his representatives

JAGIR—*contd*

on failure of male issue in the line of the grantee, and obtained a decree. On appeal to the High Court *Held* that the original grantee took an absolute heritable and alienable estate and that all his heirs were capable of inheriting it. *Ram lal Mookerjee v The Secretary of State for India, I L R 7 Calc 304 L R 8 I A 46* followed. *Gulabdas Jugjivandas v The Collector of Surat I L R 3 Bom. 186 L R 6 I A 54 Bhujanga Rau v Ramayamma I L R 7 Mad 38* and *Lalit Mohun Singh Roy v Chukkun Lal Roy I L R 24 Calc. 834 L R 24 I A 76* referred to, *Perkash Lal v Rameshwar Nath Singh I L R 31 Calc. 561* and *Poopnath Konwar v Juggun nath Sahee Deo 6 S D A Sel Rep 158* distinguished. RAM SARAN LALL v RAM NARAYAN SINGH (1914) I L R 42 Calc 305

———— *Construction of jagir—Life estate—Custom of succession in Chota Nagpur—Construction of words putrapoutradi —Grant must be not ambiguous—Bengal Regulation XXXVII of 1793 s 15—Liability to resumption on failure of lineal male heirs* A predecessor in title of the appellant granted a *jagir* of a village in Raj Ramgarh Chota Nagpur in the following terms you with your *putrapoutradi* will continue to enjoy the same. The respondents were not the direct lineal heirs of the grantee but only collaterals, the lineal male heirs having failed. The evidence showed that all *jagirs* granted in Raj Ramgarh were by custom resumable on failure of lineal heirs in the male line of the original grantee. In a suit to resume the *jagir* —*Held* (reversing the decision of the High Court, and restoring that of the Subordinate Judge) that a *jagir* must be taken to be *prima facie* an estate for life only though it might possibly be granted in such terms as to make it hereditary But the terms making the grant of a *jagir* a grant of an estate of inheritance must if they are to be considered alone be terms which are not ambiguous, and must clearly shew whether it was intended by the grantor that the right of inheritance should be general or should be confined to a particular class of heirs. In this case it was held on the evidence that the *jagir* was resumable by the heirs of the grantor on failure of male heirs in the direct line of descent *Ramlal Mookerjee v Secretary of State for India I L R 7 Calc. 304 L R 8 I A 46* and *Lalit Mohun Singh Roy v Chukkun Lal Roy I L R 24 Calc 834 L R 24 I A 76* distinguished. RAM NARAYAN SINGH v RAM SARAN LAL (1918) I L R 46 Calc 683

JAIL CODE

———— Rules in the Jail Code are framed by the Local Government and have the force of law when sanctioned by the Governor General in Council. PEARY MOHAN DAS v WESTON 16 C W N 145

JAIL REGISTER

———— **extract from—**

See SECURITY FOR GOOD BEHAVIOUR I L R 43 Calc 1128

JAGADGURU

See CIVIL PROCEDURE CODE 1908 s. 9 I L R 45 Bom 590

JAINS

See HINDU LAW

See HINDU LAW—ADOPTION I L R 32 All 247
I L R 45 Bom. 754
25 C W N 273

See HINDU LAW—INHERITANCE I L R 33 Mad 439

See HINDU LAW—SUCCESSION

———— Jains are of Hindu Origin. They are Hindu dissenters and although generally adhering to Hindu Law (i e.) the Law of their 3 superior castes they recognise no divine authority in the Vedas and do not practise the Shradhs or ceremony for the dead but the Hindu rules of adoption are applied in the absence of customary usage. SHEOKUARBAI v JEORAJ (1920) 25 C W N 273

JAJNAVALKYA

———— **Ch II, Vers 117 145—**

See HINDU LAW—STRIDHAN I L R 43 Calc 944

JALKAR

———— **right of—**

See FISHERY I L R 42 Calc 489

———— *Dispute concerning jalkar—Jurisdiction of Magistrate to institute proceedings under s 145 of the Code after an order binding down one of the parties to keep the peace—Order attaching the subject of dispute on being unable to determine the question of possession—Criminal Procedure Code (Act V of 1898) ss 107 145 146* The Magistrate has jurisdiction to take proceedings under s. 145 of the Criminal Procedure Code, after an order under s. 107 of the Code binding down one of the parties to keep the peace, when the circumstances so require. Where there was a reasonable apprehension that several persons who were interested in the subject of dispute and had absconded at the time of the s. 107 proceeding might cause a breach of the peace with the first party who were fishermen, or that the latter might seek to enforce their rights against the second party who had been bound down, in which case the order binding them down would have the effect of ousting them from any possession they might have *Held* that the Magistrate acted properly in instituting proceedings under s. 145 of the Code in order to determine which party was in actual possession of the disputed properties, and was justified in attaching the same, under s. 146 if he found himself unable to determine the question of possession. BAISNAB CHARAN MAJHI v GATI NATH MUNSHI (1912) I L R 39 Calc 469

———— *Rights in a river—Bed of a river meaning of—Hunter's Statistical Accounts if can be referred to for establishing existence of private rights* *Per* JENKINS, *C J*—*Jalkar* rights of a river extend to waters in the river bed though they are not connected with the waters of the flowing stream throughout the year Where the right of fishery is in a river the Court has to be satisfied on a consideration of all the material facts and conditions whether it can fairly and reasonably be said that the waters over which the fishery is claimed are a part of the river *Per* HARINGTON *J*—The tract in dispute was the bed of the river because it was habitually and regularly covered by the river for a substantial portion of the year in the ordinary course of

JALKAR—*contd*

nature *Per* MOOKERJEE J —The bed of a river is the whole of what contains its waters when most swollen in whatever time of the year without leaving its channel and overflowing its banks. The grantee of a fishery right in the river is entitled to fish in all waters comprised within the banks of the river and the circumstance that a particular sheet of water may during part of the year be disconnected from the flowing stream of permanent current does not affect the rights of the grantee ANNODA BRITTA *v* TARAKNATH GHOSE (1913) **17 C. W N 1173**

———— *Jalkar rights in river —Shifting of bed leaving sheets of water which become connected with the river only when there is inundation* Certain *lopras* or sheets of water which hence formed the bed of the river Mahananda are now surrounded by cultural lands within the plaintiff's zemindari The river has moved many miles away the *lopras* are completely isolated, and are no longer part of the river bed and there is no connection of the *lopras* with the river except when the whole country is inundated by the flood water of another river *Held* that the defendant, who have *jalkar* rights in the Mahananda have no right of fishery in the *lopras* which belong exclusively to the plaintiffs. SASI KANTA ACHARJEE *v* KUNJA MOHAN MOITRA (1917) **22 C W N 63**

JATS

See CUSTOM **I L R 44 Calc 749**

JEWISH LAW

———— *Marriage Custom— Ketuba legal effect of—Rights of wife* In a suit brought by a Jewish lady married in Calcutta, for the recovery from her deceased husband's estate of the sum mentioned in a *ketuba* executed on the occasion of their marriage *Held* that the *ketuba* was a necessary but formal incident of the marriage contract and ceremonial and created no such right in favour of the widow JOSHUA *v* ARAKIE (1912) **I L R 40 Calc 266**
CONFIRMING **I L R 38 Calc 708**

JIVAI GRANT

See HINDU LAW—ADOPTION **I L R 43 Bom 778**

JODI

See JUDI.

JOINDER OF CAUSES OF ACTION

See CIVIL PROCEDURE CODE (ACT V OF 1908) O II R. 2 **I L R 38 Bom 444**

JOINDER OF CHARGES

See CRIMINAL PROCEDURE CODE ss 223 to 239

1 ———— *Offences against different persons by the same accused—Legality of joint trial—Criminal Procedure Code (Act V of 1898) s 234—Practice* S 234 of the Criminal Procedure Code is not limited to the case of offences committed against the same person but applies also where they are committed against different persons *Manu Miya* v *Empress I L R 9 Calc 371* and *Sri Bhagwan Singh* v *Emperor 13 C W N 507* followed. *Empress* v *Murari I L R 4 All 147 Nanda Kumar Sircar* v *Emperor 11 C W N 1128 Ali Mahomed* v *Emperor 13 C W N 418* dissented from. *Queen Em. v Jwala Prasad I L R 7 All 174* referred to. At the same time the powers under the section should be used with great care and caution where there are different complainants. SURENDRA NATH *v* EMPEROR (1915) **I L R 43 Calc 13**

2 ———— *Offences of the same kind committed in respect of different persons —Legality of joint trial—Criminal Procedure Code ss 234 and 239—Practice* The words offences of the same kind used in s. 234 of the Code of Criminal Procedure and as defined by sub cl. (2) of the said section do not imply that the offences should necessarily have been committed against the same person. Where therefore there were six persons accused of having been jointly concerned in carrying on a systematic swindle and three joint charges were framed against all the accused: *Held* there was nothing illegal in the procedure *Surendra Nath* v *Emperor I L R 43 Calc 13* followed. *Empress* v *Murari I L R 4 All 147* dissented from. EMPEROR *v* BECHAN LANDE (1916) **I L R 38 All 457**

JOINDER OF PARTIES

See HINDU LAW—JOINT FAMILY **I L R 37 Bom 340**

See JURISDICTION OF HIGH COURT **I L R 34 Bom 13**

See PARTIES JOINDER OF **I L R 42 Bom 87**

JOINT AND ACQUIRED PROPERTY

See JURISDICTION OF HIGH COURT **I L R 34 Mad 257**

JOINT APPEAL

See COMPANIES **I L R 1 Lab 368**

JOINT BOND

See CIVIL PROCEDURE CODE (ACT XIV OF 1882) s 462 **I L R 39 Mad 409**

JOINT BUSINESS

See JOINT FAMILY BUSINESS

See MAHOMEDAN LAW—JOINT PROPERTY **I L R 38 Mad 1099**

JOINT CONTRACT

See CIVIL PROCEDURE CODE 1882 s 462 **I L R 34 Mad 314**
I L R 39 Mad 409

See CONTRACT ACT ss 43 to 45

JOINT CONVICTION

———— *Joint Penalty— Calcutta Municipal Act (Beng III of 1899) ss 444 and 574 —Disobedience of order under s 444 ( ) by two persons* The owner and an occupier of a house in Calcutta were jointly convicted of disobedience of an order under s 444 of the Calcutta Municipal Act and a joint penalty of fine was imposed upon them *Held* that the joint conviction and the joint penalty were illegal each of the accused being guilty of a separate offence BHAIRAB CHANDRA KOLAY *v* CORPORATION OF CALCUTTA (1910) **I L R 37 Calc 895**

JOINT CREDITORS

See CONTRACT ACT 1872 s 55 **2 Pat L J 520**

JOINT ESTATE

——— *Private partition—Encumbrance by co sharer—Holding in severally—Tenancy in common—Partition by Collector effect of—Estates Partition Acts (Beng Act V of 1897 s 99 and Beng Act VIII of 1876 s 128)—Practice—Abandonment of plaintiff s case and adoption by him of defendant s* S 99 of Beng Act V of 1897 applies only where the lands are held *jointly* by the proprietors and *not in severalty* in pursuance of a private arrangement between the parties *Hridoy Nath* v *Mohobutnessa I L R 20 Calc 285 Aimanaddi Patri* v *Nabin Chandra Gope 11 C L J 95 Syed Abdul Latif* v *Amanaddi Patwari 15 C W N 426* followed. *Joy Sankari Gupta* v *Bharat Chandra Bardhan I L R 26 Calc 434* distinguished Where a section of an Act (here s 128 of Beng Act VIII of 1876) which was received a judicial construction [*Hridoy Nath* v *Mohobut nessa*] is re enacted in the same words such re enactment [here s. 99 of Beng Act V of 1897] must be treated as a legislative recognition of that construction. *Mansell* v *Regina 8 E and B 54 Ex parte Campbell L R 5 Ch App 703* followed. When on a partition by the Collector any land of an undivided joint estate which had been encumbered by any co sharer is allotted to another co sharer the latter takes it free from the encumbrance so created *Bijnath* v *Ramoodeen I R 1 I A 106* followed The decision in *Sheikh Ahmedoolah* v *Sheikh Ashraf Hossein 13 W R. 447* [where the lands were held in *severalty*] which was followed in *Hridoy Nath* v *Mohobut nessa I L R 20 Cal 285* is not as is assumed in *Joy Sankari Gupta* v *Bharat Chandra Bardhan I L R 26 Calc. 434* inconsistent with and has not consequently been overruled in effect by the decision of the Judicial Committee in *Bijnath* v *Ramoodeen L R 1 I A 106* [where the lands were held in common tenancy] *Bijnath* v *Ramoodeen L R 1 I A 106 Venkatrama* v *Fsumsa I L R 33 Mad 429 Sheikh Nura* v *Baikuntanath Roy 21 C L J 596 Brojo Nath Saha* v *Dinesh Chandra Neogi 21 C L J 599 Tarikanta* v *Ishur Chandra 21 C L J 603 Joy Sankari Gupta* v *Bharat Chandra Bardhan I L R 26 Calc 434* distinguished as cases where land was held in common tenancy A plaintiff cannot be allowed to abandon his own case adopt that of the defendant and claim relief on that footing *Shibkristo Sircar* v *Abdul Hakeem I L R 5 Calc. 602 Ramdayal* v *Junmenjoy I L R 14 Calc. 791 Dalmukund Kesurdas* v *Bhagwandas Kesurdas 15 Bom L R 209* followed. But that does not prevent the defendant from contending that even on the facts found the plaintiff's claim [here for ejectment] cannot be sustained NAGENDRA MOHAN ROY v PYARI MOHAN SAHA (1915) I L R 43 Calc 103

——— *Dissolution and accounts—Private arbitration—Award operation of on moneys realised by member on behalf of family—Cash meaning of* The members of a joint family business referred their disputes (in view of dissolution) to an arbitrator before whom on 31st July 1895 they stated *inter alia* that they had divided amongst themselves all the moveables con sisting of cash and kind etc that a sum of Rs 5 600 was payable to one of them B that they had understood the accounts among themselves and that now no co sharer has any right to demand accounts from another and the arbitra tor made his award on 5th August 1895 At the date of the award there was an undischarged usufructuary mortgage executed on 16th June 1883 for 14 years by one M in favour of B as re presenting the family to be discharged by receipt of the usufruct *Held* that the terms and intent of the award precluded the other co sharers from asking for an account of moneys realised previous to the date of the award The word cash referred to all moneys received by the parties before the statement was made to the arbitrator SHEO NARAIN SINGH v BISHUNATH SINGH (1913) 18 C W N 426

JOINT FAMILY PROPERTY—contd

——Sale by father—

See Hindu Law I L R 2 Lah 338

JOINT HINDU FAMILY

See Agra Tenancy Act (II of 1901) s 2 I L R 40 All 314

s 2 I L R 42 All 668

See Civil Procedure Code (Act XIV of 1882) ss 30 ... I L R 40 Bom 248

See Civil Procedure Code (Act V of 1908) ss 2 (11) 3 I L R 42 Bom 504

2 and O XXII r 3 I L R 2 Lah 114

II Expt VI I L R 42 All 359

O XX r 18 I L R 36 All 461

See Copyright I L R 43 All 41

See Evidence Act 1872 s 69 I L R 34 All 615

See Guardian ad litem I L R 38 All 315

See Hindu Law—Alienation

See Hindu Law—Joint Family

See Hindu Law—Joint Family Property

See Hindu Law—Legal Necessity

See Hindu Law—Manager

See Hindu Law—Partition

See Hindu Law—Widow I L R 40 All 96

See Joint Family

See Mortgage I L R 34 All 289

See Partition I L R 39 All 651

See Registration I L R 37 All 105

See Sale of Goods I L R 40 Calc 523

See Specific Relief Act (I of 1877) s 42 I L R 36 All 126

See Succession Certificate Act (VII of 1889) s 4 I L R 36 All 380

See Specific Performance I L R 41 All 515

See Transfer of Property Act (IV of 1882) s 99 I L R 36 All 516

See United Provinces Land Revenue Act (III of 1901)

ss 107 and 111 I L R 35 All 527

ss 111 112 233 (l) I L R 35 All 126

——Liability of Co parcenary property under money decree against father—

See Joint Hindu Family I L R 2 Lah 253

——Whether salary of a member in the I C S is partible property—

See Hindu Law I L R 2 Lah 40

——*Ancestral property—Will—Probate—Payment of full probate duty* In a case where there was admittedly a joint Hindu family consisting of a father and a minor son the father made a will in effect bequeathing the whole property to his minor son It was not disputed that the property covered by the will was joint family property The executors contended that the deceased testator had no beneficial interest in any part of the property devised and therefore they were exempted from the payment of any probate duty *Held* that where the matter in question was probate the parties claiming under the will could not go behind its terms or claim any exemption whatsoever upon allegations utterly inconsistent not only with the fact of the will ... but with the express statements made therein and that the executors must pay full probate duty upon the will *Collector of Kaira v Chunilal ... I L R ... Bom 161* distinguished KASHINATH ... v COLLECTOR ... (1914) I L R 39 Bom 245

JOINT HOLDING

——Widow of one of the joint owners claiming partition—

See Second Appeal I L R 2 Lah 348

——Whether section 145 Criminal Procedure Code is applicable to—

See Criminal Procedure Code s 145 I L R 2 Lah 372

JOINT IMMOVEABLE PROPERTY

——partition of—

See Benamidar I L R 43 Calc 504

JOINT INQUIRY

——against members of a gang—

See Security for good behaviour I L R 37 Calc 91

JOINT JUDGMENT DEBTORS

——*Release of some—Liability of others—English law—Indian Contract Act (IX of 1872) s 44—Rule of justice equity and good conscience—Rule of English law applicability of* A release by a decree holder of some of the joint judgment debtors from liability under the decree does not operate as a release of the other judgment debtors from liability under the decree The rule of English law should not be applied in India as it is based on the substantive rule applicable to contractual joint debtors which is different under s 44 of the Indian Contract Act and is not in consonance with justice equity and good conscience *Quære* Whether the English law should be applied in cases arising within the original jurisdiction of the High Courts *Chinnamannar and Gurusami* v *Sadasiva I L R ... Mad 337* referred to MOOLCHAND v ALWAR CHETTY (1915) I L R 39 Mad 548

JOINT MAGISTRATE

See Bengal Regulation No VI of 1825 s 2 I L R 33 All 84

JOINT OWNERS

See Dispute concerning Land I L R 38 Calc 889

JOINT OWNERS—*contd*

See EVIDENCE I L R 39 All 696

See NOTICE I L R 40 Calc 503

See PENAL CODE (ACT XLV OF 1860) s 297 I L R 33 All 773

———— suit by to recover rent—

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887) SCH II ART 31 I L R 40 All 666

———— *Partition*—*Abadi not formally divided but separate portions thereof taken possession of by the various owners*—*Agreement amongst owners*—*Rights of owners as to portions in possession of each* A village was divided into three mahals with the exception of the *abadi* as to which it was found that it had not been divided between the mahals by demarcation on the village map or on the spot but the owners of the mahals had been in separate possession of portions of it *Held* that the only possible inference from this finding was that the parties had agreed among themselves as to their possession of the *abadi* and that so long as the agreement continued each party was entitled to use the portion in his possession in any way he pleased so long as such user or possession did not interfere with the user or possession of the owners of the other mahals *Kumudini Majumdar* v *Pauil Lal Majumdar 11 C W N 517* followed JAGANNATH PRASAD v BADRI PRASAD (1911) I L R 34 All 113

———— *Their right*—*Ouster what amounts to*—*Cause of action* Each joint owner has the right to the possession of all the property held in common equal to the right of each of his companions in interest and superior to that of all other person He has the same right to the use and enjoyment of the common property that he had to his sole property except in so far as it is limited by the equal right of his co sharers Accordingly each co owner may at all times reasonably enjoy every part of the common property that is he is entitled to such enjoyment as will not interfere with the like rights of the co owners It necessarily follows that one co owner has no right to the exclusive possession and use of any particular portion of the joint property and if he exercises such rights and excludes his co sharers from participation in the possession he must account to his co sharer for his interest in the part from which he is ousted even though he takes no more than his just share But the co sharer out of possession cannot complain of the mere possession of the co owner so long as he refrains from setting up any claim to share in that possession Hence in order to give rise to a cause of action against the co sharer it must be proved that his act amounted to ouster or dis eizin It is not easy to frame a formula to cover all cases of ouster but it may generally be stated that where there is an actual turning out or keeping excluded the party entitled to the possession there is an ouster Any resistance preventing a co sharer from obtaining effective possession is an actual ouster Such resistance must be clearly and affirmatively shown and is not presumed from equivocal acts which may or may not have been designed to operate as an exclusion *Jacobs* v *Seward L R 5 H L 464* referred to DEBENDRA NARAYAN SINGH v NARENDRA NARAYAN SINGH (1919) I L R 47 Calc 182

JOINT PENALTY

See JOINT CONVICTION

JOINT POSSESSION

See CIVIL PROCEDURE CODE 1908 O XXI R 35 I L R 34 All 150

See COMMON LAND I L R 2 Lah 73

See HINDU LAW—HUSBAND AND WIFE I L R 38 Mad 1036

See LANDLORD AND TENANT I L R 37 Calc 687

———— *Suit for if lies when no ouster*—*When ouster proved partition if only remedy*—*Plea that partition proper remedy when to be taken* A suit for joint possession is not maintainable unless there is actual ouster If it is stated by the defendant in possession that the plaintiff has no right and if he is refused leave to enter the land it is a case of actual ouster and a suit for joint possession will lie SARAT CHANDRA MUKHOPADHYA v RAJENDRA LAL MITRA (1913) 18 C W N 420

JOINT PROBATE

See HINDU LAW—WILL. I L R 39 Mad 365

JOINT PROPERTY

See HINDU LAW—HUSBAND AND WIFE I L R 38 Mad 1036

See LIMITATION ACT (XV OF 1877) SCH I ART 127 I L R 37 Bom 64

See PARTITION I L R 37 All 155

———— Suit for damages for ouster by co-owner—

See DEBENDRA NARAYAN SINGHA v NARENDRA NARAYAN SINGH (1919) 23 C W N 900

———— *Co owners* — *Purchase of an undivided moiety*—*Occupation of the other moiety in virtue of a lease deed*—*Subsequent holding over*—*Limitation Act (IX of 1908) Arts 110 115 and 120* Arts 110 and 115 of the Limitation Act presuppose the existence of a contract express or implied where there is no such contract or any relationship of landlord and tenant subsisting between the parties or no holding over as tenant but when the relationship is referable to right as co owners a suit for recovery of the money of a house and rent for a period of six years is governed by art 120 of the Limitation Act *Pickert Watson & Co Ld* v *Ram Chand Dutt I L R 23 Calc 790* applied *Quære* Whether the fiction of tenancy by sufferance should be kept up after the passing of the Transfer of Property Act *Subbaraidu Ramiah* v *Gundala Ramanna 1 Mad H C 145* referred to MADAR v KADER MOIDEEN (1914) I L R 39 Mad 54

JOINT PROPRIETORS

———— liability of—

See THEATRICAL PERFORMANCE I L R 44 Calc 1025

JOINT TENANCY—

1 ———— Presumption of joint tenancy—*Gift*—*Donor guardian for donee* —*Mano ce-*

JOINT TENANCY—*contd*

1. [illegible] *donees* [illegible] *estate*—*Transfer of Property Act, s 45* Where there are no words in an instrument of gift of property to several persons indicating an intention to create tenancy in common there is a presumption that the donees hold the property as joint tenants and not as tenants in common. Indian Succession Act, s 93 illustration relied on. Differences in date of handing over the management of the property by the donor to the several donees creates no presumption in favour of a tenancy in common, the property having vested on the same date. *Narroji Vacolji Wadia v. Leroy* [illegible] I L R 23 Bom 60 referred to. S 45 Transfer of Property Act has no application to gifts. ARAKAL JOSEPH CARRIEL v. DOMINGO INAS (1910)

I L R 34 Mad 80

2. ———— Partition—*Suit by transferee of a portion of a joint tenancy for partition of such portion, maintainability of—Limitation Act (XV of 1877), Sch II, Art 144—Adverse possession—Burden of proof in a suit for partition* The transferee of a portion of a joint tenancy can maintain a suit for partition of such portion when such partition will not be attended with much inconvenience to the other sharers. *Ramasamy Chetti v. Alagirisamy Chetti* I L R 2 Mad 361 not followed. Where in such a suit by the transferee it is alleged that the right of the transferor *to claim a share has become barred by exclusion for* more than twelve years from enjoyment, the article of the Limitation Act applicable is Art 144 and the burden will be on the defendant to show that the sharer was in denial of his title excluded from enjoyment of his share. HARIKRISTNA CHOWDARY v. VENKATALAKSHMI NARAYANA (1910)

I L R 34 Mad 402

JOINT TORT FEASORS

See CONTRIBUTION I L R 38 All 237

See TORT 4 Pat L J 486

JOINT TRADE

See HINDU LAW—HUSBAND AND WIFE

I L R 38 Mad 1036

JOINT TRIAL

See CHARGE I L R 40 Calc 318

I L R 46 Calc 712

See CONFESSION I L R 38 Calc 446

See CRIMINAL PROCEDURE CODE s 110 AND 117 25 C W N 334

ss 110 AND 190 4 Pat L J 7

ss 197 239 AND 532

I L R 43 Bom 147

s 239 I L R 38 All 311

s 337 CL (3) I L R 37 Bom 146

s 439 I L R 39 All 549

See EVIDENCE ACT (I OF 1872) s 30

I L R 37 All 247

See JOINDER OF CHARGES

I L R 43 Calc 13

I L R 38 All 457

See MISJOINDER OF CHARGES

I L R 42 Calc 1153

———— of thief and receivers—

See MISJOINDER I L R 46 Calc 741

JOINT TRIAL—*contd*

———— of two separate calendar cases—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) ss 421 233 537

I L R 39 Mad 52[illegible]

———— Secret society—Waging war—*Penal Code ss 121 to 123* Where the accused were all alleged to have been members of a secret society with its head quarters in Maniktolla in the suburbs and its places of meeting in Calcutta and elsewhere and to have joined in the unlawful enterprise and with others known and unknown to have conspired to wage war or to deprive the King of the sovereignty of British India and to have collected arms and ammunition with such intent and to have actually waged war. *Held* that the joint trial of the accused on charges under ss 121, 121A, 122 and 123 of the Penal Code was not bad for misjoinder of persons or charges. BARINDRA KUMAR GHOSE v. EMPEROR (1909)

I L R 37 Calc 467

———————— *Receivers of stolen property acting in concert* If two persons are shown to have been acting in concert and were in joint control of the stolen property a joint trial would not be illegal. *Query* where it is merely shown that a part of the property which has been stolen was found in the possession of one person and the remainder was found in the possession of another. JADUNANDAN PRASAD v. KING EMPEROR

1 Pat L J 64

JOINT VENTURE

———— agreement for—

See PARTNERSHIP

I L R 39 Bom 261

JOSHI VATANDAR

See VATANDAR JOSHI

I L R 40 Bom 112

I L R 42 Bom 613

JUDGE

See CIVIL PROCEDURE CODE (ACT V OF *1908) O XLI r 27 CL (b)*

I L R 38 Mad 414

———— Defamatory Statements made by—

See JUDICIAL OFFICERS PROTECTION ACT, 1850

I L R 45 Bom 1089

———— formerly Counsel for a party—

See COUNSEL I L R 47 Calc 828

See CHAMBERS

See STAY OF EXECUTION

I L R 48 Calc 796

———— order of a single—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) ss 435 439 AND 133

I L R 39 Mad 537

———— order of a single in revision—

See LETTERS PATENT (24 AND 25 VICT c 104 s 15) I L R 39 Mad 539

———— personal knowledge of—

See EVIDENCE I L R 36 Mad 168

See JUDGMENT I L R 38 Calc 153

JUDGE—*contd*

——— prosecution by—

See CONTEMPT OF COURT
I L R 45 Calc 169

——— No privilege or protection attaches to the public acts of a Judge which exempts him from adverse comment CHANNING ARNOLD *v* EMPEROR I L R 41 Calc 1023

JUDGMENT

See ARBITRATION
I L R 47 Calc 611

See ATTACHMENT BEFORE JUDGMENT

See CIVIL PROCEDURE CODE 1908

O XX r 2 I L R 33 All 236
I L R 35 All 368
I L R 42 All 262

O XLI r 11 I L R 37 Bom 610

See CRIMINAL PROCEDURE CODE

s 110 I L R 38 All 393

s 307 AND 421
I L R 36 All 496

s 421 2 Pat L J 695

See JUDGMENT OF A SINGLE JUDGE

See LETTERS PATENT 1865 Cl 15
I L R 39 Mad 235
I L R 34 Bom 1
I L R 42 Bom 260
I L R 45 Bom 377 & 428

See MISJOINDER OF PARTIES
I L R 45 Calc 111

See RES JUDICATA
I L R 38 Mad 158

——— a nullity—

See JURISDICTION
I L R 38 Calc 639

——— affirmed on appeal—

See ESTOPPEL L R 44 I A 213

——— Foreign Judgment—Suit on—

See CIVIL PROCEDURE CODE 1908 s 13
I L R 40 Mad 112

——— necessity of writing—

See CIVIL PROCEDURE CODE 1908
O XLI r 11
I L R 36 Bom 116

——— not on the merits of the case—

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 13 (*b*)
I L R 40 Mad 112

——— of a single Judge—

See LETTERS PATENT APPEAL
I L R 43 Calc 90

——— of the previous Judge successor not bound to pronounce—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 307
I L R 40 Mad 108

——— relevancy of—

See EVIDENCE I L R 41 Bom 1

JUDGMENT—*contd*

——— remarks against a person not a party or witness—

See PRACTICE AND PROCEDURE
I L R 45 Bom 1127

——— setting aside a for fraud—

See FRAUD I L R 38 Mad 203

1 ——— Judgment binding nature of on succeeding Judge—*Partition of property between co widows may be effected orally* Where a Judge on appeal decides certain points and remands the case his decision is binding on his successor before whom the case comes up again on appeal from the judgment on remand There is nothing in the Transfer of Property Act to prevent co widows effecting an absolute division of property orally LATCHUMAMMAL *v* GANGAMMAL (1910)
I L R 34 Mad 72

2 ——— Personal knowledge of Judge —*Materials not in evidence or improperly admitted as basis of judgment—Validity of such judgment* A judgment which is based on materials which were not in evidence and which have been improperly admitted or on the personal knowledge of the Judge is not in accordance with law *Vallabha v Madusudanan I L R 12 Mad 495* referred to DURGA PRASAD SINGH *v* RAM DOYAL CHAUDHURI (1910) I L R 38 Calc 153

——— *Judgments and orders not inter parties—Res judicata—Estoppel—Evidence—Relevancy* Plaintiff purchased certain properties at a sale in execution of a money decree against A A s mother B whose claim to the property under a kobala alleged to have been executed by the original owner D had been dismissed in execution proceedings also failed in a suit instituted by her against plaintiff and others under s 283 of the Civil Procedure Code of 1882 it having been found that B was really a benamidar for A Plaintiff on proceeding to take possession was opposed by D In a suit by the plaintiffs to recover the property from D *Held* that the orders and decrees in the previous litigation were relevant to the issue as to title and though not *res judicata* between the parties were admissible in evidence *Ramamurti Dhora v The Secretary of State for India I L R 36 Mad 141* referred to PEARI MOHAN SHAHA *v* DURLAVI DASSYA (1913)
18 C W N 954

——— *Not pronounced—Record lost—Procedure* Where in a criminal case the accused was convicted and sentenced the records in the case being at the time lost *Held* that it was unnecessary for the High Court to order a retrial especially in the absence of an appeal by the accused person There is no provision of law which enacts that unless all the records of a case are in the court house at the time of conviction and sentence the conviction and sentence are void and should be quashed or that the Sessions Judge s trial has been held or the sentence passed without jurisdiction Where a judgment has been lost the appropriate course is for the Sessions Judge to rewrite it from memory and from the materials before him and place it on record *Re* KAMAKSHAMMA (1913) I L R 38 Mad 498

——— A judgment of one Judge of High Court read in Court by another when former on leave is valid SARAJ RANJAN CHOUDHURY *v* PREMCHAND CHOUDHURY (1917)
22 C W N 263

JUDGMENT—*contd*

———— *Civil Procedure Code (Act V of 1908) O XX rr 1 3—Judgment pronouncing of the law relating to—Infringement—Curable by consent or waiver* O XX r 3 Civil Procedure Code lays down that a judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it and when once signed shall not afterwards be altered or added to save as provided by s 152 or on review The provisions of the law relating to the delivery of judgments may be deemed to have been framed for the benefit of the parties litigant and their contravention is an irregularity curable by consent or waiver It is not a case of lack of inherent jurisdiction where the maxim applies that consent cannot give jurisdiction *Cedar Sao v Chowdhury Madho Lal* 2 C L J 354 and *Gurdo Sahu v Chandrikah Singh* 5 C L J 611 Nor is it a case of a mandatory provision of law the infringement whereof nullifies the entire proceedings *Ashutosh v Behari Lal* I L R 35 Calc 61 and *The Liverpool Borough Bank v Turner* 2 De G F and J 60 The infringement of the procedure prescribed by O XX rr 1 2 3 constitutes an irregularity curable by consent or waiver It affords no ground for reversal of the decree based on the judgment irregularly pronounced where the irregularity is waived by the parties and does not affect the merits of the case *Eand v Hammersmith and City Ry Co* I R 2 Q B 233 *Mahomed Akil v Asadun* 9 W R 1 *Lachman Prasad v Ram Ban* I L R 3 All 256 *Holmes v Russell* 9 Dowl 45 *Garratt v Hooper* 1 Dowl 8 *Sukh Lal v Tara Chand* I L R 33 Calc 68 referred to FORT GLOSTER JUTE MANUFACTURING CO v CHANDRA KUMAR DAS (1919) I L R 46 Calc 978

———— *Insufficient judgment ground for interference in second appeal* A mere general statement that on a perusal of all the evidence in the case the Court is satisfied as to a certain state of facts is not a sufficient judgment within the meaning of the law The High Court in second appeal will interfere with a finding of fact where it is shown that a miscarriage of justice has been occasioned by the lower Court's failure to weigh all the evidence before it MOBARAK HUSAIN v SYED SHAH HAMID HUSSAIN

2 Pat L J 8

———— *Written and signed by one Judge and pronounced by his successor validity of — Code of Civil Procedure (Act V of 1908) O XX r* Where the Judge who had heard the evidence and arguments in a case also wrote and signed the judgment and was then succeeded by another Judge who after giving notice to the parties pronounced the judgment and signed the decree *Held* that the judgment was valid SRI MOTYA LAKHIAMA JIN v LOKNATH DAS

5 Pat L J 147

———— of Appellate Court in Criminal case—*What it must contain —Proper procedure—Where appellant is charged with an offence under section 228 of the Indian Penal Code—Criminal Procedure Code Act V of 1898 Sections 367 424 480 481* The petitioner was convicted by a Magistrate of the 3rd class of the offence of intentionally offering insult or causing interruption to a Court under section 228 of the Indian Penal Code and fined Rs 20 He appealed to the District Magistrate who dismissed the appeal recording the following order — I have heard the Pleader for the appellant He has dealt with the points only which are already dealt with in the judgment In my opinion the appellant has been rightly convicted Appeal rejected *Held* that the judgement of the District Magistrate does not satisfy the requirements of section 367 Criminal Procedure Code the provision of which are applicable to the judgment of an Appellate Court—*vide* section 424 of the Code An appellate Court is not required to write a long and elaborate judgment but it is clearly its duty not only to examine the evidence but also to write a judgment affording a clear indication that the appeal has been properly tried and that the points urged by the appellant have been duly considered and decided An appellate Court which writes a judgment which the High Court is unable to follow without reference to the judgment of the trial Court obviously fails in the discharge of the duty imposed upon it by law *Held* also that a Court taking action under section 480 Criminal Procedure Code is required to record particulars mentioned in section 481 and *inter alia* must record the facts constituting the offence and the record must also show the nature of the interruption or insult attributed to the accused When the guilt or innocence of a person depends upon the exact word used by him it is obviously the duty of the Magistrate to record them with a reasonable degree of precision and his omission to record the nature of the insult constitute a grave defect of procedure DALIP SINGH v THE CROWN

I L R 2 Lah 308

———— *Charges of unlawful assembly and theft—Statement of points for determination and findings thereon in such cases—Criminal Procedure Code (Act V of 1898) ss 367 and 424* Under s 424 read with s 367 of the Criminal Procedure Code the judgment of a lower Appellate Court must among other matters contain the point or points for decision the decision thereon and the reasons for the decision On a charge under s 143 of the Penal Code the judgment of such Court should contain as one of the points for determination a statement as to the existence of the elements constituting the unlawful assembly in the particular case and the decision thereon bearing in mind the provisions of s 141 of the Penal Code The judgment on a charge under s 379 of the Penal Code should contain as one of the points the question as to the dishonest intention and a finding on it especially when the taking of property is admitted but a *bona fide* claim of right thereto is set up by the accused RAM LAL SINGH v HARI CHARAN AHIR (1909) I L R 37 Calc 194

JUDGMENT CREDITOR

See INSOLVENCY I L R 42 Calc 72

JUDGMENT DEBT

———— payment of a portion of—

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XXI r 89 (*b*)

I L R 39 Mad 429

JUDGMENT DEBTOR

See ASSIGNEE OF A MONEY DECREE

I L R 38 Mad 36

JUDGMENT DEBTOR—*contd*

See CIVIL PROCEDURE CODE 1882 s 295
I L R 33 Mad 465

See CIVIL PROCEDURE CODE (ACT V OF 1908)

O XXI

R 89 I L R 40 Bom 557

R 91 I L R 35 Bom 29

See DEPOSIT IN COURT
I L R 43 Calc 100

See PRE EMPTION I L R 34 Bom 567

See PROVINCIAL INSOLVENCY ACT (III OF 1907) s 34 I L R 37 All 452

———— alienation by—

See ATTACHMENT I L R 44 Calc 662

———— death of—

See CIVIL PROCEDURE CODE (XIV OF 1882) ss. 244 252 647
I L R 34 Bom 546

See CIVIL PROCEDURE CODE (ACT V OF 1908) ss 47 AND 50
I L R 38 Mad 1076

See EXECUTION OF DECREE.
I L R 41 Calc 50

———— disability of to mortgage—

See CIVIL PROCEDURE CODE, 1882 s 325A I L R 46 Calc 183

———— examination of—

See PRACTICE I L R 43 Calc 285

———— interest of—

See SALE IN EXECUTION OF DECREE.
I L R 44 Calc 524

———— payment by as interest—

See EXECUTION OF DECREE
I L R 43 Calc 207

———— representative of—

See APPEAL. I L R 41 Calc 418

———— security for default of—

See CIVIL PROCEDURE CODE (1908) s 145 O XXXIV R. 14
I L R 38 All 327

JUDGMENT OF A SINGLE JUDGE

See LETTERS PATENT APPEAL.
I L R 43 Calc 90

JUDI

See ADVERSE POSSESSION
I L R 45 Bom 638

See INAMDAR I L R 41 Bom 159

I L R 40 Mad 93

———— payment of—

See CONTRACT ACT (IX OF 1872) s 69
I L R 42 Bom 93

JUDICIAL ACT

See SEARCH FOR ARMS.
I L R 39 Calc 953

JUDICIAL COMMISSIONER

See JURISDICTION
I L R 43 Calc 136

See SECOND APPEAL.
I L R 47 Calc 107

JUDICIAL COMMITTEE

See PRIVY COUNCIL

See PRACTICE
I L R 48 Calc 994

———— functions of in criminal cases—

See PRIVY COUNCIL, PRACTICE OF
I L R 41 Calc 1023

———— Practice of—

See PLAINT I L R 48 Calc 110

JUDICIAL DECISIONS

———— application of—

See SANCTION FOR PROSECUTION
I L R 41 Calc 446

———— suspicion not a ground for—

See BURDEN OF PROOF
I L B 34 All 511

JUDICIAL DISCRETION

See CIVIL PROCEDURE CODE 1908 ss 148 AND 115 4 Pat L J 428

O VI R 1 25 C W N 289

See COMMISSION AGENCY
I L R 45 Calc 138

See LIMITATION L R 44 I A 218

———— *Decision not based on adequate finding power of High Court to reverse —Limitation—Negligence of servants* Where it is left to the Court s discretion to act or to refuse to act in a particular way and it is found that the conclusions of fact at which the Court arrived and which formed the basis of its decision were not such as could possibly support that decision then the Court s discretion has not been exercised in a legal and proper manner and the High Court is entitled to reverse the decision arrived at In this case a discretion had been exercised because of the negligence of a party s servant which was not right and the High Court therefore interfered Where the law has provided a time limit within which any particular step is to be taken and a party waits until the last moment before beginning to take action he is not entitled to the Court s indulgence if an accident prevents the step from being taken within the time prescribed by law SETH JAHAR MAL v. G M. PRITCHAND (1919)
4 Pat L J 331

JUDICIAL ENQUIRY

See SURETY I L R 42 Calc 706

JUDICIAL INTERPRETATION

See BENGAL TENANCY ACT s 169
2 Pat L J 722

JUDICIAL NOTICE

See MAPPILLAS OF NORTH MALABAR
I L R 38 Mad 1052

See LIBEL I L R 37 Calc 760

JUDICIAL OFFICER

———— suit against—

See JUDICIAL OFFICERS PROTECTION ACT (XVIII OF 1850) s 1
I L R 39 All 516

———— *Libel—Pleader—Judge—Defamatory statement made by a Judge in the course of a suit—Discharge of judicial duty—Judge protected from being sued in a Civil Court* The plaint.

JUDICIAL OFFICER—contd

... a ... while conducting a suit in the defendant's ... the Judge's Court applied for an adjournment. The defendant complained that the application contained a statement which was false and was intended to deceive the Court called upon the plaintiff to ... and withdraw ... statement. The plaintiff ... refused to apologise or to withdraw the statement, the defendant issued a notice to the plaintiff and reported his conduct to the District Judge. The plaintiff alleged that both the notice and the report contained defamatory statements and therefore sued the defendant for libel. *Held* that the defendant in dealing with the conduct of the plaintiff pleader was acting as a Judge in discharge of his judicial duty and was therefore protected from any liability to be sued in a civil Court under Act XVIII of 1850. VITHAL RAMCHANDRA *v.* RAGHAVENDRA RAO (1920) I L R 45 Bom 1039

JUDICIAL OFFICERS' PROTECTION ACT (XVIII OF 1850)

See TRESPASS I L R 34 Calc 953

——————— suit for damages—*Allegation that defendant had brought a false case against plaintiff—Rejection of plaint.* A suit for damages was filed against a judicial officer the material allegations in the plaint being that the defendant had on account of enmity taken the plaintiff into custody and had, through ill feeling and dishonesty brought a false charge against him under ss. 384 and 161 of the Indian Penal Code. *Held* that the plaint as framed could not be said to disclose a cause of action so as to justify its rejection *in limine* for which purpose it was necessary to consider the plaint only and nothing else but it was necessary to ascertain what facts the plaintiff could prove before it was possible to decide whether the case came within the purview of Act XVIII of 1850. IZZAT ALI *v.* MUHAMMAD SHARAFAT ULLAH KHAN (1917)
I L R 39 All 516

JUDICIAL OPINION

——————— difference of—

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XXXIII r 5
I L R 41 Mad 620

JUDICIAL PROCEEDINGS

See CHOTA NAGPUR TENANCY ACT 1908 s. 27 I L R 40 Calc 518

See COURT MEANING OF
I L R 37 Calc 642

See CRIMINAL PROCEDURE CODE s 476
I L R 33 All 396

See DEFAMATION
I L R 48 Calc 388

See LEGAL PRACTITIONERS ACT s 14
15 C W N 269

See PENAL CODE s 193
I L R 45 Bom 834

——————— stage in a—

See SANCTION FOR PROSECUTION
I L R 43 Calc 597

1 ——————— Criminal Procedure Code s 476— *Judicial proceeding execution proceeding is*— An execution proceeding is a judicial proceeding within the meaning of s 476 of the Code the definition in s 4 cl (m) being clearly not exhaustive. SHAIKH BAHADUR *v.* SHAIKH FRADATULLA (1910) I L R 37 Calc 642
14 C W N 799

2 ——————— Preliminary inquiry—*Preliminary inquiry by an Assistant Settlement Officer to determine whether a prosecution should be directed—Power to take evidence on oath in such inquiry—False evidence in the course of the inquiry—Criminal Procedure Code (Act V of 1898) ss 4 (m) and 476—Indian Penal Code (Act XLV of 1860) s 193 and Explanation (2)—Oaths Act (X of 1873) s 4—Government Rule under the Bengal Tenancy Act (VIII of 1885) Rule 40.* A Court holding a preliminary inquiry under s 476 of the Criminal Procedure Code may legally take evidence on oath therein and the inquiry is therefore a judicial proceeding within the terms of s 4 (m) of the Code. *Jugobundhu Sahoy v. Kowal Singh I L R 17 Calc 84* and *Emperor v Gopal Barik I L R 31 Calc 4* referred to. Such an inquiry is also a stage of a judicial proceeding under Explanation 2 to s 193 of the Penal Code and a person giving false evidence in the course of it commits an offence under the section. Under s 4 of the Oaths Act and Rule 40 (a) of the Government Rules framed under the Bengal Tenancy Act a Settlement Officer has the power to receive evidence on oath and is competent to hold a preliminary inquiry under s. 476 of the Criminal Procedure Code. ABDULLAH KHAN *v.* EMPEROR (1909)
I L R 37 Calc 52

JUDICIAL SEPARATION

See DIVORCE ACT (IV OF 1869) s 23
I L R 33 All 500

JURISDICTION

See ACQUITTAL I L R 44 Calc 703

See ADMINISTRATION SUIT
I L R 44 Calc 890

See AGRA TENANCY ACT (II OF 1901)—

s 4 I L R 39 All 605

ss 4 5 AND 8 I L R 43 All 445

s 58 AND 177 (e)
I L R 38 All 465

s 79 I L R 39 All 455

s 106 I L R 43 All 454

s 177 I L R 43 All 18

s 198 I L R 43 All 325

s 95 I L R 35 All 14

I L R 43 All 168

199 I L R 37 All 94

See APPEAL

See ARBITRATION

I L R 45 Bom 1

I L R 47 Calc 29 752

I L R 36 All 354

I L R 46 Calc 1059

See ARBITRATION BY COURT
I L R 38 Calc 421

See ARBITRATION ACT (IX of 1899) s 8 (1) (a) (b) (c) (d) and (2) 9
I L R 43 Bom 809

JURISDICTION—*contd*

See ATTACHMENT BEFORE JUDGMENT I L R 45 Calc 780

See BENGAL NORTH WESTERN PROVINCES AND ASSAM CIVIL COURTS ACT (XII OF 1887)—

s 8 & 20 I L R 34 All 383

s 8 & 21 I L R 34 All 205

s 21 I L R 32 All 222

s 22(3) I L R 37 All 232

See BENGAL REGULATION VI OF 1825 s 2 I L R 33 All 84

See BOMBAY CIVIL COURTS ACT (XIV OF 1869) s 16 I L R 39 *Bom* 136

See BOMBAY DISTRICT MUNICIPAL ACT 1901 s 151 I L R 44 Bom 738

See BOMBAY HEREDITARY OFFICES ACT BOMBAY III OF 1874 ss 25 AND 30

See BOMBAY CITY IMPROVEMENT ACT 1898 I L R 36 Bom 203

See BOMBAY LAND REVENUE CODE s 191 I L R 45 Bom 67

See BOMBAY REVENUE JURISDICTION ACT (X OF 1876) s 4 (a)

I L R 43 Bom 277
I L R 44 Bom 130 161
I L R 45 Bom 1141 1161

See CIVIL AND REVENUE COURTS

See CIVIL PROCEDURE CODE 1882—

s 43 I L R 33 All 244

s 258 I L R 34 All 365

s 539 I L R 36 Bom 29

s 583 I L R 32 All 79

See CIVIL PROCEDURE CODE 1908—

s 9 I L R 32 All 527
I L R 37 All 313
I L R 45 Bom 590

s 10 I L R 44 Bom 283

16 (a) and (d) I L R 41 All 513

s 20 (c) I L R 34 All 49
I L R 36 All 563
I L P 37 All 189
I L R 39 All 607
I L R 45 Bom 1228

s 24 I L R 34 Bom 411
I L R 39 All 214
I L R 40 All 525
I L R 1 Lah 158

s 47 and 144 I L R 44 Bom 702

s 54 I L R 42 Bom 689

s 60 I L R 37 Bom 415

68 O XXI R 100 I L R 37 Bom 488

s 92 I L R 35 All 459
I L R 42 Bom 742

s 115 I L R 36 Bom 105
I L R 39 All 101
I L R 42 All 18
I L R 42 Bom 119
3 Pat L J 376

O 7 R 10 I L R 1 Lah 203

O IX R 13 I L R 37 All 298

O IX R 8 AND 9 I L R 44 Bom 82

O XXI R 7 I L R 38 Bom 194

XXIII R 1 I L R 37 Bom 682

O XXIII R 1 I L R 44 Bom 598

OO XXIII XLI R 11 I L R 35 Bom 261

O XLI R 22 I L R 1 Lah 396

O XLVII R 1 I L R 38 Bom 416
I L R 43 All 288

SCH III ss 7 69 70 I L R 37 Bom 32

See COLLECTOR I L R 40 Calc 465

See COMPANIES ACT (VII OF 1913) s 207 I L R 38 All 407

See COMPANY I L R 45 Calc 486

See COMPLAINT I L R 40 Calc 444

See CONTEMPT OF COURT I L R 45 Calc 169

See CONTRACT I L P 47 Calc 583

See CO OPERATIVE SOCIETIES ACT 1912 s 42 I L R 44 Bom 582

See COPYRIGHT ACT (XX OF 1847) ss 7 AND 12 I L R 33 All 24

See COSTS I L R 46 Calc 1070

See COURT FEE I L R 40 Calc 245
I L R 40 Calc 615
I L R 45 Calc 634

See COURT FEES ACT 1870 s 17 I L R 36 Bom 628

See COURT OF WARDS ACT (BOM ACT I OF 1905) s 3 (c) I L R 37 Bom 313

See CRIMINAL BREACH OF TRUST I L R 48 Calc 879

See CRIMINAL JURISDICTION I L R 37 Calc 714

See CRIMINAL PROCEDURE CODE (ACT V OF 1898)—

ss 110 AND 526 I L R 37 All 20

s 107 125 438 I L R 40 All 140

s 110 I L R 36 Mad 96
I L R 39 All 139

ss 112 167 I L R 36 All 262

s 125 I L R 35 All 103
I L R 41 All 651

s 133 I L R 36 All 209

s 145 2 Pat L J 86

ss 145 439 I L R 32 All 132

ss 145 AND 435 I L R 36 All 233

ss 145 AND 522 I L R 37 All 654

s 145 I L R 39 All 612
I L R 40 All 364

s 177 I L R 34 All 451

s 179 I L R 34 All 487
I L R 35 All 79

ss 179 AND 188 I L R 38 Mad 779

ss 182 531 I L R 32 All 397

JURISDICTION—*contd*

s 188 I L R 41 All 452

s. 190 I L R 44 Bom 42

195 I L R 39 All 657
I L R 41 Bom 877
I L R 34 All 197
I L R 36 Mad 138

19 4 6 I L R 34 All 602

203 I L R 36 All 129

s 379 I L R 37 All 231

s. 345 AND 439 I L R 37 All 419

s 350 I L R 36 All 215
I L R 40 All 307

s. 407 I L R 34 All 214

s 437 I L R 36 All 53

ss 439 476 I L R 40 All 144

s 476 I L R 39 All 91
I L R 40 All 24 & 116
I L R 43 All 180
I L R 43 Bom 300

ss. 517 520 I L R 35 All 374

s. 30 I L R 35 Bom 253
I L R 42 Bom 664

s 522 I L R 39 Calc 1050

ss. 526 107 117 118
I L R 32 All 642

s 556 I L R 32 All 635

See DECREE I L R 39 Bom 31
I L R 40 All 579

See DIVORCE I L R 44 Bom 924
I L R 45 Bom 547
I L R 45 Calc 525

See DISPUTE CONCERNING LAND
I L R 46 Calc 1056

See DIVORCE ACT (IV OF 1869)—
ss 2 4 7 AND 45
I L R 38 Bom 125

s 3 I L R 32 All 203
I L R 37 Bom 57

See EVIDENCE I L R 38 Mad 160

See EVIDENCE ACT (I OF 1872) s 44
I L R 34 All 143

See EUROPEAN BRITISH SUBJECT
I L R 39 Mad 942

See EXECUTION OF DECREE
I L R 33 All 306
I L R 35 All 119
I L R 36 All 33
I L R 47 Calc 1100

See EX PARTE DECREE
I L R 48 Calc 153

See EXTRADITION I L R 41 Calc 400

See FOREIGN DECREE
I L R 39 Mad 24

See FORFEITURE I L R 42 Calc 730

See FRAUD I L R 38 Calc 936

See GENERAL CLAUSES ACT (X OF 1897)
s 3 (25) I L R 35 All 156

See GUARDIANS AND WARDS ACT 1890—

JURISDICTION—*contd*

9 I L R 34 Bom 121

s 19 (1 2) I L R 37 All 515

See HABEAS CORPUS
I L R 44 Calc 76
I L R 46 Calc 52

See HIGH COURTS ACT (24 AND 25 VICT c 104) s 2 9 AND 13
I L R 39 Bom 604

See HIGH COURT JURISDICTION OF

See HIGH SEAS I L R 42 Bom 234

See HINDU LAW—ADOPTION
5 Pat L J 164

See HINDU LAW—PARTITION
I L R 48 Calc 1059

See HOMESTEAD LAW
I L R 42 Calc 638

See INSOLVENCY I L R 38 Calc 542
I L R 43 Calc 243
I L R 44 Calc 899
I L R 45 Bom 550
I L R 47 Calc 721

See INTEREST I L R 44 Bom 775

See JURISDICTION AND CLAIM

See JURISDICTION OF CIVIL COURTS

See JURISDICTION OF CIVIL AND REVENUE COURT

See JURISDICTION OF CRIMINAL COURTS

See JURISDICTION OF DISTRICT COURT

See JURISDICTION OF HIGH COURT

See JURISDICTION OF INFERIOR COURT

See JURISDICTION OF MAGISTRATE

See JURISDICTION OF SMALL CAUSE COURT

See JURY
I L R 37 Calc 467
I L R 44 Calc 723

See LAND ACQUISITION
I L R 39 Calc 33

See LAND ACQUISITION ACT (I OF 1894)—
s 3 I L R 45 Bom 277
s 18 I L R 35 Bom 146

See LAND REVENUE CODE (BOM ACT V OF 1879) s 85

See LETTERS PATENT (BOMBAY) s 12
I L R 37 Bom 494

See LETTERS PATENT (Cal) s 39
2 Pat L J 684

See LIMITATION ACT OF (IX OF 1908)—
ART 15– I L R 34 All 482
ARTS 181 18– I L R 42 Bom 309

See LUNACY
I L R 48 Calc 577

See MADRAS CITY MUNICIPAL ACT (MAD III 1904) s 413 I L R 38 Mad 581

See MADRAS ESTATE LAND ACT (I OF 1908) s 189 I L R 39 Mad 239

See MAGISTRATE I L R 39 Calc 119

See MAMLATDAR S COURTS ACT (BOM ACT II OF 1906) s 23
I L R 37 Bom 595

JURISDICTION—*contd*

—— —— of foreign Court—

FOREIGN DECREE, EXECUTION OF

I L R 39 Mad 24

—— —— of Municipal Courts—

See CIVIL PROCEDURE CODE (ACT V OF 1908) s ... I L R 38 Mad 635

—— —— of Registrar in Insolvency—

See PRESIDENCY TOWNS INSOLVENCY ACT ...

26 C W N 631

—— —— of subordinate Courts to take proceedings under s 14—

See ... ACT (XVIII OF 18..) s 14 I L R 39 Mad 1045

—— —— ouster of—

CIVIL COURTS I L R 39 Mad 21

—— —— protest against—

FOREIGN COURT

I L R 39 Mad 733

—— —— of High Court in a Revenue case—

See AGRA TENANCY ACT 1901 s 167

I L R 42 All 83

—— —— submission to whether voluntary—

See FOREIGN DECREE, EXECUTION OF

I L R 39 Mad 24

—— —— to rehear—

See APPELLATE ... I L R 37 Calc 259

—— —— to try offence committed on high seas—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) ... 188

I L R 41 Bom 667

—— —— voluntary submission to—

See FOREIGN COURT

I L R 39 Mad 733

1 —— Secretary of State for India in Council— *Dwell or carry on business or personally work for gain —Letters Patent 1865 s 12* This Court has no jurisdiction to entertain a suit brought against the Secretary of State for India in Council where the cause of action arose wholly outside the ordinary original civil jurisdiction of this Court on the sole ground that the Secretary of State for India in Council dwelt or carried on business or personally worked for gain within the local limits of Calcutta the capital of India at time of the institution of this suit *Doya Narain Tewary v The Secretary of State for India I L R 14 Calc 256* followed PODRICKS *v* SECRETARY OF STATE FOR INDIA (1912)

I L R 40 Calc 308

2 —— evidence taken by another Judge—*Practice—Evidence in criminal case recorded by Assistant Sessions Judge—Judgment pronounced by Sessions Judge without rehearing the evidence* Where a Sessions Judge decided a case upon evidence taken not before him but before an Assistant Sessions Judge it was *held* that the Sessions Judge's judgment was *ultra vires* and a fresh trial was ordered EMPEROR *v* BADRI PRASAD 1912) I L R 35 All 63

3 —— Sonthal Parganas—*Suit to enforce Mortgage—Land partly in Sonthal Parganas—Usury —Sonthal Parganas Act (XXXVII of 1855) s 2 —Sonthal Parganas Settlement Regulation (Beng III of 1872) ss 5 and 6—Sonthal Parganas Justice Regulation (Reg V of 1893) Part II— Civil Procedure Code (XIV of 1882) 19* A suit was brought in 1904 in the Court of the Subordinate Judge at Bhagalpur to enforce a mortgage of land of which a portion was situate in the Sonthal Parganas (a part only of that land having been settled) and a portion in the Bhagalpur district The mortgage provided that it might be enforced in the Bhagalpur Court *Held* (i) that all suits in regard to land in the Sonthal Parganas, so long as the land has not been settled and the settlement notified in the *Calcutta Gazette* must be brought before the settlement officers or the Courts of officers appointed under the Sonthal Parganas Act 1855 and the Sonthal Parganas Justice Regulation 1893 and that the Bhagalpur Court had no jurisdiction in the present suit under the Code of Civil Procedure 1882 s 19 or otherwise (ii) that the Court exercising jurisdiction to enforce the mortgage was bound by the rules as to usury contained in s 6 of the Sonthal Parganas Settlement Regulation 1872 MAHA PRASAD *v* RAMANI MOHAN SINGH (1914)

L R 41 I A 197

4 —— Concurrent Jurisdiction—*Trial— High Court—Power to determine venue when several Courts have concurrent local jurisdiction—Absence of any doubt as to which Court has such jurisdiction— Interference on the ground of convenience only— Criminal Procedure Code (Act V of 1898) s 185* S 185 of the Criminal Procedure Code does not warrant the High Court within the local limits of whose criminal jurisdiction the offender actually is in interfering thereunder merely on the ground of convenience but only when a doubt arises as to the Court by which an offence should be enquired into or tried Where therefore there is no doubt that two Courts are equally competent to exercise jurisdiction the High Court has no power under the section RAJANI BENODE CHAKRAVARTI *v* ALL INDIAN BANKING AND INSURANCE CO (1913) I L R 41 Calc 305

5 —— Additional Sessions Judge *competency of to try suit under s 92 of the Civil Procedure Code 1908 if not directly empowered by Local Government—Civil Procedure Code (Act V of 1908) ss 24 92—Bengal N W P and Assam Civil Courts Act (XII of 1887) s 8* An Additional District Judge who is not vested with the power of trying suits under s 92 of the Code of Civil Procedure by the Local Government has no jurisdiction to try such suits and a transfer of such a suit by the District Judge to the Additional District Judge is not competent *Abdul Karim Abu Ahmed Khan v Abdus Sobhan Choudhry I L R 39 Calc 116* referred to MAHOMED MUSA *v* ABUL HASSAN KHAN (1914)

I L R 41 Calc 866

5(a) —— Valuation—A plaintiff landlord sued for a declaration of title and an injunction to restrain from realising rents the defendants who had been recorded in settlement proceedings as entitled to realise rent from tenants The value of the property was found to be Rs 4 000 or Rs 5 000 but the plaintiff valued the relief prayed by him at only Rs 500 *Held* the value of the suit ought to be the value of the property KRISHNA DAS LALA *v* HARI CHURN BANERJEE

15 C W N 823

JURISDICTION—*contd*

6 ———— **Execution of decree**—*Ejectment —Indian High Courts Act 1861 (24 & 25 Vict c 104) s 15—Bengal Assam Civil Courts Act (XII of 1887) s 21—Sonthal Parganas Civil Courts Statutory Rules paragraph 29—Sonthal Parganas Act (XXXVII of 1855) s 1 cl (2) s 2—Sonthal Parganas Settlement Regulation (III of 1872)—Sonthal Parganas Rent Regulation (II of 1886) s 25—Sonthal Parganas Justice Regulation (V of 1893) s 7 9 12 14 15 27* Where the decree holder applied for execution of a rent decree by ejectment as previous applications for attachment and sale had failed and the Sub Deputy Collector of Deoghar ordered the ejectment of the judgment debtor from a *portion* of the holding but the Deputy Commissioner on the recommendation of the Sub Divisional Officer sanctioned eviction from the *whole* holding and as the suit for rent was valued at less than one thousand rupees though the market value of the land was more *Held* that the suit was rightly tried in the Court of the Sub Deputy Collector and the execution proceeding was properly commenced in the Court in which the suit had been brought and the decree made *Held* also that in relation to that Court the Court of the Commissioner was the High Court (*vide* s 15 of Regulation V of 1893) and not this High Court Though the same individual may be appointed to discharge the duties of Sub Divisional Officer and Subordinate Judge or Deputy Commissioner and District Judge and in one set of Courts be subject to the superintendence of this High Court still the two sets of Courts as institutions or tribunals were entirely distinct from each other *Abdul Karim v The Municipal Officer Aden I L R 27 Bom 175 Municipal Officer Aden v Ismail Hajee Allana I L R 30 Bom 246 Rhimbai v Mariam I L R 4 Bom 261 In the matter of John Thomson 6 B L R 180 14 W R 5* distinguished *Golam Najaf Miah v Panchanan Gupta 19 C L J 297* followed *Held* further that s 25 of Regulation II of 1886 was framed for the protection of the raiyat If the execution Court determined that the decree was to be executed by ejectment that order was not to be carried out until it had been sanctioned by the Deputy Commissioner and even then there need be no ejectment if the decree was satisfied It could never have been intended that the scope of the order as made by the execution Court should be widened by the Deputy Commissioner as had been done in the present case and that without any notice to the raiyat DARBARI LANSARA v BHOTI ROY (1914)

I L R 41 Calc 915

7 ———— **Cantonment tax**—*Civil Courts —Taxes levied by cantonment authorities—Payment under protest—Jurisdiction of Civil Courts to entertain suit for recovery of payment* Civil Courts have jurisdiction to entertain a suit to recover the amount of taxes levied by the cantonment authorities and paid under protest on the ground that the assessment was illegal This may be the case both when no demands requiring very attendtive consideration has been made on the plaintiffs and reasonable time has not been given to the latter to take advice on the subject and when the cantonment authorities have wholly disregarded the basis on which the rate should have been assessed by assessing the rate upon the gross income of the plaintiffs Kaw ... v ... I L R 26 Bom 294 followed SECRETARY OF STATE FOR INDIA v MAJOR HUGHES (1913)

I L R 38 Bom 293

8 ———— **Transfer of venue** *from one Court to another after decree—Appellate forum* The District Munsif of Madanapalle having jurisdiction over Kadiri passed a decree on 30th March 1911 in respect of a cause of action which arose in Kadiri on 1st April 1911 Kadiri was transferred to the territorial jurisdiction of the District Munsif's Court at Penukonda from which appeals lay to the District Court at Bellary whereas appeals from the District Munsif's Court at Madanapalle lay to the District Court at Cuddapah *Held* on the question as to the proper appellate forum in the case that the appeal from the decree lay to the District Court at Bellary as the transfer of territorial jurisdiction *ipso facto* effected a transfer of venue SUBBAYYA v KACHAYYA (1914)

I L R 37 Mad 477

9 ———————— *Under valuation of Suit—Change of Court of Appeal owing to under valuation—Jurisdiction of Appellate Court—Judgment of Court having no jurisdiction a nullity—Effect of such judgment—Consent decree to the prejudice of minor or any reversionary heir not binding on heir—Stranger introduction of into appeal without leave of Court* A suit was intentionally undervalued The defendants raised no objection as regards valuation and the suit was tried The appeal was filed before the District Judge instead of before the High Court in consequence of the undervaluation and the District Judge decided the appeal by a consent decree *Held* that if a Court has no jurisdiction over the subject matter of the litigation its judgments and orders however precisely certain and technically correct are mere nullities and not only voidable they are void and have no effect either as estoppel or otherwise and may not only be set aside at any time by the court in which they are rendered but be declared void by every Court in which they may be presented These principles apply not only to Original Courts but also to Courts of Appeal Jurisdiction cannot be conferred upon a Court of Appeal by consent of parties and any waiver on their part cannot make up for the lack or defect of jurisdiction *Gurdeo Singh v Chandrika Singh I L R 36 Calc 193 Baij Nath Singh v Gajraj Singh 7 All L J R 675 Coomroo Pershad Roy v Juggoburdoo Mazumder (1869) W R F B 15 Golab Sao v Chowdhury Madho Lal 9 C W N 906 Ledgard v Bull I L R 9 All 191 L R 13 I A 134 Minakshi Naidu v Subramanya Sastri I L R 11 Mad 26 L R 14 I A 160 Laurence v Wilcock 11 A & E 941 The Queen v The Judge of the country Court of Shropshire 20 Q B D 258* referred to Where in a suit between a Hindu Widow and a claimant to the estate of her husband a stranger who was not a party to the suit in the Original Court was made a party to the appeal without leave of the Court and a consent decree made the decree was not binding upon the reversionary heirs A Hindu widow who is a limited or qualified owner cannot confess judgment and be party to a consent decree so as to bind the inheritance in the hands of the reversionary heirs *Katama Natchiar v the Raja of Shivaganga 9 Moo I A 539 Stapilton v Stapilton 1 White and Tud 8th Ed 234 1 Atk 2* distinguished *Imrit Konwar v Roop Narain*

JURISDICTION—contd.

I C C I P C explained ... *Vre Sick* ... *Akhy K* ... *10 C I I* ... *Sat Kumar v D* ... *I I I* ... *Jarim Iol* ... *I L* ... *All 45* ... *I I I* ... *I J* ... *13 C W N 14* referred to A ... decree ... no ... the party ... *Sinclair v* ... *I L P* ... *Co* ... *In re* ... *American and Me ... Company* ... (1905) ... *C* ... *Board of ... Insurance Company v* ... (1905) ... BALAKRISHNA DEO ... (1910)

I L R 38 Calc 639

10 ——— Objection by ... plaintiff who takes exception to the jurisdiction of the Court is not bound to apply for a transfer of the suit to the proper Court and has no acquiescence in the trial of the suit by ... applying ... CHAND DHAR ... CHAND v SECRETARY OF STATE FOR INDIA (1914)

18 C W N 1310

11 ——— Interlocutory orders—*Proced ... under s 10 Civil Proc Act ... —High Court's jurisdiction to interfere with ... —Civil Proc Act Code (Act I of 1775) ... Charter Act ... s 101)* ... The jurisdiction of a Court in a proceeding under s 10 of the Civil Procedure Code is limited to stopping a suit if the circumstances mentioned in that section as condition precedent to the passing of the order be found by the Court to exist. Courts have no jurisdiction to decide the question of res judicata in such a proceeding. Where a Court has jurisdiction to pass an order but it has been exercised in violation of the provisions of the law and under a misapprehension of the questions at issue the Court must be held to have acted with material irregularity in the exercise of its jurisdiction. *Venkat ... v Lakshma ... I L R 1? B ... 61; Sew Bux ... v Shib Chunder Sen I L R 13 Calc 2?; Jagobundhu Pattuck v Jodu Ghose I L R 15 Calc 47; Tarini Charan Banerj v Chandra Kumar Dey 14 C W N 88* referred to. The High Court is entitled to interfere under s 15 of the Charter Act if not under s 115 of the Code with interlocutory orders when they might lead to failure of justice or irreparable injury. *Dhapo v Ram ... I L R 14 Calc 68; Gobinda Mohan Das v Kunja Behary Dass 14 C W N 117* and *Imdad Ali v ... Hussain Johar 15 C W N 3?3* referred to. SIVAPRASAD RAM *v* TRICOMDAS COVERJI BHOJA (1915)

I L R 42 Calc 926

12 ——— Suit for land *or other immovable property construction of—Letters Patent 1865 cl 12—Trespass—Compensation for wrong to land—Wrongful cutting and removal of coal—Civil Procedure Code (Act V of 1908) s 16—Civil Procedure Code (Act VIII of 1859) s 5—Venu* The expression suits for land or other immovable property in cl. 12 of the Charter of 1865 cannot be construed as being limited to suits for the recovery of land in its strict sense but must be construed as extending to a suit for compensation for wrong to land where the sub

JURISDICTION—contd.

stantial question ... to the land ... (1915)

I L R 42 Calc 942

14 ——— Suit to eject a tenant *holding ... Court Fees Act (VII of 1870) s ... cl (xi) (cc)—Madras Civil Courts Act (III of 1873) s 14* The effect of amendment of s 7 of the Court Fees Act (VII of 1870) by adding to it cl (xi) (cc) is that a suit to recover immovable property from a tenant is governed for purposes of jurisdiction by s 8 of the Suits Valuation Act (VII of 1887) and not by s 14 of the Madras Civil Courts Act (III of 1873) so that in the case ... the value for purposes of jurisdiction is the ... for court fees. *Chidambara ... I L R ... Mad ...* ... SESHAGIRI ROW *v* NARAYANA ... NAIDU (1914)

I L R 38 Mad 795

15 ——— To entertain suit after remand ... *by District Judge after ... with consent of parties by Subordinate Judge—Irregular assumption of jurisdiction ...* Where a suit valued at Rs 1,368 was heard in the first instance before the District Judge and dismissed as barred by limitation but on appeal the High Court remanded it for trial on the other issues and thereafter the case having been transferred to the file of the Subordinate Judge the latter officer with the consent of the parties tried and disposed of the suit. *Held* that if the order of the High Court did not place any restriction on the power of the District Judge to transfer the case the transfer was authorised by s 24 of the Civil Procedure Code. But if the remand order was interpreted to have directed the District Judge himself to try the suit it was not a case of the trying Court not having local or pecuniary jurisdiction but of that Court assuming jurisdiction in an irregular manner and the parties having consented to the trial by the Subordinate Judge were not entitled to object to it on that ground on appeal and it was immaterial that as consequence of such trial appeal from his decision on fact lay before the District Judge and not before the High Court. PROTAP CHANDRA ... v ... DAS (1914)

19 C W N 143

16 ——— Chota Nagpur Tenancy Act *(Beng VI of 1908) ss 87 258 264—Revenue Officer—Judicial Commissioner—Government's power to appoint the officer to hear appeals* S 87 of the Chota Nagpur Tenancy Act provides for a suit before a Revenue Officer and for an appeal in the prescribed manner to the prescribed officer from decisions passed under sub s (1) that is a decision on any other matter not referred to in cls (a) to (c). The rules made by the Government provide that suits under s 87 of the Act shall be tried in all respects as suits between the parties. S 264 (viii) of the Act gives the Government power to prescribe the officer to hear appeal and the Judicial Commissioner is the prescribed officer under the rules. The provisions for appeal appear to have been overlooked in s 258 and it must therefore be understood that the special Appellate Court in Revenue Cases in deciding disputes under this Act performs the functions of a Revenue Officer. GANESH NARAIN SAHI DEO *v* PROTAP UDAI NATH SAHI DEO (1915)

I L R 43 Calc 136

17 ——— Mesne Profits—*Court of limited pecuniary jurisdiction—Mesne profits amounting*

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to Rs 60 000 antecedent to suit and pendente lite *whether can be investigated by Munsif—Civil Procedure Code (Act XIV of 1882) ss 50 211 212—Civil Courts Act (XII of 1887) s 7 cl (1)* 18 When a plaintiff institutes his suit for possession and mesne profits antecedent to the suit in a Court of limited pecuniary jurisdiction he may be rightly deemed to have limited his claim to the maximum amount for which that Court can entertain a suit In fact in such a case if the plaintiff subsequently put forward a claim in excess of the jurisdiction of the Court he may be justly required to remit the excess because he had with his eyes open brought his suit deliberately in a Court of limited pecuniary jurisdiction. *Golap Singh* v *Indra Kumar Hazra 13 C W N 493 9 C L J 367* followed. *Sudarshan Dass* v *Ramapershad 7 All L J R 963* dissented from But mesne profits antecedent to the suit and mesne profits *pendente lite* stand on very different grounds A Munsif cannot entertain an application for investigation of mesne profits *pendente lite* when the claim was laid over Rs 60 000 The proper course to follow was to direct the return of the plaint in so far as it embodied a prayer for assessment of mesne profits from the institution of the suit to the date of delivery of possession for presentation to the Court of competent pecuniary jurisdiction *i e* the Court of the Subordinate Judge *Rameswar Mahton* v *Dilu Mahton I L R 21 Calc 550* distinguished BHUPENDRA KUMAR CHAKRAVARTI *v* PURNA CHANDRA BOSE (1916)

I L R 43 Calc 650

18 ———— **Ruling Prince or Chief** —*Consent of Local Government—Submission to jurisdiction—Waiver—International Law—Civil Procedure Code (Act V of 1908) s 86 construction of* Where His Highness Rajah of Cochin was impleaded as a defendant in a suit in the capacity of a trustee of a temple without the consent of the Local Government under s 86 of the Code of Civil Procedure (Act V of 1908) *Held* that the suit was not maintainable as against the Rajah of Cochin in the absence of consent of the Local Government under s 86 of the Code of Civil Procedure *Per* OLDFIELD J —The recognition of cases of waiver as excepted from the ordinary provision of International Law as understood in England cannot be imported into the clear language of the Indian Code *Chandulal* v *Awad bin Umar Sultan I L R 21 Bom 351* dissented from *Per* SADASIVA AYYAR J —Objection to jurisdiction is enough to show that there was no voluntary submission by the defendant to the jurisdiction of the Court *Parry & Co* v *Appasami Pillai I L R 2 Mad 407* approved *Veeraraghava Iyer* v *Muga Sait I L R 39 Mad 24* referred to NARAYANA MOOTHAD *v* THE COCHIN SIRCAR (1916)

I L R 39 Mad 661

19 ———— **Criminal misappropriation or breach of trust**—*Receipt of money and conversion at head office of a company in Madras Presidency—Loss to complaint in a district in Bengal—Jurisdiction of Court at latter place to try the offences—Criminal Procedure Code (Act V of 1898) ss 179 181(2)* The jurisdiction of a Court to try the offences of criminal misappropriation or breach of trust is governed by s 181 (2) and not s 179 of the Criminal Procedure Code Loss though a normal result is not an ingredient of the offences of criminal misappropriation or breach of trust and not therefore a consequence within the meaning of s 179 A complaint of offences under ss 403 and 406 of the Penal Code against an official of an Insurance Company having its head office at B in the Madras Presidency where the money was received and the conversion took place cannot be tried by a Court at K where loss ensured to the complainant *Ganeshi Lal* v *Nand Kishore I L R 34 All 487* and *Rambilas* v *Emperor (1914) Mad W N 894* followed *Queen Empress* v *O Brien I L R 19 All 111* and *Langridge* v *Atkins I L R 35 All 29* dissented from *Colville* v *Kristo Kishore Bose I L R 26 Calc 746 Emperor* v *Mahadeo I L R 32 All 397* distinguished SIMHACHALAM *v* EMPEROR (1916)

I L R 44 Calc 912

20 ———— **Leave to withdraw** *suit by the Appellate Court—Subsequent Suit—Res Judicata—Civil Procedure Codes—(Act XIV of 1882) 373 (Act V of 1908) O XXIII r 1* The plaintiff brought a suit for the declaration of his title in respect of certain rights and for other reliefs This suit was dismissed by the Court of first instance on the merits after the evidence had been gone into The plaintiff thereupon preferred an appeal At the hearing of the appeal he made an application for leave to withdraw from the suit under s 373 of the Code of Civil Procedure 1882 on the grounds of a formal defect and of his inability to produce the necessary evidence in time and obtained an order in the presence of the defendants to the effect that the appeal be dismissed with costs and the plaintiff s suit be allowed to be withdrawn with leave for fresh action for the same subject matter if not barred Subsequently the plaintiff brought a fresh suit against the same parties on the same cause of action as in the previous suit *Held* that the ground on which the order was made by the Appellate Court was not a ground which was contemplated by s 373 of the Civil Procedure Code and that therefore the order was without jurisdiction *Kharda Coal Co Ld* v *Durga Charan Chandra 11 C L J 45* and *Mabulla Sardar* v *Hemangini Debi 11 C L J 512* referred to KALI PRASANNA SIL *v* PANCHANAN NANDI (1916)

I L R 44 Calc 367

21 ———— **Execution** *proceedings—Suits above Rs 5 000—Appeal from order in execution proceedings—Civil Courts Act (XII of 1887) s 21 sub s (1)—Civil Procedure Code (Act V of 1908) 99 100 108* Where in execution proceedings in a mortgage suit the value of which exceeded Rs 5 000 an order was made by the Court of first instance which on appeal was modified by the District Judge *Held* that the order of the District Judge was made without jurisdiction and was contrary to law In such a suit an appeal against an order made in a proceeding arising out of the decree lay to the High Court and not to the Court of the District Judge under the provisions of s 21 sub s (1) of the Bengal Civil Courts Act 1887 *Held* also that as the order was passed on appeal by the District Judge a second appeal lay to the High Court under s 100 of the Civil Procedure Code 1908 *Ranjit Misser* v *Ramdar Singh 16 C L J 77* referred to NANDIRAM MOOKERJEE *v* PURNA CHANDRA ROY (191)

I L R 45 Calc 926

22 ———— **Deficit court fees** *whether recoverable by attachment of movables* Where after the dismissal of a suit the Court ordered the deficit court fee to be paid by the

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plaint and on default of its own motion ordered the attachment of his moveables *Held* that the Court had no jurisdiction to do so JATRA MOHAN SEN v SECRETARY OF STATE FOR INDIA (1915)

I L R 46 Calc 520

23. ———— **Mortgage** *of property situated partly in district subject to the Code of Civil Procedure 1908 and partly in a scheduled district under Act XXIV of 1839—Mortgage of such property and order for sale made by Court under Code of Civil Procedure—Order for sale whether without jurisdiction—Civil Procedure Code 1908 s 1 sub s (3) and s 17 21—Meaning of "Courts" in s 17* A suit was brought under the Code of Civil Procedure 1908 to enforce a mortgage of property which was situate partly in a district to which that Code applied and partly in a scheduled district under Act XXIV of 1839 and therefore subject to the special jurisdiction of the Agency Courts and a decree on the mortgage and for sale of the mortgaged property was made by the Subordinate Judge and affirmed by the High Court *Held* that so far as the decree was for sale of the mortgaged property in the scheduled district the Courts had no jurisdiction to make it as the Code not being applicable to such ... And it could be set aside notwithstanding that no objection to the jurisdiction had been taken in the Subordinate Judge's Court The word Courts in s 17 of the Civil Procedure Code 1908 means Courts to which that Code applied and not Courts one of which was subject to the Civil Procedure Code and the other to the Agency jurisdiction The alteration made in the decree by striking out that part of it which ordered the sale of the mortgaged property would not interfere with the plaintiff's right to obtain from the Agency Court an order for the sale of the property situate in its jurisdiction RAMALINGA PA RAJU BAHADUR v MAHARAJA OF JEYPORE (1919)

I L R 42 Mad 813

24 ———— **Second Appeal**—*Decree set aside—Court not [illegible] question of fact—Absence of evidence to support finding—Civil Procedure Code (Act V of 1908) s 100* Upon a second appeal the decree of a Subordinate Judge in favour of the plaintiffs affirmed on the facts by the District Judge was set aside by the High Court on the grounds that the evidence taken showed that the true question of fact which had not been considered and as to which no issue had been framed should have been answered in favour of the defendant and that there was no evidence to support a finding of fraud arrived at by the lower Courts *Held* that there was jurisdiction under s 100 of the Code of Civil Procedure 1908 to set aside the decree upon the grounds above stated and that upon the evidence it had been rightly set aside DAMUSE v ABDUL SAMAD (1919) **L P 46 I A 140**

25 ———— **Error**— *Whether mis interpretation is a question of—Superintendence—Code of Criminal Procedure (Act V of 1898) ss 145 and 147—Mining rights whether included in land* Where a Magistrate has jurisdiction to take cognizance of a case and devotes his judicial mind to a consideration of the points which he is required to determine any error in law with regard to the interpretation of the word of the section which he is applying is not an error in the exercise of his jurisdiction but an error which would in the ordinary course be subject to an appeal Such errors are not subject to superintendence S 147 of the Code of Criminal Procedure 1898 covers all profits derivable from land or water including mining rights ANDREW YULE CO v A H SKONE (1919) **4 Pat L J 154**

26 ———— **Distinction between existence and exercise of jurisdiction**—*Withdrawal of suit—Liberty to institute a fresh suit—Civil Procedure Code (Act V of 1908) O XXIII r 1* An order for withdrawal of a suit with leave to institute a fresh suit made under O XXIII r 1 but in circumstances not within the scope of the rule cannot be treated as an order made without jurisdiction such order is consequently not null and void A fresh suit instituted upon leave so granted is not incompetent The Court trying the subsequent suit is not competent to enter into the question whether the Court which granted the plaintiff permission to withdraw the first suit with liberty to bring a fresh suit had properly made such order The authority to decide a case at all and not the decision rendered therein is what makes up jurisdiction *Kali Prasanna Sil v Panchanan Nand Choudhury 3 C L J 459 9 C W N 1000* overruled HRIDAY NATH ROY v RAM CHANDRA BARNA SARMA (1920) **I L R 48 Calc 138**

27 ———— **Income tax**— *Agricultural income—Practice—Vakil—Right of audience—Ibid* When a Court hears a reference it really performs the functions of the Court of Appeal On a reference by the Chief Revenue authority under s 51 of the Income tax Act (VII of 1918) in cases where the assessee or the business is outside the local limit of the Original Jurisdiction of the High Court vakils and not attorneys are entitled to appear *Girdharee Singh v Hurdoy Narain 21 W R 63 Secretary of State for India v British Indian Steam Navigation Company 13 C L J 90* referred to Salami or premium received on settlement of waste land but not on transfer of a holding is exempt from assessment of income tax Illegal *abwabs* are assessable *Partridge v Mallandaine 18 Q B D 276* referred to BIRENDRA KISHOR MANIKYA v SECRETARY OF STATE FOR INDIA (1920)

I L R 48 Calc 766

28 ———— **Mortgage comprising properties outside Calcutta—Sub mortgage including properties in Calcutta**—*Suit on sub mortgage whether maintainable in the High Court—Leave under cl 12 of the Letters Patent if may be granted in such a case—Res judicata—Decree wholly or partly without jurisdiction—Waiver or acquiescence whether confers jurisdiction—Question of jurisdiction not raised or decided in the previous suit effect of* On 30th August 1906 A mortgaged to B certain immovable properties situated outside Calcutta and outside the Ordinary Original Jurisdiction of the High Court On 13th December 1907 B mortgaged to C certain immovable properties in Calcutta together with his interest as mortgagee under the mortgage of 30th August 1906 On 25th November 1912 C instituted a suit in the High Court to enforce his mortgage against A and B by the sale of properties comprised in both the mortgages after having obtained leave under cl 12 of the Letters Patent The preliminary decree was passed *ex parte* on 2nd

JURISDICTION—*contd*

September 1914 and the final decree was passed on 24th August 1917 On 20th June 1916 D purchased the right title and interest of A at an execution sale and in July 1918 D filed the present suit for a declaration that the decrees in the previous suit were without jurisdiction so far as they affected properties outside Calcutta and that the leave under cl 12 of the Letters Patent was improperly obtained GREAVES J *held* that the Court had jurisdiction to pass the decrees *Held* that the decrees were without jurisdiction in so far as the immovable properties outside Calcutta were concerned and that leave under cl 12 of the Letters Patent could not be granted *Held* further that the question of jurisdiction could be raised in the present suit though it could have been and was not raised in the previous suit *Per* MOOKERJEE J — It is an elementary principle that where a Court has no jurisdiction over the subject matter of the action in which an order is made such order is wholly void for jurisdiction cannot be conferred by consent of parties and no waiver or acquiescence on their part can make up for the lack or defect of jurisdiction *Rajlakshmi* v *Kalyan* I L R 38 *Cal* 6_9 (1910) *Gurdo* v *Chandrika* I L R 36 *Cal* 193 (1907) and *Ranjit* v *Panaddor* 17 C W N 116 (1911) referred to *Held* also there could not be *res judicata* inasmuch as the question of jurisdiction raised in this suit was neither raised nor decided in the previous suit *Per* MOOKERJEE J — When a Court judicially considers and adjudicates the question of its jurisdiction and decides that the facts exist which are necessary to give it jurisdiction over the case the decision is conclusive till it is set aside in an appropriate proceeding But when there has been no such adjudication the decree remains a decree without jurisdiction and cannot operate as *res judicata* KRISHNA KISHORE DE v AMAR NATH KSHETTRY **24 C W N 633**

29 ———— **Civil or Revenue—suit for recovery of price of barley** *delivered to defendants by a Revenue Officer—whether competent—Punjab Land Revenue Act XVII of 1887 sections 141 158 (?) (XIX)*—onus probandi Defendants applied to the Revenue Officer for division and appraisement of the produce of a holding in which they were co sharers with the plaintiffs An appraisement was duly made but before the produce could be divided the plaintiffs removed it and stored it in a house Thereupon the referee appointed by the Revenue Officer made over a whole *khatti* of barley to the defendants in lieu of their share of the produce The plaintiffs after making an unsuccessful attempt to get redress through the Revenue Authorities brought the present action for the price of the barley alleging that it belonged to them exclusively *Held* that the question whether the barley is joint property or belongs exclusively to the plaintiffs is a question of title which cannot be determined by a Revenue Officer who is required only to divide the produce which is admittedly joint or to determine its value and that consequently the Civil Court has jurisdiction to entertain the present suit which does not come within the purview of section 158 (?) (XIX) of the Punjab Land Revenue Act *Held* also that the *onus* was on the defendants to satisfy the Court that the claim made by the plaintiffs is not within cognizance of a Civil Court and that they had failed to discharge that *onus* RAMJI LAL v MANGAL SINGH **I L R 2 Lah 302**

30 ———— **Suit for money advanced and for specific performance of an agreement to mortgage** *land outside jurisdiction—Injunction to restrain disposal of land outside jurisdiction—Interest in land* In a suit instituted in the High Court in its original jurisdiction the plaint stated that the plaintiff firm advanced in Calcutta various sums of money secured by promissory notes as well as by the deposit of title deeds of property outside Calcutta to the defendant who resided outside the jurisdiction It stated that the title deeds were with the plaintiff firm in respect of a previous regularly executed mortgage It stated further that the defendant agreed to register and execute a regular mortgage whenever called upon to do so but that the defendant refused to return the money or execute the said mortgage and in breach of the agreement the defendant was attempting to transfer the property to others The plaintiff firm prayed for leave under clause 12 of the Letters Patent and under Order II r 4 of the Civil Procedure Code to institute the suit in this Court On an application for settlement of issues *Held* that a suit for specific performance of an agreement to mortgage lands outside the jurisdiction even if the title is accepted is a suit for land within the meaning of clause 12 of the Charter and accordingly that leave cannot be given *Seenath Roy* v *Cally Doss Ghose* *I L R 5 Calc 8?* followed RATANCHAND DHARACHAND v GOVINDALL DUTT (1921) **I L R 48 Calc 882**

JURISDICTION AND CLAIM

———— **denial of—**

See FOREIGN DECREE EXECUTION OF **I L R 39 Mad 24**

JURISDICTION OF CIVIL COURTS

See ADEN SETTLEMENT REGULATION (VII OF (1900) s 13 **I L R 40 Bom 446**

See JURISDICTION

See LAND ACQUISITION **I L R 44 Calc 219**

See LAND REVENUE CODE (BOM ACT V OF 1879) s 79A **I L R 35 Calc 72**

See MADRAS ESTATES LAND ACT (I OF 1908) s 8 **I L R 38 Mad 608**

See PENSIONS ACT (XXIII OF 1871) ss 4 5 6 **I L R 37 All 338**

See REGULATION II OF 1827 **I L R 34 Bom 455**

See RIGHT OF SUIT **I L R 40 Bom 200**

See TITLE **I L R 37 Calc 662**

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901) s 233 (*l*) **I L R 33 All 440**

———— **Caste question**

See HINDU LAW—RELIGIOUS OFFICE **I L R 36 Bom 94**

See TRUSTS ACT (II OF 188) ss 5 AND 6 **I L R 34 Bom 467**

JURISDICTION OF CIVIL COURTS—*contd*

——— question of title—

See BOMBAY LAND REVENUE ACT 1879 s 121 I L R 45 Bom 67

1 ——— Aden Act (II of 1864) ss 8 and 15—*Court fees Act (VII of 1870) s ... cls (c) and (d)—Suits Valuation Act (VII of 1887) s ...—Civil Procedure Code (Act XIV of 1882) s ...—Civil Procedure Code (Act V of 1908) s ...—Valuation for the purposes of Court fees and jurisdiction—Suit for declaration and injunction—Rejection of plaint as not properly stamped—Appeal—Application to state a case to High Court—Summary dismissal of appeal—Application for revision* The plaintiff brought a suit in the Court of the Assistant Resident at Aden for a declaration of her title and an injunction with reference to certain property of the value of upwards Rs 10,000 The claim being for declaration and injunction was under the provisions of the Court fees Act (VII of 1870) s 7 sub s 4 cls (c) and (d) valued by the plaintiff at Rs 130 upon which the prescribed Court fee stamp was Rs 10 only The Assistant Resident rejected the plaint on the ground that it was not properly stamped Against the order of the Assistant Resident the plaintiff appealed to the Resident at Aden and on the 23rd September 1908 presented an application under s 8 of the Aden Act (II of 1864) to state a case to the High Court upon certain questions specified in the application The Resident however on the next day that is on the 24th September summarily dismissed the appeal under s ... of the Civil Procedure Code (Act XIV of 1882) The judgment dismissing the appeal was read out to the plaintiff on the 7th October following when she attended the Court The plaintiff thereupon preferred an application for revision to the High Court praying that the order dismissing the appeal might be quashed and that the Resident be required to state a case A question having arisen as to whether the High Court had jurisdiction to interfere in revision with any order passed by the Resident in the exercise of his Civil jurisdiction under the Aden Act (II of 1864) *Held* that with regard to questions which might arise regarding cases to be stated by the Resident for the decision of the High Court under the provisions of s 8 of the Aden Act (II of 1864) the Resident's Court is subordinate to the High Court Under s 1 of the Aden Act (II of 1864) as the Court of the Resident is to be guided by the spirit and principle of the laws and regulations in force in the Presidency of Bombay and administered in the Courts of that Presidency not established by Royal Charter and in the High Court in the exercise of its jurisdiction as a Court of Appeal from those Courts the provisions of the Suits Valuation Act (VII of 1887) are the law for the time being for the valuation of claims in the Courts of the Resident of Aden *Held* further that the plaintiff's claim being valued at Rs 130 according to the law for the valuation of claims for the time being in force and according to the rulings of the Bombay High Court it did not fulfil the requirements of s 8 of the Aden Act (II of 1864) so as to give the plaintiff a right to demand the statement of the case upon any question of fact or law arising in the suit RHIMBAI JAMALBHOY *v* MARIAM BINTE ABDUL (1909)

I L R 34 Bom 267

2 ——— Appellate decree passed without jurisdiction—*High Court bound to set aside such decree* Where a small cause suit is tried by a Munsif on the original side and his decision is reversed on appeal the High Court is bound to set aside the appellate decree as having been passed without jurisdiction *Parameshwara Nambudri v Kunhu Embrandiri I L R 27 Mad 4 ... dissented from Jamasami Chettiar v Orr I L R 26 Mad 1 6 approved Shankarbhai v Somabhai I L R 25 Bom 417 approved* KOLLIPARA SITTAPATHY *v* KANKIPATI SUBBAYYA (1909)

I L R 33 Mad 323

3 ——— Suit for land—*Letters Patent cl 12—Suit in which decree is asked for operating directly on land is a suit for land* A suit which prays for any relief with reference to any specific immoveable property is a suit for land within the meaning of cl 12 of the Letters Patent Where in a suit for maintenance the plaintiff prays that the amount may be charged not on the ancestral property generally but on specific land the suit is a suit for such land within the meaning of cl 12 of the Letters Patent SUNDARA BAI SAHIBA *v* TIRUMAL RAO SAHIB (1909)

I L R 33 Mad 131

4 ——— Letters Patent cls 12 14—application under *Cause of action arising partly within jurisdiction—Leave of action arising ... jurisdiction Joinder—Time of application* An application under cl 14 of the Letters Patent to join a further cause of action arising wholly outside the jurisdiction can be made in a case in which leave to sue has to be obtained under cl 12 nor is there anything in cl 14 to show that the application must be made before the plaint is filed There is nothing to prevent the plaintiff making the application at any time before the hearing but it would certainly be advisable for him to make it at the time the plaint is presented JOHN CONNOR DONCASTER *v* THE KRISHNA MILLS LTD (1910) I L R 34 Bom 564

5 ——— Practice—*Presidency Small Cause Courts Act (XV of 1882) s ...—Suit ... Small Cause Court brought in High Court—Non joinder—Contract of sale ... of ... Association—Resolution ... of Court of ...—Rule providing for fixing ... rate of goods for purpose of ascertaining differences in case of non fulfilment of contract—Suit by buyer for damages for non delivery—Plea that no damage recoverable, having regard to rate fixed—Allegation by plaintiff that rate fixed was not binding inasmuch as the rules were not observed—Construction of rule—Principal and agent—Agent's power to bind his principal to arbitration—Indian Contract Act (IX of 1872)*

s ...—Sale—Tender The Bombay United Rice Merchants Association was a commercial body of which most of the principal rice merchants in Bombay were members Its rules were printed and circulated and they prescribed a certain form of contract which was very generally used in Bombay By these rules a Sub Committee was nominated to decide all disputes which may arise as to contract and do all other business relating to contract It was also provided that the exclusive authority to decide all such disputes should be the said Sub Committee and the Association and that no party should be at liberty to go to Court with respect to any matter connected with such contracts except to enforce the decision of the Sub Committee and the Association It was f

JURISDICTION OF CIVIL COURTS—*contd*

provided that the Sub Committee should keep a record of the daily rates and on the last day of the *vaida* should fix the *vaida* rate (*i e.* the market rate of the day) on the basis of which differences should be calculated which became payable in cases in which contracts were not carried out The plaintiffs who were rice merchants in Rangoon were not members of the Association but they employed agents in Bombay who were members to purchase rice for them and on the 24th November 1906 these agents bought from the defendants 1 340 bags of rice at Rs 9 per bag deliverable at the *vaida* of Magshir Sud 1963 (*i e.* from the 18th November 1906 to 30th November 1906) The contract which was in the printed form framed under the rules as above mentioned contained the following clause — This contract is made subject to the rules of the Bombay United Rice Merchants Association. Each party is bound to act in accordance with the same For delivery at this *vaida* a large number of the members of the Association had made contracts of sale The plaintiffs and a few others were purchasers and they were apprehensive that in settling the *vaida* rate the interests of the buyers would be disregarded in favour of those of the sellers They accordingly wrote to the President of the Association calling upon him to see that no interested person was allowed to act on the Sub-Committee for fixing the *vaida* rate In accordance with the practice a general meeting of the Association was held on the 30th November 1906 at which after discussion a special Sub Committee was appointed to fix the rate consisting only of three persons one of whom was not a member of the standing Sub-Committee and another of whom had large contracts of sale due at this *vaida* This Sub Committee fixed the rate at Rs. 8-11 0 per bag The plaintiffs alleged that it should have been fixed at Rs. 9 2 0 or Rs 9 4 0 per bag which was the real market rate of the day that the rate fixed was dishonestly fixed in the interest of sellers that the Sub Committee was not constituted according to the rules two members of it being ineligible one because he did not belong to the standing Sub-Committee and the other because he was interested in fixing a low rate and they contended that for these reasons (*inter alia*) they were not bound by the rate fixed. They had duly demanded delivery of the rice contracted for and the defendants failed to give delivery and the plaintiffs now sued for the difference between the contract price (Rs. 9) and the market price on the 30th November 1906 The sum claimed as damages was less than Rs. 1 000 The defendants pleaded—(i) That having regard to s. 16 of the Civil Procedure Code (Act XIV of 1882) and s. 18 of the Presidency Small Cause Courts Act (XV of 1882) the suit was not maintainable in the High Court (ii) That certain alleged partners of the plaintiff not being parties to the suit it should be dismissed for non joinder (iii) That having regard to the rules of the Association which provided a remedy in case of disputes among its members and forbad their going to law the plaintiffs were precluded from suing at law at all events until they had exhausted the remedies provided by the rules. (iv) That the plaintiffs were bound by the *vaida* rate fixed by the Sub Committee appointed by the Association. *Held* (i) that the High Court had jurisdiction and that the suit should proceed subject to the provisions as to costs contained in s. 22 of the Presidency Small Cause Courts Act (XV of 1882) (ii) That the alleged partnership was proved but nevertheless the suit could not be dismissed for non joinder (iii) That the plaintiffs were entitled to sue at law notwithstanding the provisions contained in the rules of the Association requiring all disputes to be submitted for decision to the Association and restricting the right of members to sue each other (iv) That at the meeting of the Association held on the 30th November 1906 the plaintiffs (through their agents) had consented to the appointment of a Sub Committee of three persons to fix the *vaida* rate and that they were therefore bound by the rate then fixed. Any stipulation that the award of an arbitrator shall be accepted as final restricts the rights of contracting parties to invoke the aid of the ordinary Courts and to that extent is void. The effect of s. 28 of the Indian Contract Act (IX of 1872) s. 21 of the Specific Relief Act (I of 1877) read with the related sections of the Indian Arbitration Act (IX of 1899) and the Civil Procedure Code dealing with arbitration is that a person may not contract himself out of his right to have recourse to Courts of law but that in the event of any party having made a lawful agreement to refer a matter of difference to arbitration as a condition precedent to going to law about it the Courts will recognise the agreement and give effect to it by staying proceedings in the Courts MULJI TEJSING *v* PANJI DEVRAJ (1909) I L R 34 Bom 13

6 ———— Suit for share in produce of immoveable property—*Provincial Small Cause Courts Act (IX of 1887) ss 16 27 32 Sch II Cls (2) and (3)—Suit for the recovery of certain sum representing a share in the produce of immoveable property—Cognizance by the Court of Small Causes—Decree final—Appeal* A suit for the recovery of Rs 12 11 6 representing plaintiff's share in the produce of immoveable property is a suit for money had and received to the plaintiff's use and is cognizable by the Court of Small Causes and the decree in such a suit is final under s 27 of the Provincial Small Cause Courts Act (IX of 1887) Notwithstanding its finality an appeal was preferred to the District Court of Ahmedabad which Court entertained the appeal and reversing the decree allowed the plaintiff's claim. The defendant thereupon, preferred a second appeal and at the hearing prayed that the second appeal might be treated as an application for revision under s 115 of the Civil Procedure Code (Act V of 1908) on the ground that the District Court acted without jurisdiction in entertaining the appeal. The respondent (plaintiff) urged that a second appeal lay and further that by reason of the conduct of the parties and the fact that the appellant (defendant) had not objected to the jurisdiction of the District Court it was too late in second appeal to take the point *Held* that the District Court had no jurisdiction to try the case and the conduct of the parties could not give it jurisdiction. *Ledgard v Bull L. R 13 I A 134* and *Meenakshi Naidoo v Subramaniya Sastri L R 14 I A 160* referred to Decree of the District Court reversed and that of the first Court restored. DAULATSINHJI (MAHARANA SHRI) *v* KHACHAR HAJIR MON (1909)

I L R 34 Bom 171

7 ———— Suit for declaration of title and injunction, valuation of—*Jurisdiction—Court Fees Act (VII of 1870) s 7 sub-s (4) cls*

JURISDICTION OF CIVIL COURTS—*contd*

(c) and (d)—Suits Valuation Act (VII of 188) s 8—Jurisdiction, Plaintiff landlord sued for d claration of titl and for an injunction to restrain from realising rents th d fendants who had been reco l l in s tll m nt pro e lings as entitled to reali rent from t nants The valu o th p op ty was found to b about Rs 4 000 or I s 5 000 but the plaintiff valu l the reli fs pray l by him at only Rs 500 *Held* that the value of the suit ou ht to be th valu of th prop rty as it was virtually a suit for possession and that th refore th suit did no lie in th Court of th Munsif *Ganesh v Chh , I L R 1 Cal* *Ibrahim v Kommath I L R Mad 01* referr l to The proposition cannot be maintained that it is op n to the plaintiff in su h ca to value the suit a bitrarily *Har Singh Dit v Har Kumar I L R 3* I nn at l in and dis n uis L *Baidya Nath Adya v Makhan Lal Adya I L R 1 Cal 65* I n l *Kristo Ko I L R 11 Cal 331* referred to KRISHNA DAS LAHA v HARI CHARAN BANERJEE (1911)

15 C W N 823

8 ——— **Consent of the parties as to jurisdiction**—*Suit of value beyond th jurisdiction of th Court—Trial of suit—Jurisdiction cannot b qu tion l in appeal—Evidence Act (I of 18) s 58* The plaintiffs fil l a suit for partition in the Court of the Subordinate Jul e First Class, valuing th r claim at an amount which made the suit triable by that Court alone The Jul however made over the trial of the suit to the Joint Subordinate Jul In the latt r Court n ith r party raised any obj tion on the ground of juris diction nor was any issue raised relating to it. Th trial pro led on m rits and a d ree was passed in favour of plaintiffs The defendant appealed to the low r Appellate Court where he for the first tim raised the question of jurisdiction on the strength of the market value stated in the plaint. The objection was overruled. On appeal — *Held* that the mark t value stated in the plaint *prima facie* d t rmined the jurisdiction *Held* furth r that as neith r party raised any question as to want of jurisdiction in the first Court and as they by their condu t and silence trea ed th market value to be of the amount suffi ient to give jurisdiction to the Court they disp nsed with proof on the question by th ir tacit admissions and thus the principle of law laid down in s. 58 of the Indian Evidence Act came into operation and prevented the result of the stat m n of the market value in th plain As a rule parties cannot by cons nt give jurisdiction wh re none exis s This rule applies only wh re th law confers no jurisdiction It do s not pre vent parties from waiving inquiry by the Court as to fa ts ne essary for the d termination of the qu stion as to jurisdiction wh re tha qu stion d p nds on fa ts to be as r ained JOSE ANTONIO v FRANCIS D ANTONIO (1910)

I L R 35 Bom 21

9 ——— **Suit for declaring adoption invalid**—*Jurisdiction—Civil Court—Subordinate Judge of Second Class—Bombay Civil Court Act (XIV of 1869) s 24—Claim valu l for Court fe purpos s at Rs 130—Court Fe s A t (VII of 1870) s 7 cl iv) sub cl (c) (d)—Property exce ding Rs 5 000 in valu —Mahom lan law—Converts from Hinduism—Custom of adoption—Burden of proof* A suit to obtain a declaration that an adoption was invalid was valued for Court fee purposes at Rs 130 though the property affected by the adoption was more than Rs 5 000 in value It was brought in the Court of the Subordinate Jul e of the second class whose jurisdiction extended only to suits involving claims valued under Rs 5 000 (Bombay Civil Courts Act, 1869 s 24) It was objected that the Subordinate Jul e had no jurisdiction to ent rtain the suit *Held* that the Subordinate Jul e was comp tent to try the suit *Sangappa v Shivappa (1897) P J p 98* and *Bai Reva v Kesharram Dulsram (1875) P J p 238* followed. The Mahom lan law does no re o nise adoption H n wh re a Hindu is conv rt l to Mohomedan ism, the p esump ion is that as a n cessary conse qu n of conve sion the law of adoption recognised by Hindu law has b n abandoned by him He who all ges that the usage of Hindu law of adoption had b n r ained must prove it BAI MUMTAZ v BAI HUSSAI (1911) **I L R 35 Bom 234**

10 ——— **Judgment of Court having no jurisdiction, a nullity**—*Jurisdiction—Under valuation of suit—Chan of Court of Appeal owing to und rvaluation—Jurisdiction of Appellate Court—Eff t of su h judgm nt—Consent decree to th pr judice of minor or any reversionary heir not binding on h ir—Stranger enrolled as of into appeal without l av of Court* A suit was inten tionally und rvalu l The l f ndants raised no obje tion as regards valuation and the suit was tri l The appeal was filed before the District Jul e inst al of b fo th Hi h Court in conse quen e of the und rvaluation and the District Jul e d ided the appeal by a consent de ree *Held* that if a Court has no jurisdiction over the subje t matter of the litigation its judgments and ord rs however p e is ly certain and technically correct are m re nullities and not only voidable they are void and have no effect either as estoppel or oth rwise and may not only be set aside at any time by the Court in which they are rendered but be declared void by every Court in which they may be presented These principles apply not only to O i inal Courts but al o to Courts of Appeal Jurisdi tion cannot be conf rred upon a Court of Appeal by cons n of par ies and any waiver on th ir part annot make up for the la k or defe t of jurisdiction *Gurl o Singh v Chandrikah Singh I L R 3, Cal 193 Brij Nath Singh v Gajraj Singh 7 All L J R 675 Gooroo Pershad Roy v Juggobundoo Mozoomdar (1867) W R F B 1, Golab Sao v Choudhury Madho Lal 9 C W N 9 9 Ledgard v Bull I L R 9 All 191 L R 13 I A 134 Minakshi Naidu v Subramanya Sastri I L R 11 Mad 5 L R 14 I A 160 Lawrence v Wilcock 11 A & E 941 The Queen v The Judge of the County Court of Shropshire 20 Q B D 242* and *In re Aylm r 20 Q B D 258* referred to Wh n in a suit betw en a Hindu widow and a claimant to the e ta e of her husband a stran r who wa not a party to the suit in the Ori inal Court was made a party to the appeal without l ave of the Cou t and a consent decree made the de ree was not binding upon the rever sionary h irs. A Hindu widow who is a limited or qualified owner cannot confess judgment and be party to a consent decr e so as to bind the inherit an e in the hands of the reversionary heirs *Kattama Natchiar v The Rajah of Shivagunga 9 Moo I A 539 Stapleton v Stapilton 1 White & Tud 8th Ed 231* I 4th distin uished *Imrit Konwur v Roop Narain Singh 6 C L R 76* explained

JURISDICTION OF CIVIL COURTS—*contd*

Sheo Narain Singh v *Khurgo Koerry 10 C L R 337* *Sant Kumar* v *Deo Saran I L R 8 All 365* *Jeram Laljee* v *Veeriai 5 Bom. L R 885* *Gobind Krishna Narain* v *Khunni Lal I L R 29 All 487* *Mahadei* v *Baldeo I L R 30 All 75* *Roy Radha Kissen* v *Nauratan Lall 6 C L J 490* *Asharam Sadhani* v *Chandi Churn Mukerjee 13 C W N 147* referred to A consent decree does not operate to the prejudice of persons not parties thereto *Nicholas* v *Asphar I L R 24 Calc 218* *In re South American and Mexican Company* [1895] *1 Ch 37* and *The Bellcairn 10 P D 161* distinguished. *Huddersfield Banking Company Limited* v *Lister* [1895] *2 Ch 273* followed. RAJLAKSHMI DASEE *v* KATYAYANI DASEE (1910) **I L R 38 Calc 639**

11 ——— Suit for declaration regarding various alleged customary rights of zamindars *mostly of the nature of cesses* A suit was filed by certain tenants of a village against the zamindars praying for a declaration that no custom existed in their village which entitled the zamindars to take certain fruits and wood, or to the use of a plough or to a number of other dues including sugarcane juice from some of the tenants poppy seed from the Koeries and various other matters of the same description *Held* that the suit was properly filed in a Civil Court and was not excluded from the jurisdiction of such Court by anything contained in either the Agra Tenancy Act 1901 or the United Provinces Land Revenue Act 1901 SHEOAMBAR NATH *v* THE COLLECTOR OF AZAMGARH (1912) **I L R 34 All 358**

12 ——— Burma Town and Village Lands Act—(*Burma Act IV of 1898*) *s 41(b)*—*Act taking away power of subject to sue Government to determine any right to land*—*Power of Lieutenant Governor in Council to pass Act*—*Legislation ultra vires*—*India Councils Act 1861 (24 & 25 Vict c 67) s 22*—*Government of India Act 1858 (21 & 22 Vict c 106) ss 65 66 67* *Held* (affirming the decision of the majority of a Full Bench of the Chief Court of Lower Burma) that s 41(*b*) of the Burma Town and Villages Lands Act (Burma Act IV of 1898) which enacted that no Civil Court shall have jurisdiction to determine any claim to any right over land as against the Government was *ultra vires* of the Lieutenant Governor of Burma in Council and therefore invalid S 22 of the India Councils Act 1861 (24 & 25 Vict c 67) provides that the Governor General in Council shall have no power to repeal or in any way effect (amongst other matters) any provision of the Government of India Act 1858 (21 & 22 Vict c 106) And the effect of s 65 of the latter Act which enacted that all persons shall and may have and take the same suits remedies and proceedings legal and equitable against the Secretary of State in Council of India as they could have done against the East India Company was to debar the Government of India from passing any Act which could prevent a subject from suing the Secretary of State in Council in a Civil Court in any case in which he could have similarly sued the East India Company The words could not be construed in any different sense without reading into them a qualification which is not there and may well have been deliberately omitted The question was not one of procedure but of the power of the Government to take away by legislation the right to proceed against them in Civil Court in a case involving a right to land and the suit in this case (for damages for interference with the respondent's property) was one which would have lain against the East India Company SECRETARY OF STATE FOR INDIA *v* MOMENT (1912) **I L R 40 Calc 391**

13 ——— Chota Nagpur Tenancy Act—(*Beng VI of 1908*) *s 139 (3) cl (a)* The plaintiffs brought a suit in the Civil Court against the defendant for recovery of arrears of *bastu* rent The defendant contended that as crops were grown on a portion of the *bastu* lands this land was agricultural and suits in respect thereof were triable exclusively by the Revenue Court under the Chota Nagpur Tenancy Act *Held* that the land in respect of which rent was claimed was *bastu* land and consequently the suit was maintainable in the Civil Court *Ramdhun Khan* v *Haradhun Paramanik 12 W R 404* *Kalee Kishen Biswas* v *Sreemutty Jankee 8 W R 250* and *Kumood Narain Bhoop* v *Purna Chunder Roy I L R 4 Calc 547* referred to MIDNAPORE ZAMINDARI CO LD *v* MUKTAKESHI DASI (1912) **I L R 40 Calc 402**

14 ——— Agra Tenancy Act Ch X, and s 198—Suit by rent free grantee against Zamindar for declaration of status and recovery of rent allowed in a Civil Court SHAM DAS *v* BAHADUR SINGH **I L R 43 All 325**

JURISDICTION OF CIVIL AND REVENUE COURTS—

See AGRA TENANCY ACT

See CIVIL AND REVENUE COURTS

See JURISDICTION

See MADRAS ESTATES LAND ACT (I OF 1908) s 8 I L R 38 Mad 608 843

——— Occupancy holding—One of two co owners of an occupancy holding upon the allegation that the other co owner was in fact cultivating more than his proper share of the holding sued him in a Civil Court asking for a decree for possession of his half share of the holding and for mesne profits The court however granted him a decree for a declaration of his right to a half share and also for mesne profits *Held* that there was no objection to such a decree being granted by a Civil Court In such circumstances a Revenue Court could not grant a decree for mesne profits *Ashiq Husain* v *Asghari Begam I L R 30 All 90* referred to GANGA SAHAI *v* BANSI **I L R 42 All 64**

——— Civil and Revenue Courts—Rent free grantee against zamindar—*To recover possession after alleged unlawful ejectment* There is no section in the Agra Tenancy Act and no article in the schedule thereto which provides for a suit by a rent free grantee to recover possession as such in the event of his wrongful ejectment even though that ejectment may be the act of his zamindar *Nannhu* v *Sri Thakurji Maharaj I L R 41 All 37* distinguished GOVIND RAI *v* BANWARI LAL **I L R 42 All 412**

——— Partition of trees—*As distinct from zamindari property* *Held* that a suit for partition of trees which had been purchased by the plaintiff and others jointly from one of the zamindars of two villages but apart from any interest in the zamindari itself was a suit which

JURISDICTION OF CIVIL AND REVENUE COURTS—*contd*

would lie in a Civil and not in a Revenue Court SHEO SAMPAT PANDE *v* THAKUR PRASAD
I L R 42 All 574

——— *Civil and Revenue Court — Act (Local) No II of 1901 (Agra Tenancy Act) chapter X and section 198 (-)—Rent free grant e—Suit against amir lar for declaration of status and recovery of rent wrongfully realised by him after from sub tenant* Plaintiff brought his suit in a Civil Court and asked for a declaration that he was the rent free grantee of certain land and that having occupied the land for a certain period he had thereby become the proprietor Incidentally plaintiff also asked for the refund of a sum of money which the defendant s predecessor in title had received as rent from a third party *Held* that the suit as framed was within the cognizance of a Civil Court *Gobind Das v Binwari Lal I L R 4- All 41* referred to SHAM DAS *v* BAHADUR SINGH
I L R 43 All 325

——— *Suit by a minor for a declaration that a partition of land effected by the Revenue Officers is not binding on him where no question of title is involved—whether cognisable by Civil Court—Punjab Land Revenue Act XVII of 1887 s 158 (1) and (2) (XVII)* The plaintiff a minor was one of the two sons of one S K who died in 1909 leaving *inter alia* the landed property in dispute The defendant A H his half brother a major applied in 1911 to the Revenue authorities for partition which was completed in 1912 In those proceedings the plaintiff was represented by his mother who had been previously appointed by the District Court as his guardian The plaintiff sued for a declaration that the land is still the joint property of himself and his half brother and that consequently the partition is not binding on him He alleged that the partition was detrimental to him that the Revenue Officer had not taken account of the trees that he was not properly represented and that the sanction of the District Judge was necessary etc *Held* that as there was no dispute as to title in the land partitioned the plaintiff s grievances arising solely out of the manner in which the land was actually allotted the Civil Court was debarred from taking cognisance of the suit and the plaintiff must pursue his remedy on the revenue side *vide* s 158 (1) and (2) (XVII) of the Punjab Land Revenue Act *Gulab Singh v Mussammat Sukhan (104 P R 1900)* followed *Dasondi v Buta (74 P R 1913)* distinguished GHULAM HAIDAR *v* AMIR HAIDAR
I L R 1 Lah 298

——— *Civil suit for recovery of price of barley delivered to defendants by a Revenue Officer—Whether competent—Punjab Land Revenue Act XVII of 1887 sections 144 158 (?) (XIX)—onus probandi* Defendants applied to the Revenue Officer for division and appraisement of the produce of a holding in which they were co sharers with the plaintiffs An appraisement was duly made but before the produce could be divided the plaintiffs removed it and stored in a house Then upon the referee appointed by the Revenue Officer made over a whole *Khatti* of barley to the defendants in lieu of their share of the produce The plaintiffs after making an unsuccessful attempt to get redress through the Revenue authorities brought the present action for the price of the barley alleging that it belonged to them exclusively *Held* that the question whether the barley is joint property or belongs exclusively to the plaintiffs is a question of title which cannot be determined by a Revenue Officer who is required only to divide the produce which is admittedly joint or to determine its value and that consequently the Civil Court has jurisdiction to entertain the present suit which does not come within the purview of section 158 (2) (XIX) of the Punjab Land Revenue Act *Held also* that the *onus* was on the defendants to satisfy the Court that the claim made by the plaintiffs is not within cognizance of a Civil Court and that they had failed to discharge that *onus* RAMJI LAL *v* MANGAL SINGH
I L R 2 Lah 302

JURISDICTION OF CRIMINAL COURTS

See COGNIZANCE OF AN OFFENCE

See CRIMINAL PROCEDURE CODE—

ss 188 227 I L R 33 All 516

s 339 I L R 1 Lah 218

s 476 I L R 33 All 396

See DISPUTE CONCERNING LAND

See EMIGRATION I L R 37 Calc 27

See JURISDICTION OF MAGISTRATE

See JURY RIGHT OF TRIAL BY
I L R 37 Calc 467

See OFFERINGS TO DEITY
I L R 38 Calc 387

1 ——— **Practice**—*Order directing prosecution for instituting a false case—False information to the police—Subsequent complaint before the Magistrate—Grounds of the exercise of such jurisdiction—Criminal Procedure Code (Act V of 1898) ss 195 (b) and 476* S 476 of the Criminal Procedure Code must be read subject to the restrictions contained in s 195 (*b*) and does not therefore empower a Court to direct a prosecution for making a false charge before the police *Dharmadas Kauar v King Emperor ~ C L J 373* followed *Lalji Gope v Gridhari Chaudhury 5 C W N 106* referred to *In re Devji I L R 18 Bom 581 Akhil Chandra Dei Queen Empress I L R 22 Calc 1004 Abdul Rahman v Emperor 7 C L J 371* and *Haibat Khan v Emperor I L R 33 Calc 30* distinguished But if the informant upon the police reporting the information to be false subsequently petitions the Magistrate for a judicial inquiry he must be taken to have preferred a complaint and s 476 would then apply *Queen Empress v Sham Lall I L R 14 Calc 707 Queen Empress v Sheikh Beari I L R 10 Mad 232* and *Jogendra Nath Mookerjee v Emperor I L R 33 Calc 1* referred to No sanction should be granted or prosecution directed unless there is a reasonable probability of conviction though the authority granting a sanction under s 195 or taking action under s 476 should not decide the question of guilt or innocence Great care and caution are required before the Criminal law is set in motion and there must be a reasonable foundation for the charge in respect of which a prosecution is sanctioned or directed *Ishri Prosad v Sham Lal I L R 7 All 871 Kali Charan Lal v Basudeo Narain Singh 12 C W N*

JURISDICTION OF CRIMINAL COURTS—*concl l*

Emperor 7 C L J 371 and *Queen Empress v A Morton and Moorle a Ali I L R 9 Bom 288* referred to Recommendation for prosecution by a Police officer under s 211 of the Penal Code comes within the meaning of the word complaint as used in s 195 of the Criminal Procedure Code as that section clearly contemplates prosecution at the instance of Police officers. DILAN SINGH v EMPEROR (1912) **I L R 40 Calc 360**

11 ———— **Arrest of an Indian subject in railway land in the Gwalior State**—*Under a warrant issued by the District Magistrate of Montgomery for a non extradita le offence committed in British India—Government of India Notification No 531 I B dated 8th February 1907* Petitioner was arrested at the Railway Station at Gwalior by the Railway Police in pursuance of a telegram sent by the District Magistrate of Montgomery in the Punjab for an offence under s 161 Indian Penal Code alleged to have been committed in the Montgomery District *Held* that the arrest was illegal as it could not be said that the Gwalior State had ceded to the British Government jurisdiction over railway lands in respect of offences not committed in those lands and having no connection with the railway administration, regard being had to the words in paragraph 3 of the Notification No 531 I B of the 8th February 1907 as have ceded to the British Government full jurisdiction or all the jurisdiction they had or the jurisdiction necessary for the administration of Railways and of Civil and Criminal justice in connection therewith. *Muhammad Yusuf ud Din v Queen Empress I L R 25 Calc 20 6 P R (Cr) 1897 (P C)* followed RADHA KISHEN v CROWN **I L R 1 Lah 406**

JURISDICTION OF DISTRICT COURT

See GUARDIAN AND WARDS ACT 1890 **I L R 36 Mad 39**

ss 12 13 17 19 24 25 **I L R 40 Bom 600**

JURISDICTION OF HIGH COURT

See AGRA TENANCY ACT 1901 s 167 **I L R 42 All 83**

See EQUITABLE MORTGAGE **I L R 38 Calc 824**

See EXTRADITION **I L R 46 Calc 31**

I L R 38 Calc 547

See HABEAS CORPUS **I L R 39 Calc 164**

See HIGH COURT JURISDICTION OF

See HUNDI SUIT ON **I L R 40 Bom 473**

See INJUNCTION **I L R 38 Calc 405**

I L R 42 All 98

See SANCTION FOR PROSECUTION **I L R 44 Calc 816**

———— **over conviction and sentences by Mewar Agent**—

See SCHEDULED DISTRICTS ACT (XIV OF 1874) s 7 **I L R 41 Bom 657**

———— **in revision**—

See CIVIL PROCEDURE CODE (1908) s 11 **I L R 40 All 674**

See REVISION **I L R 47 Calc 438**

JURISDICTION OF HIGH COURT—*contd*

1 ———— **Revision**—*Appeal wrongly laid before Collector instead of District Judge—Procedure by Deputy Collector under s 109 of the Rent Recovery Act—Civil Procedure Code how far governs Act X of 1859—Act X of 1859 s 109—Civil Procedure Code (XIV of 1882) s 310A* The High Court has jurisdiction to interfere with the orders of the Collectors and Deputy Collectors passed under Act X of 1859 *Huro Mohun Mookerjee v Kedarnath Das 5 W R Act X 25* commented on *Bhyrub Chunder Chunder v Shama Soonderee Debea 6 W R Act X 68 Gobind Coomar Choudhry v Kisto Coomar Chowdhry 7 W R 20 Deanutoollah v Nowab Nazim Sidhee Nuzer Ali Khan Bahadur 10 W R 341 Gudadhur Chatterjee v Nund Lall Mookerjee 12 W R 406 Sreemutty Nassir Jan v Akbur Mozoomdar 15 W R 418 Nilmoni Singh Deo v Taranath Mukerjee I L R 9 Calc 295* referred to *Mohant Gobind Ramanuja Das v Lukhun Panda 11 C W N 112* explained The jurisdiction of the Deputy Collector under Act X of 1859 being a limited one and the procedure under s 109 of the said Act not being *strictly* followed, a sale under s 109 must be held to be *ultra vires Deanutoollah v Nowab Nazim 10 W R 341* referred to Except upon points expressly provided for by Act X of 1859 the procedure of the Revenue Courts must be governed by the Civil Procedure Code The *ratio decidendi* of *Nilmoni Singh Deo v Taranath Mukerjee I L R 9 Calc 295* followed *Harish Chandra Ghose v Ananta Charan Patra 2 C W N 127* doubted *Adhirani Narain Kumari v Raghu Mohapatro I L R 12 Calc 50* approved *Radha Madhub Santra v Lukhi Narain Roy Choudhry I L R 21 Calc 478* and *Mokunda Bullav Kar v Bhagaban Chunder Das I L R 21 Calc 511* discussed *Nogendra Nath Mullick v Mathura Mohun Parhi I L R 18 Calc 368* explained. *Hare Krishna Mahanti v Bishnu Chandra Mahanti I L R 35 Calc 793 Ram Lochan Singh v Beni Prasad Kumri I L R 36 Calc 252* and *Madho Prakash Singh v Murli Manohar I L R 5 All 406* referred to Where a sale under Act X of 1859 is impeached as *ultra vires* and illegal or the sale is rightly sought to be set aside under s 310A of the Code of Civil Procedure (XIV of 1882) the proceedings of the Deputy Collector are amenable to the revisional jurisdiction of the High Court in either case The fact that the original suit was valued at above Rs 100 and an appeal lay to the District Judge and not to the Collector before whom the appeal was in reality heard does not take away the right of the High Court to interfere in revision. CHAITAN PATOOSI MAHAPATRA v KUNJA BIHARI PATNAIK (1911) **I L R 38 Calc 832**

2 ———— **Power to revise an order of acquittal at the instance of a private party**—*Decision on a point of local jurisdiction and not on the merits—Criminal Procedure Code (Act V of 1898) ss 43 439 (5)—Practice* S 439 (5) of the Criminal Procedure Code does not bar the jurisdiction of the High Court to interfere with an order of acquittal on an application made at the instance of a private party Where the Appellate Court set aside a conviction and sentence on the ground that the place of occurrence was outside the local limits of the trying Magistrate's jurisdiction overlooking the provisions of s 531 of the Code the High Court set aside the order of acquittal and directed a rehearing of the appeal

JURISDICTION OF HIGH COURT—*contd*

What the Appellate Court has to find is whether the offence of which an accused is convicted has been made out not with reference to any dispute as to jurisdiction but on the merits and in accordance with the evidence KANGALI SARDAR v RAKA CHARAN BHATTACHARJEE (1911)

I L R 38 Calc 786

3 ———— — — — *Jurisdiction High Court Letters Patent 1865 cl 12* The plaintiff Company's predecessors in title who held certain coal land known as Mouza Lodna in Manbhum under a permanent lease granted an underlease of a share thereof to S and it was agreed that the boundary should be demarcated between the portion underleased and the portion retained by the grantors and that a barrier of 30 feet of coal should be maintained between the two portions of the Mouza and that if either party encroached within 15 feet of the boundary line he should make good any loss sustained by the other party No boundary was demarcated at the time The permanent lease of the said Mouza was subject to the said underlease to S subsequently assigned to *T* and others and thereafter the boundary was laid down and marked by the respective Agents of *T* and others and of S and a plan showing the boundary was signed by both parties Subsequent thereto *T* and others assigned their permanent lease of the mouza to the plaintiff company and S granted an underlease of his share in the mouza to *K L C* who granted an underlease of the same to the defendant who there carried on a colliery The plaint alleged that the defendant had wrongfully cut into and removed portions of coal from the 30 feet of barrier and beyond it that the trespass and conversion had taken place within two years and that the coal so removed had been sold and delivered to the plaintiff company under an agreement to purchase the output of the defendant's colliery and claimed damages for the value of the coal so removed and damages caused by the breach of contract in cutting through the barrier The defendant denied that he had carried away any coal from the 30 feet barrier and stated that he had confined his operations well within the area underleased to him and that the plaintiff company had never been in possession of the area from which he had carried away coal —*Held* that the suit so far as it sought to recover damages for carrying away the plaintiff company's coal was founded on a case of trespass *quare clausum fregit* which necessitated the title in respect of that coal being gone into and was therefore a suit for land within the meaning of Cl 12 of the charter *Rajmohan Bose v East Indian Railway Company 10 B L R 241* distinguished That so far as the agreement not to cut into the 30 feet of barrier was concerned there was no priority of contract or estate between the defendant and the plaintiff company and the defendant was not personally liable on any of the covenants in the underlease granted to S and that the plaint did not disclose any cause of action against the defendant based on the agreement LODNA COLLIERY CO LD v BIPIN BIHARI BOSE **I L R 39 Calc 739**

4 ———————"**Dwelling**" **within the jurisdiction of the Court—Executor liability of—** *Repudiation of will—Executor and trustee setting up adverse title to property disposed of by will—Estoppel—Removal of trustee and executor from office—Joint and acquired property* This was a suit on the Original Side of the High Court by three of the executors and trustees of a will against the fourth executor and trustee (who was the son of the testator) *for the removal of the defendant from his office* and for administration of the estate by the Court Probate had been granted to the executors by the High Court at Madras and the assets realised under the grant had come into the possession of the defendant who subsequently repudiated the will and alleging that the property of the testator was joint claimed in this suit to be entitled to the estate by survivorship The defendant was domiciled and resided in the State of Mysore, but some months previously to the institution of the suit he left his house there in charge of a servant and hired a house in Madras to which he brought his wife and family and apprenticed himself for a year to a vakil of the High Court with a view to become in due course enrolled as a vakil himself He was in Madras on 30th April 1901 when the plaint was filed but left on 31st before the summons was served. The first Court made a decree removing the defendant from his office as executor and trustee which was affirmed by the High Court and both Courts decided that the cause of action arose partly within the jurisdiction of the Court and that the Court could therefore entertain the suit *Held* (affirming the decision of the High Court) that the defendant was at the time the suit was brought dwelling within the jurisdiction within cl. 12 of the Letters Patent of the High Court *Held* also that no person who has accepted the position of a trustee and has acquired property in that capacity can be permitted to assert an adverse title on his own behalf until he has obtained a proper discharge from the trust with which he has clothed himself On the question whether the property dealt with by the will was joint or acquired their Lordships of the Judicial Committee also agreed with the Courts below that on the evidence it was self acquired and that the testator therefore had power to dispose of it as he had done in the will SRINIVASA MOORTHY v VENKATA VARADA AIYANGAR (1911)

I L R 34 Mad 257

5 ——————— **Practice** —*Civil Procedure Code (Act V of 1908) s 115 O XXIII r 1—Withdrawal of suit under O XXIII r 1—Notice to the other side if necessary—Judicial order—Practice* The High Court has power to set aside orders made under Order XXIII r 1 in the exercise of the powers vested in it by s 115 of the Code of Civil Procedure *Kharda Coal Co v Durga Charan 11 C L J 45 Mabulla v Hemangini 11 C L J 519 Ram Krishna v Ram Kirpanath 9 All L J 358 Umesh Chandra Palodhi v Pakhal Chandra Chatterjee 15 C W N 666 Buratha Gunta v Thurlapatti 9 Mad L T 201* referred to Though r 1 of O XXIII of the Code of Civil Procedure does not specifically require that notice of an application under it must be given to the opposite party still it is an elementary rule of universal application and founded upon the plainest principles of justice that a judicial order which may possibly affect or prejudice any party cannot be made unless he has been afforded an opportunity to be heard *Ajant Singh v F T Christian 17 C W N 969* referred to *Bansi Singh v Kishun Lall Thakur I L R 41 Calc 632* dissented from RAJENDRA LAL SUR v ATAL BEHARI SUR (1916)

I L R 44 Calc 454

JURY—TRIAL BY—contd

was clearly erroneous the matter depending on a question of fact as whether the confession was caused by any inducement threat or promise having reference to the charge against the accused *Nazir Jharudar* v *The Emperor 9 C W N 474* and *the Emperor* v *Jasha Bewa 11 C W N 904* referred to That the *salish* being summoned to consider the case which was being made against the accused she was before the *salish* on that charge and the Sessions Judge was wrong in directing otherwise That having regard to the inducement offered by the president and members of the *salish* to the accused it is extremely doubtful whether the confession should have been allowed to be placed before the jury at all It certainly ought not to have been placed before them without an explanation as to how they should value it having regard to the circumstances in which it was made That the chemical analysis not disclosing how much arsenic was found in the powder there was no evidence on the record against the accused as to the amount of poison which was proposed to be administered and it was doubtful whether the case would come under s 302 or s 308 Indian Penal Code KING EMPEROR v AYSHI BIBI (1915) **20 C W N 512**

———————— **Forgery**—Where in a case under s 465 Indian Penal Code the charge against the accused was that by personating *M B* the husband of one *S* he induced the Mahomedan Marriage Registrar to make an entry of the divorce of *S* by her husband to which entry he affixed his thumb impression and the Sessions Judge charged the jury as follows If the person who put his thumb impression in the register as Mir Baksha was not really Mir Baksha it is clear that he made a false document within the meaning of s 364 and that his intention was that fraud should be committed also that injury should be caused to Mir Baksha He therefore committed forgery *Held* that the Sessions Judge misdirected the jury in not having left it to the jury to say whether on the evidence they found that the intention of the accused was dishonest or fraudulent The High Court did not set aside the verdict holding that it was not erroneous in spite of the misdirection EMPEROR v NAIMADDI (1918) **22 C W N 572**

———————— *Duty of Judge to place before jury cases of prosecution and defence—Defective direction on a point of law—Propriety of delivering charge through interpreter* The appellants were charged under s 148 301/149 and 324 Indian Penal Code In the record of the heads of the charge there was no clear statement of the cases for the prosecution and defence but the Sessions Judge stated that he placed the evidence of the witnesses before the jury reminding them of the nature of the offence and dealing with some of the principal points As to the charge under s 324 the direction was certain persons are charged with causing certain wounds If you find they gave those wounds they cannot plead right of private defence because they have not admitted giving those wounds *Held* that it did not appear that the jury were made fully acquainted with the nature of the case for the prosecution and the nature of the case for the defence That the mode in which the case was placed before the jury was defective and the verdict must be set aside and the case retried by a new Judge Per CHAUDHURI J That the jury are responsible for their verdict and are the sole judges of facts but the Judge's charge is not only for the purpose of stating the law and explaining it to them but also of helping the jury to find facts He has to advise the jury as to the logical bearing of the evidence admitted upon the matters to be found by them It is a privilege granted to Judges and a duty cast upon them In a case of this character it is absolutely essential that the principal points should be clearly placed before the jury and it should appear from the Judge's charge that he did so Heads of charge to jury how to be recorded pointed out Propriety of delivering charge to jury through interpreters considered AFIRUDDI CHAUKIDAR v KING EMPEROR (1919)
23 C W N

———————— **Citation of ruling in the charge to the jury**—*Right of private defence when trespassers have begun cutting crop* When trespassers began cutting and carrying away crop grown by a person in possession reasonable apprehension of the property having already commenced the right of private defence of the latter commenced at the same time and it was misdirection on the part of the Judge to leave it to the jury to say whether the fact that the police station was only 9 miles off from the place of occurrence did not take away that right reference in such circumstances to his civil remedies also amounted to misdirection No rulings or authorities should be cited by the Judge in his charge to the jury nor should they be asked to differentiate or form any opinion whatever on any authorities Such procedure confuses the minds of the jury and constitutes misdirection MEHER SARDAR v THE KING EMPEROR (1911)
16 C W N

———————— **jurisdiction—Grievous heart**—*Abetment by conspiracy—Sessions by Jury—Retrial—Jurisdiction* Where there was evidence that certain persons conspired to eject the complainant from his land or in other words to commit criminal trespass and the Judge said that if the jury found that those persons conspired with the first accused to commit criminal trespass then they would if absent be guilty of abetment and being present they were guilty of the substantive offence *Held* that the omission to note that the substantive offence for which the accused were being tried was not one of criminal trespass but of voluntarily causing grievous hurt constituted misdirection The jury have to give their verdict on the facts as against each accused severally and they are not like the Judge in charge of the entire case as a whole Where an accused is to be retried he must be placed before the jury upon all the charges which were framed against him and the High Court has no jurisdiction to uphold the conviction under one section and to order him to be retried under another JAMIRUDDI BISWAS v KING EMPEROR (1912) **16 C W N**

———————— **Verdict by casting lots**—*Admissibility of the evidence of jurors and of admissions by jurors as to the mode of arriving at verdict—Evidence of other persons in proof—the same admissibility of* The sworn statements of jurors and evidence of admissions by them as to the modes in which their verdict had

JURY—TRIAL BY—*contd*

arrived at are inadmissible But the evidence of other persons as to the same is receivable *Owen v Warburton I N R 326 Straker v Graham 4 M & W* [illegible] *Burgess v Langley 5 M & G* [illegible] and *Queen v Murphy L R 2 P C 535* referred to The evidence of a witness that he saw one of the jurors put some pieces of crumpled up paper in his *alpaca* shake them up and take them out is not sufficient to prove that the verdict was arrived at by casting lots EMPEROR *v* HAREKUMAR PARMAN ROY (1913)

I L R 40 Calc 693

———— **Suggestion by the Judge of an alternative aspect of the case** *not put forward by the prosecution or defence—Omission to point out to the jury specifically the evidence against each accused and misdirection—Criminal Procedure Code (Act V of 1898)* [illegible] *303* [illegible] *Penal Code (Act XLV of 1860) ss 146 149—Admissibility of evidence of a proceeding to keep the peace a part of the res gestae* Where the common object alleged in the charge as framed was to take forcible possession of the complainant's land and hut and to assault him and others named and the prosecution and defence each asserted exclusive possession and an attack by the opposite party *Held* that the Judge was not wrong in asking the jury to consider as a third alternative an intermediate state of facts viz that the complainant's party went to turn the accused party out of possession was resisted and driven back and that the latter then followed after they assaulted the former *Panga Hadua v King Emperor 11 C L J 2 0 Queen v Sabid Ali 20 W R Cr* [illegible] and *Wafadar Khan v Queen Empress I L R 21 Calc 955* distinguished The word violence in s 146 of the Penal Code is not restricted to force used against persons only but extends also to force against inanimate objects The omission to point out to the jury specifically the exact evidence against each accused is not a misdirection when the Judge has discussed the whole of it and has told them to be satisfied as to the guilt of and to return an independent verdict against each accused SAMARUDDI *v* EMPEROR (1912)

I L R 40 Calc 367

———— **Misdirection**—*Held that omission of Judge to give direction on point of law arising out of the plea in defence amounts to a misdirection* When a verdict is quashed it is in the discretion of the High Court to order acquittal instead of retrial ABDUL RAHIM MIR *v* THE KING EMPEROR

25 C W N 623

———— *Misdirection—Civil Procedure Code s 297* When material witnesses named in the first information and the evidence were not examined at the trial and the Judge did not tell the jury they could draw an inference nonfavourable to the prosecution and also did not draw their attention to discrepancies in evidence given in chief and cross examination the conviction and sentence passed on the accused were set aside TENABAM MONDAL *v* THE KING EMPEROR

25 C W N 142

———— *Held* that Judge was wrong in charging jury to the effect that if accused pleaded *alibi* he was bound to *prove the plea and* if he failed then that would arise a presumption against him KING EMPEROR *v* TARIBULLAH SHEIKH

25 C W N 682

JURY—TRIAL BY—*contd*

———— *Irregularity in procedure and absence of proper charge* When evidence given by three police witnesses with preliminary enquiry was read over and treated as their examination in chief and two witnesses whom Public Prosecutor declined to call were called as Court witnesses and cross examined by both sides the Court putting no question and there was no examination of accused under s 342 of the Code of Criminal Procedure and the heads of charge contained no indication as to how the evidence was summed up nor how the law of private defence which was material was explained to the Jury *Held* that there were sufficient irregularities to justify the setting aside of an acquittal GANGADHAR GORAI *v* REGINALD WILLIAM SIMON REED

25 C W N 609

———— *Misdirection—Trial by Jury—Misdirection in charge to Jury—Questions of fact Judge's expression of opinion in dogmatic and unqualified terms—Material evidence omission to refer to—Conditions precedent to using certain evidence and drawing adverse inference against accused omission to point out—Absconding not incompatible with innocence omission to point out—Retrial by a new Judge* Where the accused was convicted under ss 304 328 of the Penal Code for having administered arsenic mixed with sugar to two boys and thereby caused the death of one and hurt to the other and the Sessions Judge in his charge to the jury expressed his own opinion on the evidence in terms too dogmatic and unqualified although he informed them that on questions of fact they were not bound by any opinion of his and omitted to refer to some statements of one of the two boys before the Committing Magistrate and before the Sessions Judge and did not warn the jury that before drawing inferences against the accused they must first be satisfied that he knew of the presence of arsenic in the sugar and that the evidence negatived the possibility of accident or mistake and that before using the Chemical Examiner's report they must be satisfied on the evidence that the substances examined were in fact what they were said to be and in discussing the question of accused's absence from his village did not warn the Jury that even if they believed that he absconded absconding is not necessarily or invariably incompatible with innocence *Held* that the charge to the jury was vitiated by misdirection The High Court set aside the conviction and sentence and ordered a retrial by a new Judge on the ground that the trying Judge had formed a strong opinion on the case OPEL MOLLAH *v* THE KING EMPEROR (1913)

18 C W N 180

———— **Jurymen communication with by stranger** *and by Clerk of the Crown—Police Officer's presence near jury room—Communication of deliberation by jurymen before or after case is over—Habeas corpus writ of—Jurisdiction—Criminal Procedure Code (Act V of 1898) s 491—Letters Patent 1865 cls 25 and 26—Trial vitiation of—Practice Per Curiam* It is highly undesirable that a juror should have any communication with any body who is not a juryman upon the subject matter of the trial But the mere fact that one of them is addressed by a stranger to whom apparently the juryman makes no reply or whose remarks the juryman does not look upon as worthy of consideration cannot have the effect of invalidating a trial A mere casual question (which

evidently had nothing whatever to do with the case) by a juryman to a Police officer in charge of the jury, it not even being alleged that the Police officer spoke in reply to the juryman, cannot be any ground for invalidating the trial. Though it is undesirable that a police constable should be stationed in any position in which he can hear the deliberations of the jurymen, still if the presence of the constable has not in any way affected the deliberations of the jurors either by interfering with or inconveniencing them, the accused is not in any way prejudiced. The learned Judge was only doing his duty when he twice sent the Clerk of the Crown to the jury and asked them (in accordance with the practice in the High Court) if he could give them further assistance on any of the many points which were for their consideration, there being no less than 17 charges. The jury are ill advised to talk with anybody except their fellow jurymen about the case. Whether the case is still going on or after the case is over, the jury would be ill advised to have any communication with anybody except their fellow jurymen as to what happened in the jury room. *The Queen v. Murphy, L R 2 P C Ap Ca 535*, referred to. *Per* CHAUDHURI, J. It is well established that a writ of *habeas corpus* is not granted to persons convicted or in execution under legal process, including persons in execution of a legal sentence after conviction on indictment in the usual course. *Ex parte New on 24 L J C P 148* referred to. When the law does not allow an appeal the accused cannot have one indirectly in this way. When there has been a miscarriage of justice as alleged in this case, the proper course is to carry the matter to the Crown for remedy. *Queen Empress v. C P Fox, I L R 10 Bom 176*, referred to. BONOMALI GUPTA, *In the matter of* (1916)

I L R 44 Calc 723

——— Appeal from unanimous verdict of conviction—*Power of High Court to interfere in the absence of misdirection when there is circumstantial evidence—Finger impression—Criminal Procedure Code (Act V of 1898) s 423 (2)*. The High Court cannot in law on an appeal from the verdict of the jury interfere with it in the absence of a misdirection by the Judge when there is some circumstantial evidence of guilt such as a finger print of the accused found on a cash box broken open by the robbers during the occurrence of the offence. MOHINI MOHAN GHOSE v. EMPEROR (1918)

I L R 46 Calc 635

——— Expression of opinion by juror *outside Court during trial*. When after conclusion of the evidence one of the jurors expressed his opinion outside the Court as to guilt of accused and although Sessions Judge knew this, proceeded but differed from verdict of the jury and referred case to High Court, the verdict was set aside and case ordered to be tried by a fresh jury. KING EMPEROR v. NAZAR ALI BEG (1920)

25 C W N 240

——— Right of trial by—*Interference with the right—Governor General in Council, powers of—Indian Councils Act (24 & 25 Vic c 67) s 22 proviso—European British subject, rights of—Waiver—Order of Local Government authorising complaint of certain offences—Commitment on charge for other offences—Jurisdiction, want of—Local Government, powers of—Delegation of powers—Charges against members of a secret society—Misjoinder—Same transaction—Confessions, admissibility of—Confessions made during police investigation and to Magistrate subsequently holding inquiry—Examination of accused—Eliciting statements by questions—Admissions to the police—Handwriting, mode of proof of—Comparison of Handwriting—Leading questions—Criminal Procedure Code (Act V of 1898) ss 164, 195, 235, 239, 342, 364, 447, 451, 537—Evidence Act (I of 1872) ss 21, 24, 29, 47, 67, 73—Waging war—Conspiracy to wage war—Penal Code (Act XLV of 1860) ss 121, 121A*. The Criminal Procedure Code in so far as it interferes with the mode of trial by jury is not *ultra vires* under the proviso to s 22 of the Indian Councils Act (24 & 25 Vic c 67). *King Emperor v. Kartik Chandra Dutt* (1900) unreported, followed. *In the matter of Ameer Khan, 6 B L R 392 and 459* approved. An European British subject can under s. 451 of the Code relinquish his right to be dealt with as such. Where the Magistrate explained to such a person the nature of the charges framed against him and his rights under ss 447 and 450 and then asked him whether he claimed to be dealt with as such, and the latter stated that he did not claim the right:—*Held* that he had relinquished his right. *In re Quiros, I L R 6 Calc 83; Queen Empress v. Grant, I L R 12 Bom 561; Queen Empress v. Bartlett, I L R 16 Mad 308* followed. Where an order under s 196 of the Criminal Procedure Code authorized a particular police officer to prefer a complaint of offences under ss 121A, 122, 123 and 124 of the Penal Code "*or under any other section of the said Code which may be found applicable to the case*," and the examination of the complainant also referred to the same sections:—*Held* that no complaint under s. 121 of the Penal Code was thereby authorized by the Local Government or in fact preferred, that the Magistrate had no power to commit thereunder, and that the defect was not cured by a subsequent order obtained while the case was before the Sessions Court authorizing a complaint under the section which was not in fact made thereafter, nor did s 537 of the Criminal Procedure Code apply in such a case. *Sham Khan's case (1899) Punj R Cr J No 16* approved. *Queen Empress v. Morton, I L R 9 Bom 288* distinguished, and *Queen Empress v. Bal Gangadhar Tilak, I L R 22 Bom. 112* dissented from. The Local Government cannot delegate to any other body or person the controlling power and discretion of determining whether cognizance shall be taken by the Court of an offence mentioned in s 196 of the Criminal Procedure Code and its judgment must be specially directed to the particular section and no other under which the prosecution is to be carried on, and the order or authority should be preceded by a deliberate determination in this respect. An order authorizing a complaint under certain specified sections "*or under any other sections found applicable*," if it means found by any one other than Government, involves a delegation which cannot be sustained. Where the accused were all alleged to have been members of a secret society with its head quarters in Maniktolla in the suburbs and its places of meeting in Calcutta and elsewhere, and to have joined in the unlawful enterprise and with others known and unknown to have conspired to wage war or to deprive the King of the sovereignty of British India, and to have collected arms and ammunition with such intent and to have actually waged war:—

JURY—TRIAL BY—*contd*

Held that the joint trial of the accused on charges under ss. 121, 121A, 122 and 123 of the Penal Code was not bad for misjoinder of persons or charges. A confession under s. 164 of the Criminal Procedure Code must be made either in the course of an investigation under Chapter XIV or after it has ceased and before the commencement of the inquiry or trial. The condition requiring the confession to be prior to the commencement of the inquiry or trial is only imposed when the investigation has ceased, and not when it is made in the course of the police investigation. Where a number of persons were arrested on the 1st May and the confessions of some of them were recorded on the 4th and 5th while others were brought in subsequently and their confessions taken while the police investigation was then actually going on, and on the 17th an order under s. 196 was obtained and the police report sent in, and on the next day the examination of the prosecution witnesses began :—*Held* that the Magistrate did not take cognizance under s. 190 of the Code nor did the inquiry commence on the 4th, and that the confessions were taken in the course of an investigation under Chapter XIV. The fact that the Magistrate who has taken the confessions, afterwards holds the inquiry does not, under s. 164 constitute the recording of the confessions an examination of the accused in the course of it and at its commencement. *Empress* v. *Anuntram Singh, I. L. R. 5 Calc. 951* and *Empress* v. *Yakub Khan, I. L. R. 5 All. 253* declared obsolete. *Sat Narain Tewari* v. *Emperor, I. L. R. 32 Calc. 1085* distinguished. S. 164 includes confessions taken by a Magistrate who afterwards holds such inquiry or trial. *Empress* v. *Anuntram Singh, I. L. R. 5 Calc. 951* and *Reg.* v. *Bai Ratan, 10 Bom. H. C. 166* declared obsolete on the point. Ss. 164, 342 and 364 of the Code are not exhaustive and do not limit the generality of s. 21 of the Evidence Act as to the relevancy of admissions. *Queen Empress* v. *Narayen, (1893) Ratan Lal Unrep. Cr. C. 679* referred to. The mere fact that a statement was elicited by a question does not make it irrelevant as a confession under s. 164 of the Criminal Procedure Code or s. 29 of the Evidence Act, though such fact may be material on the question of its voluntariness. Methods of proving handwriting discussed. A document does not prove itself nor is an unproved signature proof of its having been written by the persons whose signature it purports to bear. S. 73 of the Evidence Act does not sanction the comparison of any two documents, but requires, first that the standard writing shall be admitted or proved to be that of the person to whom it is attributed, and secondly that the disputed writing must *itself purport* to have been written by the same person. A comparison of handwriting is at all times as a mode of proof hazardous and inconclusive, and especially so when made by one not conversant with the subject and without guidance from the arguments of counsel and evidence of experts. *Phoodee Bibee* v. *Gobind Chunder Roy, 22 W. R. 272* referred to. The value of expert evidence of handwriting discussed. *Reg.* v. *Harvey, 11 Cox C. C. 546* referred to. To constitute an admission the document need not be written by the party against whom it is used; it is sufficient if it is found in his possession and his conduct thereto creates an inference that he was aware of its contents and admitted their accuracy, but unless this is done the document cannot be used against him as proof of its contents. What conduct would properly give rise to such inference depends on the facts of each case. The mere fact of possession of letters is not of much value unless it is shown that their contents were recognized and adopted by the replies elicited or the conduct inspired by them. The expression "wages war" in s. 121 of the Penal Code must be construed in its ordinary sense, and a conspiracy to wage war or the collection of men, arms and ammunition for that purpose is not waging war. An agreement between two or more persons to do all or any of the unlawful acts mentioned in s. 121A of the Penal Code is an offence, and the fact of the purpose not being immediate is only material in connection with s. 95. No proof is necessary of direct meeting or combination nor need the persons be brought into each other's presence, but the agreement may be inferred from circumstances raising a presumption of a common concerted plan to carry out the unlawful design. Nor is it necessary that all the accused should have joined in the scheme from its inception. Eliciting answers from witnesses while under examination in chief or re-examination by leading questions deprecated. *Per* CARNDUFF, *J*.—Regard being had to the definition of "proved" in s. 3 of the Evidence Act, moral conviction, provided it is based exclusively on evidence that is admissible, is not distinguishable from legal proof. Save when an accused person is being examined under s. 342 of the Criminal Procedure Code, there is nothing to prevent a Magistrate from eliciting information from him by independent enquiry so long as the information is voluntarily given. A statement by an accused to the police which tells against him but does not amount to an admission of guilt is admissible in evidence. Each case must be decided as it arises with reference to the question whether the particular statement is or is not a confession. *Queen* v. *Macdonald, 10 B. L. R. App. 2*, *Empress* v. *Dabee Pershad, I. L. R. 6 Calc. 530*, *Queen* v. *Amir Khan, 9 B. L. R. 36, 72* and *Emperor* v. *Mahomed Ebrahim, 5 Bom. L. R. 312* referred to. *Queen* v. *Hurribole Chunder Ghose, I. L. R. 1 Calc. 207*, *Queen-Empress* v. *Mathews, I. L. R. 10 Calc. 1022*, *Queen-Empress* v. *Mehar Ali Mullick, I. L. R. 15 Calc. 589*, *Imperatrix* v. *Pandharinath, I. L. R. 6 Bom. 34* and *Queen-Empress* v. *Jaiecharam, I. L. R. 19 Bom. 363* discussed and distinguished. Handwriting may in addition to the usual methods be proved by circumstantial evidence under s. 67 of the Evidence Act, which prescribes no particular kind of proof. *Neel Kanto Pandit* v. *Juggobundhoo Ghose, 12 B. L. R. App. 18*, *Abdool Ali* v. *Abdoor Ruhman, 21 W. R. 429* and *Abdulla Paru* v. *Gannibai, I. L. R. 11 Bom. 690* referred to. BARINDRA KUMAR GHOSE *v.* EMPEROR (1909) **I. L. R. 37 Calc. 467**

———— Trial by, in Criminal case—*Onus of proof in—Penal Code (Act XLV of 1860), s. 411—Receiving stolen property*. In a criminal case the onus is on the prosecution to prove beyond reasonable doubt the guilt of the accused. That onus never changes. Where recent possession of stolen property by the prisoner is established and he offers an explanation which the jury thinks may be reasonably true, though they are not convinced that it is true, the prisoner is entitled to an acquittal because the Crown in such a case has not discharged the onus of proof that rested upon it. In a case under s. 411, Indian Penal Code, in charging a jury it should be pointed out that the possession

JURY—TRIAL BY—*concld*

of stolen goods referred to must be possession soon after the theft or that the stolen goods must have been recently stolen HATHEM MONDAL v KING EMPEROR 24 C W N 619

——— Misdirection—*Ommission to explain onus*—When the Sessions Judge in his charge to the Jury did not clearly explain that the onus of proof was on the prosecution nor set out the points for decision and omitted to give proper direction on facts *Held* that it amounted to a misdirection which vitiated the verdict ABDUL GOHUR SIKAR v KING EMPEROR 26 C W N 972

——— to—*Verdict when should be interfered with—Test whether misdirection occasioned failure of justice* The accused were found not guilty by the unanimous verdict of the jury and acquitted by the Sessions Judge On the appeal by the Local Government against the acquittal on the ground of misdirection in the Judge's charge to the jury *Held*—That though there was misdirection this did not justify a reversal of the verdict of the jury unless the misdirection in fact occasioned a failure of justice The High Court not being prepared to hold that the jury's verdict was due to the misdirection in the charge and that apart from this they would not have come to the same conclusion the acquittal was not disturbed SUPERINTENDENT AND REMEMBRANCER OF LEGAL AFFAIRS v SHAYAM SUNDAR BHUMY 26 C W N 558

JUST ANTECEDENT DEBT

See CUSTOM (ALIENATION)
I L R 1 Lah 472

JUS TERTII

See AGRA TENANCY ACT (II OF 1901)—
ss 102 AND 198 I L R 33 All 61
s 177 I L R 33 All 260
See CIVIL PROCEDURE CODE 1908 s 11 EXPL VI I L R 33 All 493

——— Suit in ejectment Held that a defendant in ejectment might set up and prove *jus tertii* And is entitled to rely on the *jus tertii* appearing from the facts adduced by the plaintiff to defeat his claim SITARAM BHIMAJI v SADHU I L R 38 Bom 240

JUSTICE EQUITY AND GOOD CONSCIENCE

See JOINT JUDGMENT DEBTORS
I L R 39 Mad 548
See WILL I L R 35 All 211

JUSTICE OF THE PEACE

See EUROPEAN BRITISH SUBJECT
I L R 39 Mad 942

——— Trials of European British subjects The powers of Magistrates of the first class who are Justices of the Peace and European British Subjects are the powers referred to in s 36 of the Code of Criminal Procedure of 1898 as hereinafter conferred upon them and specified in the third schedule and styled ordinary powers They do not include powers with which by virtue of s 34 of the Code a Magistrate of the first class may be invested by the authorities mentioned therein. LOGAN v YOMER (1910)
I L R 34 Mad 344

JUSTIFICATION

See TORT I L R 39 Mad 433

JUTE TRADE

See SHARES I L R 46 Calc 331 342

——— usage of—

See VENDOR AND SUB VENDOR.
I L R 38 Calc 127

——— *Fariahs—Trade usage at Chandpur—Passing of property on sale—Custody with purchaser merely as security for advances—Insurance of that interest benefit of—Contract Act (IX of 1872) s 81* When nothing remains to be done to the goods by the seller for the purpose of ascertaining the price then *primâ facie* the property in them passes although they have not been weighed by the buyer *Simmons* v *Swift 5 B & C 857*, *Turley* v *Bates 2 H & C 200* *Shoshi Mohan Pal Choudhry* v *Nabo Krishto Poddar I L R 4 Calc 801* *Martineau* v *Kitching L R 7 Q B 436* referred to It would be otherwise in England if the parties intended that property in the goods should not pass until the goods had been weighed The Indian Law is the same and the provisions of s 81 of the Contract Act do not exclude the question of intention which is laid down in the English cases as the determining factor Where according to the usage of trade at Chandpur the sale of jute by *fariahs* is not complete until the goods are examined selected and weighed by the company (purchaser) although stored in the godowns of the company by whom advances have been made to the *fariahs* against these goods — *Held* that the contract in the present case being in the first instance a contract for the sale of unascertained goods what remained to be done by the buyer to the goods appropriated to the contract by the seller was not merely for the purpose of ascertaining the price but was also for the purpose of placing the buyers in a position to say whether and to what extent they would for their part accept the goods offered to them That the position seemed to be that the buyer had a right to the custody of the jute as security for his advances and that in addition while the seller had no right to sell to others the buyer was under a corresponding obligation to buy as much of the jute as was of the requisite standard That (though the company had insured this jute as their own) the insurance appeared to have been intended for the protection of their own interest in the jute not for the protection of the seller's interest which they were not bound to insure That the defendants therefore were entitled to apply the whole amount which they received under the policies of insurance to indemnify themselves against the loss which they themselves had actually sustained and were not bound to apply any portion of it to the benefit of the plaintiff That there was no usage that the loss is borne entirely by the company in cases where the jute is not insured to the full extent ABDUL AZIZ BEPARI v JOGENDRA KRISHNA ROY (1916 I L R 44 Calc 98

K

KABULIYAT

See INTEREST I L R 41 Calc 342
I L R 48 Calc 93
See LANDLORD AND TENANT
I L R 41 Calc 493

KABULIYAT—*contd*

See RENT I. L. R 47 Calc. 133

See TRANSFER OF PROPERTY ACT s 10 14 C W N 73

——— containing false recitals—

See FABRICATING FALSE EVIDENCE. I L R. 46 Calc 986

——— construction of—

See RENT I L R 47 Calc 133

——— stipulation in—

See ILLEGAL CESS. I L. R. 45 Calc 259

———Stipulation to pay same as mamuli for the Idol—

See ILLEGAL CESS. I L R 45 Calc 259

——— *Kabuliyat construction of—Rent partly in money and partly in kind—Fixed rent—Evidentiary value of later documents between different parties in construing an earlier one* Where the terms of a document clearly point to the fact that the rent is to be partly in money and partly in kind the rent cannot be regarded fixed in amount even though the *kabuliyat* is a *mokarrari* one and in the original deed the two items of rent in kind and rent in cash were lumped up and expressed as a consolidated money rent An earlier document cannot be construed by reference to a later document which is not between the same parties BANESWAR MUKHERJI *v* UMESH CHANDRA CHAKRABARTI (1910) I L R 37 Calc 626

——— *Lease—Landlord and Tenant—Kabuliyat without pottah if constitutes a lease—Transfer of Property Act (IV of 1882) ss 4 105 and 107—Amending Act (III of 1885) s 5—Registration Acts (III of 1887) s 3 and (XVI of 1908) s 2(7)* A registered *kabuliyat* signed by the lessee and accepted by the lessor is sufficient to constitute a lease within the meaning of s 107 of the Transfer of Property Act *Akram Ali* v *Durga Prasanna Roy Choudhuri 11 C L J 614* referred to *Nand Lal* v *Hanuman Dass I L R 26 All 568* *Kashi Gir* v *Jogendra Nath Ghose I L R 27 All 136* *Sheo Karan Singh* v *Maharaja Parbhu Narain Singh I L R 31 All 276* *Turof Sahib* v *Esuf Sahib I L R 30 Mad 322* *Kaki Subbanadri* v *Mutlu Rangayya I L R 32 Mad 532* discussed *Sayed Ajam Sahib* v *Madura Sree Menatchi Sundareswarar Devastanam 21 Mad L J 202* approved *Nilmamud Sarkar* v *Boul Das 14 C W N 73* distinguished RAI MONI DASSI *v* MATHURA MOHAN DEY (1912) I L R 39 Calc 1016

——— *Stipulating to pay rent in kind a money value being given in the document—Landlord if may recover market value or the amount stated—Proof that amount was inserted for registration purposes or to fix stamp duty if inadmissible—Evidence Act (I of 1872) s 92—Conflict of decision* Where a tenant executed a *kabuliyat* promising to pay as rent Rs 4 in cash and 91 *aris* of paddy as the landlord s share of the produce and it was stipulated that on the tenant's failure to pay the said rent and share of paddy the landlord would be competent to realise the said rent and Rs 36 as price of the paddy *Held* that on the tenant making default in paying the landlord s share of the paddy the latter was not entitled to recover the market value of the paddy at the time but only the fixed amount of Rs 36 *Per* CHATTERJEE J —Contracts for payment of *bhag* paddy are very common and it was well known that middle class people specially of the *bhadra logue* class who cannot cultivate lands themselves let out their lands for getting paddy for the consumption of their family and in some cases the *bhag* paddy is the only means of subsistence of the family A certain value has to be fixed for the paddy in the *kabuliyat* not only for the ascertainment of the registration fee but also (and specially) for fixing the stamp duty payable though that is not expressly stated in the *kabuliyat* A distinction may perhaps be drawn between cases where there is no express stipulation to pay the sum mentioned in the *kabuliyat* as the value of the paddy in the event of its non delivery and where there is such a stipulation But even in the latter class of cases it has been held upon a construction of the contract in some cases that the value mentioned was the value of the paddy at the date of the contract or stated for purposes of registration while a contrary view has been taken in some other cases. The view taken in *Ajer Morole* v *Prosunna Kumar 15 C W N 243* s c *12 C L J 643 (1910)* and recent decisions viz that it is not open to the Court to hold that the value of the paddy mentioned in the *kabuliyat* is applicable on the ground that it was so done for fixing the stamp duty or registration fee affects not only the cases where there is stipulation that the money value mentioned is to be paid on default but also where there is no such stipulation and it is desirable that the question should be settled by a Full Bench GURU DAS SEN *v* GOBINDA CHANDRA SINHA 24 C W N 85

——— *Contract of tenancy whether kabuliyat amounts to* Where a tenant has been put into possession of land on the strength of a *kabuliyat* and has paid rent at the *kabuliyat* rates the *kabuliyat* having been confirmed by the conduct of the parties must be deemed to have been adopted as a contract of tenancy *Sheikh Kasim Ali* v *Sheikh Ahmad Ali* 2 Pat L J 40

KACCHI ADAT

See CONTRACT I L R 42 Bom 224

KADIM INAMDAR

——— *Grantee of soil—Introduction of summary settlement into the alienated village—Mirasdar holding lands in the village long before the alienation—Inamdar s right to enhance the rent—Bombay Land Revenue Code (Bombay Act V) of 1879 s 217* A Kadim Inamdar who is a grantee not merely of the Government share of rent and land revenue but a grantee out and out of soil in a village where a survey settlement has been introduced is entitled to enhance the rent of the Mirasdar whose tenancy dates from a time prior to the grant PANDU *v* RAMCHANDRA GANESH (1917) I L R 42 Bom 112

KAHUTS

See CUSTOM I L R 2 Lah 170

KAIMI LEASE

See BENGAL TENANCY ACT 1885 s 20 5 Pat L J 287

KAIMI LEASE—*contd*

See LANDLORD AND TENANT
I L R 37 Calc 815

KALIGHAT TEMPLE

See PALAS OR TURNS OF WORSHIP
I L R 42 Calc 455

KAMATHIS

See HINDU LAW—INHERITANCE
I L R 34 Bom 553

KANGANAM

———— levy of legality of—

See ESTATES LAND ACT (MAD ACT I OF 1908) ss 4 27 73 AND 143
I L R 40 Mad 640

KANOM

See MALABAR LAW I L R 44 Mad 344

KANTI MARRIAGE

See MARRIAGE 24 C W N 958

KANUNGO

See CONTRACT ACT (IX OF 1872) s 23
I L R 39 All 51 58

KARNAM

———— *Nature of tenure—Land appurtenant to office and impartible—Enfranchisement and inam grant effect of —Law governing Palayams not applicable* In Madras the Karnam of the village occupies his office not by hereditary or family right but as personal appointee though in certain cases that appointment is primarily exercised in favour of a suitable person who is member of a particular family It follows that land appurtenant to the office so enjoyed should continue to go with that office and should accordingly be impartible The enfranchisement of the Karnam lands in 1906 whereby the *Inam* was confirmed to V his representatives and assigns to hold and dispose of as he or they might think proper subject to the payment of quit rent etc and the reservation of minerals did not enure for the benefit of the joint family of which V was a member but to him exclusively Different considerations apply to the case of a Palayam for when a Palayam was abolished in so far as the duty of rendering military service was concerned the estate was continued with all its hereditary incidence to the Palayagar in the same manner as if possessed by a zamindar and the Full Court of Madras were in error in applying the law regarding Palayams by analogy to a Karnam case in *Gunnaiyan* v *Kamalchi Ayyar I L R 26 Mad 399* MUSTI VENKATA JAGANNADHA SARMA v MUSAMMAT VEERABHADRAYYA (PC)
26 C W N 301

KARNAVAN

See MALABAR LAW I L R 44 Mad 140

See MALABAR TARWAD
I L R 33 Mad 918

KARAMKARI TENURE

See MALABAR LAW
I L R 36 Mad 380

KARTA

See HINDU LAW—MANAGER

See HINDU LAW—JOINT FAMILY

See HINDU LAW—MINOR

See HINDU LAW—PARTITION
I L R 43 Calc 459

———— of Hindu joint family—

See HINDU LAW JOINT FAMILY
23 C W N 500—

———— suit against—

See LIMITATION ACT 1908 ss 10 AND 20
25 C W N 356

KASBATIS

———— *History and status of Kasbatis in Gujarat—Ahmedabad Taluqdar s Act (Bombay Act VI of 1862)—Gujarat Taluqdar s Act (Bombay Act VI of 1888)—Bombay Land Revenue Code (Bombay Act V of 1879) ss 68 73—Rights of Kasbatis after cession to and annexation by British Government—Rights of lessees from Bombay Government—Onus of proof on claimant of rights of permanent tenure—Lease implies no obligation to renew at end of term—Obligation to give up possession at end of lease.* In this case their Lordships of the Judicial Committee held (reversing the judgments of the Courts below) that the respondent the descendant of a family of Kasbatis who were in possession of a village called Charodi in the district of Ahmedabad in Gujarat and the date of the cession of that district by the Peishwa to the British Government and whose predecessors in title held thereafter under leases from the Government where mere lessees of the Government of Bombay bound to give up at the end of each term of lease possession of the village and were never legally entitled as each lease terminated to have a new lease granted in the last lessee or representative and therefore never acquired permanent possession of the village The only legal enforceable right the Kasbatis could have as against the British Government were those and those only which that Government by agreement express or implied or by legislation chose to confer upon them The relation in which they stood to their native sovereign and the consideration of the existence nature and extent of their rights before the cession were only relevant matters for the purpose of determining whether and to what extent the British Sovereign had recognized their ante cession rights and had elected or agreed to be bound by them The burden of proving that they had any such rights which the Bombay Government consented to their continuing to enjoy rested upon the respondent The principle laid down in *The Secretary of State for India in Council* v *Kamachee Boye Sahaba 7 Moo I A 476* and *Cook* v *Sprigg [1899] A C 572* followed The just and reasonable inferences to be drawn from the evidence were that the respondent had failed to discharge the onus on her that the Bombay Government had never by agreement express or implied conferred upon her or any of her ancestors the proprietary rights in or ownership of the village claimed by her they never conferred upon any of the lessees of the village a legal right to insist at the termination of the lease upon a new lease being granted they were never under a legal obligation to grant any lease of the village and the granting or withholding of a

KASBATIS—*contd*

lease rested solely in their discretion The mere repetition of acts of grace by the Government could not *per se* create a legal right to their continuance *Primâ facie* a lease for a term does not impart any right to a renewal of on the contrary it *primâ facie* implies that the lessee s right to the premises ends with the term There was no analogy between holdings of the Grassias and the Kasbatis they and the Mewassies were clearly distinguishable from the Kasbatis The Ahmedabad Taluqdars Act (Bombay Act VI of 186) did not apply to Kasbatis lessees They never were Ahmedabad Taluqdars in the true sense they did not lose their ancient rights of ownership of land by taking leases as did the Grassias and therefore did not suffer the injustice which the statute was designed to remedy The effect of ss 68 and 73 of the Bombay Land Revenue Code (Bombay Act V of 1879) read with the Gujarat Taluqdars Act (Bombay Act VI of 1888) is that a lessee whether a true Taluqdar or a Thakur Mewassie Kasbati or Naik is bound by the terms of his lease one term of which is that he shall only occupy for the term of years for which a lease for years is granted and *primâ facie* no longer SECRETARY OF STATE FOR INDIA *v* BAI RAJBAI (1915)

I L R 39 Bom 625

KAZI

———— alienation of inam lands granted for Kazi service

See BOMBAY REVENUE JURISDICTION ACT s 4 I L R 44 Bom 120

———— discretion of—

See MAHOMEDAN LAW—ENDOWMENT I L R 43 Calc 1085

———— sanction by—

See WAKF I L R 47 Calc 592

KAZIS ACT (XII OF 1880)

———— ss 2 and 4—*Kazi not entitled to any exclusive right to officiate as such* The appointment of a person as Kazi under the Kazis Act (XII of 1880) does not confer on the appointee any exclusive franchise or any exclusive right to perform the functions of his office Where therefore the plaintiff a Kazi appointed under the Act sued the defendant to restrain him from officiating at marriages and for the recovery of sums of money received by the latter as fees for *nikkas* performed by him *Held* that the suit must fail as the plaintiff had no right to restrain any person from his performing any of the functions of a Kazi *Mahammad Yusub* v *Sayad Ahmed 1 Bom H C R App* 18 distinguished *Sayad Hashim Sahib* v *Huseinsha I L R 13 Bom 429 Mira Mohidin* v *Asan Mohidin 17 Mad L J 421 Bhola* v *Syud Unwar Ulee (1859)* W *W P S D 4 197* and *Zeenatoollah Ca* *v Vajhoollah 1835 6 B S D 4 31* referred to SHEIK UMMAR *v* BUDAN KHAN (1914)

I L R 37 Mad 228

"KETUBAH"

See JEWISH LAW

I L R 40 Calc 266

KHAIRAT

See BEQUEST I L R 41 Bom 181

KHADIANIS

See MAHAMMADANS 2 Pat L J 108

KHAMAR LAND

See NON OCCUPANCY RAIYAT

I L R 44 Calc 267

KHANA DAMAD

See CUSTOM I L R 44 Calc 749

KHANDESH DISTRICT

See PRE EMPTION I L R 40 Bom 358

KHANGA ATTACHED TO DARGA

See MAHOMEDAN LAW—ENDOWMENT

I L R 36 Bom 308

KHARACH I PANDAN

See MAHOMEDAN LAW—MARRIAGE

I L R 32 All 410

KHAS POSSESSION

See UNDER RAIYAT 23 C W N 435

———— suit for—

See CHAWKIDARI CHAKRAN LANDS

I L R 37 Calc 57

KHATEDAR

See LAND REVENUE CODE (BOM ACT V OF 1879) s 74

I L R 41 Bom 170

———— inamdar s name entered as—

See LAND REVENUE CODE (BOM ACT V OF 1879) ss 3 (11) 217

I L R 34 Bom 686

KHATIB INAM LANDS

See BOMBAY REVENUE JURISDICTION ACT 1876 s 4 I L R 44 Bom 130

KHOD KAST JOTES

———— *Dowl Bandobust Kabuliyat—Transfer of Property Act (IV of 1882) ss 10 111 and 117—Evidence Act (I of 1872) s 92—Proof of custom—Bengal Tenancy Act (VIII of 1885) s 106* A suit lies to correct an entry in a finally published record of rights The fact that an application under s 106 of Bengal Tenancy Act was withdrawn does not bar the jurisdiction of the Civil Court to deal with the matter *Troilakya Nath Bose* v *Macleod I L R 28 Calc 28 Sashibhusan Hazra* v *Sheikh Eshabar 19 C W N 636* followed *Jogendra Nath Ray* v *Krishna Pramada Dassi I L R 35 Calc 1013* dissented from *Gulab Misser* v *Kumar Kalanand Singh 14 C W N 884 Pandab Dwari Das* v *Ananda Kisan Chakrabutty 14 C W N 897* referred to With regard to Dowl kabuliyats from the fact that the sons have been allowed to hold the tenancy it does not follow that it is heritable Nor from the fact that the landlord accepted the mortgage of the tenancy from the sons can it be inferred that it is heritable It is necessary to look into the express terms regarding the tenancy as appearing in the kabuliyat The evidence of custom in respect of tenancies is inadmissible where the custom alleged is contradictory to the terms of the written agreement Therefore in an agreement where

KHOD KAST JOTES—*contd*

the tenancy was non transferable in express words no evidence can be given of the customary transferability of tenures in the locality *Webb* v *Plummer 2 Barr Ald 746 Boraston* v *Green 16 East 71 Clarke* v *Roystone 13 M W 752* and *Brown* v *Byrne 3 El Bl 703* referred to An interest in land created before the passing of the Transfer of Property Act is not subject to that Act *Hiramoti Dasya* v *Annada Prosad Ghose 7 C I J 553* and *Ananda Mohan Saha* v *Gobinda Chandra Roy Chaudhuri 20 C W N 320* referred to But where it is found that a yearly tenancy commenced after the passing of the Act *Held* that such a tenancy is an interest in land which can be transferred and could only be determined under s 111 of the Transfer of Property Act by a notice MAHAMMAD AKEJUDDIN v PRODYAT KUMAR TAGORE (1920) **I L R 48 Calc 359**

KHOJAS

See DOCTRINE OF SATISFACTION
I L R 37 Bom 211

——— *Hindu law how far applicable to Khojas—Joint family—Presumption as to membership of joint family—Mahomedan law —Spes successionis transfer of—Family arrangement in the nature of a partition reasonableness of— Limitation Act (IX of 1908) Articles 91 and 127* In the year 1879 one *D* a Khoja was living at Malad in the Thana District where he carried on a small business together with *inter alia* his mother and unmarried daughter his sons *A* and *I* and *A* s wife and *A* s son *J* In that year it was agreed that *A* should separate from the rest of the family and should receive what was considered to be his share in the family property The family property was valued at Rs 4 500 and Rs 900 or the fifth part of it was made over to *A* or the members of his family at his share namely Rs 400 in cash given to *A* ornaments of the value of Rs 200 given to *A* s wife and a house of the value of Rs 300 settled on *J* The terms of this transaction were contained in a deed of release dated the 13th of February 1879 by which deed *A* released all claims of himself and his wife and son against the family and family property Subsequently *I* by himself or assisted by his father *D* continued to carry on business and acquired a considerable amount of property After the release *A* lived in the house given by the release to his son *J* and some 12 or 13 years after the release another son was born to *A* namely *X* *J* and *X* at times lived with their grandfather *D* and their uncle *I* and received assistance from them in various ways in particular their marriage and other ceremonies being performed from *D* s house and at his expense *J* and *X* were at times also employed by *D* and *I* in their business for wages In the year 1902 *D* made a gift to *I* of his property at Malad reserving about Rs 7 000 to himself *J* and *X* filed the present suit In their plaint they stated that the release of the 13th of February 1879 was not valid or binding as having been obtained by fraud undue influence etc and also because it had not been acted upon They prayed *inter alia* for a declaration that the above mentioned business and properties were the properties and business of an undivided family that the rights of the plaintiffs and defendants therein might be ascertained and declared that the properties might be partitioned between the plaintiffs and defendants in accordance with their

KHOJAS—*contd*

interests so ascertained and declared that all necessary accounts might be taken that a receiver might be appointed that *D* and *I* might be restrained by injunction from alienating the properties that it might be declared that the release of the 13th of February 1879 was not valid and binding on the plaintiffs and *A* and that it might be declared that the deed of gift of the 8th of October 1902 was void and of no effect as against the interests of the plaintiffs and other members of the joint family *D* and *I* filed written statements denying the allegations as to fraud etc and asserting that the release of the 13th of February 1879 had been acted on It was assumed in the pleadings that the parties were governed by the Hindu law of the joint family *Held* that as to the law governing Khojas the proper way to approach the question was as follows —(i) Where Mahomedans were concerned the invariable and general presumption was that they were governed by the Mahomedan law and usage and that it lay on a party setting up a custom in derogation of that law to prove it strictly (ii) But that in matter of simple succession and inheritance it was to be taken as established that succession and inheritance among Khojas and Memons were governed by Hindu law as applied to separate and self acquired property *Held* accordingly that the plaint disclosed no cause of action at all unless the plaintiffs had alleged and were prepared to prove two or three salient features of the Hindu law of the joint family as customs adopted by the Khojas of Bombay as the question involved in the suit did not really arise on a plea of simple succession and inheritance and that there had been no allegation of custom and no attempt had been made to prove a custom and in any case many of the prayers in the plaint were on the face of them bad as the plaintiffs could not have the declaration asked for as to the nature of the property and their rights therein not sue for partition *Held* further that assuming this to have been a joint family under Hindu law when *A* passed the release of the 13th of February 1879 he went out of the family and purported to take out of it his wife and infant son that the plaintiffs could not dispose of the release as void under Mahomedan law as the mere transfer of a *spes successionis* as under Mahomedan law the plaintiffs had no cause of action and that *X* having been born after his father *A* had gone out of the family from the point of view of members of the joint family did not exist *Held* further that it could not be inferred from the facts that their grandfather and uncle had kept the plaintiffs educated them and got them married etc that the plaintiffs thus became members of a joint family that what was to be looked at in estimating the reasonableness of such family arrangements as the release of the 13th of February 1879 (under Hindu law) was not the state of the family fortune on the day it was called in question but at the time it was made and that if there was then an adequate motive the Court would not scrutinize too closely the adequateness of the consideration *Ramdas* v *Chabildas 12 Bom L R 621* applied *Semble* Where the existence of a document if valid and binding on a party would defeat his suit to recover possession of any property he must sue under Article 91 of the Limitation Act for the cancellation of the document and that if he does not take steps in time to remove what else will be a bar to the success of his suit he cannot surmount that

KHOJAS—*contd*

for during the trial by exactly the attack he ought to have made on it directly and within the shorter period allowed by the law of limitation *Semble* Article 127 of the Limitation Act does not apply to Mahomedans as such or to Khojas and Memons except where the property is shown to have gone through one unimpaired descent and thereafter to have been held by the survivors as joint family property *Wasantrao v Anandrao 6 Bom L R 925* considered *Semble* also since no Khoja son can enforce a partition it follows that he can not be a co sharer *Ahmedbhoy Habibhoy v Cassumbhoy Ahmedbhoy I L R 13 Bom 534* and *Rani Sartaj Kuari v Rani Deoraj Kuari L R 15 I A 51* considered JAN MAHOMED v DATU JAFFER (1913) I L R 38 Bom 449

—————— *Settlement—Settlor himself trust —No delivery of possession—Son born after settlement —Power of settlor to revoke settlement—Settlor's intention not carried out owing to settlor's death—Power of Court to aid defective execution—Suit by afterborn son to set aside settlement—Limitation Act (IX of 1908) s 10—Resulting trust back to settlor — Adverse possession—Difference between estoppel and res judicata—Validity of wakf contained in deed containing other gifts—Local usage cannot override Mahomedan Law—Registration—Is Major* By an indenture of settlement dated 7th January 1886 *J P* a Khoja Mahomedan, purported to convey certain immoveable properties to trustees for the benefit of his family The trusts were in effect for *J P* for life and after his death subject to certain rights of residence and maintenance to pay the net income of the trust properties to *N M* for his life and in the event (which subsequently occurred) of the death of *N M* without leaving male issue to divide the trust funds into ten equal parts to be held in favour of certain donees four tenths being given to charity The indenture also reserved to the settlor power to revoke or vary any of the trusts contained therein There was no surrender of the property in fact to any one except *J P* himself in his character as trustee for himself The donor however opened an account in his books of this property as trust property On the 26th October 1886 a second son the plaintiff was born to *J P* whereupon *J P* being desirous of providing for the second son desired to vary the terms of the deed of the 7th of January 1886 and to resettle the same so that his two sons should share equally A draft deed of declaration of new trusts was accordingly prepared by *J P's* attorneys and on the 24th of July 1887 was finally settled and approved by *J P* An engrossment was thereupon made and duly stamped but on taking the engrossment to *J P* for his execution on July 29th it was found that owing to an error of the engrossing clerk several pages of it were missing Another engrossment was prepared forthwith, but on the same day before the new engrossment was ready *J P* died The plaintiff thereupon brought a suit to have it declared whether or not the deed of 1886 was a valid deed and prayed that the defective execution of the second deed might be added by the Court and the provisions of the said second deed declared to be valid *Held* (i) That the plaintiff was not time barred as against the trustees from bringing the action (ii) That however restricted the gift was in form to *J P* it was in effect a gift absolute to him for life and that entirely irrespective of the power of revocation (iii) That all the gifts in the trust settlement made contingent upon *N M* dying without issue were bad (iv) That the portion of the instrument which purported to create a *wakf* in respect of four tenths of the settled property was bad and void (v) That the gift was bad for want of contemporaneous delivery of possession (vi) That this was a case, if ever there was a case in which the Courts might act upon those principles which have always guided the Courts of Equity in England and aid defective execution of a power defective not through any fault on the part of the person intending to execute it but by reason of an act of God and that the unsigned deed ought to be effectuated by the Court to the extent of making it binding on that conscience of the trustees. *Per* CURIAM It is only in the events of the trusts of some of them being bad that the question of limitation can arise For if a trust deed in its entirety is good then of course effect must be given to it irrespective of any question of lapse of time Where what purports to be a trust deed turns out to have been entirely void and therefore not to have passed the legal estate the position of those who took possession believing themselves to be trustees but not in law real trustee necessarily assumes the character of possession by *trespass and is therefore from its inception* in law adverse against all the world. Where however the trust deed in itself is good and valid to the extent of passing the legal estate but the trusts declared are in themselves wholly or partially bad then there is a resultant trust to the author of the trust and the possession of the trustees whatever they might think of it and however they might intend to use it for the purpose of carrying out the bad trusts could not in law be adverse to the *cestui que trust* that is to say the grantor Widely different is the case of trustees who obtain the legal estate from the author of the trusts to apply the beneficial uses to specified objects which may or may not be good. For then from the beginning there is always a relation between the author of the trusts and the trustees in whom confidence has been reposed and there is always the legal possibility at least of another relation coming into existence *between them where owing to the failure of the declared* trusts there is a resultant trust back to the grantor who from that moment becomes in law the *cestui que trust* of the trustees Where it was the intention that there should be an ultimate trust in favour of the grantor it is usual to express that on the face of the deed A deed so framed as upon its very face to provide for the springing back of the trust fund or a part of it in certain events to the author of the trust does create what is at once an express and resultant trust The current of authority seems to have set steadily against the extension of s 10 of the Limitation Act to all cases of resultant implied or constructive trusts. Where the ultimate resultant trust which is to spring back to the settlor is consistent with the discharge of the declared trusts then it may by loose use of language be said to be express on the face of the deed but when the extinction or failure of all the intended trusts is a condition precedent to the resultant trusts coming into being *then the* latter is clearly a true resultant trust and is not express and never can be express on the face of the deed The answer to the question—What is the true position when declared trusts failed and there is a resultant trust over to the settlor or his heirs —is to be found in the very elementary proposi

KHOD-KAST JOTES—*contd*

the tenancy was non transferable in express words no evidence can be given of the customary transferability of tenures in the locality *Webb* v *Plummer 2 Barn Ald 746 Boraston* v *Green 16 East 71 Clarke* v *Roystone 13 M W 752* and *Brown* v *Byrne 3 El Bl 703* referred to An interest in land created before the passing of the Transfer of Property Act is not subject to that Act *Hiramoti Dasya* v *Annada Prosad Ghose 7 C L J 553* and *Ananda Mohan Saha* v *Gobinda Chandra Roy Chaudhuri 20 C W N 320* referred to But where it is found that a yearly tenancy commenced after the passing of the Act *Held* that such a tenancy is an interest in land which can be transferred and could only be determined under s 111 of the Transfer of Property Act by a notice MAHAMMAD AYEJUDDIN v PRODYAT KUMAR TAGORE (1920) **I L R 48 Calc 359**

KHOJAS

See DOCTRINE OF SATISFACTION
I L R 37 Bom 211

——— *Hindu law how far applicable to Khojas—Joint family—Presumption as to membership of joint family—Mahomedan law—Spes successionis transfer of—Family arrangement in the nature of a partition reasonableness of—Limitation Act (IX of 1908) Articles 91 and 127* In the year 1879 one *D* a Khoja was living at Malad in the Thana District where he carried on a small business together with *inter alia* his mother and unmarried daughter his sons *A* and *I* and *A* s wife and *A* s son *J* In that year it was agreed that *A* should separate from the rest of the family and should receive what was considered to be his share in the family property The family property was valued at Rs 4 500 and Rs 900 or the fifth part of it was made over to *A* or the members of his family at his share namely Rs 400 in cash given to *A* ornaments of the value of Rs 200 given to *A* s wife and a house of the value of Rs 300 settled on *J* The terms of this transaction were contained in a deed of release dated the 13th of February 1879 by which deed *A* released all claims of himself and his wife and son against the family and family property Subsequently *I* by himself or assisted by his father *D* continued to carry on business and acquired a considerable amount of property After the release *A* lived in the house given by the release to his son *J* and some 12 or 13 years after the release another son was born to *A* namely *X* *J* and *X* at times lived with their grandfather *D* and their uncle *I* and received assistance from them in various ways in particular their marriage and other ceremonies being performed from *D* s house and at his expense *J* and *X* were at times also employed by *D* and *I* in their business for wages In the year 1902 *D* made a gift to *I* of his property at Malad reserving about Rs 7 000 to himself *J* and *X* filed the present suit In their plaint they stated that the release of the 13th of February 1879 was not valid or binding as having been obtained by fraud, undue influence etc and also because it had not been acted upon They prayed *inter alia* for a declaration that the above mentioned business and properties were the properties and business of an undivided family that the rights of the plaintiffs and defendants therein might be ascertained and declared that the properties might be partitioned between the plaintiffs and defendants in accordance with their

KHOJAS—*contd*

interests so ascertained and declared that all necessary accounts might be taken that a receiver might be appointed that *D* and *I* might be restrained by injunction from alienating the properties that it might be declared that the release of the 13th of February 1879 was not valid and binding on the plaintiffs and *A* and that it might be declared that the deed of gift of the 8th of October 1902 was void and of no effect as against the interests of the plaintiffs and other members of the joint family *D* and *I* filed written statements denying the allegations as to fraud etc, and asserting that the release of the 13th of February 1879 had been acted on It was assumed in the pleadings that the parties were governed by the Hindu law of the joint family *Held* that as to the law governing Khojas the proper way to approach the question was as follows —(i) Where Mahomedans were concerned the invariable and general presumption was that they were governed by the Mahomedan law and usage and that it lay on a party setting up a custom in derogation of that law to prove it strictly (ii) But that in matter of simple succession and inheritance it was to be taken as established that succession and inheritance among Khojas and Memons were governed by Hindu law as applied to separate and self acquired property *Held* accordingly that the plaint disclosed no cause of action at all unless the plaintiffs had alleged and were prepared to prove two or three salient features of the Hindu law of the joint family as customs adopted by the Khojas of Bombay as the question involved in the suit did not really arise on a plea of simple succession and inheritance and that there had been no allegation of custom and no attempt had been made to prove a custom and in any case many of the prayers in the plaint were on the face of them bad as the plaintiffs could not have the declaration asked for as to the nature of the property and their rights therein not sue for partition *Held* further that assuming this to have been a joint family under Hindu law when *A* passed the release of the 13th of February 1879 he went out of the family and purported to take out of it his wife and infant son that the plaintiffs could not dispose of the release as void under Mahomedan law as the mere transfer of a *spes successionis* as under Mahomedan law the plaintiffs had no cause of action and that X having been born after his father *A* had gone out of the family from the point of view of members of the joint family did not exist *Held* further that it could not be inferred from the facts that their grandfather and uncle had kept the plaintiffs educated them and got them married etc that the plaintiffs thus became members of a joint family that what was to be looked at in estimating the reasonableness of such family arrangements as the release of the 13th of February 1879 (under Hindu law) was not the state of the family fortune on the day it was called in question but at the time it was made and that if there was then an adequate motive the Court would not scrutinize too closely the adequateness of the consideration *Ramdas* v *Chabildas 12 Bom L R 621* applied *Semble* Where the existence of a document if valid and binding on a party would defeat his suit to recover possession of any property he must sue under Article 91 of the Limitation Act for the cancellation of the document and that if he does not take steps in time to remove what else will be a bar to the success of his suit he cannot surmount that

KHOTI SETTLEMENT ACT (BOM I OF 1880) —contd

———— ss. 8 and 10—contd

Adverse possession of land against the occupant—Effect of adverse possession against the Khot—Ejectment by Khot—Notice—Land Revenue Code (Bom Act I of 1879) section 84 An occupancy tenant of khoti land having died in 1898 the defendant who was his remote relative took possession of the land and held it adversely A first cousin of the deceased relinquished the holding in favour of the plaintiff Khot in 1914 The plaintiff having sued to recover possession of the land —*Held* that the defendant's adverse possession against the heir of the occupancy tenant only extinguished the latter's right to the actual possession of the land and did not operate to annihilate the occupancy tenant's right which he would transfer to the plaintiff Khot *Held* further that the defendant on account of the resignation of the rightful occupancy tenant could claim to be a tenant under s 8 of the Khoti Settlement Act 1880 and in the absence of any specific agreement between himself and the Khot he should be held to be a yearly tenant liable to pay rent to the Khot at the rates prescribed and that he was accordingly entitled to the notice prescribed in the case of yearly tenants under section 84 of the Land Revenue Code 1879 VISHNU BHIKAJI v BABLA LAKHA (1920)

I L R 45 Bom 1001

———— s 9—

See RES JUDICATA

I L R 40 Bom 675

———— ss 9 10—*Khoti Takshim—Resignation of occupancy rights—Transfer—Lease for a term of years—Expiration of the lease—Suit to recover possession—Impeachment of plaintiff's title—Consent of khots necessary for transfer—Resignation accompanied by consideration—Parties in pari delicto—Estoppel* The defendant resigned his occupancy rights in a khoti takshim to the plaintiff who was one of the khots in the year 1905 Synchronously with this resignation a lease for a term of five years was executed and the defendant attorned to the plaintiff in respect of the lands The defendant's resignation was accompanied by consideration After the expiration of the term of the lease the plaintiff sued to recover possession of the lands and the defendant impugned the plaintiff's title *Held* dismissing the suit for recovery of possession that the foundation of the plaintiff's title in 1905 was illegal that the resignation and lease having been made at the same time and having formed part of what was virtually one transaction if the transfer which the resignation was held to amount to were tainted with any illegality as being in contravention of the statute law namely the Khoti Settlement Act (Bom Act I of 1880) the letting must go with it that under s 9 of the said Act the consent of the khots including the plaintiff was necessary to the validity of the transfer and it was not shown that such consent had been obtained that accordingly the conditions stated in s 9 being not complied with there was no transfer under that section nor could the transaction be regarded as a resignation under s 10 of the said Act because it was accompanied by consideration Held further that in the case of a contract where both the parties were in *pari delicto* the plaintiff was not entitled to estop the defendant from showing the illegality of his title, nor was there any estoppel against any Act of Parliament or in India against an Act of the Legislature SHRIDHAR BALKRISHNA v BABAJI MULA (1914) I L R 38 Bom 709

———— *Occupancy tenants—Transfer of occupancy rights—Possession—Right of Khot to forfeit occupancy right* Defendants Nos 2 to 6 were the occupancy tenants of the plaintiff Khot. On the 1-th January 1912 the defendants sold their occupancy rights to the defendant No 1 giving him possession The plaintiff having sued for a declaration that by transfer the defendants had forfeited their occupancy rights and that therefore he was entitled to possession of the property *Held* dismissing the suit that although the transfer to defendant No 1 was null and void as against the Khot the defendants Nos 2 to 6 still remained his occupancy tenants *Yesa bin Rama* v *Sakharam Gopal* (1905) *30 Bom. 290* followed DAMODAR RAGHUNATH v VASUDEO PARASHRAM (1919)

I L R 44 Bom 267

———— s 20—*Entry in settlement register—Occupancy tenant—The fact of tenancy not conclusively settled by the entry* The rule of evidence laid down in s 20 of the Khoti Act that the entry in the settlement register purporting to record the fact that the interest of any occupancy tenant is not transferable shall be conclusive evidence cannot apply where according to a judgment *inter partes* the person relying on the section is not an occupancy tenant for the fact of the tenancy of the individual is not conclusively settled by the entry CHINTO MAHADEV v MAHADEV RAMCHANDRA (1918)

I L R 43 Bom 565

———— s 21—*Decision of the Recording Officer—Finality—Mere entry in revenue records as occupant is not such decision—scope of the section* S 21 of the Khoti Settlement Act 1880 makes conclusive certain decisions of the Recording Officer The mere entry of the name of some particular person as occupant is not such a decision What are contemplated as conclusive are decision as to the class of tenure and as complicated rights of the Khots BHIVA BHIKA to the v BABU BALSHET (1918)

I L R 43 Bom 469

———— ss 33 (c) 40 (a) Rules I III and VIII—*Occupancy tenant—Rent payable to the Khot—Appraisement under the provision of r VIII—Appraisement by the tenant* r VIII of the rules framed under s 40 (a) of the Khoti Settlement Act (Bom Act I of 1880) is *ultra vires* and under the provisions of that rule the khot can recover from the occupancy tenant rent either on the basis of appraisement made under the provision of that rule or on the basis of appraisement made by the tenant himself The Court is precluded from arriving at what it considers the reasonable amount of rent by the provision of the said rule VINAYA BALKRISHNA v SITARAM JANARDAN (1912)

I L R 37 Bom 284

KHOTI TAKSHIM

See KHOTI SETTLEMENT ACT (BOM I OF 1880) ss 9 10
I L R 38 Bom 709

KHOTI VILLAGE

See BOMBAY SURVEY AND SETTLEMENT ACT 1865 ss 25 28 37 38
I L R 36 Bom 290

KHUD KASHT

See BENGAL TENANCY ACT 1885 s 120(2) **5 Pat L J 87**

See LANDLORD AND TENANT
I L R 38 Calc 432

KHURDAH IN ORISSA

See SARBARAKARI TENURE
I L R 46 Calc 378

KIDNAPPING

See CRIMINAL PROCEDURE CODE s 188
I L R 41 All 452

See PENAL CODE (ACT XLV OF 1860)—
s 90 **I L R 36 Mad 453**
s 361 **I L R 42 All 146**
ss 361 366 109
I L R 38 All 664
ss 361 363 AND 368 **4 Pat L J 74**
s 363 **I L R 37 Mad 567**
s 366 **I L R 34 All 340**
ss 366 AND 372
I L R 37 All 624
ss 366 AND 368
I L R 40 All 507

——— *Removal by the mother of her child from the custody of the father after decree nisi delivering custody to him—Absence of prayer in divorce petition for custody and of subsequent application therefor—Ex parte decree—Submission of decree to High Court for confirmation—Order of custody part of the decree—Time of operation of order of custody—Divorce Act (IV of 1869) ss 17 43 57—Penal Code (Act XLV of 1860) s 363* Where the plaint in a divorce suit did not contain a prayer for custody of the child and there was no subsequent application therefor by the husband but the District Judge passed an *ex parte* decree nisi and included in it as one of its terms a direction without notice to the wife to deliver her child to the father and submitted the decree to the High Court for confirmation and where the father subsequently obtained custody of the child but she took it away from his house and was charged with kidnapping —*Held* that the Judge's direction as to the custody of the child was not intended to be an *ad interim* order under s 43 of the Divorce Act which was to take effect immediately but formed an integral part of the decree and did not operate till confirmation by the High Court and that she had therefore committed no offence punishable under the Penal Code.

KIDNAPPING—*contd*

Ledhe v Ledhe I L R 18 Calc. 473 referred to
BORTHWICK v BORTHWICK (1913)
I L R 41 Calc 714

KIDNAPPING A GIRL OUT OF BRITISH INDIA

See PENAL CODE (ACT XLV OF 1860), ss 366 360 90
I L R 42 Bom 391

KILLADARI ESTATE (ORISSA)

See CHOWKIDARI ACT s 1
15 C W N 300

KILLAJAT ESTATES (ORISSA)

See RENT **I L R 38 Calc 278**

KING S BENCH COURT OF

See CONTEMPT OF COURT
I L R 41 Calc 173

KING S PREROGATIVE OF PARDON

See PRIVY COUNCIL PRACTICE OF
I L R 42 Calc 739

KITTIMA ADOPTION

See BURMESE LAW
I L R 45 Calc 1

KNOWLEDGE

See ATTESTATION OF INSTRUMENT
I L R 37 All 350

See HINDU LAW—ALIENATION
I L R 44 Calc 186

See PROBATE **I L R 42 Calc 460**

KNOWLEDGE AND INTENT

See PENAL CODE (ACT XLV OF 1860)
s 86 **I L R 38 Mad 479**
s 302 **I L R 40 All. 360**

KOBALA

See FABRICATING FALSE DOCUMENT
I L R 48 Calc 911

KOCHES

See HINDU LAW (INHERITANCE)
24 C W N 173

KOLI CASTE

See HINDU LAW—MARRIAGE
I L R 37 Bom 295

KONKANI MAHOMEDANS

See CONTRACT I L R 42 Bom 499

KOWL

See LAND REVENUE CODE (BOM V OF 1879) s 3 CL (19)
I L R 35 Bom 462

KUDIVARAM

See LAND TENURE IN MADRAS
L R 46 I A 123

——— acquisition of—

See MADRAS ESTATES LAND ACT (I OF 1908) s 8 (EXCEP)
I L R 38 Mad 843

——— ownership of—

See CIVIL COURTS.
I L R 39 Mad 21

——— right to—

See MADRAS ESTATES LAND ACT (I OF 1908) s 8 (EXCEP)
I L R 38 Mad 608 843

——— sale of—

See LIMITATION ACT (IX OF 1908) s 2.
I L R 38 Mad 837

KULACHAR

See BABUANA GRANT

KULKARNI VATAN

See BOMBAY REVENUE JURISDICTION ACT 1876 s 4
I L R 44 Bom 261

See LIMITATION ACT 1908 s 20
I L R 45 Bom 1207

See PENSIONS ACT (XXIII OF 1871) s 4 I L R 42 Bom 257

KUMAUN

——— land tenures of—

See CIVIL PROCEDURE CODE (1908) s 100 I L R 36 All 256

KUMAUN RULES (1894)

——— r 17— *Final decree —Civil Procedure Code (1908) s 2 (2)—Promissory note liability of maker of not disclosing name of principal* *Held* that the definition of decree as given in s 2 cl. (2) of the Code of Civil Procedure (1908) cannot be applied strictly in interpreting the term final decree as it occurs in the Kumaon Rules which were framed in 1894 *Held* also that where a person executes a promissory note without either before or at the time of execution thereof disclosing the fact that he does so merely as an agent the executant is personally liable on the note *Sadasuk Janki Das* v *Sir Kishan Pershad I L R 46 Calc 663* referred to NASIB ULLAH v KUNWAR ANAND SINGH
I L R 42 All 642

KUNJPURA STATE OF

——— *Succession to estates of Punjab Ruling Chiefs—Custom—Impartible estate—Primogeniture—Mahomedan law—Suit by junior members of Kanjpura family for shares in estate—Zemindari rights—Property appertaining to Chiefship up to 1849—Property subsequently acquired* The question in this case was as to the rule of succession applicable to the Kunjpura State situate in the Cis Sutlej districts of the Punjab The *riasat* or *raj* was founded by Najabat Khan who in 1748 obtained a *sanad* from the Afghan Conqueror Ahmed Shah Abdali granting him an hereditary *jagir* of the villages of which he was then in possession which were declared to be revenue free and held subject to the obligation of maintaining order in his possessions In 1849 however the British Government withdrew from the Chief of Kunjpura the civil and criminal jurisdiction under which he had been until then exercising quasi sovereign power *Held* that it had been established beyond doubt that the Kunjpura Estate had ever since the time of Najabat Khan descended to a single heir who had been recognised as the Chief of an impartible *raisat* and that attempts by junior members of the family to obtain shares in it had invariably failed The two instances relied on as showing the allotment of shares to junior members were in their Lordships opinion opposed to that contention and no other evidence had been referred to suggesting that there had ever been a division of the estate in accordance with Mahomedan Law The opinion of the Board of Administration in 1852 that the zamindari rights in the villages comprised in the *jagir* were the subject of inheritance according to the Mahomedan law and should be shared by all the members of the family became ineffective and was never acted upon in the course of the constant claims put forward by the junior members of the family to a share in the estate and later decisions on those claims laid down in explicit terms that the *zamindari* rights belonged to the *riasat* With regard to the property acquired after 1849 in which the Chief Court had decided that the plaintiffs (younger brothers of the defendant who had taken possession of all the property as the eldest son) were by the Mahomedan law entitled to shares *Held* (reversing that decision) that there was nothing to show that the Government in withdrawing the civil and criminal powers which the Chiefs had exercised prior to 1849 intended to make any alteration in their status or to vary the rule which had governed the succession to the estate IBRAHIM ALI KHAN v MUHAMMAD AHSANULLAH KHAN (1912)
I L R 39 Calc 711

KUZHIKANAM

See CUSTOMARY LAW
I L R 41 Mad. 118

LAND ACQUISITION—*contd*

the meaning of the provisions of s 32 of the Land Acquisition Act Where a portion of the *debutter* property was acquired under the Land Acquisition Act and the compensation money was invested in approved securities the *shebait* is entitled to withdraw a portion of the invested funds and apply the same to effect necessary repairs to the remainder of the *debutter* property As under s 32 of the Act the compensation money is placed in the custody of the Court jurisdiction is by implication conferred upon it to deal with all questions that may arise as to the application of the fund in its custody KAMINI DEBI v PRAMATHA NATH MOOKERJEE (1911)
I L R 39 Calc 33
See Also SHEBAIT I L R 40 Calc 895

——— Apportionment of Compensation money—*Method of Assessment—Government as landlord share of* In assessing the amount of compensation due to the landlord regard must be had to the question of how much the landlord is actually realising from the land The Government in its capacity as landlord is entitled as usual to a capitalisation of as much rent as may be found to be payable in respect of the proportion of the holding that is taken together with 15 per cent for compulsory acquisition and something more in respect of the possibility of the enhancement of the value of the land thereafter The Government is not entitled in law to a higher proportion on the ground that in similar cases it has frequently received a higher proportion either by consent of the parties or otherwise Where a *raiyat's* rent is fixed in perpetuity it would be enough in apportioning compensation to capitalize this rent according to the rule laid down in *Dinendra Narain Roy* v *Titiuram Mookerjee I L R 30 Calc 801* in order to arrive at the share due to the landlord but where that is not the case this rule will not be sufficient and some other means of calculation must be adopted MANMOHAN DUTT v COLLECTOR OF CHITTAGONG (1912) I L R 40 Calc 64
17 C W N 1001

——— Bustee Land—Valuation—*Calcutta Municipal Act (Beng Act III of 1899) s 557 sub ss (c) (d)—Market value—Inadmissibility of evidence with regard to sales of other lands in the neighbourhood—Land Acquisition Act (I of 1894) ss 6 23* When land is compulsorily acquired any use to which the land may be put in future should not be taken into consideration in determining its value The valuation should be according to the market value at the time of the acquisition Sub s (c) of s 557 of the Municipal Act precludes evidence being given of other purposes to which *bustee* land can be put in future Evidence relating to the undertenants and rents paid by them is not relevant for the purpose of ascertaining the market value as defined by sub s (c) of s 557 of the Municipal Act *Harish Chunder Neogy* v *Secretary of State for India 11 C W N 875* followed MANINDRA CHANDRA NANDI v SECRETARY OF STATE FOR INDIA (1914)
I L R 41 Calc 967

——— Godowns used as servants residence whether part of house or building—*Acquisition of such godown alone legality of—Land Acquisition Act (I of 1894) ss 49 (1) 54—Practice—Appeal* Godowns necessary as residence for servants are part and parcel of a building [within the meaning of s 49 (1) of the Land Acquisition Act] being a most important part of that building for the purpose of letting it out to gentlemen as a place of residence The acquisition of such godowns would thus be an acquisition of a part of a house contrary to the provisions of the Act It has never been doubted that an appeal would lie in the case of such an order under that section *Hasan Molla* v *Nasiruddin I L R 39 Calc 393* distinguished DALCHAND SINGHI v THE SECRETARY OF STATE FOR INDIA (1916)
I L R 43 Calc 665

——— Court if may determine question of title—*Claims to compensation by Zemindar as against person holding under a lakhraj title—Onus of proof* A purchaser of an entire estate sold for arrears of revenue suing to recover land claimed by the defendant as *lakhraj* must prove a *primâ facie* case that his *mal* land has since 1790 been converted into *lakhraj* The fact that the lands are within the ambit of the estate is not sufficient to meet this burden Whether in a particular case the plaintiff has been able to prove such a *primâ facie* case would depend upon its own circumstances Where the question of title to a plot of land arose between claimants to compensation money paid by Government on acquisition thereof under the Land Acquisition Act one being the purchaser of the estate at a sale for arrears of land revenue whilst the other was holding it as *lakhraj* *Held* that the former was in the position of the plaintiff and the burden of proof as stated above was on him *Harihar Mookerjee* v *Mathab Chandra Babu 14 Moo I A 152* relied on A Land Acquisition Court has jurisdiction to determine a conflict of title between rival claimants KRISHNA KALYANI DASI v R BRAUNFELD (1915) 20 C W N 1028

——— Title by adverse possession—On the acquisition of a piece of land under the Land Acquisition Act it was found that the person in possession had taken possession of it on the death of the last male owner and held possession for more than 12 years without payment of rent He asserted that he held the land under another person and not under the rival claimant who was the reversionary heir of the last male owner *Held* that the person in such possession was entitled to the full compensation paid for its compulsory acquisition having acquired the right to hold the land rent free by twelve years adverse possession RAJBANS SAHAY v RAI MAHABIR PRASAD (1916) 20 C W N 828

——— Award meaning of—*Appeal—Land Acquisition Act (I of 1894) ss 49 54* A decision or determination under the Land Acquisition Act which has no reference to compensation in some form or other *is not an award* An order under s 49 of the Land Acquisition Act is not an award and is not appealable under s 54 of that Act *Dalchand Singhi* v *Secretary of State for India I L R 43 Calc 665* *Mulraj Khatau* v *Collector of Poona 15 Bom L R 802* *Seddon* v *Deputy Collector of Madras 17 Ind C 117* *Balram Bhramaratar Ray* v *Sham Sunder Narendra I L R 23 Calc 526* and *Trinayani Dasi* v *Krishnalal De 17 C W N 933* referred to SARAT CHANDRA GHOSE v THE SECRETARY OF STATE FOR INDIA (1919) I L R 46 Calc 861

——— Timber compensation for—*Division between Landlord and Tenant* By custom of the country bamboos are used in building and there

LAND ACQUISITION—*contd*

fore are Timber *Held* Landlord entitled to half compensation for the trees in this case MAHARAJA SIR RAMESWAR SINGH BAHADUR v BASUDEBA SINGH 6 Pat. L J 127

———— **Binding agreement can be made between parties fixing the amount of compensation**—*Before the Collector has made his award—Offer and acceptance by letter—Contract—Specific performance of contract—Power of Municipal Commissioner—Powers of Directors of Joint stock Companies—Collector—Award—Indian Contract Act (IX of 1872) ss 2 and 10—Land Acquisition Act (I of 1894) ss 6 (3) and (4) 11 18 30 31 48 and 51 (2)—The City of Bombay Municipal Act (III of 1888) s 61 (m) 64 69 87 90 91 92 96 and 517—Specific relief—Declaration form of* In August 1916 the plaintiffs the Municipal Corporation for the City of Bombay wishing to acquire certain property belonging to the defendant Company for the purpose of widening a street entered into negotiations with the defendants in order to arrive at the price the defendants would accept for their property No agreement having been arrived at, the plaintiffs applied to the Government to acquire the property for them by proceedings under the Land Acquisition Act. Thereafter on 12th July 1917 the defendants resumed negotiations with the plaintiffs On 26th July 1917 the usual notification was published in the *Government Gazette* On 12th September 1917 the Secretary of the defendant Company in pursuance of the previous correspondence between the parties and the interviews of their respective engineers wrote to the plaintiffs engineer — The Company is willing to accept without prejudice the sum of Rs 1 46 517 inclusive of 15 per cent for compulsory acquisition. The amount will be subject to deductions of the capitalised dues to the Collector and of the easements of the neighbouring properties if any The said letter was placed by the plaintiffs engineer before the Municipal Commissioner who endorsed on it his approval of the acceptance of the offer On the 14th September 1917 at a meeting before the Deputy Collector who held inquiry under the Land Acquisition Act the plaintiffs solicitor produced the letter of 12th September 1917 The defendants engineer stated at the meeting that the term without prejudice in their letter had no longer any force as the Municipality had accepted the proposal of the defendants Thereupon the Deputy Collector recorded the agreement between the parties and adjourned the inquiry to determine the claims of owners of adjoining premises to easements of light and air On the 22nd September 1917 the Directors of the Company passed a resolution approving of the letter of 12th September 1917 and noting that the said letter conveyed the acceptance of the plaintiffs offer by the Secretary on behalf of the Company On 23rd October 1917 the defendants through their solicitors intimated to the plaintiffs engineer that they had withdrawn the offer made by them on the 12th September 1917 The plaintiffs solicitors replied that there was a definite agreement concluded between the parties and that the defendants were not entitled to resile from the same At an adjourned meeting before the Collector held on 29th January 1918 the defendants made a formal claim of Rs. 5 71 600 as compensation and the proceedings were adjourned by the Collector The plaintiffs thereupon sued for a declaration (1) that there was a contract binding on the defendants in terms of the letter of the 12th September 1917 which had been accepted by the plaintiffs (2) that the defendants were not entitled to claim in the proceedings before the Collector any sum for compensation other than or beyond Rs 1 46 517 and (3) that if Collector awarded more the excess belonged to the plaintiff The plaintiffs also claimed them in question accordingly The defendant contended that their letter was not an offer but an invitation or in the alternative that the agreement was void for want of mutuality or was made without authority or that Government could withdraw under s 48 of the Act *Held* that the letter was an offer and not a mere invitation and that the offer and the acceptance thereof had been made by the duly authorised agents of the defendants and the plaintiff respectively *Held* further that the offer and acceptance amounted to an agreement definitely fixing the compensation as between the parties themselves whatever sum may be ultimately awarded by the Collector and with an obligation on either party to refund any excess or make good any deficiency as the case might be and that this agreement was a contract within the meaning of ss 2 and 10 of the Indian Contract Act which was capable of being specifically enforced against the defendants. *Held* also that the agreement was not wanting in mutuality nor rendered nugatory as between the parties merely because power of withdrawal was reserved to the Government under s 48 of the Land Acquisition Act The dicta of Bowen L. J in *The Moorcock (1889) 14 P D 64* at p 68 referred to FORT PRESS CO LTD v THE MUNICIPAL CORPORATION OF THE CITY OF BOMBAY (1919)

I L R 44 Bom 797

———— **Application by owner for abandonment of acquisition in consideration of special payment**—*Application—Street scheme—Submission of scheme to Government for sanction—Building sites not demarcated—Scheme* ultra vires *—Calcutta Improvement Act (Beng V of 1911) ss 39 41 and 78* There is nothing in the Calcutta Improvement Act which compels the Trust to delineate on the plan the building sites before the scheme is submitted to Government for sanction. The owner of certain premises made an application to the Board of Trustees for the Improvement of Calcutta under s 78 of the Calcutta Improvement Act for the abandonment of acquisition in consideration of special payment Such application was subsequently rejected by the Board inasmuch as the disputed property was too small to form an independent building site on a 100 feet main thoroughfare and would not fit in with the lay out *Held* that the Board came to the conclusion *bonâ fide* and as there was no evidence to show that the land was not required for the execution of the scheme within the meaning of sub s *(1)* of s 78 there was no basis for the application to the Trustees nor was there any ground for complaint in the suit for the fact that they made enquiries under sub s. (2) of s. 78 did not entitle them ultimately to reject the application on the ground that it did not come within sub s *(1)* of that section BIPIN BEHARI SEN v TRUSTEES FOR THE IMPROVEMENT OF CALCUTTA (1920) I L R 47 Calc 604

———— **Recoupment—Calcutta Improvement Act** (*Beng V of 1911) ss 42 (a) 78-49 (2)*

LAND ACQUISITION—*contd*

the meaning of the provisions of s 32 of the Land Acquisition Act Where a portion of the *debutter* property was acquired under the Land Acquisition Act and the compensation money was invested in approved securities the *shebait* is entitled to withdraw a portion of the invested funds and apply the same to effect necessary repairs to the remainder of the *debutter* property As under s 32 of the Act the compensation money is placed in the custody of the Court jurisdiction is by implication conferred upon it to deal with all questions that may arise as to the application of the fund in its custody KAMINI DEBI v PRAMATHA NATH MOOKERJEE (1911)
I L R 39 Calc 33
See Also SHEBAIT **I L R 40 Calc 895**

——— **Apportionment of Compensation-money**—*Method of Assessment—Government as landlord share of* In assessing the amount of compensation due to the landlord regard must be had to the question of how much the landlord is actually realising from the land The Government in its capacity as landlord is entitled as usual to a capitalisation of so much rent as may be found to be payable in respect of the proportion of the holding that is taken together with 15 per cent for compulsory acquisition and something more in respect of the possibility of the enhancement of the value of the land thereafter The Government is not entitled in law to a higher proportion on the ground that in similar cases it has frequently received a higher proportion either by consent of the parties or otherwise Where a *raiyat s* rent is fixed in perpetuity it would be enough in apportioning compensation to capitalize this rent according to the rule laid down in *Dinendra Narain Roy* v *Tituram Mookerjee I L R 30 Calc 801* in order to arrive at the share due to the landlord but where that is not the case this rule will not be sufficient and some other means of calculation must be adopted MANMOHAN DUTT v COLLECTOR OF CHITTAGONG (1912) **I L R 40 Calc 64**
17 C W N 1001

——— **Bustee Land—Valuation**—*Calcutta Municipal Act (Beng Act III of 1899) s 557 sub ss (c) (d)—Market value—Inadmissibility of evidence with regard to sales of other lands in the neighbourhood—Land Acquisition Act (I of 1894) s 6 23* When land is compulsorily acquired any use to which the land may be put in future should not be taken into consideration in determining its value The valuation should be according to the market value at the time of the acquisition Sub s (c) of s 557 of the Municipal Act precludes evidence being given of other purposes to which *bustee* land can be put in future Evidence relating to the undertenants and rents paid by them is not relevant for the purpose of ascertaining the market value as defined by sub s (c) of s 557 of the Municipal Act *Harish Chunder Neogy* v *Secretary of State for India 11 C W N 875* followed MANINDRA CHANDRA NANDI v SECRETARY OF STATE FOR INDIA (1914)
I L R 41 Calc 967

——— **Godowns used as servants residence whether part of house or building**—*Acquisition of such godown alone legality of—Land Acquisition Act (I of 1894) ss 49 (1) 54—Practice—Appeal* Godowns necessary as residence for servants are part and parcel of a building [within the meaning of s 49 (1) of the Land Acquisition Act] being a most important part of that building for the purpose of letting it out to gentlemen as a place of residence The acquisition of such godowns would thus be an acquisition of a part of a house contrary to the provisions of the Act It has never been doubted that an appeal would lie in the case of such an order under that section *Hasan Molla* v *Pasaruddin I L R 39 Calc 393* distinguished DALCHAND SINGHI v THE SECRETARY OF STATE FOR INDIA (1916)
I L R 43 Calc 665

——— **Court if may determine question of title**—*Claims to compensation by Zemindar as against person holding under a lakhraj title—Onus of proof* A purchaser of an entire estate sold for arrears of revenue suing to recover land claimed by the defendant as *lakhraj* must prove a *primâ facie* case that his *mal* land has since 1790 been converted into *lakhraj* The fact that the lands are within the ambit of the estate is not sufficient to meet this burden Whether in a particular case the plaintiff has been able to prove such a *primâ facie* case would depend upon its own circumstances Where the question of title to a plot of land arose between claimants to compensation money paid by Government on acquisition thereof under the Land Acquisition Act one being the purchaser of the estate at a sale for arrears of land revenue whilst the other was holding it as *lakhraj* *Held* that the former was in the position of the plaintiff and the burden of proof as stated above was on him *Harihar Mookerjee* v *Madab Chandra Babu 14 Moo I A 152* relied on A Land Acquisition Court has jurisdiction to determine a conflict of title between rival claimants KRISHNA KALYANI DASI v R BRAUNFELD (1915) **20 C W N 1028**

——— **Title by adverse possession**—On the acquisition of a piece of land under the Land Acquisition Act it was found that the person in possession had taken possession of it on the death of the last male owner and held possession for more than 12 years without payment of rent He asserted that he held the land under another person and not under the rival claimant who was the reversionary heir of the last male owner *Held* that the person in such possession was entitled to the full compensation paid for its compulsory acquisition having acquired the right to hold the land rent free by twelve years adverse possession RAJBANS SAHAY v RAI MAHABIR PRASAD (1916) **20 C W N 828**

——— **Award meaning of**—*Appeal—Land Acquisition Act (I of 1894) ss 49 54* A decision or determination under the Land Acquisition Act which has no reference to compensation in some form or other is not an award An order under s 49 of the Land Acquisition Act is not an award and is not appealable under s 54 of that Act *Dalchand Singhi* v *Secretary of State for India I L R 43 Cal 665* *Mulraj Khatau* v *Collector of Poona 19 Bom L R 502* *Seddon* v *Deputy Collector of Madras 17 Ind C 117* *Balram Lhumaratar Raj* v *Sham Sunder Narendra I L R 23 Cal 526* and *Trinayani Dassi* v *Krishnalal De 17 C W N 933* referred to SARAT CHANDRA GHOSE v THE SECRETARY OF STATE FOR INDIA (1919) **I L R 46 Calc 861**

——— **Timber compensation for**—*Division between Landlord and Tenant* By custom of the country bamboos are used in building and there

LAND ACQUISITION—*contd*

agreement was arrived at between the Municipality and plaintiff No. 2 whereby in consideration of the plaintiff No. 2 agreeing *inter alia* not to claim from the Municipal Corporation the compensation payable to himself and to pay the portion of compensation payable to two other claimants the Municipality agreed to convey to him the residue of the land acquired from him after retaining the portion necessary for the purpose of widening the street and to give in addition a certain strip of land which the Municipality were to get under an arrangement with a third party The Collector thereupon published his award. Soon after the Collector s Surveyor wrote to the Acquisition Officer of the Municipality that plaintiff No 2 had handed over to him charge of his properties and he further sent along with the letter a charge receipt for the properties and the same was signed by the Surveyor and the Acquisition Officer whereby it was recorded that they had respectively handed over and taken charge of the said properties. The Municipality thereafter served on 23rd December 1919 notices on the various defendants in the suits to vacate the premises in their occupation by the 31st December 1919 and on defendant refusal to vacate filed suits against them in ejectment *Held* that under s 16 of the Land Acquisition Act when the Collector made the award he could take possession of the land which thereupon vested absolutely in the Government free from all incumbrances that the acquisition and the resulting vesting were equally effective and complete in the case of acquisition undertaken by Government on the application of the Municipal Commissioner under s. 91 of the City of Bombay Municipal Act which *pro tanto* modified the provisions of the Land Acquisition Act so as to vest the property in the Corporation instead of in the Government on the payment of compensation awarded and that no transfer from Government to the Corporation was needed *Held* further that the provisions of s 31 of the Land Acquisition Act did not apply in the case of acquisitions made by virtue of the provisions of s 91 of the City of Bombay Municipal Act and payment of the compensation amount by the Commissioner was enough *Held* also that in the case of acquisitions under s 91 of the City of Bombay Municipal Act the taking of possession by the Collector and his handing over the same to the Municipality was not necessary inasmuch as the property vested directly in the Corporation without the intervention of the Government or the Collector and the Corporation became entitled to take possession and that if actual possession was required the same was given by the Collector to the Municipality as evidenced by the signing of the charge receipt *Held* further (1) that the general provisions of the Rent Act could not be held by implication to repeal and override particular and special enactments like the Land Acquisition Act and the Municipal Act inasmuch as the whole object of such an acquisition was to get the land immediately for useful public purposes and it would be defeating that object to lay down that the public body acquiring the land was not entitled to immediate possession and (2) that assuming the Rent Act applied the premises were required by the Municipality for a satisfactory cause in order to enable them to carry out the whole scheme and to fulfil their obligation under the agreement with plaintiff No 2 *Dodds* v *Shepler I* (1876) *1 Ex D* 75 *at p* 78 followed *Held* further that on compulsory acquisition of the premises the lease of *D* terminated and that on such determination the monthly tenancies of the defendants as underlessees of *D* also came to an end with the result that the defendants thereafter remained on the premises merely as tenants on sufferance and were not entitled to a month s notice PER SETALVAD J —S 296 of the City of Bombay Municipal Act expressly empowers the Municipality to acquire in addition to the land actually required for widening any public street all such land and buildings outside the intended regular line of such street as it shall deem expedient and to sell such additional land THE MUNICIPAL COMMISSIONER FOR THE CITY OF BOMBAY *v* M DAMODAR BROTHERS (1920) **I L R 45 Bom 725**

LAND ACQUISITION ACT (I OF 1894)

See APPEAL TO PRIVY COUNCIL
I L R 40 Calc 21

See BOMBAY CITY MUNICIPAL ACT (BOM ACT III OF 1888 AS AMENDED BY BOM ACT V OF 1905) ss 297 299 301 **I L R 42 Bom 462**

See INTEREST **I L R 35 Bom 255**

See LIMITATION ACT 1908 SCH I ARTS. 120 132 141 and 144 **3 Pat L J 522**

See MADRAS ESTATES LAND ACT (I OF 1908) s 6 SUB S (6) AND s 8
I L R 39 Mad 944

See RAILWAY COMPANY
I L R 43 I A 310

See RAILWAYS ACT (IX OF 1890 AS AMENDED BY ACT IX OF 1896) s 7
I L R 41 Bom 291

———— award whether a decree—

See LETTERS PATENT CLS 15 36
I L R 41 Mad 943

———— proceedings under—

See APPEAL TO PRIVY COUNCIL.
I L R 40 Calc 21

1 ———— Compensation—*Valuation of residential property—Element to be considered—Evidence before Acquisition Officer—Practice* The income of a property whether actual or imaginary is no doubt one of the recognised starting points for a valuation but it is a mistake to think that it is the only element to be taken into consideration In the case of residential to endeavour to arrive at the market value the basis of an hypothetical rent may work injustice to the owner There are co which may possess a value in the market the return they give on capital invested advantages and enjoyment which a their possession Residential pro sense of property which a purchaser quire for his own residence, is such The first question to determine is who a demand, and if there is a co t is the most important ation It is the duty of legal ing before the Acquisition arrivin at a valuation by the information and materials *In the matter of* LAND *matter of* GOVERNMENT AND

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LAND ACQUISITION—*contd*

122—Street scheme— Affected meaning of On the construction of s 42 (a) of the Calcutta Improvement Act 1911 their Lordships of the Judicial Committee *held* that there was no limitation of severance either in that section or in s 78 and there was no ground for implying any limitation as affecting the authority of the Board of Trustees for the acquisition of land under s 42 The result in the opinion of their Lordships was that none of the suggested limitations to the usual and normal meaning of the word affected in s 42 was admissible and that there was no reason either in the general purpose of the Act or in the special context that the word should not be construed in its ordinary sense and that as so construed s 42 authorised the acquisition of the land of the respondent which was inserted in the scheme because in the opinion of the Board it would be enhanced in value by its execution TRUSTEES FOR THE IMPROVEMENT OF CALCUTTA *v* CHANDRA KANTA GHOSH (1919)

I L R 47 Calc 500

OVERRULING **I L R 44 Calc 219**

———— **Piecemeal acquisition**—*Land Acquisition Act (I of 1894) ss 6 to 11* Where there is one holding there cannot be piecemeal acquisition as the Land Acquisition Act refers only to one notice one proceeding and one award to be given taken and made regarding one holding and one ownership But when the Collector in obedience to the decision of a Court to which he was subject desisted pending an appeal from that decision from proceeding with the acquisition of the portion of the premises affected by that decision he is not thereby debarred from further proceeding with the acquisition when a Court superior to that which gave the decision declared the latter to be erroneous R C SEN *v* THE TRUSTEES FOR THE IMPROVEMENT OF CALCUTTA AND THE LAND ACQUISITION COLLECTOR OF CALCUTTA (1921) **I L R 48 Calc 892**

———— **Calcutta Improvement Act**—*(Beng V of 1911)—Calcutta Municipal Act (Beng III of 1899) ss 20 357 556—Land Acquisition Act (I of 1894) ss 6(3) 5—Evidence Act (I of 1872 s 4 —Proceedings before Land Acquisition Collector —High Court power of to restrain further proceedings—Specific Relief Act (I of 1877) s 15 (e)* In an application under s 4 of the Specific Relief Act by the owner of certain premises to restrain the Corporation and the Improvement Trust from taking further steps in the proceedings then pending before the Acquisition Collector in the acquisition of the said premises by the Corporation under a Government notification in terms of s 6 of the Land Acquisition Act it was found having regard to the absence of a sanctioned project on the part of the Corporation or of a scheme on the part of the Trust and having regard to the fact that the Corporation was to acquire and the Trust was to pay that notwithstanding a Government notification under s 6 of the Land Acquisition Act the acquisition proceedings should not be continued —*Held* that though the notification under s 6 of the Land Acquisition Act is conclusive so far as s 4 of the Evidence Act considered yet the Court is entitled to enquire into the validity of the steps leading up to the recommendation and was competent to inquire into the legality or otherwise of the acts of the Corporation and the Trust *Held* also that special powers of the Corporation for purposes of acquiring land cannot be used to enable another body to acquire land through them however estimable the purpose The power to acquire is limited to cases where the Corporation itself undertakes the work It was observed that it is to be assumed that the Local Government and the Land Acquisition authorities will stay their hands in view of a decision of the Court and not be parties to what may be held to be illegal and *ultra vires* action MANICK CHAND MAHATA *In re v* THE CORPORATION OF CALCUTTA AND THE CALCUTTA IMPROVEMENT TRUST (1921)

I L R 48 Calc 916

———— **Assessment of compensation**—*Prospective user it may be taken into account—Land not capable of use as independent brickfield but wanted for inclusion in existing brick fields if may be valued as brick field land* Tribunals assessing compensation must take into account not only the present purpose to which the land is applied but also any other more beneficial purpose to which in the course of events it might within a reasonable period be applied just as an owner might do if he were bargaining with a purchaser in the market Where it appeared that the lands acquired could not profitably be used as independent brickfields but there was trust worthy evidence to show that if the acquired lands had been thrown into the market adjoining brick field owners would have come forward to purchase them or take leases of them for inclusion in their brick fields *Held*—That the Court was justified in assessing the value of the lands as brick field lands Too much importance must not be attached to evidence of offers in ascertaining the market value of land but the position is different when the question is whether there is a market at all for a tract of land for use for a specified purpose MOHINI MOHAN BANERJEE *v* THE SECRETARY OF STATE FOR INDIA **25 C W N 1002**

———— **City of Bombay Municipal Act** *(III of 1888) ss 91 and 296—Land Acquisition Act (I of 1894) ss 16 and 31—Land acquired by the Government of Bombay at the instance of Municipality—Effect of acquisition—Vesting of land in Municipality—Municipality empowered to acquire land in addition to that required for its scheme and to sell such additional land—Bombay Rent (War Restrictions) Act II of 1918 s 9—Bombay Rent Act does not override general provisions of the Land Acquisition Act or the Municipal Act— Sufficient Cause within the meaning of s 9 of the Rent Act—Lease for fixed period terminal on compulsory acquisition—Monthly tenants under the original lessee—Tenants on sufferance not entitled to a month's notice—Ejectment* In pursuance of a scheme for the widening of a street within the Fort the Municipal Corporation of the City of Bombay plaintiff No 1 moved the Government of Bombay to acquire certain buildings on behalf of the Corporation under the Land Acquisition Act The Governor in Council thereupon issued the necessary notification for the acquisition of the said buildings Plaintiff No 2 was the owner of the buildings in the five suits and he had leased them to *D* for a period of three years from 1st November 1917 *D* let out different portions of the buildings to the several defendants in the suits on monthly tenancies By the time the proceedings before the Collector terminated but before the award was actually published an

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agreement was arrived at between the Municipality and plaintiff No. 2 whereby in consideration of the plaintiff No. 2 agreeing *inter alia* not to claim from the Municipal Corporation the compensation payable to himself and to pay the portion of compensation payable to two other claimants the Municipality agreed to convey to him the residue of the land acquired from him after retaining the portion necessary for the purpose of widening the street and to give in addition a certain strip of land which the Municipality were to get under an arrangement with a third party. The Collector thereupon published his award. Soon after the Collector's Surveyor wrote to the Acquisition Officer of the Municipality that plaintiff No. 2 had handed over to him charge of his properties and he further sent along with the letter a charge receipt for the properties and the same was signed by the Surveyor and the Acquisition Officer whereby it was recorded that they had respectively handed over and taken charge of the said properties. The Municipality thereafter served on 23rd December 1919 notices on the various defendants in the suits to vacate the premises in their occupation by the 31st December 1919 and on defendants' refusal to vacate filed suits against them in ejectment. *Held* that under s. 16 of the Land Acquisition Act when the Collector made the award he could take possession of the land which thereupon vested absolutely in the Government free from all incumbrances; that the acquisition and the resulting vesting were equally effective and complete in the case of acquisition undertaken by Government on the application of the Municipal Commissioner under s. 91 of the City of Bombay Municipal Act which *pro tanto* modified the provisions of the Land Acquisition Act so as to vest the property in the Corporation instead of in the Government on the payment of compensation awarded and that no transfer from Government to the Corporation was needed. *Held* further that the provisions of s. 31 of the Land Acquisition Act did not apply in the case of acquisitions made by virtue of the provisions of s. 91 of the City of Bombay Municipal Act and payment of the compensation amount by the Commissioner was enough. *Held* also that in the case of acquisitions under s. 91 of the City of Bombay Municipal Act the taking of possession by the Collector and his handing over the same to the Municipality was not necessary inasmuch as the property vested directly in the Corporation without the intervention of the Government or the Collector and the Corporation became entitled to take possession and that if actual possession was required the same was given by the Collector to the Municipality as evidenced by the signing of the charge receipt. *Held* further (1) that the general provisions of the Rent Act could not be held by implication to repeal and override particular and special enactments like the Land Acquisition Act and the Municipal Act inasmuch as the whole object of such an acquisition was to get the land immediately for useful public purposes and it would be defeating that object to lay down that the public body acquiring the land was not entitled to immediate possession and (2) that assuming the Rent Act applied the premises were required by the Municipality for a satisfactory cause in order to enable them to carry out the whole scheme and to fulfil their obligation under the agreement with plaintiff No. 2. *Dodds v. Shepherd (1876) 1 Ex. D. 75* at p. 78 followed. *Held* further that on the compulsory acquisition of the premises the lease of *D* terminated and that on such determination the monthly tenancies of the defendants as underlessees of *D* also came to an end with the result that the defendants thereafter remained on the premises merely as tenants on sufferance and were not entitled to a month's notice. PER SETALVAD J.—S. 296 of the City of Bombay Municipal Act expressly empowers the Municipality to acquire in addition to the land actually required for widening any public street all such land and buildings outside the intended regular line of such street as it shall deem expedient and to sell such additional land. THE MUNICIPAL COMMISSIONER FOR THE CITY OF BOMBAY v. M. DAMODAR BROTHERS (1920) I. L. R. 45 Bom. 725

LAND ACQUISITION ACT (I OF 1894)

See APPEAL TO PRIVY COUNCIL I. L. R. 40 Calc. 21

See BOMBAY CITY MUNICIPAL ACT (BOM. ACT III OF 1888 AS AMENDED BY BOM. ACT V OF 1905) ss. 297, 299, 301 I. L. R. 42 Bom. 462

See INTEREST I. L. R. 35 Bom. 255

See LIMITATION ACT 1908 SCH. I ARTS. 120, 132, 141 and 144 3 Pat. L. J. 522

See MADRAS ESTATES LAND ACT (I OF 1908) s. 6 SUB-S. (6) AND s. 8 I. L. R. 39 Mad. 944

See RAILWAY COMPANY I. L. R. 43 I. A. 310

See RAILWAYS ACT (IX OF 1890 AS AMENDED BY ACT IX OF 1896) s. 7 I. L. R. 41 Bom. 291

———— award whether a decree—

See LETTERS PATENT CLS. 15, 36 I. L. R. 41 Mad. 943

———— proceedings under—

See APPEAL TO PRIVY COUNCIL I. L. R. 40 Calc. 21

1. ———— Compensation—*Valuation of residential property—Element to be considered—Evidence before Acquisition Officer—Practice.* The income of a property whether actual or imaginary is no doubt one of the recognised starting points for a valuation but it is a mistake to think that it is the only element to be taken into consideration. In the case of residential property to endeavour to arrive at the market value solely on the basis of an hypothetical rent may work grave injustice to the owner. There are commodities which may possess a value in the market not for the return they give on capital invested but for the advantages and enjoyment which accrue from their possession. Residential property in the sense of property which a purchaser wishes to acquire for his own residence is such a commodity. The first question to determine is whether there is a demand and if there is a demand the original cost is the most important element for consideration. It is the duty of legal practitioner[s appear]ing before the Acquisition Officer to assist him [in] arriving at a valuation by putting before him the information and materials at their [disposal.] *In the matter of* LAND ACQUISITION ACT[; In the] *matter of* GOVERNMENT AND SUKHANAND ([19]1[1]) I. L. R. 34

LAND ACQUISITION ACT (I OF 18°4)—*contd*

2 ———— Land —*Acquisition of out standing interest where Government owns fee simple* Per CHANDAVARKAR J —To acquire a land [Sc under the Land Acquisition Act] is not necessarily the same thing as to purchase the right of fee simple to it but means the purchase of such interests as clog the right of Government to use it for any purpose they like The definition given to the word land in s 3 (a) of the Act is not exhaustive The use of the inclusive verb includes shows that the Legislature intended to lump together in one single expression—viz, land —several things or particulars such as the soil the buildings on it any charges on it and other interests in it all of which have a separate existence and are capable of being dealt with either in a mass or separately as the exigencies of each case arising under the Act may require Per BATCHELOR J —Government are not debarred from acquiring and paying for the only outstanding interests merely because the Act which primarily contemplates all interests as held outside Government directs that the entire compensation based upon the market value of the whole land must be distributed among the claimants In such circumstances there is no insuperable objection to adopting the procedure to the case on the footing that the outstanding interests which are the only things to be acquired are the only things to be paid for *In the matter of the* LAND ACQUISITION ACT THE GOVERNMENT OF BOMBAY *v* ESUFALI SALEBHAI I L R 34 Bom 618

3 ———— Collector s award—*Government directing Collector to publish his award on a lower valuation* When the Collector appointed under the Land Acquisition Act of 1894 once makes the enquiry prescribed by the Act and reaches his own conclusion as to the amount of compensation to be awarded to the claimant it is not competent to the Government to set aside the conclusion and to direct the Collector to substitute a smaller amount than that which as the result of his inquiry he has determined to offer DOSSABAI BEJANJI *v* THE SPECIAL OFFICER SALSETTE BUILDING SITES (1912)

I L R 36 Bom 599

4 ———— Apportionment of compensation—*Between zamindar and occupancy ryot principles of—Value of trees on land acquired to be given to whom* In making an apportionment of compensation for land awarded under the Land Acquisition Act between a zamindar and his occupancy tenant several factors are to be taken into consideration for determining their respective rights in the land such as expenses of cultivation the fact that the cultivator has a home and a sphere for labour for himself and his family and the nature of the tenure The principle of *Appasami Mudali* v *Rangappa Nattan I L R 4 Mad 367* applied This decision which apportioned on the facts of that case three fifths to the zamindar and two fifths to the ryots was not intended to lay down a general rule applicable to all cases On the facts of this case their Lordships affirmed the decision of the lower Court which apportioned the compensation given for land in the ratio of three fifths to the ryots and two fifths to the zamindar *Raja Vommadevara Venkatanarasimha Naidu Bahadur* v *Lakshmanna (Appeal No 119 of 1893)* *Sh ma Irosunno Bose Mozumdar* v *Iraloda Sundari Dasi I L R 28 Calc 146 Dinendra Nath Roy* v *Titram Mukerjee I L R 30 Calc 801* *Bhupa* v *Roy* v *Secretary of State 5 C L J 662* and *Satis Chandra Chottopadhyaya* v *Rai Jatindra Nath Choudhury 7 C L J 284* distinguished On a consideration of the whole evidence in the case their Lordships affirmed the decision of the lower Court which gave to the ryots the whole value of the trees (fruit) trees that stood upon the land which was compulsorily acquired *Narayana Ayyangar* v *Orr I L R 26 Mad 252* and *Bodda Goddeppa* v *The Maharaja of Vizianagram I L R 30 Mad 155* distinguished *Per* CURIA Proceedings under part III of the Act are not by way of appeal and what is contemplated is a new enquiry by the District Judge BAMMADEVARA VENKATANARASIMHA NAIDU *v* SUBBARAYUDU (1913) I L R 36 Mad 395

5 ———— Special adaptability of land for purpose required—Where a piece of land is compulsorily acquired by Government for quarrying purposes its special adaptability for quarrying is an element for consideration in fixing the amount of compensation DAYA KHUSHAL *v* ASSISTANT COLLECTOR SURAT (1913) I L R 38 Bom 37

6 ———— Noabad Mehal property—*Acquisition of—Apportionment of compensation between Government and claimant—Basis of calculation of value of Government interest—Chance of enhancement of rent value of* A Noabad Mehal held under Government implies a hereditary and transferable title in perpetuity subject to payment of rent for all lands under cultivation Where certain properties included in a Noabad Mehal held under the Government were acquired under the Land Acquisition Act *Held* that the mere fact that the rent was enhancible did not justify the Court awarding half the compensation money to Government as Government would not in ordinary course increase the assessment unless the assets of the property also increased That the interest of the Government ought to be measured by capitalising the present rent at 20 years purchase JOGESH CHANDRA RAY *v* THE SECRETARY OF STATE FOR INDIA (1912)

18 C W N 531

7 ———— Objection to award by one of two claimants—*Other claimant if entitled to any portion of the excess amount allowed by Judge on reference* When in a proceeding under the Land Acquisition Act the tenants accepted the Collector s valuation but the landlord objected to it and asked for a reference and the Judge allowed an excess amount representing all the interests in the land *Held* that the tenants were not entitled to any portion of the excess amount allowed by the Judge SECRETARY OF STATE FOR INDIA *v* MANOHAR MUKHERJEE (1918)

23 C W N 720

8 ———— Acquisition of lands for building purposes—*Wet lands in a zamindari—Occupancy rights of tenants included—Valuation of lands mode of—Interests of zamindar and tenant how valued—Apportionment of compensation—Land whether to be valued merely as wet lands or as house site* Where wet lands in a zamindari are acquired by the Government under the Land Acquisition Act for extension of the village site the lands have to be valued in the first instance including all interests in it and the amount so ascertained has then to be apportioned among the parties interested accord

LAND ACQUISITION ACT (I OF 1894)—*contd*

ing to the interest The proper way of valuing lands with occupancy rights is to ascertain what would be their market value if they were put to the most lucrative use having regard to their condition and when they are acquired for building purposes they ought to be valued as building sites and not merely as wet lands the fact that neither the landlord nor the tenant can utilise the lands for building purposes without the concurrence of the other does not make any difference *Collector of Ernakulam v Thimmamma* ... *Raja of Pittapuram v The Revenue Divisional Officer Cocanada* Appeals Nos. 3 1 and 3 2 of 1916 (unreported) dissented from RAJA OF PITTAPURAM v THE REVENUE DIVISIONAL OFFICER COCANADA (1919) I L R 42 Mad 644

9 ——————— Compensation — The Government acquired certain land containing gravel and laterite for the gravel for which it had been paying the owner at the rate of six annas *per* hundred feet. Compensation was assessed on the basis of the average income which had actually been obtained by the owner from lands of this description. On objection that the compensation should have been based upon the value of the entire quantity of gravel and laterite contained in the land at the rate of six annas *per* hundred cubic feet *held* that the basis upon which compensation had been assessed was correct BIHARAR NARAYAN CHANDRA DHIR NARENDRA v THE COLLECTOR 2 Pat L J 147

10 ——————— *Acquisition of land for quarrying—Principle of compensation—Value of prospective gravel* When a piece of land is compulsorily acquired for quarrying purposes its special adaptability for quarrying is an element for consideration in fixing the amount of compensation in spite of the fact that no one but the local authority for which the acquisition was made ever made any demand for the land as a quarry and it is not right to award compensation for it only as cultivable land *Dija Khusal v Assistant Collector Surat (1914) I L R 38 Bom 37* followed Judgment of MOULTON L J in *In re Lucas and Chesterfield Gas and Water Board [1909] 1 K B 16 at 30 31* distinguished The amount of compensation to be awarded is the present value of all the gravel that might be expected to be realized in the future RAGHUNATHA ROW v SECRETARY OF STATE FOR INDIA (1921) I L R 44 Mad 261

——— s 3(a)—

——————— *Per* CHANDAVARKAR J To acquire land is not necessarily the same thing as to purchase the right of the fee simple in it but means the purchase of such interests a clog the right of Government to use it for any purpose they like THE GOVERNMENT OF BOMBAY v ESUFALI SALEBHAI I L R 34 Bom 618

——————— *Land situated in cantonment limits—...for building ...Government ...apportionment of compensation between claimant and Government—valuation of claim*—Ad valorem *Court fee on memo of appeal—Court Fees Act (VII of 1870) s 8* The claimant owned a bungalow which stood within the limits of Ahmedabad cantonment The Government having acquired the bungalow under the Land Acquisition Act the claimant was awarded Rs 4 500 as compensation for the superstructure of the bungalow and Rs 18 631 were awarded to Government as compensation for the land on the footing that the land being within cantonment limits belonged to Government The claimant appealed to the High Court contending first that the superstructure was undervalued and secondly that he was entitled to the full compensation for land also inasmuch as under the provisions of the Land Acquisition Act the Court had no jurisdiction to try any question of title or apportionment between the claimant and Government The memorandum of appeal bore a Court fee stamp of Rs. 2 only as the claim in appeal was treated as one of apportionment of compensation between the claimant and Government A preliminary point having been raised whether the memorandum of appeal was properly stamped —*Held* by *Shah* and *Hayward* JJ that the memorandum of appeal should bear Court fee stamp *ad valorem* on the value of the land claimed since what was styled as apportionment was really the determination of the amount payable by Government to claimant for the land On the question whether proceedings under the Land Acquisition Act were proper to determine compensation when the land was claimed by Government —*Held* by *Shah* and *Crump* JJ that in a proceeding under the Land Acquisition Act it is competent to the Court to adjudicate on any question of title to the land acquired or to apportion the amount of compensation for it as between the claimant and Government *The Government of Bombay v Esufali Salebhai (1909) 34 Bom 618* approved *Per* SHAH J —Under the Land Acquisition Act what is acquired is the land which includes all that is stated in clause (*a*) of s 3 of the Land Acquisition Act *But in the case of any land with superstructure thereon in which either the Government have an limited interest or wherein that interest is a matter of dispute between a claimant interested in the property and the Government it is open to the Government to acquire that property under the Act When it comes to a question of determining the market value of the property acquired and the amount payable as compensation for the property ... to the person having a limited interest in the property it is open to the Court to determine what sum is ... payable to the claimant ... The question of title ... is really incidental to this question of the determination of the market value of the interest of the claimant in the land acquired MANSALAL ... THE ASSISTANT COLLECTOR OF PRANT AHMEDABAD (1920) I L R 45 Bom 277

——— ss 3 (b) 11 and 31 (1) and (2)—*Compensation moneys deposited in Court under s 31 (2)—Claim of Government to deduct poundage and fees paid by Government on such deposit out of the moneys deposited—Person interested in compensation moneys—Compensation money how to be apportioned among* Government sought under the Land Acquisition Act (I of 1894) to acquire a piece of land vested in the City of Bombay Im-

LAND ACQUISITION ACT (I OF 1894)—*contd*

——— s 3 (b)—*contd*

provement Trust under Schedule Q of Bombay Act IV of 1898 and in the occupation of one Pestonji Jehangir under an agreement with the Improvement Trust under which he had the right to obtain a lease of the land for 99 years when certain buildings had been erected in accordance with the terms of he said agreement The amount payable as compensation for the land was fixed by the Collector under s 11 of the Act and was apportioned under the same section between the Government the Improvement Trust and Pestonji Jehangir The amount awarded to the Improvement Trust was deposited by the Collector in Court under s 31 (2) of the Act and poundage and fees thereon were paid by Government Pestonji Jehangir raised objections to the basis on which his claim had been valued but this matter was settled by a consent decree Government thereon claimed to deduct the amount of the poundage and fees paid by them from the amount deposited in Court *Held* that the Court had only power to direct payment of the compensation money without any deduction to the person or persons interested therein and consequently had no power to direct that portion of such money should be refunded to Government as representing the poundage and fees paid by them when the money was deposited in Court *Semble* It is possible for a person to be interested in the compensation money within the meaning of cl 11 of the Act without having an interest in the land in the legal sense of the term and that the Collector and the Court should apportion the sum awarded among the persons interested as far as possible in proportion to the value of their interests the market value of which might afford some guide as to the amount to be apportioned in respect of that interest but only considered in relation to the total sum awarded as compensation PESTONJI JEHANGIR MODI *In the matter of* (1911)

I L R 37 Bom 76

——— s 3 (b), 18

——— *Award of compensation by Revenue Divisional Officer—Application for reference to Court—Person claiming interest—Power of Collector to refuse to refer—Order refusing reference—Judicial or administrative order—Revision petition to High Court—Power of High Court to revise—Civil Procedure Code (Act V of 1908) s 115—Government of India Act (5 & 6 Geo 5 Cap 61) s 107* An order passed by a Revenue Divisional Officer dismissing an application under s 18 of the Land Acquisition Act (I of 1894) for a reference to the Court regarding his award of compensation for certain lands is a judicial order and is subject to revision by the High Court *The Administrator General of Bengal v The Land Acquisition Collector 12 C W N 241* followed *Best & Co v Deputy Collector of Madras 20 M L T 388* dissented from S 18 read with s 3 (b) of the Act enables any person claiming an interest in the compensation who has not accepted the award to require a reference to the Court It is no part of the Collector's duty to decide whether the claim is well founded and he is not authorised to refuse to make the reference merely because he may think the claim is not well founded PARAMESWARA AIYAR v LAND ACQUISITION COLLECTOR PALGHAT (1918)

I L R 42 Mad. 231

LAND ACQUISITION ACT (I OF 1894)—*contd*

——— ss 3 (f), 6—

"Public Purpose" meaning of

——— The provision of a suitable house for Government Officers in Bombay held to be a public purpose HAMABAI FRAMJEE v SECRETARY OF STATE

I L R 39 Bom 279

——— s 6—

See s 3

I L R 39 Bom 279

See LAND ACQUISITION

I L R 48 Calc 892 916

——— ss 6 (3) (7), 11 18 25 31 48 and 41 (2)—

See LAND ACQUISITION

I L R 44 Bom 797

——— *ss* 6 9, 23 (1) (4) 24 (6) 48—

See RECOUPMENT

I L R 45 Calc 343

——— ss 6 23—

See LAND ACQUISITION

I L R 41 Calc 967

——— s 7—

See RAILWAYS ACT (IX OF 1890) s 7

I L R 38 Bom 565

I L R 41 Bom 291

——— s 9—

See LAND ACQUISITION

I L R 48 Calc 892

——— *Procedure—Occupier of land sought to be compulsorily acquired—Notice Under s 9 cl (3) of the Land Acquisition Act 1894* the occupier of land concerning which a public notice has been given under cl (1) of the section is entitled to such notice as will give him in the same manner as the persons mentioned in cl (2) fifteen days interval in which to state before the Collector the nature of his interest in the land and the particulars of his claim for compensation etc KRISHNA SAH v THE COLLECTOR OF BAREILLY (1917)

I L R 39 All 534

——— s 9 to 21 50 53—

See LAND ACQUISITION

I L R 38 Calc 230

——— ss 9 18 25—*Effect of omission of owner to state his claim under s 9—Reference under s 18—Limitation of powers of Judge* The facts that there had been previous negotiations between the Government and a person whose land the Government wished to acquire and that the Government was aware of the price which the owner had asked for the land would not afford a sufficient reason for the owner omitting to put in any claim under s 9 of the Land Acquisition Act 1894 nor relieve the owner from the consequence of such omission as set forth in s 25 NARAIN DAT v THE SUPERINTENDENT OF DEHRA DUN (1914)

I L R 37 All 69

——— ss 9 25—*Omission to state in answer to notice—Owner not entitled to claim more than what was awarded by the acquisition officer* It is intended by s 9 cl ( ) of the Land Acquisition Act that the owner of property about to be acquired should appear and state his claim in the manner provided by the clause so as to enable the acquis-

LAND ACQUISITION ACT (I OF 1894)—*contd*

——— ss 9 25—*contd*

tion officer to make a fair reasonable and proper award based upon a proper inquiry after the proper means have been placed before him for holding such inquiry S 25 cl (2) makes the refusal or omission to comply with the provisions of s 1 (2) without sufficient cause an absolute bar to the obtaining of a greater sum than that awarded by the Collector SECRETARY OF STATE FOR INDIA v BISHAN DAT (1911)

I L R 33 All 376

——— *Claim of owner filed beyond time but no objection raised before Judge—Objection not entertainable in appeal* In a case under the Land Acquisition Act the owner s claim was not filed until after the period prescribed therefor but no objection was taken on that score before the Collector *Held* that it was too late to raise the objection when the case had come in appeal before the District Judge LACHMAN PRASAD v SECRETARY OF STATE FOR INDIA IN COUNCIL I L R 48 All 652

——— When a claimant appeared before the Collector on the date specified in a notice under s 9 and probably made a verbal statement but filed his petition of claim next day held that this was sufficient compliance with the notice under s. 9 or alternately sufficient reason under s. 25 GYANENDRA NATH PAL v SECRETARY OF STATE FOR INDIA 25 C W N 71

——— ss 9 (3) and 45—*Notice of award—Want of notice of acquisition proceedings* The Collector s failure to serve notice of the intended acquisition on the occupier or owner as required by ss 9 (3 and 45 of the Land Acquisition Act does not make the subsequent proceedings such as the award void so as to entitle the owner or occupier to resist a suit in ejectment *Ganga Ram Marwari v Secretary of State for India (1903)* I L R *30 Calc 576* followed KASTURI PILLAI v MUNICIPAL COUNCIL ERODE (1920)

I L R 43 Mad 280

——— s 11

See s 3

I L R 37 Bom 76

See LAND ACQUISITION

I L R 44 Bom 797
I L R 48 Calc 892
15 C W N 87

——— *Apportionment of compensation by Collector—S 18 and proviso to s 31 cl (2) maintainability of a separate suit by a person dissatisfied with the apportionment but who did not ask for reference to Court* Some lands were acquired for a Railway and the Collector after serving notice under s 9 of the Land Acquisition Act on the zamindar and the *putnidar* apportioned the compensation half and half between them Neither party applied for any reference to Court under s 18 of the Act and the *putnidar* withdrew the amount awarded to him The zamindar thereupon brought a suit for recovery of the amount withdrawn by the *putnidar* on the ground that under the *putni kabuliyat* the *putnidar* was not entitled to any portion of the compensation money *Held*—That the zamindar having been served with notice under s 9 of the Act was bound to apply for a reference under s 18 when he was dissatisfied with the award and he cannot maintain a suit in the ordinary Civil Court to re open the question The Act creates a special jurisdiction and provides a special remedy And ordinarily when jurisdiction has been conferred upon a special Court for the investigation of matters which may possibly be in controversy such jurisdiction is exclusive and the ordinary jurisdiction of the Civil Court is ousted Under the third proviso to s 31 cl (2) a person who was a party to the apportionment proceedings cannot re open the question by a regular suit The proviso must be given a limited application and it applies only to cases where the person was under a disability or was not served with notice of the proceedings before the Collector SAIBESH CHANDRA SARKAR v SIR BEJOY CHAND MAHATAB BAHADUR

26 C W N 506

——— ss 11 and 12—A person in possession without payment of rent for 12 years preferred to collateral heir of last male owner RAJ BUNS SAHAY v MAHABIR PRASAD 20 C W N 828

——— ss 11 12 18 31—

See BOMBAY CITY IMPROVEMENT TRUST ACT (BOM ACT IV OF 1898) s 48 (11) I L R 42 Bom 54

——— s 18—

See s 3

I L R 42 Mad 231

See LAND ACQUISITION ACT

I L R 34 Bom 486

See LAND ACQUISITION

I L R 38 Calc 230
I L R 44 Bom 797

1 ——— *Hereditary Offices Act (Bom Act III of 1874) ss 10 and 13—Maharki Vatan land—Acquisition by Government—Award—Compensation—Title by adverse possession against Vatandars—Collector s certificate—Jurisdiction* Certain land with buildings thereon having been acquired by Government under the Land Acquisition Act (I of 1894) the Assistant Collector passed an award whereby he awarded by way of compensation one sum to the owner of the buildings on the land and another to certain Mahar Vatandars on account of the land being Maharki Vatan The owner of the buildings having objected to award the Assistant Collector at the instance of the objector referred the matter to the District Court under s. 18 of the Act The District Judge found that the objector had acquired title to the land by adverse possession and thus became entitled to the compensation on account of the land as against the Mahar claimants. Subsequently the Collector forwarded to the District Court a certificate issued under s 10 of the Hereditary Offices Act (Bom Act III of 1874) that the order for the payment of the compensation to the objector should be set aside in accordance with the provisions of ss 10 and 13 of the Act Thereupon the District Judge holding that he had no jurisdiction to decide whether the property was Vatan or not in the face of the Collector s certificate cancelled his order The objector having appealed against the said order *Held* restoring the award of the District Court that an award under the Land Acquisition Act (I of 1894) was not a decree or order capable of execution under the Civil Procedure Code (Act V of 1908) and was therefore not within the purview of s. 10

LAND ACQUISITION ACT (I OF 1894)—*contd*

—— ss 18—*contd*

of the Hereditary Offices Act (Bom Act III of 1874) *Held* further that the award of the District Court which was the cau e of the certificate made it clear that the Mahar s property had been acquired by the objector by adv rse pos es ion before the com mencement of the proceedings for the acqu sition of the land by Government *Per curiam* Even if it could be said that there was any danger of the passing of the ownership by virtue or in execution of a d cree or order in the Land Acquisition pro ceedings it could not be said that that result was arrived at without the sanction of Government who set the machin ry of the Act in motion for the acquisition of the land *Nilkanth* v *The Collector of Thana I L R 22 Bom 802* *Collector of Thana* v *Bhaskar Mahadev I L R 8 Bom 264* *Rachapa* v *Amingovda I L R* 5 *Bom 283* referred to LADDHA EBRAHIM AND CO v THE ASSISTANT COLLECTOR POONA (1910)

I L R 35 Bom 146

2 —— *Money paid out to one party before reference heard—Power of Court to entertain reference—Inherent power to recover the money* The mere fact that the compensation money awarded under the Land Acquisition Act has been paid out to a party does not oust the jurisdiction of the Civil Court to entertain a refer ence duly made under s 18 of the Act Where the party to whom the money had been paid is found to have no title to receive it the Court to which the reference has been made has inherent power to recall it In this case the High Court directed that on failure of the party to restore the money within a time limited the other party would be entitled to recover it in execution JOGESH CHANDRA RAY v YAKUB ALI (1912)

17 C W N 1057

3 —— *Reference to Court for valuation—Duty of Court to see whether the evidence displaces Collector s Award—Effect when evidence exaggerated and reckless* Compensation pay able for land acquired by Government cannot be ascertained with mathematical accuracy and the Court has to see whether the evidence adduced displaces the amount awarded by the Collector The valuation of the Collector is not displaced by evidence of value given by the claimant which is so exaggerated and reckless that no reliance can be pla ed thereon HIGGINS v SECRETARY OF STATE FOR INDIA (191)

22 C W N 659

4 —— *Application by claimant for reference on the ground of inadequacy of award—Reference if bad because grounds not given in detail* There is nothing in the Land Acquisition Act which requires a claimant to state the grounds in detail upon which in applying for a reference under s 18 of the Land Acquisition Act he claim a larger sum than that awarded by the Collector MAHANANDA PAL v THE SECRETARY OF STATE FOR INDIA IN COUNCIL

24 C W N 716

5 —— Proceedings under th sect on amount to a new enquiry by the District Judge and not an app al BOMMADEVARA VENKATA v ATMORI SUBBARAYUDU

I L R 36 Mad 395

—— ss 18 and 26—*Whether the Court to which reference has been made should consider the compensation as a whole or confine itself to any particular object on made.* Certain land belonging to the appellants was acquired by Government for the new capital of India at Delhi The Special Land Acquisition Officer made a separate valuation for wells buildings trees and for the land the total of the various items with 15 per cent addition amounting to Rs 11 613 The appellants raised objections and a reference was made under s 18 of the Land Acquisition Act to the District Judge of Delhi who came to the conclusion that having regard to prices paid for lands in the immediate vicinity the market value of the property acquired was approximately Rs 10 000 and as that sum with 15 *per cent* addition amounted to slightly less than that awarded by the Land Acquisition Officer maintained the original award Against this decision the present appeal was presented and it was contended that the District Judge had no power to examine the compensation awarded as a whole but should have confined himself to a consideration of the valuation of the various parts into which it had been split up by the Land Acquisition Officer *Held* that when a ca e is referred under the Land Acquisition Act the whole case is referred subject to the limitation in s 26 of the Land Acquisition Act and not merely any particular objection and the District Judge was there fore right and indeed bound to consider the question of the compensation awarded in its entirety *Gangadhara Sastri* v *Deputy Collector of Madras (14 Indian Cases 270)* followed *British India Steam Navigation Co* v *Secretary of State for India (I L R 38 Calc 230)* not followed ZAI UD DIN v THE SECRETARY OF STATE

I L R 1 Lah 352

—— ss 18 30—

See MORTGAGE **I L R 42 Calc 1146**

—— s 23—

See LAND ACQUISITION

I L R 41 Calc 967

—— *Compensation—Market value of land—Valuation by belts* The Government acquired land on the banks of the Hughly The owners objected to the Collector s award The Special Judge on reference determined the amount of compensation by basing his calculations on a sy tem of dividing the land into belts On appeal the High Court rejected the Special Judge s method of valuation and upon a careful consideration of previous awards and prices realised on sales of land in the neighbourhood and other matters increased the amount *Held* on the appeal of the Government to His Majesty in Council that the argument ba ed on the great experience of the Special Judge in such ca es amounted to a denial of the right of the High Court to review his findings The judgment of the High Court which gave due weight to the evidence in the case was affirmed SECRETARY OF STATE FOR INDIA v THE INDIA GENERAL STEAM NAVIGATION AND RAILWAY CO LD (1909)

I L R 36 Cal 967
14 C W N 134

—— Although in ascertaining the market value of land sought to be acquired under Act No I of 1894 the general principle to be applied is that the value of the land should be calculated with reference to the most lucrative and advantageous way in which the land might be

LAND ACQUISITION ACT (I OF 1894)—*contd*

——— s 23—*contd*

used if it is apparent that the use of such land for some special purpose e g as building site would be permitted the land should not be valued as if could be utilized for such purpose *Stebbing* v *Metropolitan Board of Works L R 6 Q B 37* referred to UJAGAR LAL v THE SECRETARY OF STATE FOR INDIA I L R 33 All 733

——— *Orchard land method of valuing* In assessing the amount of compensation to be paid on the acquisition of orchard land regard should be had to the suitability of the land for orchard purposes A calculation of the value of ordinary occupancy rights in neighbouring plots and of the value of the trees of which the orchard is composed is not a satisfactory method of arriving at the proper compensation for orchard land and should only be adopted when there is no possibility of ascertaining the value of lands as orchard lands FLIAS M COHEN v THE SECRETARY OF STATE FOR INDIA IN COUNCIL 2 Pat L J 615

See LAND ACQUISITION I L R 41 Calc 967

——— *Market value of land definition of—How to determine market value whether with reference to commercial value or abstract legal rights—Tenancy at will valuation of* In a Land Acquisition case there were two sets of claimants one was a tenure holder and the others were sub tenants in actual occupation of the land acquired The Collector awarded to the tenure holder the capitalized value of the rent actually recovered by him from the sub tenants It was contended on behalf of the tenure holder that the award was inadequate On the other hand on behalf of the Secretary of State it was contended that at the time when the tenant in occupation transferred his interest in the land to the present occupant the rent being increased from Rs 24 to Rs 36 per bigha it was not probable that the rent could be further increased and consequently the capitalized value of this rent was more than adequate *Held*—That when the rent was enhanced the landlord took premium and did not claim a higher rent as he might well have done if no premium had been paid Consequently it was not sufficient to award to the tenure holder the capitalized value of the rent as then settled. *Held also*—That the market value means the price that an owner willing and not obliged to sell might reasonably expect to obtain from a willing purchaser with whom he was bargaining for the sale and purchase of the land The Court below in concurrence with the Collector had not awarded any compensation to the sub tenants on the ground that their tenancies were of so precarious a nature that they could not be deemed to have any market value It was found in evidence that they were tenants at will having no transferable interest in the land but that their interest in the land was frequently sold and substantial prices were paid by the purchasers who thereupon approached the landlord and got his consent to the sale *Held*—That the sub tenants had an interest in land which had a market value inasmuch as such sales were common because purchasers were able in usual course to secure recognition from the landlord *Held also*—That the question of market value is to be determined rather with reference to the commercial value than with reference to any abstract legal rights *Held further*—That the view that the value of land should ordinarily be determined as a whole and the question of apportionment of the compensation awarded amongst claimants of different degrees should thereafter be taken into consideration has not always been accepted in practice The procedure adopted in the present case namely that the market value of the interests claimed by persons who held interests of different degrees in the property acquired has been determined successively and independently of each other has been followed as a matter of convenience GIRISH CHANDRA ROY CHOWDHURY v SECRETARY OF STATE FOR INDIA IN COUNCIL 24 C W N 184

——— *Circumstances to be considered by the Court in determining compensation discussed* Special use of land (in this case for a Municipal drain) is a important factor and introduces the principle of reinstatement BARODA PRASAD DEY v SECRETARY OF STATE FOR INDIA (1921) 25 C W N 677

——— ss 23 (2) and 32—*Hindu widow—Position of widow under the law prevailing in Bikanir—Mode of calculating the 15 per cent extra allowed for compulsory acquisition* A piece of land with some buildings and trees on it was taken up by Government under the provisions of the Land Acquisition Act 1894 The land belonged to a Hindu widow but evidence was given on her behalf that her husband s native country was Bikanir and that according to his personal law his widow would take an absolute interest in the property left by him and not merely an ordinary Hindu widow s estate *Held* that the widow was entitled to be paid the whole of the price awarded for the land and not merely to have it invested for her and to receive the interest during her life time *Held* also that the 15 per cent which is to be added for compulsory acquisition was not to be calculated on the value of the land alone but on the combined value of the land building and timber KRISHNA BAI v THE SECRETARY OF STATE FOR INDIA IN COUNCIL I L R 42 All 555

——— ss 23 49—*Principles of assessment of compensation—Land forming part of compound of house but actually in possession of tenants with occupancy rights* The owner of a house with a compound attached to it let out a large part of the compound to agricultural tenants whom he allowed to acquire occupancy rights therein *Held* on a question arising as to the principle of assessing compensation for this portion under the Land Acquisition Act 1894 that so far as the owner s interest was concerned compensation was properly calculated at so many years purchase of the annual profits actually received by the owner at the time of the sale The owner could not in the circumstances be allowed to claim compensation as for a building site *Bombay Improvement Trust* v *Jalbhoy Ardeshir I L R 33 Bom 483* referred to QRDE v THE SECRETARY OF STATE FOR INDIA IN COUNCIL (1918) I L R 40 All 367

——— s 25—

See 9

I L R 33 All
25 C W N

LAND ACQUISITION ACT (I OF 1894)—*contd*

——— ss 18—*contd*

of the Hereditary Offices Act (Bom Act III of 1874) *Held* further that the award of the District Court which was the cau e of the certificate made it clear that the Mahar s property had been acquired by the objector by adverse possession before the commencement of the proceedings for the acquisition of the land by Government *Per curiam* Even if it could be said that there was any danger of the passing of the ownership by virtue or in execution of a decree or order in the Land Acquisition proceedings it could not be said that that result was arrived at without the sanction of Government who set the machinery of the Act in motion for the acquisition of the land *Nilkanth* v *The Collector of Thana I L P 22 Bom 802 Collector of Thana* v *Bhaskar Mahadev I L R 8 Bom 264 Rachapa* v *Amilgovda I I R 5 Bom 283* referred to LADDHA EBRAHIM AND CO *v* THE ASSISTANT COLLECTOR POONA (1910)

I L R 35 Bom 146

2 ——— *Money paid out to one party before reference heard—Power of Court to entertain reference—Inherent power to recover the money* The mere fact that the compensation money awarded under the Land Acquisition Act has been paid out to a party does not oust the jurisdiction of the Civil Court to entertain a reference duly made under s 18 of the Act Where the party to whom the money had been paid is found to have no title to receive it the Court to which the reference has been made has inherent power to recall it In this case the High Court directed that on failure of the party to restore the money within a time limited the other party would be entitled to recover it in execution JOGESH CHANDRA RAY *v* YAKUB ALI (1912)

17 C W N 1057

3 ——— *Reference to Court for valuation—Duty of Court to see whether the evidence displaces Collector s award—Effect when evidence exaggerated and reckless* Compensation payable for land acquired by Government cannot be ascertained with mathematical accuracy and the Court has to see whether the evidence adduced displaces the amount awarded by the Collector The valuation of the Collector is not displaced by evidence of value given by the claimant which is so exaggerated and reckless that no reliance can be placed thereon HIGGINS *v* SECRETARY OF STATE FOR INDIA (1917)

22 C W N 659

4 ——— *Application by claimant for reference on the ground of inadequacy of award—Reference if bad because grounds not given in detail* There is nothing in the Land Acquisition Act which requires a claimant to state the grounds in detail upon which in applying for a reference under s 18 of the Land Acquisition Act he claims a larger sum than that awarded by the Collector MAHANANDA LAL *v* THE SECRETARY OF STATE FOR INDIA IN COUNCIL

24 C W N 716

5 ——— Proceedings under the section amount to a new enquiry by the District Judge and not an appeal BOMMADEVERA VENKATA C ATMURI SUBBAR YUDU

I L P 36 Mad 395

——— ss 18 and 26—*Whether the Court should in the reference that has been made hold consider the compensation as a whole or confine itself to any particular objection made.* Certain land belonging to the appellants was acquired by Government for the new capital of India at Delhi The Special Land Acquisition Officer made a separate valuation for wells buildings trees and for the land the total of the various items with 15 per cent addition amounting to Rs 11 613 The appellants raised objections and a reference was made under s 18 of the Land Acquisition Act to the District Judge of Delhi who came to the conclusion that having regard to prices paid for lands in the immediate vicinity the market value of the property acquired was approximately Rs 10 000 and as that sum with 15 *per cent* addition amounted to slightly less than that awarded by the Land Acquisition Officer maintained the original award Against this decision the present appeal was presented and it was contended that the District Judge had no power to examine the compensation awarded as a whole but should have confined himself to a consideration of the valuation of the various parts into which it had been split up by the Land Acquisition Officer *Held* that when a case is referred under the Land Acquisition Act the whole case is referred subject to the limitation in s 26 of the Land Acquisition Act and not merely any particular objection and the District Judge was therefore right and indeed bound to consider the question of the compensation awarded in its entirety *Gangadhara Sastri* v *Deputy Collector of Madras (14 Indian Cases 270)* followed *British India Steam Navigation Co* v *Secretary of State for India (I L R 38 Calc 230)* not followed ZAI UD DIN *v* THE SECRETARY OF STATE

I L R 1 Lah 352

——— ss 18 30—

See MORTGAGE **I L R 42 Calc 1146**

——— s 23—

See LAND ACQUISITION

I L R 41 Calc 967

——— *Compensation—Market value of land—Valuation by belts* The Government acquired land on the banks of the Hughly The owners objected to the Collector s award The Special Judge on reference determined the amount of compensation by basing his calculations on a system of dividing the land into belts On appeal the High Court rejected the Special Judge s method of valuation and upon a careful consideration of previous awards and prices realised on sales of land in the neighbourhood and other matters increased the amount *Held* on the appeal of the Government to His Majesty in Council that the argument based on the great experience of the Special Judge in such ca es amounted to a *denial of the right of the High Court to review* his findings The judgment of the High Court which gave due weight to the evidence in the case was affirmed SECRETARY OF STATE FOR INDIA *v* THE INDIA GENERAL STEAM NAVIGATION AND RAILWAY CO LD (1909)

I L R 36 Cal 967
14 C W N 134

——— Although in ascertaining the market value of land sought to be acquired under Act No I of 1894 the general principle to be applied is that the value of the land should be calculated with reference to the most lucrative and advantageous way in which the land might be

LAND ACQUISITION ACT (I OF 1894)—*contd*

——— s 32—*contd*

cases where a Hindu widow inherits moveable property and the law applicable to the latter case does not apply to the former *Quære* Whether the Land Acquisition Court could compel refund of the money improperly withdrawn in violation of s 32 *Nobin Kali v Banala a I L R 32 Calc 9?1 Cobirda Pani v Brinda Pani I L R 35 Calc 1104 s c 12 C W N 1039* referred to MRINALINI DASI v ABINASH CHANDRA DUTT (1910) 14 C W N 1024

——— *Investment in the purchase of other lands —If includes erection of buildings* Some lands having been acquired for the Calcutta Improvement Trust a sum of Rs 244 000 was deposited with the President of the Calcutta Improvement Tribunal The Trustees of the estate to which the lands belonged applied for delivery of the money to them in order that they might erect buildings on the exempted portion The President refused *Held* that s 32 of the Land Acquisition Act as amended by the Calcutta Improvement Act provides that the Tribunal shall order the money to be invested in the purchase of other land to be held on like conditions and having regard to the definition of land s 32 includes the erection of buildings *In re* GANENDRA MULLICK 25 C W N 597

——— ss 35 36 (2)—*Compensation—Principal on which it should be awarded* Where culturable land in the hands of tenants was acquired temporarily for the purpose of digging kankar *Held* that having regard to s 36 of the Land Acquisition Act 1894 such portion of the compensation as might be awarded to the owner for the purpose of restoring the land to its original condition was not assessable until after the term of occupation had expired In the circumstances of the case also this amount was not rightly assessed on the probable value of the kankar which might hypothetically be extracted from the land SECRETARY OF STATE FOR INDIA *v* ABDUL SALEM KHAN (1915) I L R 37 All 347

——— s 45—

See s 9 I L R 43 Mad 280

——— s 48—

See LAND ACQUISITION I L R 44 Bom 497

——— ss 48 and 51—

See LAND ACQUISITION I L R 44 Bom 297

——— s 49—

——— *Question whether land under acquisition part of house—Reference to Court—Refusal by Collector—High Court if may interfere in revision* Where a Land Acquisition Collector refused to make a reference to the Civil Court under s 49 of the Land Acquisition Act the High Court in revision set aside his proceedings subsequent to the refusal and directed the Collector to proceed according to law *The Administrator General of Bengal v The Land Acquisition Deputy Collector 24 Parganahs 12 C W N 241* followed *British India Navigation Co v Secretary of State for India 12 C L J 505 s c 15 C W N 87* referred to An application for a reference under the section

LAND ACQUISITION ACT (I OF 1894)—*contd*

——— s 49—*contd*

may be made at any time before the award is actually made KRISHNA DAS ROY *v* THE LAND ACQUISITION COLLECTOR OF PABNA (1911) 16 C W N 327

——— *Acquisition of part of a house—reference to Civil Court duty of Deputy Collector to make—refusal to refer—High Court's power to interfere with order of refusal—Revision* The High Court has jurisdiction to interfere with an order refusing to refer to the civil court a question under the second proviso to sub s (1) of s 49 of the Land Acquisition Act 1894 In making or refusing to make a reference under that proviso the Deputy Collector is a court SARASWATTI PATTAK *v* THE LAND ACQUISITION DEPUTY COLLECTOR OF CHAMPARAN 2 Pat L J 204

——— ss 49 (1) 54—

See LAND ACQUISITION
I L R 43 Calc 665
I L R 46 Calc 861

——— s 52—

See LAND ACQUISITION
I L R 48 Calc 916

——— s 53—

See RECORDS POWER TO CALL FOR.
I L R 43 Calc 239

——— The Court can enforce refund of compensation money taken from Court in certain instances COLLECTOR OF AHMEDABAD *v* LARAJI MULAJI I L R 35 Bom 255

——— *Review whether District Judge may order—Code of Civil Procedure (Act V of 1908) O XLVII* A District Judge is competent to review his own order apportioning the compensation money paid on compulsory acquisition of and between the parties entitled to it *Rangoon Latatoung Co v Collector of Rangoon I L R 40 Calc 21* referred to SHREE SAKTI NARAIN SINGH *v* BIR SINGH 5 Pat L J 253

——— ss 53 54—

See ANCIENT MONUMENTS PRESERVATION ACT (VII OF 1904) *ss 10 21*
I L R 42 Bom 100

——— *Land—Compulsory acquisition—Compensation—Award by Assistant Judge—Appeal to the District Judge—Second appeal—Practice and procedure—Civil Procedure Code (Act V of 1908) ss 96 100* Where an award is made by the Assistant Judge under the provisions of the Land Acquisition Act 1894 and there has been an appeal to the District Judge no second appeal can lie from the appellate decision. NATHUBHAI NARANDAS *v* MANORDAS LALDAS (1911) I L R 36 Bom. 360

——— s 54—

See APPEAL I L R 39 Calc 393

See LAND ACQUISITION
I L R 43
I L R 46
I L R 40

See LIMITATION ACT 1908
I L R.

LAND ACQUISITION ACT (I OF 1894)—*contd*

——— ss 25 and 31—
See LAND ACQUISITION I L R 44 Bom 297

——— s 26—
See s 18 I L R 1 Lah 352

——— s 30—*Compensation—Mode of apportioning amount allotted as compensation between different interests* Where land which is taken up under the Land Acquisition Act belongs to two or more persons the nature of whose interest therein differs the compensation allotted therefor must be apportioned according to the value of the interest of each person having rights therein so far as such value can be ascertained HIRDE NARAIN v POWELL (1912) I L R 35 All 6

——— *Reference to Civil Court if lies after payment of compensation to one party by Collector—Order by Civil Court directing Government to pay compensation to party found entitled to it and to realise the amount wrongly paid from the other party propriety of—Facts to be proved by claimant in order to be entitled to compensation—Road cess return value of to show status as lakhraj dar* The appellant who was the first party claimed that he had a lakhraj title to a land acquired under the Land Acquisition Act The second party claimed as *putnidars* and *darputnidar* The Collector made an award in favour of the first party and the amount of compensation was actually paid to him On a reference to the Civil Court under s 30 of the Act the Subordinate Judge found in favour of the second party and directed the Government to pay the compensation to them and to realise the amount previously paid to the first party from him *Held* that though the Land Acquisition Act clearly contemplates that when there is a dispute as to apportionment the reference to the Civil Court under s 30 should be made before any payment has been made still there is nothing in the Act that prohibits the Land Acquisition Collector from making the reference after payment of compensation to one of the parties When such a reference has been made it is undesirable that the party who succeeds in showing that the Collector s order was wrong should have to resort to a regular suit to compel the opposite party to refund the compensation to which he has been held not to be entitled nor can the rights of the opposite party be in any way prejudiced by the reduction of litigation That the omission of the appellant to file any road cess return with regard to the land went strongly against his claim to have asserted a lakhraj title to it The High Court varied the decree of the Subordinate Judge and ordered the first party to pay the amount of compensation received by him to the second party with interest at 6 per cent per annum from the date of withdrawal *Held* further that a claimant in a Land Acquisition proceeding can get no share of the compensation without establishing either title to or possession of the land acquired. SATISH CHANDRA SINHA v ANANDA GOPAL DAS (1916) 20 C W N 816

——— s 31 cl (2)—
See s 3 I L R 37 Bom 76
See BOMBAY CITY IMPROVEMENT TRUST ACT 1898 s 48
I L R 42 Bom 51
See SHEBAIT I L R 40 Calc 895

——— ss 31 32—*Debutter lands—Status of shebaits—Order for deposit of compensation money there being no person competent to alienate the lands* Where certain lands dedicated to an idol were acquired under the Land Acquisition Act and the application of the *shebaits* for payment of the compensation money was rejected and an order for deposit thereof in Court was made *Held* that a *shebait* has no power to alienate the dedicated property in the general character of his rights and the order made was a proper order RAM PRASANNA NANDY v SECRETARY OF STATE FOR INDIA (1913) 19 C W N 652

——— s 32—
See COURT FEE I L R 39 Calc 906
See LAND ACQUISITION
I L R 39 Calc 33

——— *Bhagdari and Narwadari Act (Bom Act V of 1862) s 3—Unrecognised sub division of a narwa holding—Compulsory acquisition* The provisions of s 32 of the Land Acquisition Act (I of 1894) cannot be made applicable to a case where the land compulsorily acquired is an unrecognised sub division of a *narwa* holding *Per* BATCHELOR J The only case contemplated by the draughtsman (in s 32 of the Land Acquisition Act 1894) was the case where the legal estate was in a person possessing only a limited interest while outstanding rights were in a beneficiary or revisioner who upon the exhaustion of the limited estate would become in the words of the clause 'absolutely entitled to the land ASSISTANT COLLECTOR OF KAIRA v VITHALDAS (1915)
I L R 40 Bom 254

——— *Widow s estate—Purchaser of widow s estate if may withdraw compensation money—Refund of money withdrawn power of Court to order—Investment of compensation money* A widow s estate in a property was sold without any legal necessity and purchased by the defendant Subsequently the land was acquired under the Land Acquisition Act and the defendant withdrew the compensation money In a suit by the reversioners for a declaration that they were not bound by the sale to the defendant and for a deposit of the money in Court for investment in Government securities *Held* that the defendant could be compelled to refund the money into Court for the purpose of investment and the Court has authority to give directions for proper investment of the money in the interest of the reversioners in accordance with the rules of justice equity and good conscience in the absence of any statutory power S 32 of the Land Acquisition Act applies to Hindu widows who hold possession of property as limited owners *Sheo Ratan v Mohri I L R 21 All 354 Sheo Prasad v Jaleha I L R 24 All 189* followed *Mahammad Ali v Ahammed Ali I L R 26 Mad 286* distinguished Till the money passes into the hands of a person absolutely entitled thereto there is constructive reconversion of it into land S 32 makes it reasonably clear that although an owner may be deprived of the land for the sake of public purposes the Legislature intended that the protection enjoyed by reversionary heir when land is in the hands of limited owners should not by reason of the acquisition alone be completely withdrawn Cases of this kind where land has been compulsorily converted into money stand on a different footing from

LAND ACQUISITION ACT (I OF 1894)—*contd*

——— s 32—*contd*

cases where a Hindu widow inherits moveable property and the law applicable to the latter case does not apply to the former *Quære* Whether the Land Acquisition Court could compel refund of the money improperly withdrawn in violation of s 32 *Nobin Kali v Banalata I L R 32 Calc 9?1 Cobirda Pani v Brinda Pari I L R 35 Calc 1104 s c 12 C W N 1039* referred to MRINALINI DASI v ABINASH CHANDRA DUTT (1910) 14 C W N 1024

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——— s 45—

See s 9 I L R 43 Mad 280

——— s 48—

See LAND ACQUISITION I L R 44 Bom 497

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——— ss 49 (1) 54—

See LAND ACQUISITION
I L R 43 Calc 665
I L R 46 Calc 861

——— s 52—

See LAND ACQUISITION I L R 48 Calc 916

——— s 53—

See RECORDS POWER TO CALL FOR I L R 43 Calc 239

——— The Court can enforce refund of compensation money taken from Court in certain instances COLLECTOR OF AHMEDABAD v LARAJI MULAJI I L R 35 Bom 255

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——— ss 53 54—

See ANCIENT MONUMENTS PRESERVATION ACT (VII OF 1904) ss 10 21
I L R 42 Bom. 100

——— *Land—Compulsory acquisition—Compensation—Award by Assistant Judge—Appeal to the District Judge—Second appeal—Practice and procedure—Civil Procedure Code (Act V of 1908) ss 96 100* Where an award is made by the Assistant Judge under [illegible] of the Land Acquisition Act 1894, and there has been an appeal to the District [illegible] appeal can lie from the appel[illegible] BHAI NARANDAS v MANORIA [illegible]
I L R [illegible]

——— s 54—

See APPEAL I L R [illegible]

See LAND A[illegible]
[illegible]
[illegible]
[illegible]

See [illegible]
[illegible]

LAND ACQUISITION ACT (I OF 1894)—*concld*

——— s 54—*contd*

——— *High Court—Decision by High Court on appeal—Appeal to Privy Council—Leave to appeal—Letters Patent cl 39* An appeal does not lie to His Majesty's Privy Council from the decision of the High Court on appeal under s 54 of the Land Acquisition Act (I of 1894) *the Collector Rangoon Potatoung Company Ld v The Collector Rangoon I L R 40 Calc 21* followed SPECIAL OFFICER SALSETTE BUILDING SITES v DOSSABHAI BEZONJI (1913) I L R 37 Bom 506

——— *Order directing compensation to be invested in Government securities if appealable—Award what is* An order under s 32 of the Land Acquisition Act by which the sum awarded as compensation is directed to be invested in Government securities is an integral part of the award made in the case and is open to appeal under s 54 of the Land Acquisition Act TRINAYANI DASI v KRISHNA LAL DEY (1910) 17 C W N 935

——— *Bombay Civil Courts Act (XIV of 1869) s 16—Civil Procedure Code (Act V of 1908) s 96 (1)—Reference to Assistant Judge—Award not exceeding Rs 5 000—Appeal to the District Judge—Second appeal to the High Court not maintainable* A reference having been made in accordance with the provisions of the Bombay Civil Courts Act (XIV of 1869) to the Assistant Judge he tried the reference and made an award under the Land Acquisition Act (I of 1894) which did not exceed Rs 5 000 An appeal was presented against the said award to the District Judge and he having decided the appeal a second appeal was preferred to the High Court *Held* that under s. 16 of the Bombay Civil Courts Act (XIV of 1869) the Court authorized to hear appeals from the Assistant Judge's Court where the value of the subject matter was less than Rs 5 000 was the District Court and not the High Court and no second appeal being expressly given by the Act the (second) appeal to the High Court was not maintainable AHMEDBHOY HABIBHOY v WAMAN DHONDU (1913) I L R 38 Bom 337

——— *Order allowing withdrawal of money deposited under s 31 if appealable* Under s. 54 of the Land Acquisition Act there is no appeal against an order of the District Judge allowing a Hindu widow to withdraw the compensation money deposited by the Collector under s 31 of the Land Acquisition Act BISWA NATH SINHA v BIDHUMUKHI DASI (1915) 19 C W N 1290

LAND ACQUISITION JUDGE

See LAND ACQUISITION
I L R 38 Calc 230

See MORTGAGE —INTEREST
I L R 42 Calc 1146

——— order of—

See COURT FEE ACT 1870 s 5
I L R 39 Calc 906

——— *Land Acquisition Judge powers of—Order for discovery* The Court of a Land Acquisition Judge is a Court of special jurisdiction the powers and duties of which are defined by statute and it cannot be legitimately invited to exercise inherent powers and assume jurisdiction over matters not intended by the Legislature

LAND ACQUISITION JUDGE—*contd*

to be comprehended within the scope of the enquiry before it *Shyam Chunder Mardraj v Secretary of State for India I L R 35 Calc 525 Gajendra Sahu v Secretary of State for India 8 C L J 39* distinguished It was never contemplated by the statute to authorise the Land Acquisition Judge to review the award of the Collector to cancel it or to remit it to him to be recast modified or reduced The Court of the Land Acquisition Judge is restricted to an examination of the question which has been referred by the Collector for decision under s 18 and the scope of the enquiry cannot be enlarged at the instance of parties who have not obtained or cannot obtain any order of reference *Promotha Nath Mitra v Rakhal Das Addy 11 C L J 490* followed An order for discovery can be made in a case under the Land Acquisition Act under O XI R 12 Civil Procedure Code BRITISH INDIA STEAM NAVIGATION CO v SECRETARY OF STATE FOR INDIA (1910) I L R 38 Calc 230

LAND CESS

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887) ART 30
I L R 36 Mad 18

LAND ENCROACHMENT ACT (MAD III OF 1905)

See IRRIGATION CESS ACT (MAD VII OF 1865) s 1 PROVISOS 1 AND 2
I L R 40 Mad 886

See MADRAS LAND ENCROACHMENT ACT 1905

LAND FOR AGRICULTURAL PURPOSES

See BOMBAY LAND REVENUE CODE s 48
I L R 34 Bom 239

LAND-HOLDER

See MADRAS ESTATES LAND ACT (I OF 1908) I L R 38 Mad 33 1155
I L R 39 Mad 1018
I L R 44 Mad 6"7

——— engagement by with Government—

See MADRAS IRRIGATION CESS ACT (MAD ACT VII OF 1865)
I L R 40 Mad 886

LAND IMPROVEMENT LOANS ACT (XIX OF 1883)

——— s 7—

See DEKKHAN AGRICULTURIST RELIEF ACT (XVII OF 1879)
I L R 40 Bom 483

——— s 7 (1) (c)—*Sale under—Loan a first charge on the land—Sale free of prior encumbrances—Improvements effected before receipt of loan effect of—Non completion of improvements within time and extension of time effect of on further advance of loan—Proviso to a section use of to interpret the section* A loan advanced under the Land Improvement Loans Act (XIX of 1883) is subject to proviso to s 7 (1) a first charge on the land for the improvement of which the loan is advanced hence a sale under s 7 (1) (c) of the Act to recover the loan is free of prior encumbrances

LAND IMPROVEMENT LOANS ACT (XIX OF 1883)—*contd*

———— s 7 (1) (c)—*contd*

Neither the fact that a portion of the improvement had been effected with the help of a private loan before the loan applied for was actually advanced nor the fact that the Government relaxed the rigour of its rules and allowed the borrower an extension of time to utilize the first instalment of the loan before the second was disbursed makes the loan any the less a loan under the Act if in effect the loan was utilized for the purpose for which it was borrowed Though a proviso to a section cannot be used to extend its operation yet in case of doubt or ambiguity as to the meaning of the substantive part of the section the proviso can be looked to to ascertain its proper interpretation *West Derby Union* v *Metropolitan Life Assurance Society* [*1897*] *A C 647* followed SANKARAN NAMBUDRIPAD *v* RAMASWAMI AYYAR (1918)
I L R 41 Mad 691

LAND LAW IN BENGAL

See MINERALS L R 44 I A 246

LANDLORD

See SPECIFIC RELIEF ACT ss 9 42
I L R 33 Mad. 452

See TRANSFER OF PROPERTY ACT s 107
I L R 36 Bom 500

———— interest of—

See SALE I L R 45 Calc 294

———— right of—

See CHAUKIDARI CHAKRAN LAND
I L R 37 Calc 598

LANDLORD AND TENANT

LANDLORD AND TENANT—*contd*

See ABANDONMENT 2 Pat L J 225

See ADVERSE POSSESSION
I L R 38 Bom 53
I L R 37 Mad 373

See AGRA TENANCY ACT (II OF 1901)—
s 16 I L R 41 All 223

s 16 AND 58
I L R 43 All 606

s 28 29 30 AND 34
I L R 35 All 123

s 34 I L R 40 All 300

ss 74 75 AND 76
I L P 32 All 458

ss 79 AND 95 I L R 35 All 299

ss 102 AND 198 I L R 33 All 61

See BOMBAY LAND REVENUE CODE 1879
s 83 I L R 45 Bom 303 and 350

See BOMBAY RENT (WAR RESTRICTION) ACT 1918

See CIVIL PROCEDURE CODE (1908) O II R 2 I L R 38 Bom 444

See CHOWKIDARI CHAKRAN LANDS
I L R 37 Calc 57

See EJECTMENT

See EVIDENCE ACT (I OF 1872) s 116
I L R 38 All 226

s 116 I L R 40 Mad. 561

See FAZENDARI TENURE
I L R 39 Bom 316

See INTERPLEADER
I L R 37 Calc 552

See KABULIYAT 2 Pat L J 40

See LAND ACQUISITION
I L R 45 Bom 725

See LEASE

See LESSOR AND LESSEE

See LIMITATION ACT (IX OF 1908) SCH I ARTS 120 AND 144
I L R 42 Bom 333

See MADRAS ESTATES LAND ACT (MAD ACT I OF 1908) s 40 CL. (3)
I L R 41 Mad 109

See MINERAL RIGHTS
I L R 38 Calc 845

See ORISSA TENANCY ACT 1913
2 Pat L J 46

See PENAL CODE (ACT XLV OF 1860) ss 341 109 I L R 43 Bom 531

See PROVINCIAL INSOLVENCY ACT (III OF 1907) s 16 I L R 34 All 121

See RENT ACT (BOM ACT II OF 1918) ss 2 (c) 9 I L R 43 Bom 795

LANDLORD AND TENANT—*contd*

See SECOND APPEAL I L R 39 Calc 241

See TRANSFER OF PROPERTY ACT (IV OF 1882) — I L R 43 All 330

s. 106 I L R 42 Bom 195

s 111

——— Adverse Possession—

See LIMITATION ACT 1908 Sch I Art 120 144 I L R 42 Bom 333

——— Denial of Title—

See TRANSFER OF PROPERTY ACT 1882 s 111 I L R 35 All 145

See EVIDENCE ACT 1872 s 116 I L R 40 Mad 516

ABANDONMENT

——— When a tenant having a non transferable occupancy right sells such right to a 3rd person and having obtained a sub lease remains in possession the landlord (in the absence of representation by the tenant of his landlord's title) is not entitled to receive possession as there has been no abandonment SEPARGAN *v* RUJDEF RAI 24 C W N 117

ADVERSE POSSESSION

——— *Adverse possession against landlord—Transferee of non transferable occupancy holding in possession for over 12 years—Payment of rent by him as marfatdar—Suit for ejectment—Limitation—Limitation Act (IX of 1908) Sch I Art 142* Where a person recorded in the record of rights as a trespasser was in possession of the land in dispute for more than 12 years but had once during that period paid rent to the landlord on behalf of the old tenant and taken a rent receipt in which he was described as a *marfatdar* *Held* that the suit by the landlord for *khas* possession against the trespasser after 12 years was not barred by limitation *Ishan Chandar* v *Ram Ranjan 2 C L J 125* and *Raktoo Singh* v *Sudhram Ahir 8 C L J 557* referred to JADU NATH BELEI *v* PAJ NARAIN MUKHERJEE (1912) 17 C W N 459

——— *Adverse possession by tenant—Suit for declaration of title to jalkar and injunction against defendants—Plaintiff's title based on durputni lease—Defendants possession as tenants for 12 years previous to lease—Knowledge of necessary to constitute possession adverse* Where the plaintiff sued for a declaration of his title to a certain *jalkar* and for an injunction prohibiting the defendants from catching fish in that *jalkar* and it was admitted that the plaintiff was entitled to an eight annas share of the *jalkar* and the plaintiff claimed the other eight annas share under a *dur putni* lease granted to them by one *P* the *putnidar* of the said eight annas share who it was found had no possession at the time of granting the lease to the plaintiffs and no knowledge as to who was in actual possession and the defendants proved possession as tenants for 12 years previous to the granting of the lease by *P* to the plaintiffs *Held* that the defendants by their possession gained title as against all the world and this held good as against the person who was in fact their landlord though he did not know and the defendants possession was a good answer to the plaintiffs claim which was equivalent to a claim for *khas* possession *Ishan Chandra* v *Ram Ranjan 2 C L J 125 Ichharam Singh* v *Nilmoney Bahida, I L R 35 Calc 740 s c 12 C W N 636* and *Gopal Krishna* v *Jalhiram 16 C W N 634,* followed KALI CHARAN SAHA *v* DABILUDDIN AHMED (1913) 18 C W N 654

——— *Adverse possession—Title—Under tenant—Purchase of tenancy by auction purchaser—Incumbrance—Notice of annulment proceedings—Bengal Tenancy Act (VIII of 1885) ss 161 167* When a person has by adverse possession against a sub tenant acquired a statutory title to a portion of the lands comprised in the sub tenancy he has an interest in the sub tenancy so that when on a sale of the superior tenancy for arrears of rent the purchaser seeks to annul the sub tenancy as an incumbrance such person stands in the position of an incumbrancer and is entitled to notice under s 167 of the Bengal Tenancy Act BHUSHAN CHANDRA GHOSE *v* SRIKANTA BANERJEE (1916) I L R 45 Calc 756

——— *Tenant setting up permanent right of tenancy by adverse possession—Specific notice of such right must be given to the landlord—Limitation* If a person in occupation of land as a tenant wishes to set up a larger claim of permanent tenancy by adverse possession the landlord must have a specific notice of such a claim and until that is done time does not begin to run against the landlord *Budesab* v *Hanmanta (1896) 21 Bom 509* discussed BABUSHO RAMCHANDRA *v* PANDU (1920) I L R 45 Bom 508

AGRICULTURAL LEASE

——— *Agricultural lease—Days of grace for payment of rent—Forfeiture clause for non payment of rent after days of grace—Relief against forfeiture* Courts in India have power to relieve against forfeiture for non payment of rent even in cases where a period of grace is allowed for payment by the lease deed and this rule applies equally to a lease (as in this case) for agricultural purposes Whether relief against forfeiture should in any particular case be given depends on the facts of that case *Per* SESHAGIRI AYYAR J — It is open to Courts to look at legislative provisions regarding the liability of other lessees and tenants as embodying the principles of justice equity and good conscience *Per* NAPIER J — When the statute specifically excludes one transaction of the same class as that which is being dealt with from its purview the —— cannot be applied The Transfer of Property Act cannot be looked to for guidance in the matter of an agricultural lease APPAYYA SHETTY *v* MAHAMMAD BEHARI (1915) I L R 39 Mad. 834

——— FLOODING BY SEA WATER—*Land rendered unfit for cultivation—Right of lessee to abatement of rent—Duty to avoid lease in toto—Transfer of Property Act (IV of 1882) s 108 cl B (e)—Principle of the section applicable of* If by an inundation of sea water a portion of lands leased for agricultural purposes becomes unfit for cultivation and the landlord brings a suit to recover

LANDLORD AND TENANT—*contd*

AGRICULTURAL LEASE—*contd*

the whole rent reserved in the lease the tenant can plead as a defence that he is entitled to a proportionate abatement and is not bound to have avoided the lease *in toto* The principle of proportionate abatement was recognized in India prior to the Transfer of Property Act and is in accordance with natural justice Neither s 108 B (e) Transfer of Property Act nor its principle is applicable to cases of flooding by sea water of lands leased for agricultural purpose *Sheikh Enayutoollah v Sheikh Elaheebuk* (1864) *W R Gap (Act X Rulings)* 47 followed SUBRAMANIA PATTER *v* KATTAMBALLI RAMA (1920)

I L R 43 Mad. 132

——— Annual tenancy—*Tenant building on a portion of the land to the knowledge of landlord—Suit in ejectment—Tenant bound to vacate—Landlord bound to compensate in equity for tenant's building* The defendant was for a number of years in occupation of plaintiff's land as an annual tenant On a portion of the land the defendant in 1882 erected a building to the knowledge of the plaintiff The plaintiff after giving notice sued to eject the defendant in 1914 and prayed that the land be restored to him by removing the defendant s building The trial Court ordered the plaintiff to get possession on paying Rs. 2 000 to the defendant The appellate Court reversed the decree on the ground that the defendant being allowed without objection to build on a portion of the land the agricultural lease for a year had become a building lease On appeal to the High Court *Held* restoring the decree of the trial Court that the plaintiff was entitled to get vacant possession at the expiration of the defendant s term of tenancy but on the facts of the case he was in equity bound to compensate the defendant for retaining his building RAMCHANDRA RAGHUNATH *v* VISNU BABAJI (1920)

I L R 44 Bom 950

——— Hut built by tenant—*on Lands demised for agricultural purposes—Conversion of the hut into a substantial building—Use of the building by the tenant for agricultural purposes—Conversion allowed* A tenant permanent or otherwise of lands used for agricultural purposes is entitled to erect even a substantial building for himself to live in and for agricultural purposes BHAU MAHADU *v* VITHAL DATTATRAYA (1919)

I. L. R 44 Bom. 609

ALIENATION

See SUB HEADING LEASE

21 C W N 117

——— *Position of landlord purchasing raiyat s interest* The position of the landlord purchasing the raiyat s interest under a private alienation and of the landlord purchasing himself at a sale for arrears of rent distinguished. JANAKINATH HORE *v* PRABHASINI DASI (1915)

19 C W N 1077

——— When the landlord purchases at a sale held in execution of a decree possession is delivered to him by the Court as auction purchaser *i e* on the footing that there is no longer any relation of landlord and tenant between him and the tenant and the possession of the landlord as purchaser cannot be challanged

LANDLORD AND TENANT—*contd*

ALIENATION—*contd*

so long as the sale is not set aside or declared ineffective against the tenants In the case of private purchase such as the present there is relation of landlord and tenant between the Plaintiff and the Defendants and the mere fact that he obtained a *kobala* from one of the heirs of the original tenants cannot take the case out of the purview of Art 3 Sch III NABIN CHANDRA SAHA *v* SHEIKH WAJID 24 C W N 38

BUILDING AND RESIDENTIAL LEASE

——— *Building and Residential Lease—Heritability—Transferability—Transfer of Property Act (IV of 1882) s 108 (j)* Where there is a lease for building and residential purpose in the absence of any intention to the contrary indicated either in the terms of the grant or in the nature of the tenancy the leasehold interest is heritable and the tenancy does not determine by the death of the lessee but vests in his legal personal representatives who are entitled to give or receive the usual notice to quit Such a tenancy in the absence and any custom or contract to the contrary is governed by the provisions of the Transfer of Property Act and is consequently *primâ facie* transferable under s 108 (j) of that Act KISHORI LAL ROY CHOWDHURY *v* KRISHNA KAMINI CHOWDHRANI (1910) I L R 37 Calc 37

CESSES

1 ——— *Cesses inclusion of in patta—Payment of cesses for a long time—Effect on legality and enforceability of—Rules for determining whether cesses are legal and enforceable—Madras Estates Land Act (I of 1908 s 14)—Usage—Contract—Cesses called kanganam kulavettu tiruppani etc nature and legality of* Cesses paid for a long time by the tenant without objection are not *necessarily* legal and recoverable by the landlord Such of them as have a direct or proximate bearing on the purposes for which the land was let are *primâ facie legal* while those having no such bearing are only recoverable under a contract supported by consideration or under a usage proved or presumed from the nature of the case and long course of payments *Held* accordingly on the facts of the case and the nature of the cesses in question that the cesses called *kanganam kulavettu melvaram urai kudivaram urai* and *swatantram* which were paid for a long series of years out of the gross produce before division thereof between the landlord and the tenant were legal and recoverable by the landlord that the cesses called *kangori* and *tiruppani* paid out of the kudivaram for a long time were not legally recoverable and that the cess for the use of the thrashing floor was recoverable unless the tenant had a thrashing floor in which case the cess ought not to be levied Rules for determining whether cesses paid for a series of years are legal and enforceable pointed out VADAMALAI THIRUVANATHA SEVUGA PANDIA THEVAR *v* SANKARAMOORTHI NAIDU (1918)

I L R 42 Mad. 197

2 ——— *Cesses legal and illegal—Charge for taking landlord's water rent within s 3 (11) Estates Land Act (I of 1908)—*Res judicata— *Competent to try such subsequent suit in s 11 Civil Procedure Code (Act V of 1908), meaning of* The words competent to try such

CESSES—*contd*

subsequent suit in s 11 Civil Procedure Code, refer to the competency of the Court which tried the previous suit to entertain the later suit *at the time of the institution of the previous suit* and the fact that it was deprived of jurisdiction to try suits of the nature of the later suit after the institution but some time before pronouncing judgment in the previous suit does not make its decision any the less *res judicata* Hence the decision of a Munsif s Court in a prior suit for rent operates *res judicata* in respect of a later suit for rent though by reason of the Estates Land Act the Munsif's Court was deprived of jurisdiction to try such suits after the institution but some time before pronouncement of judgment in the prior suit *Kunji Amma* v *Paman Menon I L R 15 Mad 494* explained *Gopi Nath Chobey* v *Bhagwant Pershad I L R 10 Calc 697* and *Raghunath Panjah* v *Issur Chunder Chowdhry I L R 11 Calc 153* followed A judgment does not cease to have the force of *res judicata* simply because in other suits between the same parties the decision on the same point was different A charge for taking water belonging to the landlord is rent within s 3 (11) Estates Land Act and it is not an enhancement of rent even if not consolidated with the rent proper *Thayammal* v *Muttia I L R 10 Mad* 29 followed Where such water is taken with the permission of the landlord only a suit for rent therefore can be brought and no suit for compensation for taking it will lie Where for water so taken even for dry crops the landlord was for long time levying and the tenant was paying the same rent as for water taken for paddy cultivation (*sarasari*) it is reasonable to charge rent at that rate whenever water is taken for dry crops A landlord is entitled to levy only such cesses as have a direct or proximate bearing on the purposes for which a land is let and mere length of payment will not give a cess which is purely voluntary or illegal a binding character *e g Mahimai* a cess for payment to a village temple *Sriparapu Ramanna* v *Mallikarjuna Prasada Nayudu I L R 17 Mad 43* and *Vada Malai Thiruvanatha Seruga Pandia Thevar* v *Sankaramoorthi Naidu I L R 42 Mad 197* followed Cesses for purposes which are beneficial to both the landlord and tenant can be deducted out of the gross produce such as *kulavettu* (a cess for repair of irrigation sources) and *Pala suatantram* (a cess for payment to village artisans and servants) No cess for superintending a harvest (*Kaganam*) can be claimed where the landholder is entitled to get a fixed rent irrespective of the produce VENKATACHALAM CHETTY v ANANTPERUMAL TEVAN (1919)

I L R 42 Mad 702

COVENANTS

See LANDLORD AND TENANT (LEASE)

See LESSOR AND LESSEE

I L R 48 Calc 176

——— Breach of

See BENGAL TENANCY ACT 1885

s 1 3 19 C W N 1196

——— No right to renewal implied

See KASBATIS I L R 39 Bom 625

COVENANTS—*contd*

——— A purchaser at an execution sale of a right title and interest of a tenant s holding under tenure not transferable to anyone but the landlord and containing no covenant against involuntary alienation or for reentry acquires a good title by his purchase PROMODO RANGAN GHOSH v ASHWINI KUMER NAG

18 C W N 1138

——— *Landlord and tenant—Renewal covenant of*—Dosara bundbust *meaning of* Where a *kabuliyat* stated that after the expiry of the term of the tenancy the tenant would take a *dosara bundbust* and on his failure to take the same the landlord would be competent to grant settlement thereof to any other tenant *Held* that the covenant was one for renewal on the same terms as the previous tenancy GURU PROSANNA BHATTACHERJEE v MADHUSUDAN CHAUDHURY 26 C W N 901

——— *Permanent lease of Agricultural land—Covenant against alienation voluntary as well as involuntary with proviso for re entry if enforcible—Purchaser if must be notified by lessor of intention to determine lease before suit—Bengal tenancy Act (VIII of 1885) s 155 Sch III cl (1) if applies—Limitation—Mortgage by lessee sale in execution purchase by mortgagee—Mortgagee if trespasser* A permanent lease of agricultural land contained a covenent against sale gift mortgage etc by the lessees with a proviso for re entry in case the land was transferred or sold by auction The lessees having mortgaged the land the mortgagee sued on his mortgage and in execution of the decree obtained therein had the holding sold or purchased it himself and got possession through Court on 23rd November 1898 The original lessees continued in possession of a portion of the land under a sub lease from the purchaser Plaintiffs who proved their right to a 12 annas share in the interest of the landlord sued the purchaser and the original lessees for ejectment on 20th March 1908 The lower courts having decreed the suit the purchaser only preferred this second appeal *Held* that the plaintiffs were entitled to recover (joint) possession to the extent of their 12 annas interest the defendant being a trespasser and the suit which was governed by Art 142 of Sch I of the Limitation Act having been instituted within time DWARIKA NATH ROY v. MATHURA NATH ROY

21 C W N 117

——— *Covenant against sub letting—Tenant sub letting at higher rent—Breach of covenant—Claim for damages—Damage must be proved* The defendants tenants of the plaintiff, sub let the premises at a much higher rent in contravention of the terms of their lease The plaintiff thereupon brought a suit claiming arrears of rent and also damages for breach of the terms of the lease *Held* that the mere fact that sub letting resulted in a profit to the tenant would not cause damage to the landlord and the plaintiff not having proved that he had suffered any damage by reason of the breach of the covenant was entitled only to nominal damages CURUSHANTAPPA v MALLAPA

I L R 45 Bom 119

LANDLORD AND TENANT—*contd*

CUSTOM.

———— *Rights of tenant occupying a house in the abad —Custom—Evidence—Nature of evidence requisite to prove custom—Second appeal.* The High Court in second appeal has jurisdiction to consider the evidence given in support of an alleged custom and to determine whether or not that evidence is sufficient in point of law to establish the custom set up *Hashim Ali v Abdul Rahman I L R 28 All 698* and *Ram Bilas v Lal Bahadur I L R 30 All 311* followed. GIRRAJ SINGH v HARGOVIND SAHAI (1909) I L R 32 All 125

DIGWARI TENURE

See DIGWARI TENURE

———— *Landlord and Tenant —Digwari Tenure in Manbhum—Grant of Coal Mines by Digwar—Grant of Mokurari lease—Minerals right to under the soil—Suit by zemindar claiming mineral rights—Parties to suit—Government—Digwar appointed and liable to dismissal by Government* Though the Digwari tenures in Manbhum are similar in some respects to Ghatwali tenures in Birbhum as having been originally granted in consideration of the performance of military service to which police duties were attached, and as being hereditary and inalienable the two kinds of tenure are not analogous the Ghatwals had special rights under Regulation XXIX of 1814 and as to minerals under Act V of 1859 and paid rent direct to Government and not to the zamindar The Digwal of Tasra in Manbhum appointed and liable to dismissal by Government was the holder of two mouzahs at a fixed rent payable to the plaintiff (appellant) in whose zamindari they were situated He granted a perpetual lease of the coal mines underlying the two mouzahs to a coal company who took possession and raised and sold a large quantity of coal In a suit for a declaration of the zamindar s right to the minerals under the soil and for an account and an injunction —*Held* (revising the decision of the High Court) that there having been at the time of the permanent settlement no separate settlement with the Digar of Tasra (if the Digwari tenure then existed which was doubtful and the mineral rights not being vested in him at that time the presumption was that the mineral rights remained in the zamindar in the absence of proof that he had parted with them *Hari Narayan Singh Deo v Sriram Chakravarti I L R 37 Calc 723 I L R 37 I A 136* followed *Held* also that it was not necessary to make the Government a party to the suit They had never claimed the minerals under the mouzahs in suit nor put forward any claim inconsistent with the rights asserted by the zamindar and the rights of the Government would not be prejudiced or affected by the result of a suit to which they were not a party DURGA PRASAD SINGH v BRAJA NATH BOSE (1912) I L R 39 Calc 696

DISPOSSESSION BY LANDLORD

———— ———— *Suit by tenant against landlord for recovery of land—Rules of limitation general and special onus of proof as to—Limitation Act (IX of 1908) Sch I Art 142—Bengal Tenancy Act (VIII of 1885) Sch III Art 3 ss 184 550 ?7—Character of tenancy presumption as to—Area less than 100 bighas* In a suit by a tenant for the recovery of land of which he had been dispossessed by the landlord the tenant claimed the land as tenure holder and the defendants contended that it was an occupancy holding Neither the character of a tenure holder nor that of an occupancy *raiyat* was established by positive evidence The question being what period of limitation was applicable to the case *Held* that in the circumstances of the case there was no statutory presumption either way That the general rule of limitation in suits for recovery of possession of property was twelve years and that it is upon the party claiming the benefit of a shorter period of limitation to establish that the case fell within the special rule limiting the period to a shorter time The defendants having failed to establish the occupancy character of the holding so as to bring it within the special rule of limitation under the Bengal Tenancy Act and plaintiffs suit being within time by the general rule the suit was not barred by limitation A suit by a tenant to recover lands from the landlord of which he alleges he has been dispossessed is not a proceeding under the Bengal Tenancy Act within the meaning of cl (7) of s 20 of the Act There is no provision in cl (5) of s 5 of the Bengal Tenancy Act that when the area held by a tenant is less than 100 bighas the tenant is to be presumed a *raiyat* until the contrary is shown TARA NATH CHAKRAVERTY v ISWAR CHANDRA DAS SARKAR (1911) 16 C W N 398

EJECTMENT

See EJECTMENT

See LANDLORD AND TENANT (FORFEITURE)

See WAIVER 2 Pat L J 595

———— *Suit for ejectment—Denial of landlord s title—Forfeiture* Where defendant in a suit for rent by the plaintiff his landlord had denied his title and claimed to hold under a third party *Held* that in a suit by the landlord for ejectment of the defendant as a trespasser the defendant was debarred from pleading his tenancy and claiming to hold possession on that ground *Nilmadhab Bose v Ananta Ram Bagdi 2 C W N 755 Fajj Dhali v Aftabuddin Sirdar 6 C W N 575 Ramgati Mohurer v Pranhari Seal 3 C L J 201 Thaler Mistri v Sadruddi Khan I L R 34 Calc 922* followed *Mallika Dassi v Makham Lal Chowdhry 9 C W N 928* distinguished. SHEIK MAIDHAR v RAJANI KANTA RAY (1909) 14 C W N 339

———— *Co sharers—Notice to quit* A notice to quit by some only of the co sharers is not sufficient to determine a tenancy *Gopal Ram v Dhakeswar I L R 35 Calc 807* followed *Doed Aslin v Summersett 1 B & Ad 135* not followed SURENDRA NATH ROY v KRISHNA SAKHI DASI (1910) 15 C W N 239

———— *Presumption as to landholders right in the abad agricultural village—House site occupied by a person not an agriculturist nor one of the customary village servant of artisans —Adverse possession* In a village which was not a purely agricultural village but in which on the contrary some two thirds of the inhabitants

LANDLORD AND TENANT—*contd*

EJECTMENT—*contd*

were non agriculturists certain persons father and son were in possession of a house site in the *abadi* They carried on the occupation of inn keepers and sellers of tobacco and there was no evidence of the origin of their pos es ion or that they ever paid rent to the zamindar or acknow ledged his title in any way The site was sold by the son and some time after such sale the hou e or shop thereon having fallen down the zamindar sued to eject the purchasers *Held* that in the circum stances of the case the defendants and their prede cessors in interest were properly held to have acquired a title to the site by adverse pos es ion *Chajju Singh v Kanthia All Weekly Notes (1881) 114* and *Bhaddar v Khair ud din Husain I L R 29 All 133* referred to INCHA PAM v BANDI ALI KHAN (1911) **I L R 33 All 757**

——— *Evidence Act (I of 1872) ss 11 13 32 cls (2) and (3)—Deeds not inter partes admissibility—Description of boun da ries in sales and mortgages of adjoining plots—Statements against pecuniary interest* In a suit to eject the defendants as tre passers the latter set up title as tenants in occupation of the land *Held* that recitals of boundaries in deeds of sales and mortgages executed by owners of adjoining plots of land and describing the disputed land as the tenanted land of the defendants or their prede cessors were relevant s 32 (3) of the Evidence Act though not under s 32 (2) or 11 or 13 of that Act *Sheorandan Singh v Jeorandan Dusadh 13 C W N 71 Ningaua v Bharmapra I L R 2? Bom 63 Haji Bibi v Aga Khan 11 Bom L R 409 Abdal A[illegible] v Ebrahim I L R 31 Calc 98?* referred to ABDULLAH v KUNJ BIHARI LAL (1911) **16 C W N 252**

——— *Suit for Ejectment—Tenant s claim to hold more land than included in lease—Limitation—Onus—Limitation Act (XV of 1877) Sch II Art 142* In a suit by the zemindars for ejectment the defendants claimed to hold seven *puras of* land as a *mokurari chal* under a *sanad* of 1740 renewed in 1815 which pur ported to grant only two *puras* The defendants also pleaded limitation The boundaries of the *mokurar chal* on three sides were specified in the *sanad* and were identifiable but the other boundary was described as an *ail* The plaintiffs failed to prove that they or their predeces ors ever had possession of any portion of the seven *puras* since the *sanad* was originally granted and they also failed to show what was the eastern boundary if it was not the *ail* pointed out by the defendants which if accepted would make the land seven *puras* *Held* that the plaintiffs having failed to prove that the land in suit were not covered by the *sanad* and that they had been dispos essed or that their possession had been discontinued within 12 years before the suit it was properly dismissed It lay upon the plaintiffs to prove not only title as again t the defendants to the posses ion but to prove that the plaintiffs had been dispossessed or had discontinued to be in possession of the lands within 12 years of the commencement of the suit DHARANI KANTA LAHIRI CHOWDHURI v PARAP ALI KHAN (1912) **17 C W N 389**

——— *Tenancy terminat on by notice to quit—Tenancy out side Transfer of Property Act (IV of 1882)—Sufficiency of notice—Service by registered post—Proof—Endorsement of tender and refusal by postal officers if sufficient—Permanency of tenure question when one of law—Second Appeal* The rule which has gene rally been applied to cases outside the Trans fer of Property Act in connection with the suffi ciency of a notice to quit is that the notice must be a reasonable notice The tender to and refusal by the defendant of a cover sent by registered post and containing the notice to quit was sufficiently proved by the endorsement on the cover or enve lope stating the defendant s refusal to receive the document *Jogendra Chander Ghose v Dwarka Nath Karmokar I L R 15 Calc 681* followed A finding of the lower Appellate Court that a te nure is not permanent if and when open to Se cond Appeal discussed DURGA NATH PARAMANICK v RAJENDRA NARAIN SAHA (1913) **17 C W N 1073**

——— *Ejectment—Puchaser of non transferable occupancy holding possession for more than 12 years—Rent payment as marfatdar—Tenant recognition by landlord—Possession if adverse—Limitation if would extinguish right or create limited interest and tenancy* A plaintiff suing in ejectment a purchaser of a non trans-ferable occupancy holding cannot succeed (un less he makes out a case under s 18 of the Limi tation Act) where his right to possession accrued long before 12 years of the commencement of the suit Where the defendant had paid rent for more than 30 years and the rent had been re ceived by the landlord from the defendant as *marfatdar* of the original tenant who had no trans ferable right a Court would be slow to hold that a complete extinguishment of the plaintiff s right took place by adverse posses ion and prefer to hold that the statute of limitation created a limited interest and tenancy The mere fact that in rent receipts the word *marfatdar* is used is not conclu sive to show that there was not recognition and the Courts should determine in each case whether on a consideration of all the facts not merely by giving undue weight to words used a legal inference is or is not to be drawn that there has been a recognition establishing a relationship of landlord and tenant between one who has paid and another who has received rent for a number of years PRABHABATI DASSI v TAIBATUNNESSA CHOWDHURANI (1913) **17 C W N 1088**

——— *Landlord and tenant—Right of lessee after expiry of lease to eject a trespasser* Where a les ee whose lease had expired prior to suit sued for posse sion of the land leased to him from a trespasser *Held* that the expiration of the lease did not nece sarily imply the expiration of les ee s right of possession and the lessee was entitled to a decree for po session as against tres passers *a fortiori* where the landlord acquiesced in plaintiff getting a decree *Gibbins v Buckland L J 32 Exch 156* and *Knight v Clarke 15 Q B D 94* referred to VENKAYYA v SATTEYYA (1914) **I L R 37 Mad 281**

——— What was held in *Rajendra Kumar Bose v Mohim Chandra Ghose ? C W N ?63* was that when a tenant has been in possession of land ostensibly as part of an admitted tenure it lies upon the landlord in a suit in ejectment to prove in the first instance that the land is his *khas* property It

LANDLORD AND TENANT—*contd*

EJECTMENT—*contd*

is not the law that because a defendant is found to be a tenant of some land under the plaintiff the burden is thereby cast upon the plaintiff to establish that the land he seeks to recover is outside the tenancy of the defendant The burden would ordinarily be on the defendant to prove the tenancy under which he claims to hold it *Nanda Lal Goswami* v *Jajneswar Haldar 6 C W N 105* and *Sheodeni Roy* v *Chaterbhuj Roy 12 C L J 376* referred to PROTAP CHANDRA ROY v JUDHISTIR DAS (1914)

19 C W N 143

———————— *Onus of on landlord or on tenant to prove tenancy* The mere fact that the defendant holds some land under the plaintiff as tenant would not be sufficient to throw upon the plaintiff the burden of showing that in respect of any other land in the zamindari which the defendant may be found to be in possession of he has no right as tenant The burden of proof in a case like this is on the tenant The principle laid down in *Bhidoy Krista Mistri's Case 12 C L R 407* throwing the onus on the plaintiff should be held applicable to cases where the land sought to be recovered is admitted by the plaintiff to be contiguous to the holding of the defendant or that it has come to his possessions by encroachment GOPINI DEBI v RAM TARAN TEWARY (1911)

19 C W N 140

———————— *Suit for—Lease of land for residential purposes—Law before the Transfer of Property Act (IV of 1882)—Onus to prove transferability—Presumption of transferability if arises from long continued possession* The effect of the recent decisions is that when a landlord sues a person on the allegation that he is a trespasser and that person sets up a transfer from a tenant it is for the latter to prove first of all the tenancy and secondly the validity of the transfer With regard to tenancies of homestead land created before the Transfer of Property Act the tendency of these decisions has been to establish that in the absence of evidence to the contrary the burden of proof being upon the tenant these tenancies are non transferable *Benee Madhab* v *Joukissen 12 W R 495* and *Durga Pershad Misser* v *Bindaban Soolul 15 W R 274* referred to and doubted The only exception made to the above rule is when there has been an erection of pucca buildings or a standing by on the part of the landlord while the tenant spends a large sum upon the land *Madhu Sudan Sen* v *Kamini Kanta Sen I L R 32 Calc 1023* s c *9 C W N 895* and *Nabu Mandal* v *Cholim Mullik I L R 25 Calc 896* s c *2 C W N 405* relied on Mere long continued possession cannot give rise to a presumption of transferability AMBICA PROSAD SINGH v BALDEOLAL (1916)

20 C W N 1113

———————— *Suit for ejectment—Notice to quit—Tenancy reserving an annual rent—What notice a tenant holding an annual tenancy is entitled to—Transfer of Property Act (IV of 1882) ss 106 107* The defendant's brother one Chandu by a registered *kabuliyat* took a lease of 2 cottahs of land from the landlord at an annual rental of Rs 12 for residential purpose On the death of Chandu his heirs including the defendant continued to live on the land and subsequently the defendant's name was substituted in the landlord's *sherista* as tenant in respect of 2½ cottahs of land at an annual rental of Rs 15 Thereafter the landlord executed a registered *patta* and let out one bigha of his lands including the defendant's portion for a period of 59 years to one Sheikh Fasiulla who accepted the defendant as tenant of a portion of it Fasiulla then transferred his interest to one Mamsa who subsequently sold the same to the plaintiff On the defendant's failure to pay rent for the 2½ cottahs of land the plaintiff on the 10th Kartick 1318 corresponding with the 27th October 1911 served the defendant with a notice to vacate the land within the 30th Kartick 1318 corresponding with the 16th November 1911 The defendant failed to comply with this notice The plaintiff thereupon brought a suit for ejectment and *khas* possession and for arrears of rent *Held* that the rent being an annual rent and there being nothing to rebut the presumption in such a case that the tenancy was of a character corresponding thereto the presumption ought to be drawn that the tenancy was to be an annual tenancy *Durga Nilarini* v *Gobardhan Bose 20 C L J 448* referred to *Held* also that inasmuch as there was a contract of tenancy between the plaintiff and the defendant but there was no registered instrument as required by s 107 of the Transfer of Property Act this case came within s 106 of that Act *Held* further that inasmuch as this was a lease of immoveable property and not for agricultural or manufacturing purposes but for some other purpose it must be deemed to be a lease from month to month terminable on the part of either lessor of lessee by 15 days notice expiring with the end of a month of the tenancy SHEIKH AKLOO v SHEIKH EMAMAN (1916)

I L R 44 Calc 403

———————— *Taluka patta if imports permanency—Covenant by tenant to relinquish land on grantor personally requiring it if runs with the land—Grant to be construed against grantor—Rule explained—Land encroached upon by tenant and treated by landlord as part of permanent tenancy—Tenant if may be ejected therefrom* If there be nothing either in the surrounding circumstances or in the instrument which creates the interest to show that it was intended to be otherwise the inference is that a tenancy called *taluka* constitutes a permanent tenure Where in a contract of tenancy *primâ facie* purporting to be a permanent tenancy there was a covenant that if the grantor had a personal necessity the grantee would relinquish the land *Held* that the covenant was in favour of the grantor personally and was not enforceable after his death by his heir Scope of the rule that a covenant is to be construed most strongly against the grantor and most beneficially in favour of the grantee explained The tenant aforesaid having encroached upon land belonging to the landlord the landlord did not within the statutory period from the date of encroachment institute a suit to eject the tenant on the ground that he could not without his consent acquire the status of a tenant on the land encroached upon but on the other hand treated it as part of the permanent tenancy *Held* in a suit for ejectment by the heir of the grantor that the land originally leased as well as the encroached land stood on the same footing and the tenant could not be ejected from

LANDLORD AND TENANT—*contd*
EJECTMENT—*contd*

either of them SARODA KRIPA LAHA v AKHIL BANDHU BISWAS (1917) 21 C W N 903

——— *Eviction of tenant effect of—Suspension of rent* The eviction of the tenant whether from part of the demised premises or from the whole entails a suspension of the entire rent while the eviction lasts whether the tenant remains in possession of the residue or not the tenancy however is not thereby terminated nor is the tenant discharged from the performance of his covenants other than payment of the rent such as a covenant to repair It is not necessary for the application of the rule to find from how much land the tenant has been dispossessed if it is found that he has been dispossessed from some land To constitute an eviction it is not necessary that there should be an actual physical expulsion by force or violence from any part of the premises Any act of a permanent character done by the landlord or his agent with the intention of depriving the tenant of the enjoyment of the demised premises or any part thereof operates as an eviction Therefore whether the tenant is expelled by violence or is obliged from the exigencies of the situation to submit quietly to the high handed act of the powerful landlord the result in either case is suspension of rent DWIJENDRO NATH RAY v AFTABUDDI SARDAR (1916) 21 C W N 492

——— *Tenancy residential house with fruit bearing trees if governed by Bengal Tenancy Act or Transfer of Property Act—Ejectment—Tenant at will—Question as to applicability of Bengal Tenancy Act or Transfer of Property Act—Land with house and used for residential purposes with fruit bearing trees—Nature of tenancy—Presumption of permanency when can be drawn—*Dakhilas *stating tenant to be tenant at will value of* The fact that a portion of a holding used for residential purposes is planted with fruit bearing trees does not alter the character of the holding and the case is governed by the Transfer of Property Act Where in a suit for ejectment the Plaintiff produced *dakhilas* shewing that the predecessors in interest of the Defendant were tenants at will and it was found that the tenancy held by the Defendant existed in 1884 and there was nothing to shew that it existed before that year and the Defendant urged that under the circumstances there was a presumption that the tenancy was much older and in its origin it was intended to be permanent *Held*—That the evidence afforded by the *dakhilas* was not to be regarded as conclusive but the lower Appellate Court was right in holding that the Defendants tenancy was created after the passing of the Transfer of Property Act and that quite apart from the entries in the *dakhilas* the circumstances of the case did not warrant the presumption that the tenancy was in its origin of a permanent character *Surendra Nath Roy v Dwarkanath Chakravarti 24 C W N 1 (1919)* referred to *Mokaram Chaprasi v Telamuddin Khan 16 C W N 567 (1911)* distinguished SRIMATI SASIBALA DEBI v SRIMATI AMALA DEBI 25 C W N 378

——— When the Kabuliyat provides ejectment as a remedy for a breach of its conditions that is not the only remedy and damages can be claimed KRISHNA DAS ROY v MOHENDRA CHANDRA 25 C W N 930

LANDLORD AND TENANT—*contd*
ENCROACHMENT

——— *By tenant ensure for the benefit of the tenant during his tenancy and afterwards for the benefit of the landlord—Adverse possession* Possession by a person will be presumed to be held in his own right and adversely to the true owner This presumption will not apply when a special relationship exists between the parties as tenants in common or members of an undivided family The presumption in such cases will be that possession is held on behalf of all the co owners or members of the family and it will lie on the possessor to prove that he held exclusive possession to the knowledge of those whose right he seeks to affect by such possession Where a tenant taking advantage of his position as such takes possession of lands belonging to his landlord not included in his holding the presumption is that such lands are added to the tenure and form part thereof for the benefit of the tenant so long as the holding continues and afterwards for the benefit of his landlord unless it clearly appeared by some act done at the time that the tenant made the encroachment for his own benefit *Gooroo Doss Roy v Issur Chunder Bose 22 W R 246* approved It is not necessary that the tenant trespasser should prove that his trespass was known to his landlord to justify such presumption MUTHURAKKOO THEVAN v ORR (1912) I L R 35 Mad. 618

——— *Encroachment by tenant—Adverse possession of encroached land as tenant if creates title—Landlord's right to recover possession when barred—Limitation Act (XV of 1877) Sch II Art 144—Interest acquired by tenant* While a tenant is bound to treat that which is an encroachment on his landlord's land as held by him under his landlord the landlord is not bound to treat the land on which his tenant encroaches as held under a tenancy But the landlord's right to recover possession of the land encroached upon may be lost by the tenant having adversely to the landlord asserted his title as tenant to the land for more than twelve years Under Act 144 of the Limitation Act there may be adverse possession not only of immoveable property but of any interest therein and tenant may claim to have been in adverse possession for 12 years of a limited interest in encroached land *i e* a tenancy commensurate with that in the admitted lease between the parties GOPAL KRISHNA JANA v LAKHIRAM SARDAR (1912) 16 C W N 634

——— *Encroachment by tenant upon land not his landlord's—Tenant if may keep land in a suit by owner to recover—* Bona fide *possession under a* de facto *landlord what amounts to—Possession by de facto landlord and settlement of encroached land with tenant to be proved* The principle of the Full Bench decision in *Binad Lal Pakrashi v Kalu Pramanik I L R 20 Calc 708* only applies where raiyats are settled upon land by a person in *de facto* possession as landlord, who is afterwards found to have no title It is not applicable in every boundary dispute or in every case where a question of parcel and no parcel arises Where in a suit by the owner *B* to recover land from *C* who held other lands as *A*'s tenant it was not found that the disputed land was ever in *A*'s possession or that it was included in the area settled by *A* with *C* but *C* appeared to have encroached upon the land in

LANDLORD AND TENANT—*contd*

ENCROACHMENT—*contd*

such circumstances as to raise a presumption that the encroachment would enure to *A's* benefit and become an accretion to *C's* holding under *A* *Held* that though *A* might perhaps be described a *C's de facto* landlord it could not be said that the land was settled with *C* by *A* and there is nothing in the Full Bench decision to prevent B from suing to recover possession from *A* and *C* TEPU MAHAMMAD *v* TEPAYET MAHAMMAD (1915)

19 C W N 772

ENHANCEMENT OF RENT

——— Waiver—*Enhancement of rent—Bengal Tenancy Act (VIII of 1885) ss 43 108—Chur lands—Right of Occupancy* A took a lease of a certain Government *khas mehal* and executed a *kabuliat* in favour of the Collector by which he (1) covenanted not to raise the rents of raiyats beyond the amounts mentioned in the settlement *jamabandi* The tenants however subsequently agreed to pay rent at an enhanced rate on the ground that the fertility of the land had been increased Upon a suit for arrears of rent at the enhanced rate against the tenants the defence was that *A* was bound by the *kabuliat* executed in favour of the Collector and as such he was not entitled to a decree at the rate claimed *Held* that inasmuch as the tenants voluntarily agreed to an enhancement of rent they deliberately waived the benefit of the said covenant and they could not impeach the validity of their own agreement on this particular ground *Zamir Mandal* v *Gopi Sundari Dasi I L R 37 Calc 463 (note)* referred to Under s 180 of the Bengal Tenancy Act a raiyat holding a *chur* land but who has not acquired a right of occupancy is liable to pay such rent for his holding as may be agreed on between him and his landlord irrespective of the provisions of s 43 of the Act JAHANDAR BAKSH MALLIK *v* RAM LAL HAZRAH (1910)

I L R 37 Calc 449

——— Rent in kind—*Enhancement of rent by addition of a rent in kind—Bengal Tenancy Act (VIII of 1885) s 29* S 29 of the Bengal Tenancy Act applies even where a money rent is enhanced by the addition of a rent in kind KISHORI MOHUN BOSE *v* SHEIKH UJIR (1910)

I L R 37 Calc 610

——— Prevailing rate of rent—*Occupancy raiyats—Enhancement of rent—Proof of rise in price of staple food crops how ascertained and Court's duty in the matter—Prevailing rate for similar land in same or neighbouring villages with same advantages—Bengal Tenancy Act (VIII of 1885) ss 29 30 32 39* In a suit for enhancement of rent under s 30 of the Bengal Tenancy Act it is the duty of the Court to refer to the price lists prepared under s 39 whether the parties to the suit produce these or not It is right and proper that the Civil Court in directing a local investigation under s 31 (*b*) should indicate to the officer holding the investigation what it is that the Court precisely requires Where the Court is satisfied that all the rent in the village should be excluded from consideration in finding out the prevailing rate in the village because it is fixed in a mode which contravenes the provisions of s 29 of the Bengal Tenancy Act then an enquiry should be directed which will bring to light the prevailing rate of rent paid by occupancy *raiyats* for lands of a similar description and with similar advantages in the neighbouring villages NABIN CHANDRA SHAHA *v* KULA CHANDRA DHAR (1910)

I L R 37 Calc 742

——— *Contract between landlord and tenant—Right to enhance rent—Expression putni taluk whether imports fixity of rent—Hereditary tenure whether implies fixity of rent—Evidence of conduct when admissible* In a lease granted in 1823 there was a clause as follows — "I (tenant) shall pay the annual rent of Rs 173 8 as 12 gds year by year and month by month as per *doul* in the *khas taluk* In another clause it was stated I shall continue to be in enjoyment down to my sons grandsons etc on receipt of the *talukdari* rents according to custom on account of tanks bheries etc lying in the village The landlord in a proceeding under s 106 of the Bengal Tenancy Act alleged that the rent was enhanceable while the tenants contended that the tenure was not merely hereditary but was held on a rent fixed in perpetuity *Held*—That unless the landlord is precluded from the exercise of the right of enhancing rent by a contract binding on him or the lands in question can be brought within one of the exemptions recognized by Bengal Reg VIII of 1793 he may be presumed to have the right of enhancing rents *Rama Sundari* v *Radhika Chowdhrain 13 M I A 248 (1869)* followed *Held*—The expression *putni* taluk in the contract did not import that the tenure was not merely hereditary but was held on a rent fixed in perpetuity The mere fact that a tenure is hereditary does not show that rent of the tenure has been fixed in perpetuity In the present case although there were expressions which showed that the tenure was *mourasi* there was nothing to show it was intended to be *mokurrari* *Tarinee* v *Watson 12 W R 413 (1869)* and *The Port Canning and Land Improvement Co Ltd* v *S M Katyayani Debi I L R 47 Calc 280 s c 24 C W N 369 (P C) (1919)* distinguished *Held also*—If the terms of the contract are ambiguous the rights of the parties may be determined with reference to the conduct of the parties but in any case where the terms are unambiguous no evidence can be given of the conduct of the parties in contravention of the terms of the contract *Hebbert* v *Purchas L R 3 P C 605 (650) (1871)* and *N E Railway* v *Hastings [1900] A C 260 (263)* referred to BHUPENDRA CHANDRA SINGH *v* HARIHAR CHAKRAVARTI

24 C W N 874

——— In a suit for rent at an enhanced rate on the ground of additional lands it is sufficient if the landlord can establish that since the creation of the tenancy rent has been assessed and when last assessed it was on the basis of a certain area and that defendants are in possession of land on which no rent was assessed at the time DURGA PRITA CHOUDHURI *v* NAZRA GAIN AND ORS

25 C W N 204

FORFEITURE

See BOMBAY RENT ACT 1918 ss 3 9 AND 12 I L R 45 Bom 525

See LANDLORD AND TENANT (TITLE)

See TRANSFER OF PROPERTY ACT

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LANDLORD AND TENANT—*contd*
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such circumstances as to raise a presumption that the encroachment would enure to *A*'s benefit and become an accretion to *C*'s holding under *A* *Held* that though *A* might perhaps be described a *C's de facto* landlord it could not be said that the land was settled with *C* by *A* and there is nothing in the Full Bench decision to prevent B from suing to recover pos ession from *A* and *C* TEPU MAHAMMAD *v* TEFAYET MAHAMMAD (1915)
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ENHANCEMENT OF RENT

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———— In a suit for rent at an enhanced rate on the ground of additional lands it is sufficient if the landlord can establish that since the creation of the tenancy rent has been assessed and when last as e sed it was on the basis of a certain area and that defendants are in possession of land on which no rent was asses ed at the time DURGA PRIYA CHOUDHURI *v* NAZRA GAIN AND ORS
25 C W N 204

FORFEITURE

See BOMBAY RENT ACT 1918 ss 3 9 AND 12 **I L R 45 Bom 535**

See LANDLORD AND TENANT (TITLE)

See TRANSFER OF PROPERTY ACT

———— *Forfeiture clause contained in a decree—Execution proceeding—Power*

LANDLORD AND TENANT—*contd*

FORFEITURE—*contd*

of the Court to grant relief The principle that Courts of equity will not forego their power to grant relief against forfeiture in the case of non payment of rent where the relations of the parties are those of lanlord and tenant merely on the ground that the agreement between them is embodied in a decree of the Court applies alike to a suit to en force a decree and to proceedings in execution *Krishnabai* v *Hari I L R 31 Bom 15* explained BALAMBHAT v VINAYAK GANPATRAV (1910)
I L R 35 Bom 239

———— *Lease before Transfer of Property Act IV of 1882 forfeiture of—Suit for ejectment by landlord maintainability of with out subsequent act evincing intention to forfeit—Waiver—Claim for rent in suit for ejectment does not amount to waiver* Under the law applicable to leases before the Transfer of Property Act forfeiture is incurred when the denial of title occurs any subsequent act of the landlord elect ing to take advantage of the forfeiture is not a condition precedent to the right of action for ejectment The bringing by the landlord of a suit for ejectment is simply a mode of manifesting his election Where a tenant holding under a lea e prior to the Transfer of Property Act denies the title of his landlord the landlord can maintain a suit for ejectment without having done prior to the suit any act evincing his intention to deter mine the lease A claim for rent in the suit for ejectment will not amount to a waiver of the for feiture The election to forfeit is complete and irrevocable when the suit for ejectment is institu ted *Venkatramana Bhatta* v *Govindarata I L R 31 Mad 403* considered PADMANABHAYA v RANGA (1910)
I L R 34 Mad 161

———— *Relationship of Land lord and tenant denied in previous rent suit if can be urged in subsequent suit*—Res judicata—*Forfeiture of tenancy for denial of landlord's title under Bengal Tenancy Act (VIII of 1885)* Where in a suit for rent the defendants denied the exist ence of the relationship of landlord and tenant and got an adjudication to that effect in a suit subsequently brought by the landlord for *khas* pos session of the land on a declaration of his title *Held* that the question as to the relationship of landlord and tenant between the parties was *res judicata* and the defendant could not assert his title as tenant in such suit *Deb ruddi* v *Abdur Rahim I L R 17 Calc 196* *Dhora Kairi* v *Ram Jeuan I L R 20 Calc 101* *Mallika Dassi* v *Makham Lal Chowdhry 9 C W N 923* distinguished *Seikh Miadhar* v *Rajani Kanta 14 C W N 339* referred to EKABBAR SHEIKH v HARA BEWA (1910)
15 C W N 335

———— *Landlord and Tenant —Ejectment—Recorded Tenant—Effect of denial of tenancy by him on his unrecorded co sharer—Forfeiture* In a suit for ejectment based on the ground of forfeiture by reason of the denial of the landlord s title it was found that the denial was by the recorded tenant and not by his unrecorded co-sharer in the tenancy *Held* that a person representing the tenancy in the books of the land lord was entitled to bind his co sharers for the purposes of the tenancy but when he repudiated the tenancy he must bettaken to have acted beyond the scope of his auhority his disclaimer consequently could not operate as a forfeiture of the tenancy BIRENDRA KISHORE MANIKYA v BHUBANESWARI (1912) **I L R 39 Calc 903**

———— In order that a denial of landlord s title should work a forfeiture three things are necessary (1) the tenant must et up title either in himself or a third party inconsistent with their mutual relationship (2) the denial must be direct and unequivocal and not casual and (3) it must be made to the knowledge of the landlord KIZHAKKEKATH KEMALOOTI v PULIKKALAKATH MAHAMED **I L R 41 Mad 629**

———— *Forfeiture of lease by non payment of rent—Relief against forfeiture only on payment of all arrears of rent though barred by limitation—Transfer of Property Act s 114* Under s 114 of the Transfer o Property Act a tenant can be relieved against forfeiture of lease incurred by non payment of rent only on pay ment of all arrears of rent including such as may be barred by limitation together with such interest as might be legally due thereon *Semble* The arrears of rent so payable will probably be limited to twelve years VASUDEVA UDPA v KRISHNA UDPA (1921) **I L R 44 Mad. 629**

———— A permanent tenancy governed by the transfer of Property Act 1882 is determinable by denial of the landlord s title BIDYA NATH v KHIKHINDA KOER
1 Pat L J 157

GROVE LAND

See GROVE LAND

———— *Rights of tenants with regard to groves—Custom—Wajib ul-arz —Con struction of document— Malik* The *Wajib ul arz* of a village contained the following provision as to grove land — Persons who have planted a grove and who are in posse sion of a grove have the rights of an owner (*ikhtiyar malikana*) If any trees fall down they can plant fresh trees without the permission of the zamindar When the land becomes denuded of all trees the planter of the grove will have the first right to cultivate the land *Held* that the e provisions implied a right of transfer in the possessor of grove land MUHAMMAD YASIN v ILAHI BAKHSH (1912)
I L R 34 All 545

HYPOTHECATION

———— *Tenant in possession without a patta—Suit to enforce hypothecation of property as security for rent* *Held* that a hypothe cation of other property by certain tenants as se curity for their rent was none the less enforceable because though the tenants had executed a *qa buliat* in respect of the land held by them no *patta* had been executed by the landlords in their favour *Sheo Karan Singh* v *Mahara a Parbhu Narain Singh I L R 31 All 276* referred to SRI KISHAN DAS v YAKUB KHAN (1913)
I L R 35 All 505

IMPROVEMENTS

———— *Tenancy determina tion of—Improvement non removal of during tenancy—Right to them or their value after determina tion of tenancy—Transfer of Property Act (IV of*

LANDLORD AND TENANT—*contd*

IMPROVEMENTS—*contd*

1889) s *108* (*h*) The plaintiff's husband took a house site on lease from the predecessor in title of the first defendant in 1883 After 1883 and before 1st May 1898 the plaintiff built a house thereon to the knowledge of the landlord and the *lease was renewed by the first defendant on 1st* May 1898 in plaintiff's favour who thereby agreed to vacate the land on a month's notice While the plaintiff was in possession under that lease the first defendant filed a suit in ejectment in the Small Cause Court Madras and though the present plaintiff then set up the claim now advanced viz a right to the superstructure built by her or its value she was ordered without the determination of the right set up by her to deliver possession of the land on or before the 26th February 1907 and on her failure to do so the first defendant was put in possession on that date On the 1st August following the first defendant gave the plaintiff notice to remove the superstructure within a fortnight She did not do so but in 1908 instituted the present suit for (*a*) a declaration that she was the owner of the house built by her and for its possession or (*b*) in the alternative to be paid compensation for it or (*c*) if that was not granted to be allowed to remove the superstructure WALLIS J holding that the plaintiff was not entitled to any of the reliefs dismissed the suit *Held* on appeal confirming the judgment of WALLIS J (SANKARAN NAIR J *dissenting) that the plaintiff* was not entitled to any of the reliefs asked for *Held* by the Court that the landlord was not estopped from disputing the plaintiff's right if any by the mere fact that the house was erected with his knowledge and without any protest by him *Held* (WHITE C J dissenting) that the tenant was for the purpose of removing her superstructure entitled to a reasonable time after the determination of the tenancy whether it is by act of parties or by the order of Court *Held* by MILLER J that the tenant having been given ample time to remove the building after giving up possession through the Court she was not entitled to any further time *Per* WHITE C J—S 108 clause (*h*) of the Transfer of Property Act governed the case and the tenant was not entitled to remove the buildings after the termination of the tenancy *Per* SANKARAN NAIR J—S 108 of the Transfer of Property Act is only an enabling section and it did not take away the pre existing right of the tenant to compensation or to remove building even after the termination of the tenancy if he is not given compensation The new lease having recognised the tenant's ownership in the house the plaintiff's ownership thereto cannot be defeated by her failure to remove the house within a reasonable time and as such failure cannot effect a transfer of ownership all that the landlord was entitled to was an option to retain the building and pay compensation for it or to restore the land to its old condition by removing the building and claim damages *Per* MILLER J The recognition by the landlord for the period of the new tenancy of the tenant's property in the building has no other necessary effect than to prevent the landlord from treating the building as having been surrendered to him at the end of the previous term and it was only a piece of evidence of a contract to allow the removeable fixture to remain *as such* upon the land for the new term *Ismai Kani Rowthan* v *Nazarali Sahib I L R* *27 Mad 211* referred to English and Indian Case Law on the subject considered ANGAMMAL v ASLAMI SAHIB (1913) **I L R 38 Mad 710**

INAM LANDS

———— *Inam Register—Object of mentioning the tax payable for the land—Inam authorities duties of—Right of melvaramdar to trees in case of lands which were topes at the Inam Settlement* In cases where the holding of a tenant was at the time of the Inam Settlement and has subsequently been a tope consisting of trees the melvaramdar has a right to a portion of the value of the trees and the ryot is not entitled to cut them down for his sole appropriation the portion due to melvaramdar being determinable according to the evidence The incidents of the tenure of a tenant under an inamdar are governed by the law applicable to landlord and tenant and not by the Inam patta or the Inam Register whose object in mentioning the tax payable by the tenant was only to enable the Inam authorities to fix the quit rent payable to Government by the Inamdar *Bodda Goddeppa* v *The Maharaja of Vizianagram I L R 30 Mad 155 Rangayya Appa Rao* v *Kadiyala Patnam I L R 13 Mad 249 Apparau* v *Narasanna I L R 15 Mad 47 Narayana Ayyangar* v *Orr I L R 26 Mad 252* and *Kalarla Ablayya* v *Raja Venkata Papayya Rao I L R 29 Mad 24* distinguished SRI RAJAGOPALASWAMI TEMPLE v JAGANNADHA PANDIAJIAR (1913) **I L R 38 Mad 155**

INJUNCTION

———— *House in abadi—Well sunk by tenant inside his house—Mandatory injunction—Discretion of Court* In this the High Court refused to grant a mandatory injunction at the suit of the zamindar for the removal of a well recently constructed inside their house by tenants of a house in a town the position of the tenants being that they and their predecessors in title had paid no rent for generations and were only liable to ejectment in the event of the site occupied by them being cleared of buildings BHAGWAN DAS v MUHAMMAD YAHIA (1913) **I L R 35 All 292**

INTEREST

———— *Kabuliyat containing stipulation to pay excessive rate of interest—Assurance by landlord at the time of execution of kabuliyat that covenant will not be enforced effect of on the document—Evidence Act (I of 1872) s 92 prov 1* A *kabuliyat* for a period of one year provided that on default of payment of rent the arrears would carry interest at 75 per cent per annum The tenant held over after one year On a suit for rent on the basis of the *kabuliyat* the tenant pleaded that before the *kabuliyat* was executed by him the landlord assured him that the covenant for payment of interest at 75 per cent would not be enforced This allegation was found to be true *Held* that under the circumstances the *kabuliyat* was not the real agreement between the parties having been induced by fraudulent misrepresentation and the tenant was not liable to pay interest claimed on the basis of the *kabuliyat* S 92 Prov 1 of the Evidence Act referred to NADIA CHAND SAHA v BIRENDRA CHANDRA DUTT (1915) **20 C W N 1067**

LANDLORD AND TENANT—*contd*
LEASE

1 ———— Trees—*Kaimi lease—Lease created before the Transfer of Property Act (IV of 1882)—Trees planted after lease—Right of removal of trees by tenant—Fixtures doctrine of—Bengal Tenancy Act (VIII of 1885) s 23—Transfer of Property Act (IV of 1882) ss 2 108 (h)* In the absence of any special provision in a lease granted before the Transfer of Property Act (IV of 1882) came into force the property in the trees planted by the lessee after a *kaimi* lease had been granted does not vest in the landlord The rule laid down in s 108 cl (h) of the Transfer of Property Act (IV of 1882) has no application to such a case The lease in the present case not being for agricultural or horticultural purpose s 23 of the Bengal Tenancy Act has no application The doctrine of the English Law of Fixtures cannot be appropriately extended to this country on equitable grounds *Bain* v *Brand 1 App Cas 762 Mears* v *Callender [1901] 2 Ch 388 Elwes* v *Maw 2 Smith s Leading Cases 189 3 East 38 Ness* v *Pacard 2 Peters 137* referred to The Law of Fixtures is not recognized under the Hindu or Mahomedan laws *Thakoor Chunder Paramanik* v *Ramdhone Bhuttacharjee 6 W R 228 B L R F B 595 Secretary of State* v *Charlesworth Pilling & Co I L R 26 Bom 1 Khodeeram Serma* v *Trilochun 1 Mac Sel Rep 35 Jankee Singh* v *Bukhooree Singh (1856) Beng S D A 761 Pogose* v *Nuamutoollah (1858) Beng S D A 1517 Brij Bhookun* v *Dabee Dyal (1863) 2 Agra S D A 480 Kalee Pershad Dutt* v *Gouree Pershad Dutt 5 W R 108* relied upon Before the passing of the Transfer of Property Act the doctrine of the English Law of Fixtures did not prevail in this country and the provisions of that Act substantially reproduced the law on this subject as recognised by Hindu and Mahomedan jurisprudence *Ismai Kani Rowthan* v *Nazarali Sahib I L R 27 Mad 211* referred to MOTIZ SHEIKH v RASIK LAL GHOSE (1910) **I L R 37 Calc 815**

2 ———— Sarbarakari jamai lease—*Construction—Intermediate tenure if can be created between proprietary and putni interests* Where a pottah recited that a *sarbarakari jamai* settlement had been taken from the zemindar at a certain annual rental and continued I hereby confer upon you all the powers I had to realise the rents etc payable by the *putnidars* By virtue of these powers you shall be competent to sue those *putnidars* in my behalf and using my name I have executed *am muktear namahs* in your favour lest your applications be not accepted by the Collector *Held* upon a construction of the pottah that it did not create any interest in land as that of a tenure holder but only a personal obligation between the grantor and the grantee *Semble* A zemindar cannot create a permanent tenure between his own interest and *putni* taluk of the first degree BIBI JARAO KUMARI SAHABA v HANIFUDDIN AHAND (1909) **14 C W N 289**

3 ———— Mokurari pattah, construction of—*Conflict between area and boundaries—Landlord and tenant* It is only when the boundaries of a land can be ascertained with perfect certainty that an intention to convey all lands comprised within those boundaries can be inferred if the boundaries are uncertain the intention should be taken to be to convey the specified quantity of land within those boundaries *Held* upon a construction of the *pattah* in the case that the dimensions specified were an essential part of the description of the land conveyed and not a cumulative description of it which was to be governed by the boundaries *Held* further that in the circumstances of the case the intention should be inferred to have been to pass the specified quantity of land only *Daniel Herrick* v *Garret Sixby L R 1 P C A 436 Mellor* v *Walmesley [1905] 2 Ch 164* referred to KUMAR RAMESHAR MAITA v RAM TARAK HAZRAH (1909) **14 C W N 268**

4 ———— Rent in kind and in default a fixed price—*Payable if landlord can recover more than price specified—Money value put down for purposes of registration—Object if may be proved—Evidence Act (I of 1872) s 92—Oral agreement to vary written contract if admissible* Where a *kabuliyat* provided for the payment of rent partly in money and partly in kind and further provided that if the tenant neglected to pay the rent the landlord would be entitled to recover a certain sum as the price of paddy deliverable *Held* that upon a true construction of the *kabuliyat* the landlords would be entitled to realise only the amount stated in the *kabuliyat* as the price of the paddy on the failure of the tenants to deliver it Evidence to show that the money value was put in only for the purpose of registration and that thus the real intention of the parties was to realise the current price of paddy would be evidence of an oral agreement to contradict or substantially vary the terms of a written contract which is not admissible under s 92 of the Evidence Act *Lakhatullu Sheikh* v *Bisuambhar Roy 6 Ind Cas 577 2 Ind Cas 160* referred to *Sohobut Ali* v *Abdool Ali 3 C W N 151 Bipra Charan* v *Suchand Roy 14 C W N cxxxiii Baneswar Mukerjee* v *Umesh Chandra Chakravarti 14 C W N clxxxii* not followed *Saikh Ishaf* v *Gopal Chandra Das 14 C W N cxcii* referred to AFAR v SURJA KUMAR GHOSE (1910) **15 C W N 249**

5 ———— Raiyati zurpeshgi and others—Cultivation of Indigo—*Acquisition for right of occupancy—Nature of holding—Zeraat khudka ht and private land of landlord—Notice to quit on expiry of lease—Suit to recover land lease—Bengal Tenancy Act (VIII of 1885) s 5 cl (5) and s 116—Raiyat—Tenure holder* The appellants (plaintiffs) were the proprietors of the village of Ballipura Parsram and the owners of the Hathowri Indigo Concern (the predecessors in title of the respondent defendant) and the respondent himself had been their tenants under various leases (raiyati zurpeshgi and others) since 18[illegible] for the cultivation of indigo To a suit brought to recover two areas of land of 1[illegible]6 bighas and 25 bighas respectively on the ground that the latest leases (of 21st October 1891 and 10th February 1892) under which they were respectively held had expired the respondent pleaded as to the larger area that he had acquired occupancy right and that even assuming he had not acquired such right a notice to quit was necessary under s 4[illegible] of the Bengal Tenancy Act (VIII of 1885) before he could be ejected The latter defence alone was set up as to the smaller area The Subordinate Judge held on the construction of the various leases that the larger area was the appellants private land in respect of which

LANDLORD AND TENANT—*contd*

LEASE—*contd*

therefore (within the meaning of s 116 of the Bengal Tenancy Act) the respondent could not acquire a right of occupancy and (acting on the presumption under s cl (5) of the Act and on an admission that the smaller area was the private land of the appellants) he decided that the respondent was a tenure holder and not a raiyat in respect of all the land in suit and that he could be ejected without notice to quit The High Court on appeal reversed that decision holding as to the larger area that the presumption under s cl (5) of the Act had been rebutted and that respondent was a raiyat and not a tenure holder and (notwithstanding the admission) came to a similar conclusion as to the smaller area and decided that the respondent had acquired rights of occupancy in both areas of land and a notice to quit was necessary before ejectment *Held* (by the Judicial Committee) that on the construction of the leases and under the circumstances of the case the High Court had rightly decided as to the larger area but were wrong in going behind the admission made as to the smaller area *Bengal Indigo Company* v *Roghobur Das I L R 24 Calc 272 L R 23 I A 158* distinguished on the ground that in that case there was no finding of fact to rebut the presumption under s 5 cl (5) of the Bengal Tenancy Act DAMODAR NARAYAN CHOWDHRI v DALGLIESH (1911) **I L R 38 Calc 432**

6 ———— *Sub-lessee—Avoidance of lease —Vacant possession—Holding over—Transfer of Property Act (IV of 1882) s 108* The plaintiffs were lessees of a godown for one year from 1st April 1908 at a monthly rent From 1st May 1908 they sublet it on the same terms for the remainder of their lease to the defendant who used it for storing bags of sugar On 5th December the godown was partially destroyed by fire and a quantity of sugar therein considerably damaged. The defendant s insurers came in to take charge of the salvage but soon after sold the remains of the sugar to *G M* and the latter then took possession and continued in possession sorting the sugar until 16th February 1909 Meanwhile on 10th December the plaintiff had written to the landlord advising him of the fire and of the r termination of the lease in cons quence The landlord however insisted on their liability to pay rent until such time as vacant po session should be given to him The defendant in answer to a bill for rent wrote to the plaintiffs to the effect that he had terminated his lease on account of the fire and would not pay more than the proportionate rent for the first 5 days of December As however vacant possession was not given until 16th February (on which day *G M* went out of possession) the plaintiffs sued the defendant for rent and for use and occupation *Held* that the plaintiffs could not exercise their option to terminate the lease until they put the landlord into possession If the avoidance of the lease under s 108 (*e*) of the Transfer of Property Act (IV of 1882) was effectual without surrender of vacant pos ession the plaintiffs by failing to give vacant possession were holding over after the termination of their lease and were liable for rent under an implied monthly tenancy on the same terms as before If the avoidance was ineffectual the lease continued until put an end to by mutual consent *Held* further that the abandonment to the insurers by the defendant was effected for his benefit and in the absence of evidence that the insurers and their vendee *G M* kept the sugar in the godown in spite of protests by the defendant the latter (as between the plaintiffs and the defendant) must be taken to have been in occupation either under his original tenancy or under a similar one resulting from his holding over SIDICK HAJI HOOSEIN v BRUEL & Co (1910) **I L R 35 Bom 333**

7 ———— Amalnamah—*Construction of—A present demise or an agreement to make a future demise a question of intention—Bengal Tenancy Act (VIII of 1885) ss 10 78 155 178 sub s (1) cl 8—Waste land—Notice if necessary to terminate a lease of—Lessee of waste lands if may be ejected except in execution of decree—Registered lease omission of the landlord to give if effects tenants position* The question whether an instrument made a present or merely an agreement to make a future demise must depend upon the paramount intention of the parties *Parmanan Das* v *Dharsey Virji I L R 10 Bom 101 Jones* v *Reynolds L R 1 Q B 506 516 Chapman* v *Towner 6 M & W 100 104* referred to Where an *amalnamah* granted in 1313 recited that the defendant had applied for a *mourasi mokurari chukdari* lease from the plaintiff and that in anticipation of the execution of a proper lease the plaintiff had agreed to place the defendant in posse sion of the land on certain conditions *viz* that out of Rs 2 000 payable as premium Rs 500 would be paid in Magh 1311 and the remainder by three equal annual instalments that in default of such payment the *amalnamah* would stand cancelled and cea e to be operative and that in 1312 and 1313 the lands should be held rent free and that rent at specified rates would be payable in respect of the lands in subsequent years and the instrument further provided that in 1312 the defendant would bring under cultivation 200 bighas of land and that the whole would be brought under cultivation in 1313 and that in the event of a failure to cultivate the lands in 1312 and 1313 the grantor would be at liberty to re enter and settle the land with other tenants —*Held* that there was a present demise by the *amalnamah* and not an agreement to make a future demise *Semble* The position of the tenant under such circumstance would not in substance be affected by the failure of the landlords to execute a registered lease in favour of the tenant *Bibi Jawahir Kumari* v *Chatterput Singh 2 C L J 313 Singheeram* v *Bhagbat Chander 11 C L J 543* referred to *Held* that s 178 of the Bengal Tenancy Act does not operate to make s 155 of the Act inapplicable to the ca e of a tenant of waste land who cannot therefore be ejected without notice under s 155 being served on him *Held* further that under s 178 sub s (1) cl (8) read with s 89 and s 10 the landlord had no right to eject the tenant in the circumstances of the case except in execution of a decree CHAMPALATIKA MITRA v NARAP CHANDRA PAL CHOWDRY (1910) **15 C W N 536**

8 ———— Protected interests"—*Incumbrance—Bengal Tenancy Act (VIII of 1885) s 160 (g)* The plaintiffs had under a sub lease granted by *G* who held under a permanent lease granted by *B* *B* again holding under a permanent lease granted by *I* The lease given by *P* to *B* authorized *B* to grant sub leases *Held* that the right and interest of *G* and therefore of the plaintiffs are protected interests and are not such

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LEASE—*contd*

as can be interfered with by a purchaser under the Bengal Tenancy Act AFAZUDDI KHAN v PRASANNA GAIN (1911) I L R 39 Calc 138

9 ———**Mistake in Lease**—*Landlord and Tenant* Where a comparatively small portion of the demised lands was found to have originally belonged to the lessee and to have been included in the lease by mutual mistake *Held* that the whole lease should not be set aside but that there should be an apportionment of rent for the re maining land RAIMONI DASSI v MATHURA MOHON DEY (1912) 16 C W N 606

10 ——————— **Denial of Title**—*Evidence Act (I of 1872) s 116—Estoppel* *A* purporting to be *dharmakarta* of a temple gave a lease of the temple properties to *B* During the tenancy *C* and not *A* was declared in a separate suit to be the rightful *dharmakarta* *B* had not attorned to nor been evicted by *C* *Held* that the tenancy had not been determined and that in a suit by *A* for rent *B* was estopped by s 116 Indian Evi dence Act from denying *A s* title DEVALRAJU v MAHAMED JAFFER SAHIB (1913)

I L R 36 Mad 53

11 ——————— **Tenancy at will**—*Lease until lessee requires or wishes—Tenancy at will on both sides* A lease by which the lessees are to hold for such time as they require or wish is a tenancy at the will of the lessee which in law is a tenancy at the will of the lessor also Coke on Littleton page 55 (*a*) and Halsbury s Laws of England Vol 18 page 434 referred to MANIKA v CHINNAPPA (1913) I L R 36 Mad 557

12 ———— **Lease of land for mining coal**—*Description in kabuliyat given in bighas and boundaries specified in schedule—Area of land delivered found less than area stated in kabuliyat—Claim to abatement of rent in respect of deficiency—Onus on tenant to prove right to reduction of rent—Construction of kabuliyat—Negotiations leading to contract and other ex traneous evidence inadmissible in evidence* This appeal arose out of a suit for Rs 23 868 as arrears of rent cesses and interest under a *mokarari maurasi kabuliyat* dated 3rd December 1894 (1301) executed by the respondent on be half of himself and his co sharers (the other res pondents) in favour of the predecessor in title of the appellant for the right of coal mining under 400 bighas of land in mauzah Dobari in Man bhum (the boundaries of the area leased being specified in a schedule to the *kabuliyat*) at a rental of Rs 2 800 a year which the *kabuliyat* stated shall never on any account be varied The land within the boundaries specified in the sche dule was not measured at any time or if measur ed it was not shown what the measurement was in bighas The defence so far as material was mainly that the respondents had been given pos session of the *mining rights under an area less* than 400 bighas of land and were therefore entitled to an abatement of the rent in respect of the de ficiency that by an injunction made in 1902 in a suit brought by the appellant the rights of the *respondents* to work coal underneath the land leased to them was restricted to an area of 275 bighas and they tendered rent at a reduced rate which the appellant refused to accept The rent had been reduced in 1898 (1305) by the original lessor on the ground that the coal taken out was of inferior quality and rent had been paid at the reduced rate for 2 years but the document wit nessing the reduction had not been registered and was therefore inadmissible in evidence On the construction of the *kabuliyat* the appellant con tended that the respondents were entitled only to the coal underneath such quantity of land as was contained within the boundaries given in the schedule and the contention of the respond ents was that they were entitled to the coal under neath the full quantity of 400 bighas of land Both Courts below found that 400 bighas of land had been demised but the Subordinate Judge while finding that the respondents were in posses sion of only 346 bighas held that they were not entitled to any abatement of rent in respect of the deficiency The High Court disregarded the des cription of the land by boundaries but found on the evidence in the former suit that the respond ents had only been in possession of 275 bighas and held that they were entitled to a proportionate abatement of the rent fixed by the *kabuliyat* *Held* (reversing the decrees of the Courts in India) that the question as to what had been demised in 1894 turned on the true construction of the *kabu liyat* which could not be varied by extraneous evidence as to the negotiations which led up to the contract or by evidence showing that within the boundaries specified in the *kabuliyat* there was not 400 bighas of land *Held* further that there was no reliable and admissible evidence to prove that the original lessor ever bound himself permanently to accept a reduced rent and the fact that he did so for some years was consistent with the reduc tion having been a mere voluntary and temporary abatement It was for the respondents to make out a case for the abatement of the rent but they had not proved how many bighas were contained in the area of mouzah Dobari within the boun daries specified in the schedule to the *kabuliyat* nor had they proved the area in bighas within those boundaries of which they were put in posses sion They had not proved otherwise than by the action of the Subordinate Judge on the former suit in granting an injunction in the form in which it was granted and by their neglect to appeal from that decree that they had been deprived of the right to work any coal which otherwise they would have been entitled to work under the demise and the injunction as granted gave them no right which they could enforce by suit or of which they could avail themselves as a defence to a suit for the fixed rent they had in fact wholly failed to prove any facts which would entitle them to any abate ment of the rent fixed by the *kabuliyat* The tenders based on a reduced rent were therefore not good and were ineffective and the appellant was entitled to a decree for the amount sued for less the costs of the former suit DURGA PRASAD SINGH v RAJENDRA NARAYAN BAGCHI (1913)

I L R 41 Calc 493

13 —— —**Clause allowing removal of fixture**—*After expiry of lease if a renewal clause —Notice of a lease—Notice of terms of a lease—Estoppel—Ouster* Terms in a lease giving the lessee if unwilling at the end of the term to take a fresh settlement the right to take away the fixtures put on the land cannot operate as a covenant under which the lessee could comp

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LEASE—*contd*

the les.or to grant a fresh term SARAT CHANDRA MUKHOPADHYAY v RAJENDRA LAL MITRA (1913)
18 C W N 420

14 ——— **Nim howla lease**—*Stipulation in against voluntary alienation by tenant to person other than landlord—Purchase of tenure by stranger at sale in execution of money decree—Purchaser if acquires good title—Landlord if can sue original tenants for rent and obtain decree binding on tenure* The plaintiff purchased at an execution sale the right title and interest of the tenants in a *nim howla* tenure Notwithstanding the purchase by the plaintiff which was duly notified to the landlord the latter brought a suit for rent against the tenants and obtained a decree The plaintiff brought a suit for declaration that this decree was not binding on him and that the tenure in his hands was not liable to be sold in execution thereof The lease which created the *nim howla* provided as follows Let it be known that if you find it necessary to transfer the *nim howla* tenure you will transfer it to me for proper price You will not be at liberty to transfer it to any person other than myself If you transfer it to any other person such transfer will be invalid *Held* that there being no covenant against involuntary alienations and no covenant for re entry the planitiff acquired a good title by his purchase and consequently it was not open to the landlord to sue the *original tenants with a view to obtain a decree* whereby he could proceed agains t the tenure in the hands of the plaintiff PROMODE RANJAN GHOSH v ASWINI KUMAR NAG (1914)
18 C W N 1138

15 ———**Covenant against alienation—Permanent lease of agricultural land**—*Covenant against alienation voluntary as well as involuntary with proviso for re ntry if enforcible—Purchaser if must be notified by lessor of intention to determin lease before suit—Bengal Tenancy Act (VIII of 1885) s 155 Sch III cl (1) if applies—Limitation—Mortgage by lessee sale in execution purchase by mortgagee—Mortgagee if trespasser* A permanent lease of agricultural land contained a covenant against sale gift mortgage etc by the lessees with a proviso for re entry in case the land was transferred or sold by auction The lessees having mortgaged the land the mortgagee sued on his mortgage and in execution of the decree obtained therein had the holding sold and purchased it himself and got possession through Court on 23rd November 1898 The original lessees continued in possession of a portion of the land under a sub lease from the purchaser Plaintiffs who proved their right to a 12 annas share in the interest of the landlord sued the purchaser and the original lessees for ejectment on 20th March 1908 The lower Courts having decreed the suit the purchaser only preferred this second appeal *Held* that the plaintiffs were entitled to recover (joint) possession to the extent of their 12 annas interest the defendant being a trespasser and the suit which was governed by Art 142 of Sch I of the Limitation Act having been instituted within time *Per* SANDERSON *C J*—The assignment was not *ad invitum* as the execution sale was directly due to the voluntary act of the lessees *Per* MOOKERJEE *J*.—A covenant for re entry by the landlord upon an involuntary sale is valid in India as in England *Per* CURIAM —That in the absence of any act of the Plaintiffs recognising the purchaser as a tenant he was in the position of a trespasser and neither s 165 nor cl (*I*) to Sch III of the Bengal Tenancy Act applied to the case *Per* MOOKERJEE *J*—Where a covenant against alienation is coupled with a proviso for re entry the landlord is not limited to the reliefs by injunction or damages That as the tenancy was of agricultural lands s 111 Transfer of Property Act did not apply and the suit was not bad because the plaintiffs did not previously notify their election to enforce the proviso The institution of the suit itself was a sufficient manifestation of the option to treat the lease as determined DWARKA NATH ROY CHOWDHURY v MATHURA NATH ROY CHOWDHURY (1916)
21 C W N 117

16 ——— **Option of renewal**—*Written notice in exercise of option to be given within time specified in Indenture—Oral arrangement—Modification or rescission of covenant for renewal—Admissibility of evidence—Waiver—Estoppel—Evidence Act (I of 1872) ss 91 92 (proviso 4) 115* An Indenture of lease contained a covenant for renewal of the lease whereby if the lessee desired to renew the lease he should give 3 months notice in writing of his intention to do so The lessee however failed to observe this covenant and relied on an oral statement or agreement between himself and his les ors for renewal of the lease *Held* that there was no waiver *Held* also that the oral statement or agreement amounted to either a modification or a rescission within the meaning of s 92 proviso 4 of the Evidence Act and evidence of such oral statement or agreement was not admissible *Held* also that there was no representation of a thing within the meaning of s 115 of the Evidence Act and consequently no estoppel MARK D CRUZ v JITENDRA NATH CHATTERJEE 1919) **I L R 46 Calc 1071**

17 ——— **Non delivery of possession of entire land demised**—*Rent suspension of for non delivery* Where the landlord having let out a portion of a land to an earlier lessee lets it out again *with other lands* to a subsequent lessee and fails to deliver to the subsequent lessee posse sion of the entire land leased to him the entire rent is suspended *Neale* v *Mackenzie 1 M & W 747 46 R R 418* and *Smith* v *Raleigh 3 Camp 513 14 R R 809* followed *Stokes* v *Cooper 3 Camp 514n 14 R R 829n*, and *Annada Prosad Mukhopadhya* v *Mathura Nath Nag Mazumdar 13 C W N 702* distinguished MANINDRA CHANDRA NANDI v NARENDRA CHANDRA LAHIRI (1919)
I L R 46 Calc 956

18 ——— **Right of pre-emption**—*of leasehold right—Clause of forfeiture of lease and right to re enter on breach of covenant—Contract Act (IX of 1872) s 74 applicability of—Transfer of Property Act (IV of 1882) ss 111 (g) and 117 applicability of—Relief against forfeiture whether grantable* Where a *mulgeni* lease provided for previous notice to the lessor in case of any intended sale or mortgage of the leasehold interest by the lessee and for forfeiture of lease and re-entry on breach of the covenant *Held* that s 74 of the Indian Contract Act did not apply that Courts had no power to relieve

LANDLORD AND TENANT—*contd*
LEASE—*concld*

against the forfeiture and that the lessor was entitled to possession on breach of the covenant *Held* further that by reason of the prohibition in s 117 of the Transfer of Property Act s 111 (*g*) of the Act did not in terms apply but that the principles of the *Courts of Equity* embodied in s 111 (*g*) applied to the case KRISHNA SHETTI *v* GILBERT PINTO (1919)

I L R 42 Mad 654

MINERAL RIGHTS

——— *Permanent tenure of an agricultural character—Underground rights not mentioned in lease—Minerals under surface of land—Rights of Zemindar—Onus of proof—Transfer of Property Act* (*IV of 1882*) *ss 108 117* The question for decision in this case whether certain Goswamis the sebaits of an idol and lessees of a village in the zemindari of the appellant the Rajah of Pachete had under their lease which had been granted by a predecessor in title of the appellant about 60 years ago acquired any rights to the minerals beneath the surface of the village which they could have transmitted to the respondents who claimed to hold under them There was no document or evidence defining the terms of the lease to the Goswamis Two decrees in favour of the Rajah for the payment of an annual rent of Rs 22 15 6 by the Goswamis were put in in one of which they were described as cultivators and in the other as britti holders There was no evidence whatever that the Rajah had ever granted mineral rights in the village to the Goswamis or to any other person Both the Courts in India found that the village was a *mal* (rent paying) village of the zemindari of the Rajah and that no prescriptive right had been proved by the respondents to any underground rights in the village The High Court held that the zemindar had created a permanent tenure of an agricultural character and that the tenure holder would possess all underground rights in the absence of express reservation by the zemindar *Held* by the Judicial Committee (reversing that decision) that the title of the zemindar Rajah to the village being established he must be presumed to the owner of the underground rights appertaining thereto in the absence of evidence that he had parted with them and no such evidence had been produced Field s Bengal Regulations Introduction page 36 referred to In the case of leases under the existing law of 1882 (the Transfer of Property Act IV of 1882 s 108) no right arises for a lessee to work mines not open when the lease was granted HARI NARAYAN SINGH DEO *v* SRIRAM CHAKRAVARTI (1910)

I L R 37 Calc 723

——— *Mineral rights—Permanent tenures grant of if conveys underground rights—Mogali Brahmottar grants—Proof of permanency—Original tenure split up—Character of tenancy if altered* When certain tenures which were described as *Mogali Brahmottar* were shown to have existed since before the permanent settlement and it appeared that the same rents had always been paid for them and that they were freely transferable *Held* that the tenures were at least permanent tenures That it was not correct to view such tenure holders as owners of the land subject to a rent charge The holder of a permanent tenure in the absence of all evidence of the terms of the lease should not be presumed to own the underground rights *Abhiram* v *Shyama Charan I L R 36 Calc 1003 14 C W N 1* *Shyam Chand* v *Ram Kanai 15 C W N 417* *Shama Charan* v *Abhiram I L R 33 Calc 511 10 C W N 738* *Megh Lal* v *Raj Kumar I L R 34 Calc 358 11 C W N 527* *Broja nath Bose* v *Durga Prosad I L R 34 Calc 753 12 C W N 193* *Sriram* v *Hari Narain I L R 33 Calc 54 10 C W N 495* referred to Where the original grant was that of a permanent tenure the fact that subsequently the tenure was merely split up into more than one would not affect the permanent character of the tenancies *Udoy Chandra Karji* v *Nripendra Narayan Bhup I L R 36 Calc 287 33 C W N 410* distinguished JYOTI PROSHAD SINGH DEV *v* GEORGE MATHEW DARBY (1911)

16 C W N 241

——— The grantee of a permanent or heritable tenure at fixed rent or rent free from a Zamindar is not entitled to the minerals in the absence of express provision to that effect RAGHUNATH ROY *v* RAJA OF JHERIA

23 C W N 914

——— *Mining lease construction of—Provision for payment of royalties—Power to lessees to surrender lease on six months notice without definite time fixed—Condition of surrender all royalties to be paid before lessees right arose—Waiver of condition by lessor by his asking for surrender by deed on receiving notice from lessees of intention to surrender and delay caused thereby* A lease for 999 years was granted by the appellant in favour of the respondent company of coal land and mining rights in certain mouzahs in his zamindari By cl 1 of the lease certain royalties were fixed for each ton of coal and cl 2 provided that such royalties should be payable quarterly By cl 3 an annual minimum royalty was fixed until the expiration of the term with a provision that if the royalties paid were found at the end of the Bengali year to be less than the minimum royalty the lessees should be bound to make up the loss and pay the minimum royalty in full within the first two months of the following year By cl 6 the lessees were given power to take the necessary surface land for the purpose of carrying on the colliery business at a fixed rent per bigha to become payable at the end of each Bengali year Cl 9 gave the lessees a right to surrender any or all of the mouzahs hereby leased to you by giving me six months written notice and paying the minimum royalty for the said six months, *i e* a half of the annual minimum royalty But I shall not accept any surrender for a portion or any of the mouzahs neither shall you be entitled to surrender so long as any rent or royalty remains unpaid The respondent Company on 11th May 1912 sent to the appellant a registered letter giving him six months notice of their intention to relinquish the mouzahs the appellant handed the notice to his manager who requested the respondent Company to execute a formal deed of surrender Admittedly no deed was tendered for execution nor was any amount ascertained as being payable for royalties before the expiration of the six months' notice The respondent Company on 23rd May 1913 paid the amount they calculated to be due but the appellant objected that there had been no effectual surrender,

LANDLORD AND TENANT—*contd*

MINERAL RIGHTS—*concld*

ins much as the notice did not expire at the end of the Bengali year and no tender of the amount due had been made In a suit brought by the appellant treating the lease as being still in force —*Held* that there was nothing in the terms of the lease to fix the notice as one that must be given at any definite period and therefore under cl 9 it had been rightly given that cl 9 did not make it necessary to tender the amount due for royalties at the time when the notice was served that when the manager asked that the surrender should be by deed it was not obligatory to pay the money until the deed was tendered and that the lease was no longer subsisting on the expiry of the six months and therefore the suit was not maintainable DURGA PRASAD SINGH *v* TATA IRON AND STEEL COMPANY (1918) I L R 46 Calc 552 L R 45 I A 275

MULGENI TENURE

———————— *Landlord and Tenant—Mulgeni tenure—Revenue assessment who to pay—Revenue Recovery Act II of 1864 ss 1 and 35—Principles apart from Act* Under s 35 Revenue Recovery Act a mulgenidar who pays revenue due on land held by him as a mulgeni tenant is entitled to recover the same from his landlord the mulgar by deducting the amounts so paid from any rent then or afterwards due from him to the mulgar The fact that the mulgar s revenue assessment has been increased by Government does not make him the less liable to pay the whole assessment although the amount so to be paid may be in excess of or out of proportion to the rent to be received by him To hold otherwise would be to deprive the mulgenidar of the right secured to him by s 35 of the Revenue Recovery Act *Per* BENSON *J*—Apart however from the Revenue Recovery Act which thus indirectly and as it were unintentionally imposes the whole burden on the pattadar it cannot be held that where an increased revenue assessment has not been contemplated in the mulgeni chit either the mulgar or the mulgenidar is bound to pay the whole of the increase in assessment imposed by Government Assessment is a burden imposed by Government on the land and where the rent has been fixed by contract and the imposition of a higher assessment by Government is a matter outside the terms of the contract altogether and is not provided for in it either expressly or impliedly it ought in accordance with principle to be shared by the mulgar and the mulgenidar in proportion to the benefit which each derives from the land VIDYAPURNA THIRTHASWAMI *v* UGGANNU (1910) I L R 34 Mad 231

———————— The rights of mulgenidar do not escheat to Government on the death of the last owner dying without heirs but revert to the mulgar for whom the mulgeni was acquired—a mulgeni differs from a permanent lease SECRETARY OF STATE FOR INDIA *v* SHITARAM APPA I L R 42 Mad. 327

NOTICE TO QUIT

———————— —*Principles to be observed in construing notices to quit—Inaccuracies in notice may be immaterial—Test of sufficiency though inaccurate—Interpretation affected by the fact that the persons on whom they are served are conversant with all the facts and circumstances of the tenancy it is desired to terminate—Maxim Ut res magis valeat quam pereat—Mode of service —Transfer of Property Act (IV of 1882) s 106* The principles on which notices to quit containing errors honestly but mistakenly or inadvertently made are to be construed are entirely inapplicable to notices containing inaccuracies deliberately inserted for fraudulent purposes The principles laid down by the English authorities are equally applicable to cases arising in India They establish that notices to quit though not strictly accurate or consistent in the statements embodied in them may still be good and effective in law that the test of their sufficiency is not what they would mean to a stranger ignorant of all the facts and circumstances touching the holding to which they purport to relate but what they would mean to tenants presumably conversant with all those facts and circumstances and further that they are to be construed not with a desire to find faults in them which would render them defective but in accordance with the maxim *Ut res magis valeat quam pereat* *Doe d Huntingtower v Culliford 4 Dow & Ry 248 Doe d Williams v Smith 5 Ad & E 350 Wride v Dyer [1900] 1 Q B 23* and *Doe v Archer 14 East 245* referred to Applying these principles to the present case in their pleadings to which the defendants attributed fraudulent intentions to the plaintiffs —*Held* that the plaintiffs were not actuated by a desire to effect any fraudulent purposes in connection with the notice to quit or in bringing the suit from all their action and on the evidence a contrary view was to be inferred that the earlier portion of the notice to quit correctly and clearly described the identity of the land it was intended to cover which the defendants admittedly knew was 2 bighas 2½ cottahs and the erroneous statement in the schedule as to the area of the land being 6 cottahs did not predominate over the description of it already given in the notice but was merely an immaterial inaccuracy and that the pleadings and evidence in the case showed that the defendants were conservant with all the circumstances and facts relating to the land The notice was sufficient to cover the entire area held by the defendants from the plaintiffs and was therefore a good notice *Held* further that the notice to quit had been duly served on all the tenants and the conditions laid down in s 106 of the Transfer of Property Act (IV of 1882) were complied with Service on one joint tenant is *primâ facie* evidence that it has reached the other joint tenants *Macartney v Crick 5 Esp 196 Doe d Bradford v Watkins 7 East 551* and *Pollock v Kelly 6 Ir C L R 367* referred to Service through the post was sufficient [*Gresham House Estate Co v Rossa Grande Gold Mining Co (1870) W N 119*] and the presumption that the notice so served has been received is greater when the letter is registered as in the present case and is not rebutted but strengthened by the fact that a receipt for it is produced signed on behalf of the addressee by some person other than the addressee himself *Tanham v Nicholson L R 5 H L 561* referred to HARIHAR BANERJI *v* RAMSHASHI ROY (1918)

I L R 46 Calc 458

LANDLORD AND TENANT—*contd*

OCCUPANCY RIGHT

See OCCUPANCY RIGHT

——— *Occupancy right extinguishment of—New occupancy right in the same holding—Acquisition of adverse rights in two capacities—Non occupancy raiyat if he can sub let and create incumbrance—Bengal Tenancy Act (VIII of 1885) ss 2 cl (2) 159 160 cl (g)* When an occupancy right is extinguished by the operation of s 2 cl (2) of the Bengal Tenancy Act a new occupancy right cannot be acquired in the same tenancy by the co sharer proprietor by whose action the occupancy right has ceased to exist The owner of a holding cannot acquire a right adversely to himself in his other character as co proprietor A non occupancy raiyat is a *raiyat* and the land held by him is a holding s 159 of the Bengal Tenancy Act applies to non occupancy holdings also A non occupancy raiyat is not prohibited from sub letting and may have an under raiyat under him and may create a protected interest under s 160 cl (g) if his landlord allows him so to do An incumbrance may be created by a non occupancy raiyat on his holding in limitation of his own interest however limited by way of sub lease RAM LAL SUKUL v BHIKA GAZI (1910) I L R 37 Calc 709

——— *Purchase of raiyats interest by sole Landlord—Occupancy holding and occupancy right—Transferability—Merger—Under raiyat—Notice to quit—Ejectment—Bengal Tenancy Act (VIII of 1885) as amended by Bengal Act I of 1907 ss 22 cl (2) 49 85 and 167* The *raiyats* of certain lands in dispute executed a mortgage of their lands and put the mortgagee in possession Subsequently the mortgagee settled the lands with under *raiyats* The superior landlord then brought a suit for rent against his *raiyats* and purchased the holding at a sale for arrears of rent Thereafter the landlord sold the permanent *raiyati* to one Meajan who after having taken a lease from the landlord and after having redeemed the mortgage sold the same to the present plaintiffs The plaintiffs thereupon brought a suit to eject the under *raiyats* *Held* that the occupancy still continued to exist after the purchase by the landlord *Akhil Chandra Biswas* v *Hasan Ali Sadagar 19 C W N 916* followed *Held* also that the landlord was able to transfer the holding to Meajan through whom it came to the plaintiffs *Held* also that the under *raiyats* continued to be under *raiyats* and were duly served with notice to quit and must be ejected YAKUB ALI v MEAJAN (1915) I L R 43 Calc 164

PERMANENT TENANCY

See BOMBAY LAND REVENUE CODE 1879 ss 63 216 I L R 44 Bom 566

——— *Evidence of permanent tenancy—Contention that no permanent tenancy can exist in the Punjab as there is no Permanent Settlement as there is in Bengal* In this case the land in dispute was situated in a suburb of Delhi and was covered by buildings of masonry occupied by the respondents It was admitted that their predecessors were invited to occupy the land for building purposes by the predecessors of the appellants in 1859 No document showing the terms of occupancy is extant nor is there any reliable evidence of what passed at that time But the facts found (as to which there was no dispute) were that from 1859 onwards a uniform and fixed rent had been paid that in some of the receipts given by the landlord the term perma nent as applied to the rent was used that the respondents and their predecessors in title have erected substantial buildings without the landlord s objection that they have dealt with these properties by way of sale and mortgage and that the properties has passed by succession *Held* that the evidence sufficiently showed that the respondents had a permanent tenancy and the fact that there was no permanent settlement in the Punjab was not material as affecting this conclusion AFZAL UN NISSA v ABDUL KARIM (1919) I L R 47 Calc. 1

——— *Permanent heritable and transferable tenure—Liability to enhancement—Contract for rent at progressive rates—Inference when highest rate is reached and there is no further enhancement by law—Bengal Tenancy Act (VIII of 1885) ss 29 30* The defendant in this case was the tenant of the plaintiffs (appellants) and the tenure was admittedly permanent heritable and transferable The only question was whether the rent was fixed as the defendant alleged or was liable to enhancement Ordinarily the admitted characteristics would create a presumption in favour of the tenant and throw on the plaintiffs the onus of showing that the tenure was wanting in the characteristics of fixity of rent but *held* that even if the onus lay on the defendant she had fully discharged it In the books of the plaintiff Company it was expressly stated that the tenure should not be liable to rent for the first four years After that it carried rent on a progressive scale until in 1298 it reached one rupee one anna per bigha The contract as to progressive rent thus came to an end in 1298 and there was no further enhancement by operation of law The clear inference from those facts was that the maximum rent reached in 1298 was the fixed rent of the tenure as long as it lasted *Golam Ally* v *Gopal Lall Thakoor* s c in Privy Council *Soorasondery Dabee* v *Golam Ally 15 B L R 125n* 9 *Suth W R 65 Dhunput Singh* v *Gooman Singh 11 Moo I A 435* and *Huro Prasad Roy Chowdhry* v *Chundee Churn Royragee I L R 9 Calc 505* referred to PORT CANNING LAND IMPROVEMENT CORPORATION v KATYANI DEBI (1919) I L R 47 Calc 280

——— *Raiyati holding created in 1845 and held at fixed rent—Recognised as heritable and transferable—Inference that holding permanent—Rent receipts stating tenant to be tenant at will value of* In a suit to eject the Defendants from a raiyati holding situated within the Calcutta Municipality it was found upon the evidence that the holding was created somewhere in 1845 that it had been held ever since at a fixed permanent rent and that the Plaintiff landlord had in the *benami* of another person taken a mortgage of the holding treating it as a permanent transferable heritable holding *Held*—That the District Judge was right in holding that the holding was a permanent heritable one and in refusing to attach any importance to a statement in the rent receipts granted to the tenants that they were tenants at will when there was nothing to show that the tenants consented to the insertion of these

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PERMANENT TENANCY—*concld*

words in the receipts or were even aware of it SURENDRO NATH LOY v DWARKANATH CHAKRAVARTI 24 C W N 1

RELINQUISHMENT

——— *Joint tenants surrender by one of her share if operative against the other—Relinquishment to take effect at a future date if inoperative* A relinquishment made in favour of the landlord by one of two co tenants so as to effect her share is valid A relinquishment is not inoperative because it was to take effect at a subsequent date KUBIR MUNSHI v BAIKUNTA CHANDRA SHAHA (1910) 15 C W N 680

——— *Occupancy tenant—Usufructuary mortgage—Relinquishment of tenancy during the term of the mortgage* *Held* that an occupancy tenant who has made a usufructuary mortgage of his holding and put the mortgagee in possession cannot during the subsistence of such mortgage relinquish his holding to the prejudice of the mortgagee s rights *Rannu Rai* v *Rafi ud din I L R 27 All 82* followed CHHOTE LAL v SHEOPAL SINGH (1900) I L R 33 All 335

RENT

1 ——— **Presumption of permanency of rent**—*Record of Rights—Bengal Tenancy Act (VIII of 1885) as amended by Bengal Acts III of 1898 and I of 1903 ss 50 105 115* When an application is made under s 105 of the Bengal Tenancy Act as amended by Bengal Acts III of 1898 and I of 1903 for settlement of rent after the final publication of the record of rights the tenant is entitled in view of the provisions of s 115 of the Bengal Tenancy Act to the benefit of the presumption under s 50 of the same Act *Radha Kishore Manikya* v *Umed Ali 12 C W N 904* approved *Secretary of State for India* v *Kajimuddi I L R 26 Calc 617* distinguished PIRTHICHAND LAL CHOWDHRY v BASARAT ALI (1909) I L R 37 Calc 30

2 ——— **One suit for rent of different tenancies if maintainable**—*Bengal Tenancy Act (VIII of 1885) ss 20 29 cls* (a) *and* (b)—*Presumption under s 20 when arises—Effect of division of tenancy* When there are several tenures held by the same tenant the landlord may institute one suit for the rent of all the tenures but if he does so he cannot put the tenancies to sale in execution of the decree so as to enable the purchaser to avoid incumbrances *Hriday Nath Das* v *Krishna Prasad Sircar I L R 31 Calc 298 s c 6 C L J 153 11 C W N 497 Baikanta Nath Roy* v *Thakur Debendro Nath Sahi 11 C W N 676 Nanda Lal* v *Sadhu Charan 7 C L J 96 Bipra Das* v *Rajaram 13 C W N 650* referred to No inflexible rule of law can be laid down that the division of a tenancy creates or does not create a new tenancy Whether it does or does not is a question of the intention of the parties to be decided on the evidence *Uday Chandra* v *Nripendra Narayan 13 C W N 410 Badhu Mala* v *Alfazuddi 13 C W N 969* referred to NULIUK CHAND DASS v SATISH CHANDRA DAS (1909) 14 C W N 335

LANDLORD AND TENANT—*contd*

RENT—*contd*

3 ——— **Denial of lessor's right to sue**—*Estoppel* *Held* that a tenant who had taken a lease from one of several trustees was not competent to deny his lessor s right to sue alone for the rent *Musammat Purnia* v *Torab Ally 3 Wyman 14* and *Jainarayan Bose* v *Kadimbini Dasi 7 B L R 723* referred to KESHO DAS v MAKSUDAN DAS (1910) I L R 32 All 213

4 ——— **Suspension of rent**—*Substantial interference by landlord with enjoyment of holding by tenant—Tenant when entitled to suspension of rent—Bona fide interference what is* Where there is substantial interference by the landlord with the tenant s enjoyment of his tenure even though there is no complete eviction the tenant is entitled to suspension of rent for the period during which there was such interference *Kadumbini Dossia* v *Kashee Nath Biswas 13 W R 338 Dhunpat Singh* v *Kasim Ispahani I L R 24 Calc 296 Harro Kumari* v *Purna Chandra I L R 28 Calc 188 Lalita Sundari* v *Surnomoyee Dasi 5 C W N 353* discussed *J* auction purchased a dur putni with power to annual incumbrances and served notice to quit on the *seputnidars* who refused to yield possession On *J* attempting to take forcible possession criminal proceedings ensued as a result of which the *seputni* was attached under s 146 of the Criminal Procedure Code on the 3rd October 1902 The land attached was subsequently let out to *ijaradar* who paid rent to the *putnidar* and deposited certain sums as *ijara* rent in the Collectorate Some of these sums deposited were withdrawn by *J* as *dur putnidar* In 1906 the *seputnidars* obtained a decree establishing their *seputni* title and in pursuance of that decree withdrew some of the *ijara* rent that was deposited in the Collectorate In a suit for rent by *J* against the *seputnidars* for the period during which the property was under attachment *Held* that the circumstances constituted substantial interference by the landlord with the tenant s enjoyment of his tenure such as disentitled him to recover rent for that period *Held* on the facts of the case that it was not such *bonâ fide* interference without prejudice to the tenant as would entitle the landlord to receive rent *Ranee Surnomoyee* v *Shooshee Mookhee 12 Moo I A 244* distinguished MAHOMED JEAULLYA MEAN v SUKHEANNESSA BIBI (1910) 14 C W N 446

5 ——— **Co owners**—*Receipt for rent collusively given to tenant by one co owner—Rights of the others to sue tenant and remaining co owner for rent* *W* and others were co owners of a shop which was let to *U* The other co owners suspecting *W*'s good faith gave notice to *U* forbidding him to pay rent to *W* They then commenced proceedings for partition of the shop Subsequently *W* executed in favour of *U* a receipt for arrears of rent and for a further sum alleged to represent rent paid in advance *Held* that in the above circumstances the co owners other than *W* were entitled to sue the tenant and *W* for their proportionate share of the rent their allegation being that the receipt referred to above was fictitious and collusive *Doorga Churan Surma* v *Jampa Dossee 12 B L R 289* referred to ZIA UD DIN v MUHAMMAD UMAR (1910) I L R 33 All 308

6 ——— **Joint promise**—*Contract Act (IX of 1872) s 43—Joint and several liability when*

LANDLORD AND TENANT—*contd*

RENT—*contd*

arises—Joint heirs of original tenant if jointly and severally liable—Where suit for rent dismissed against two of three joint tenants who did not admit the rate of rent if landlord can recover entire rent from one who admits rate of rent Whether a promise is joint or several or joint and several is a question of construction depending upon the intention of the parties to a contract In cases of joint and several promises in addition to several persons joining in a promise to another there is a promise by each to the others and of each of them separately to the promise It cannot therefore be affirmed as an inflexible rule that in every case where *A* lets out land jointly to *B* and *C* there is a promise that each of them will be responsible for the entire rent so that the landlord may recover against any one of them At any rate where several persons jointly inherit a tenancy any one of the heirs cannot be made separately liable for the entire rent Where out of three joint tenants who were representatives of one original tenant there was an admission by one in favour of the rate of rent claimed by the landlord but the admission was held to be inadmissible against the other tenants and the suit against the other two was dismissed —*Held* that the landlord could not recover the entire rent from the tenant who admitted his rate of rent The suit was dismissed as against him also *Quære* Whether a landlord may make one of several joint tenants responsible for the whole rent KASI KINKAR SEN *v* SATYENDRA NATH BHADRA (1910)

15 C W N 191

7 ———— **Transfer of tenure**—*Bengal Tenancy Act (VIII of 1885) ss 12 13 167—Suit for rent—Unregistered transferee of permanent tenure who has paid landlord's fee if necessary party—Sale in execution of rent decree obtained against recorded tenant only—Decree if money decree only—Benamidars if necessary parties—Notice to annul incumbrances signed by Deputy Collector—Validity* The transfer of a permanent tenure is completed upon payment of the landlord's fee prescribed by s 12 irrespective of its acceptance by the landlord and thereupon the landlord is bound to look to the transferee for payment of rent accruing due since that date It is not necessary in such a case that the transferor himself should have had his name registered in the landlord's books Where the landlord sues for such arrears of rent without making the transferee a defendant the decree obtained in the suit only operates as a decree for money The landlord is not bound to join in his suit for rent as parties defendants persons who are merely *benamidars* GIRIS CHANDRA GUHA *v* KHAGENDRA NATH CHATTERJEE (1911)

16 C W N 64

8 ———— **Failure of tenant to raise crop—damages for rent** —*Suit by landlord for recovery of value of his share if lies in Small Cause Court—Provincial Small Cause Courts Act (IX of 1887) S 1 II Art 8— Rent — Damages for use and occupation* Where a landlord brought a suit against his tenant claiming damages for wilfully omitting to raise crops whereby the plaintiff was deprived of his share thereof *Held* that inasmuch as the share of the produce to be received by the landlord was ascertained before the commencement of the suit and the term for which the land was let out had not terminated the claim was in substance one for recovery of rent and the suit would not lie in the Small Cause Court LALJI LANDAY *v* BAPHAMDEO LANDAY (1911)

16 C W N 89

See also post **2 Pat L J 97**

9 ———— **Rent decree one decree for two different tenures**—*Consolidation of tenures* Where there are two different *darputni* tenures in respect of 13 as and 3 as respectively of a *putni* with different assessments of rent held by the same tenant though it is competent to a landlord to bring one suit for both the tenures the mere fact that the total rent of the two tenures is claimed in the same suit cannot have the effect of consolidating the two tenures into one A decree obtained for arrears of rent in respect of two or more separate tenures cannot be executed as a rent decree under the Bengal Tenancy Act but must be executed as a money decree under the Civil Procedure Code PASH MOHINI DASI *v* DEBENDRA NATH SINHA (1911)

16 C W N 395

10 ———— **Tenant holding on after expiry of term**—*Amount of rent payable* When a tenant holds on after expiration of his lease he does so on the terms of the lease and at the same rate and on the same stipulations as are mentioned in the lease unless the parties come to a fresh settlement The mere fact that the rent for some years has been received at a reduced rate does not bind the lessor to accept rent at that rate *Durga Prosad Singh v Rajendra Narain Bagchi 10 C L J 570* followed *Quære* Whether variation of the *kabuliyat* rent when the tenant is holding over can be established by oral evidence *Sheikh Enayutoollah v Sheikh Elahee Buksh [1864] W R Act X 42* and *Sayaji bin Habaji v Umaji bin Sadoji 3 Bom H C A C J 27* followed *Mukund Chandra Sarma v Arjan Ali 2 C W N 47* explained BAIJNATH PROSAD SAHU *v* RAGHUNATH RAI (1911)

16 C W N 496

See also post **20 C W N 347**

11 ———— **Denial of relationship of landlord and tenant**—*Bengal Tenancy Act (VIII of 1885)—Suit for rent dismissal of—Appeal by landlord withdrawal of—Suit for ejectment if maintainable* Mere denial of the relationship of landlord and tenant does not in case to which the Bengal Tenancy Act applies work any forfeiture unless the denial has been given effect to by a decree of the Court Where the landlord after the dismissal of his suit for rent upon the tenant's denial of the relationship of landlord and tenant appealed and pending the appeal withdrew the suit with liberty to bring a fresh suit and then brought an action to eject the tenant on the ground of such denial by the tenant *Held* that the only decree that could be relied on here was a decree which ceased to exist owing to the withdrawal of the suit by the landlord and so the denial of the relationship of landlord and tenant by the tenant would not work any forfeiture as it was not given effect to by a decree of the Court PYARI LAL HALDAR *v* HEM CHANDRA SARKAR (1912)

16 C W N 730

12 ———— **Settled raiyat**—*Settlement proceedings tenant setting up rent free title in—Tenant entered as settled raiyat in Record of Rights as final*

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published—Suit to have rent assessed—Limitation Where more than 12 years before the landlord s suit for assessment of rent the tenant in the course of settlement proceedings set up a title to hold the land rent free but no actual decision of the question by the Settlement Officer was proved though the record of rights which was finally published within 12 years of the suit showed that the tenant was entered as a settled raiyat in the village *Held* that it was open to the landlord to rely upon the entry in the record of rights as a tacit recognition of his right to have rent assessed at any rate within 12 years of the date of final publication and the suit therefore was not barred by limitation *Maharaja Birendra Kishore Manikya Bahadur* v *Posan* 15 C L J 03 s c 16 C W N 931 distinguished AMAN GAZI v BIRENDRA KISHORE MANIKYA BAHADUR (1912)
16 C W N 929

13 ———— Assessment of rent — A suit for assessment of rent brought more than 12 years after an adverse title had been set up is barred by limitation BIRENDRA KISHORE MANIKYA BAHADUR v POSAN (1912)
I L R 39 Calc 453
16 C W N 931

14 ———— Fixed rate tenants—Liability —*Contract Act (IX of 1872) s 43* *Held* that the liability of joint holders of a fixed rate tenancy of payment of rent is joint and several and not joint only The failure therefore of the plaintiff in a suit for rent against several fixed rate tenants jointly to bring upon the record the representatives of a deceased defendant is no bar to the continuance of the suit against the remaining defendants *Joy Gobind Laha* v *Monmotha Nath Banerji I L R 33 Calc 580* followed *Muhammad Askar* v *Radhe Ram Singh I L R 22 All 307* referred to ABDUL AZIZ v BASDEO SINGH (1912)
I L R 34 All 604

15 ———— Denial of landlord s title— *Landlord if entitled to rent for use and occupation where no such alternative claim is made in the plaint* In a suit for rent where no alternative claim is made for compensation for use and occupation no rent can be decreed on that footing Where in a suit for rent the defendant denied the landlord s title and the plaintiff failed to prove an alleged settlement with him and no alternative claim was made in the plaint for compensation for use and occupation *Held* that the landlord was not entitled to compensation for use and occupation *Lukhee Kant Doss* v *Sumeerooddi Luskar 13 B L R 243* *Surendra Narain* v *Bhai Lal I L R 22 Calc 752* *Rachhea Singh* v *Upendra Chandra I L R 27 Calc 239* and *Gobinda Sundar* v *Srikrishna 10 C L J 538* followed *Surnomoyee* v *Dino Nath I L R 9 Calc 908* and *Azim Sirdar* v *Ramlal I L R 25 Calc 324* discussed *Eshen Chandra Singh* v *Shama Charn Bhatto 11 Moo I A 7 20* referred to BHUKHI KOER v RAM KHELWAN PERSHAD (1912)
17 C W N 311

16 ———— Ex parte decree for if operates as res judicata—*Notice under s 167 of the Bengal Tenancy Act (VIII of 1885) if bars suit for rent* An *ex parte* decree in a suit for rent operates as *res judicata* upon the question of relation of landlord and tenant *Bir Chander* v *Harish Chander I L R 3 Calc 383* referred to *Madhu Sudan* v *Brae I L R 16 Calc 300* discussed and distinguished Where a suit was decided in the presence of the defendant s pleader *Held* that the decree could not be called an *ex parte* one merely because the defendant did not adduce evidence or submit any argument at the trial *Held* also that the *ex parte* decree did not lose its conclusive character because it was not executed The relation of landlord and tenant being once established the mere fact of non payment of rent is not sufficient to show that the relationship has ceased If a landlord elects to treat the defendant as a tenant the mere fact of his having served a notice on him under s 167 of the Bengal Tenancy Act does not bar a suit for rent RAJ KUMAR ROY CHOWDHURY v ALIMUDDI (1912)
17 C W N 627

17 ———— Agreement to deliver agricultural produce—*Over and above cash rent—Cess—Agreement opposed to public policy* Certain tenants holding under a registered *qabuliat* agreed therein to deliver to their landlord over and above the sum specified as a money rent certain agricultural produce and further to supply the landlord with a cart and bullocks when necessary and in default the landlord might claim the cash value of the said dues along with rent *Held* on suit by the landlord to recover the cash equivalent of such dues for several years that the covenant in question was for various reasons unenforceable *Abdul Hai* v *Nathua 1 All L J 537* *Sadanand Pande* v *Ali Jan I L R 32 All 193* and *Sheoamber Ahir* v *The Collector of Azamgarh I L R 34 All 358* referred to SIS RAM v ASGHAR ALI (1912)
I L R 35 All 19

See also U P LAND REVENUE ACT 1901 s 56
I L R 38 All 286

18 ———— Patni lease—*Diluvion caused by tidal river—Right to abatement of rent under patni lease—Diluviated land part of taluk re forming in situ—Claim by zamindars and patnidar —Bengal Act VIII of 1869 s 19—Limitation by adverse possession—Failure to show relinquishment of submerged land by patnidar* The appellants were owner of a zamindari within which was a patni taluk created in 1837 by one of the predecessors in title of the appellants this taluk was owned by the first respondent as patnidar and a strong tidal river flowed close to the boundaries of the taluk The patni lease covenanted that if the land be found to be more in measurement by *nal* prevalent according to the custom of the pargana I shall separately pay the rent thereof at this rate if it be found to be less I shall get remission therefor In 1843 the appellants obtained a decree in the Revenue Court for increased rent on the ground that additional land was found on measurement to be in the patnidars possession In 1889 part of the taluk having been washed away by the river the respondent obtained a proportionate abatement of the rent Subsequently the land so diluviated re formed *in situ* whereupon both parties claimed it and each party attempted to exercise rights of ownership as evidence of adverse possession against the other but it was found that neither party had proved sufficient adverse possession to give him a title In 1906 the appellants sued for a declaration of

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their title to khas possession of the land re formed on the ground that it was part of their zamindari or in the alternative were entitled to receive a proper rent for it The respondents pleaded that the land was an accretion to their taluk and that the appellants were only entitled to rent and not to khas possession *Held* that the High Court whilst rightly holding that the land re formed did not come within the provisions of s 4 of Regulation XI of 1825 and that it could not be claimed by either party as an accretion to his lands had laid too much stress on the terms of the lease and the evidence of intention deducible from the proceedings in respect of additional rent and abatement of rent There was nothing to show that by claiming or accepting remission of rent in respect of land washed away from time to time by the action of the river the respondent abandoned or agreed to abandon his rights to such land on its re formation *in situ* The diluviated land formed part of a permanent heritable and transferable tenure and until it could be established that the holder of the tenure had abandoned his right to the submerged land it remained intact *Hemnath Dutt v Ashgar Sirdar I L R 4 Calc 894* dissented from *Mazhar Rai v Ramgat Singh I L R 18 All. 290* followed ARUN CHANDRA SINGH v KAMINI KUMAR (1913) I L R 41 Calc 683

19 ———— **Execution of decree for rent** —*Bengal Tenancy Act (VIII of 1885) s 65 66 148(h)—Bengal Regulation (VIII of 1819) ss 8 11 13 sub ss ( ) and (4)—Right to bring tenure to sale in execution of decree for arrears of rent—Assignees of decree* A zamindar having parted with all his interest in the zamindari brought a suit for arrears of rent against the patnidar and obtained a decree Further arrears became due to recover which the purchaser of the zamindari took proceedings under Bengal Regulation VIII of 1819 (relating to patni tenures) and the darpatnidar deposited the amount of the arrears under s 13 of the Regulation and was put into possession of the patni tenure In a suit brought by him for a declaration that he had a first charge on the patni for the sum deposited by him and for an injunction to restrain the defendants (persons to whom the ex zamindar had assigned amongst other property the decree for arrears of rent) from executing the decree *Held* (reversing the decision of the High Court) that the decree was not one for rent within the meaning of s 65 of the Bengal Tenancy Act Ss 65 and 66 taken together cover practically the remedies provided by law for the landlord to recover arrears of rent One section is the exact corollary of the other The right to proceed to sale in one case in the other to eject is dependent on the existence of the relationship of landlord and tenant at the time when the remedy provided by law is sought to be enforced By S 148(h) of the Act the right to apply for the execution of a decree for arrears of rent was attached to the status of decree holder *qua* landlord The prohibition contained in that section referred to decrees obtained by the landlord under s 65 and the right to bring the tenure to sale *exists only* so long as the relationship of landlord and tenant exists and appertains exclusively to the *landlord* A person therefore to whom rents are due and who obtains a decree for them after he has *parted with the* property in which the tenancy is situate has no such right *Akhtra Pal Singh v Kritarthamoni Dassi I L R 33 Calc 566* distinguished *Held* also that the plaintiff by his deposit of the arrears for which the patni tenure was advertised for sale at the instance of the purchaser of the zamindari, acquired the special lien expressly created by Regulation VIII of 1819 arising not under any implication of law but under the express directions and declarations contained in ss 8 11 13 and 13 sub s (2) of the Regulation, and the Bengal Tenancy Act is declared by s 195 of that Act not to affect any enactment relating to patni tenures so far as it relates to those tenures FORBES v MAHARAJ BAHADUR SINGH (1914) I L R 41 Calc 926

20 ———— **Abatement of Rent**—*Onus—Tenant deprived of a portion of land by form of injunction erroneously decreed in landlord's suit to restrain encroachment by tenant on khas lands—Agreement to take reduced rent not registered if admissible—Want of consideration* The receipt by the landlord of a reduced rent for some years in the absence of reliable and admissible evidence to prove such an agreement was held to be consistent with the reduction having been a mere voluntary and temporary abatement Where after a permanent lease had been executed the landlord sued the tenant for alleged wrongful entry upon his *khas* land by the tenant and prayed for an injunction to restrain the tenant from committing such trespass but the Court instead of granting the injunction as prayed decreed that the tenant be restrained from dealing with property lying outside the demised mouzah as delineated in the map prepared by the Civil Court Amin and the tenant preferred no appeal against the decree *Held* that it was not intended by that decree to reduce the area of the land which the tenant was entitled to deal with under his lease and in a suit for arrears of rent he could not claim an abatement of the rent if in fact the injunction which was granted in wider terms than were called for had that effect as he did not avail himself of his remedy by way of appeal and submitted to the decree Where the tenant tendered a reduced amount of rent and interest on the plea that owing to his having not been given possession of the entire area demised he was entitled to an abatement of rent but no ground was made out by the tenant for such abatement the tender was not a good tender It is for the tenant to make out a case if he has one for an abatement of the fixed rent DURGA PRASAD SINGH v RAJENDRA NARAYAN BAGCHI (1913) 18 C W N 66

21 ———— **Eviction by title paramount**—*If good defence to rent suit—Tenant induced to attorn to superior landlord by offer of reduced rent* Eviction by title paramount would be a good defence to a suit for rent if the party evicting having a good title the tenant quitted against his will The same result would follow where the party seeking to evict should claim the rent and the tenant on such notice attorn to him *Hill v Saunders 4 B & C 529* followed This doctrine of *quasi* eviction should apply in this country but it does not apply to a case where the tenant is induced to attorn to the superior landlord by an offer to accept reduced rent NOORJAN SARDAR v BIMOLA SUNDARI GUPTA (1912) 18 C W N 552

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22. ———— **Abatement of Rent**—*Construction of kabuliyat* In a *putni kabuliyat* there was the following provision for abatement of rent If you obtain remission in the *sudder jama* from the Government in respect of lands taken up for culverts embankments or roads I shall al o get from you reduction of *jama* on account of all the said remissions in the *jama* of this *putni* *Held* on a construction of the agreement that the *putnidar* was to get the same amount of remission which the zamindar would get in the Government revenue *Held* also that the words culverts embankments or roads in the agreement were illustrative and not exhaustive HIRENDRA NATH DUTT *v* HARI MOHAN GHOSH (1914) **18 C W N 860**

23 ———— **Adjustment of account**—*Between landlord and tenant—Wasil baki—Portion of amount due on adjustment kept in deposit with tenant for payment to superior landlord—Such amount if continues to be rent and if recoverable as such—Limitation Act (IX of 1908) Sch I Art 115* The plaintiff was the landlord and the defendant the tenant There was an adjustment of accounts between them as regards rent in 1312 F S the adjustment be ng embodied in a *wasil baki* and the defendant was found liable to pay as certain amount out of which Rs 136 2 was left with the defendant as a deposit for payment to the superior landlord on account of rent payable by the plaintiff to the latter and the balance was stated as payable to the plaintiff The defendant did not make the payment to the superior landlord who sued the plaintiff and obtained a decree against him for the amount due from him The plaintiff thereupon sued the defendant to recover the rent for the years 1313 to 1315 and the amount which he had to pay to the superior landlord with interest *Held* that the *wasil baki* showing that the amount which was to be paid to the superior landlord was left in deposit with the defendant it must be held that there was a discharge for this portion of the rent The assignee was no party to the contract but if as the contract showed the amount was left in deposit with the defendant for payment to a third party and it amounted to a discharge so far as that portion of the rent was concerned, the amount so kept in deposit ceased to be rent and recoverable as such and Art 115 of the Limitation Act was applicable to the case LUCHMI MISSIR *v* DEOKI KUAR (1913) **19 C W N 174**

24 ———— **Tenant never put in possession of entirety of demised land**—*Acquiescence—Payment of full rent—Suit for rent—Plea of suspension of rent if sustainable—Abatement—Apportionment* Where a tenant who had not been put in actual po session of a portion of the demised land nevertheless went on paying the full rent agreed to in the lease in a suit for recovery of arrears of rent by the landlord *Held* that the tenant cannot in such circumstances claim suspension of rent but the rent payable to the landlord was liable to abatement *Annada Prosad v Mathuranath 13 C W N 707* followed SARADA PROSAD BHATTACHARJEE *v* RAI MONMATHA NATH MITTER (1914) **19 C W N 870**

25 ———— **Non-occupancy raiyat**—*Lease for a term—Suspension of portion of rent during the term—Stipulation for payment of rent at full rate after expiry of term—Agreement if invalid—Acceptance of rent at reduced rate after expiry of the term if deprives landlord of his right to claim rent at the stipulated rate—Waiver—Intention of parties* Where in a *kabuliyat* for a term executed by a non occupancy raiyat a certain rent was settled out of which a portion was kept in suspen sion and the balance was stated to be the rent payable for the term and it was further stipulated that if after expiry of the term of raiyat continued in occupation without taking a fresh sett ement he would be liable to pay rent at the full rate and after the expiry of the term the raiyat re mained in occupation without taking a fresh settlement and rent was then realised from the tenant at the reduced rate for a few years and there upon the landlord sued for rent at the full ra e *Held* that the agreement did not contravene the provisions relating to non occupancy raiyats and was not invalid *Held also that the landlord* by accep ing rent at the reduced rate was not deprived of his right to claim rent at the rate stipulated in the *kabuliyat* and was entitled to receive rent at the full rate *Durga Prasad Singh v Rajendra Narayan Bagchi I L R 41 Calc 493 s c 18 C W N 66* and *Baijnath Prosad v Raghunath Pai 16 C W N 496* followed *Held* further that evidence that s nce the execu tion of the *kabuliyat* the tenant paid rent at a lower rate than that stated in the *kabuliyat* was admissible to shew the intention of the parties that the *kabuliyat* was not intended to be ac ed upon or that there had been a waiver of the terms of the lea e *Beni Madhab Gorani v Lalmoti Dasi, 6 C W N 242* followed KAILASH CHANDRA SAHA *v* DARBARIA SHEIKH (1915) **20 C W N 347**

26 ———— **Suit for Rent calculated on area under cultivation**—*On the basis of kabuliyat by one co sharer only making the other co sharer a defendant if maintainable—Bengal Tenancy Act (VIII of 1885) ss 52 188* The plaintiffs as fractional owners sued to recover rent on a *kabuliyat* making their co sharer who refused to join them a *pro forma* defendant The land was at the time of letting waste and jungly and was not measured but a certain area was stated by guess and it was provid d that the tenants would pay rent at a fixed rate per bigha when the lands would be reclaimed or the surrounding lands brought under cultivation *Held* that although as a general rule all co contractees ought to be joined as plaintiffs a suit by one would not be bad if the others were joined as defendants and if there was good reason for not jo ning them as plaintiffs and one of several joint contractees may sue to enforce his share of the obligation if the other co contractees are jo ned as defendants That the present suit was not one for additional rent for exce s land within the meaning of s 52 Bengal Tenancy Act and was maintainable by the plaintiffs upon the *kabuliyat* under the general law and the provisions of s 188 are not applicable to the suit BHOSAI *v* AMINUDDIN (1916) **21 C W N 371**

27 ———— **Presumption of permanency of rent**—*Bengal Tenancy Act (VIII of 1885) as amended by Bengal Acts of 1898 and I of 1903 ss 31A 50 (2) 113 and 115—Effect of ss 31 and 113 of the Bengal Tenancy Act—Prevailing rate—Ground for enhancement of rent* Where a Record

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of Rights has been finally published in view of s 115 of the Bengal Tenancy Act the presumption under s 50 (2) of the Act does not arise where the tenants have been recorded as occupancy raiyats and not raiyats holding at fixed rents *Radha Kishore Manikya* v *Umed Ali* 12 C W N 901 not followed *Prithichand Lall Chowdhry* v *Basarat Ali* I L R 37 Calc 30 13 C W N 1149 relied upon By enacting s 31 of the Bengal Tenancy Act the Legislature never intended to alter the pre existing law in districts to which that section has no application Where each tenant holds at a different rate there is no prevailing rate Even on the ground of prevailing rate there can be no enhancement of rent for 15 years under s 113 of the Bengal Tenancy Act where rent has been settled under Chap X of the Act HARIHAR PERSHAD BAJPAI v AJUB MISIR (1913)

I L R 45 Calc 930

28 ———— **Conditions for rendering services when called upon**—*Denial of title and refusal to render services—Services a subsidiary consideration and of a ceremonial nature—Forfeiture and resumption right to* The suit which gave rise to this appeal was brought in 1906 by the appellant the Maharaja of Jeypore against the husband of the respondent (now deceased and represented by his widow) for the possession and arrears of rent of a pargana called Bissamcuttak on the allegation that it was part of the appellant s zamindari and had been held by the predecessors in title of the defendant under grants or leases on conditions of payment of kattubadi or rent and of rendering services to the Maharaja The latest was a patta dated 1st August 1877 under which the possession of the defendant s father had been renewed by the then Maharaja on payment of an annual kattubadi of Rs 15 000 and the rendering of services stated in the plaint as just as your father used to attend at Dasara for service so now you should also present yourself with 500 paiks for service whenever directed to do so In 1903 when directed to render such services the defendant had not so attended the Dasara darbar nor had he paid the proper amount of rent for that year or for 1904 but had asserted that the pargana was not held as a service tenure and had set up a title in himself to the pargana as an independent zamindari and subject only to a payment of Rs 2 900 to the Maharaja which sum he then paid as rent but denied his liability as a tenure holder under the appellant He wrote a letter to the appellant dated 26th November 1904 which was alleged to be a contumacious refusal to render services and to amount to a denial of the appellant s title causing forfeiture of his tenant s holding which the appellant claimed to be entitled to resume *Held* that denial of title in the suit would not work a forfeiture of which advantage could be taken in that suit because the forfeiture must have accrued before the suit was instituted and there was no denial by matter of record previous to the institution of the suit *Nizamuddin* v *Mamtazuddin* I L R 28 Calc 135 and *Prannatha Shaha* v *Madhu Khatu* I L R 13 Calc 36 referred to *Held* also that here there was no such renunciation by the tenant of his character as such as to work a forfeiture *Held* further that in this case the rent received was the principal matter and the rest was subsidiary and that under the circumstances the refusal to render the services contracted for did not operate to create a forfeiture or give occasion for resumption MAHARAJA OF JEYPORE v RUKMINI PATTAMAHADEVI (1919)

I L R 42 Mad 589

29 ———— **Letting for cultivation of dry land at fixed rate**—*Improved cultivation thereafter effected solely at tenant s expense—Payment of higher rate of rent for a series of years—Presumption of consideration for and contract for payment of higher rate from such payment* Where a tenant to whom dry lands were let for cultivation at a fixed rate and who cultivated them for a certain time dug wells on the land at his own expense and thereafter raised garden crops for which he paid for a long number of years at rates higher than the dry rate *Held* by the full Bench (AYLING and SESHAGIRI AYYAR JJ dissenting) that a Court can presume a contract to pay the higher rate and a legal origin and consideration therefor from such long continued payment of higher rate if that be the only evidence in the case to prove the rate payable but that if there be other evidence a Court cannot make any such presumption from such payment alone *Per* AYLING and SESHAGIRI AYYAR JJ —Where as in this case the reason and origin of the payment of higher rate are known to be due to the raising of better crops by the aid of tenants wells to which the landlord contributed nothing there is no consideration moving from the landlord and no scope for raising any presumption of a legal origin for the contract from the mere fact of a long course of payment of the higher rate TERIAKARUPPA MUKKANDAN v RAJA RAJESWARA SETHUPATHI (1918)

I L R 42 Mad 475

30 ———— **Stipulation in kabulyat as to payment of rent in kind** Where a tenant executed a kabulyat promising to pay as rent Rs 4 in cash and 91 *aris* as the landlord s share of produce and it was stipulated that on the tenants failure to pay the said rent and share of paddy the landlord would be competent to realise the said rent and Rs 36 as price of the paddy *Held* that on the tenant making default in paying the landlord s share of paddy the latter was not entitled to recover the market value paddy at the time but only the fixed amount of Rs 36 GURUDAS SEN v GOBINDO CHANDRA SINHA

24 C W N 85

31 ———— **Permanent Tenure rent**—*Reclamation lease providing for progressive increase of rent up to a limit—Further enhancement if may be made—Registration Act (XVI of 1908) s 17—Lease not registered but possession given—Entry subsequently made of terms in landlord's book if admissible* When a tenure is found to be permanent heritable and transferable there is a presumption in favour of the tenant that the rent is fixed and the onus is on the landlord to show that it is otherwise Where the contract in respect of a reclamation lease of 1291 B S was that the tenure should not be liable to rent for the first four years after which it was to carry rent on a progressive scale until 1298 when it reached 17 annas per bigha and there was no reference to further enhancement by operation of law *Held*—That the clear inference from these facts was that the maximum rent reached in 1298 was the fixed rent

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of the tenure so long a it lasted THE PORT CANNING AND LAND IMPROVEMENT Co v SREMATI KATYAYANI DEVI 24 C W N 369

32 ——————— *Term are ten ant su t against f r d mag s f r u e and occupation whethe s a s it f r re t* Where in a suit by a landlord for damages for u e and occupation of land the defendant claimed to be a tenant and the plaintiff admitted that he was a permissive occupant *held* that the relationship between the parties was indistinguishable from the relation hip of landlord and tenant and that the suit was therefore one for rent and was not cognizable by a Small Cause Court MAHADEO RAI v MAHARAJA KESHO PRASAD SINGH BAHADUR 2 Pat L J 97

33 ——————— *Suit for rent—plaintiff in pos e s on u der revenue sale—sal set a ide—wh th r pla ntiff en itl d to reco er rent from tenants* Where the plaintiff's purchase of an ijmali share of an estate was subsequently set a ide on appeal *h ld* that the plaintiff was entitled to recover rent from the tenants so long as he remained in possession until the original proprietors succeeded in recovering pos ession of the ijmali share MUNSHI ABDUR RAZZAQ v RAI BAHADUR BAIJNATH GOENKA 2 Pat L J 383

TITLE

S LANDLORD AND TENANT (LEASE) (TRANSFER)

——————— *Estoppel—Tenant ad mitted into pos ession of ma j den j landl rd's title and set up a d fferent titl der ved from stranger* A tenant who has been let into po session cannot deny his landlord's title however defe tive it may be so long as he has not openly restored po session by surrender to his landlord BILAS KUNWAR v DESRAJ RANJIT SINGH (1915)

I L R 37 All 557
19 C W N 1207

——————— **Onus of proof**—*Zerait ne essity of prov ng d sputed land—khas land other than era t—Tenure or h ld ng—Leas to ticcadar to cult vate—Lan ls cu tivated as raiyati land of t c cadar—Ticcadar s poss ssion of land outside ticca if adverse to landlord* The owner of a tauzi is entitled to recover posses ion of lan ls within it unless the defendants whom he sues can prove a subordinate interest that derogates from his title The fact that he has failed to prove certain spe i fic titles which he in ad lition as erted in the dis puted lands does no deprive him of this initial presumption in his favour The onus which is on the d fendants mu t be discharged by them The fact that the defendants were raiyats holding other lands of the village would make them settled raiyats of the disputed lands if th y proved that these lands were held by them as raiyats but not if th y fail to prove this *Rajendra Kuar v Mohim Chand a 3 C W N 76* did not apply to this case in which the defendants held a number of separate hol lings and did not claim to hold the land in suit as part of any specific holding Where a ticcadar t ok a lea e of lands for exceed ing 100 bighas in area to cultivate by sowing indigo or other crops either by means of *khas* cultivation or through tenant *Held* that it was a tenure A tenure hol ler does not become a raiyat with re pect to all land that comes into his direct pos ession becaus the lea e authori es him to cultivate the e lands A proprietor may hold other lands besides *erait* lands in *khas* pos se sion and because he recovers possession of lands on the ba is of the presumption arising from his proprietorship it does not follow that the land is *erait* nor does the fact that he fails to prove the land to be *erait* prevent him from claiming the land if the defendant fails to establish a subordinate interest in it Where the proprietors having purcha d certain holdings suffer them without any arrangement to be taken possession of by their ticcadars the ticcadars po session of such hold ings does not become adverse to the proprietors MANNERS v HARIHAR KOER (1914)

19 C W N 149

——————— **Denial of landlord's title when entails forfeiture**—*Power of Court to relieve forfeiture* In order that a denial of landlord s title should work a forfeiture of the tenancy three things are necessary (*a*) the tenant must set up title either in himself or in a third party inconsistent with their mutual relationship (*b*) the denial must be direct and unequivocal and not casual and (*c*) it must be made to the knowledge of the landlord A casual statement uncommuni cated to the landlord made by a tenant in a sale deed execut d by him in favour of a third party in respect of *other* properties to the effect that the executant is the *owner* of the proper ies leased does not amoun to a di claimer of the landlord s title *Per* SESHAGIRI AYYAR *J Obiter* A dis claimer of the landlo d s title effects a forfeiture even if the tenure be for a specific t rm and Courts have no power to relieve against it unless the disclaimer was occasioned by the fraud mistake or accident of the landlord and the tenant was neither careless nor negligent KEVATOOTI v MUHAMED (1917) I L R 41 Mad 629

——————— **"Sarkhat"**—*executed by tenant in favour of a person with an imperfect title—Notice of ejectment—Tenant not competent to deny the title of p rson to whom he had given the sarkhat* In execution of a decree against one of two joint owners of a hou e the de ree holder caused the entire house to be sold Whilst the house was under attachment the oth r joint owner filed his suit for partition and obtained a preliminary decree but the sale took place before this decree was made final One M P who was a tenant of both the original owners then executed a *sarkhat* or acknowledgment of his tenancy in favour of the au ion purchaser admitting that he was a tenant of the auction purchaser and liable to ejectment by him under the conditions stated therein *Held* that it was not open to M P *to challenge the auction purchaser s right* to eject him accord ng to the terms of the *sarkhat* and to set up the *jus tertii* of one of the co owners *Lal Mohamed v Kallanus I L R 11 Calc 519* distinguished MATHURA PRASAD v GOKUL PRASAD (1919) I L R 41 All. 654

——————— *Denial of landlord's title—Forfeiture of tenancy— D n al that landlord's t tle was s bsisting—Adverse posse s on—Kudima tenure nature of—Part of j it s e servic s—Resump tion of lands—Right to ej ct on denial of t tle* A denial by the tenant of his landlord s title must in order to wo k a forf ure of the tenancy be brou ht ho ne to the knowl dge of th landlord and it mus be unequivocal and clear The

LAND REGISTRATION ACT (BENG VII OF 1876)

———— ss 42 53 88—

See FALSE EVIDENCE
I L R 38 Calc. 368

———— s 78—*Resumed chaukidari chakran land—Effect of transfer to zemindar—Non registration under the Land Registration Act if bar to suit for rent—Village Chaukidars Act (Beng VI of 1870) s 51* Where the plaintiff zemindar claimed rent for land which was originally chaukidari chakran and was upon resumption settled with his predecessor in interest and the defendant resisted the claim on the ground that the name of the plaintiff was not registered in the books of the Collector under s 78 of the Land Registration Act of 1876 *Held* that under s 51 of the Village Chaukidars Act of 1870 the effect of transfer of resumed chakran lands to the zemindar was not to impart to such land the character of an estate for all purposes and s 78 of the Land Registration Act was no bar to the plaintiff s suit TINKARI MUKERJEE v SATYA NIRANJAN CHAKRABUTTY (1913) **18 C W N 158**

———— *Suit for rent—Dismissal for non registration of plaintiffs names under the Act—Registration pending appeal effect of—Costs* Where a suit failed by reason of non registration of the plaintiffs names under Act VII of 1876 s 78 but registration was obtained during the pendency of the plaintiffs appeal the High Court on second appeal directed the case to be disposed of by the Trial Court on the merits it appearing that no portion of the claim was barred on the day when the land registration was really taken The plaintiffs were directed to pay the costs of the defendants of the original trial and were not allowed costs of either Court of Appeal CHULLAN SINGH v MADHO SINGH (1915)
19 C W N 794

———— ss 78 81—

See IJARADAR
I L R 48 Calc 1078

See LAND REGISTRATION
I L R 38 Calc 512

LAND REVENUE

———— assignment for the office of Kulkarni—

See PENSIONS ACT (XXIII OF 1871) s 4 **I L R 42 Bom 257**

LAND REVENUE CODE (BOM ACT V OF 1879)

See BOMBAY LAND REVENUE CODE

LAND TENURE IN BENGAL

See BENGAL TENANCY ACT

———— *Enhancement of Rent—Reservation of Progressive Rent—Interference—Bengal Tenancy Act (VIII of 188) s 30* When the agreement creating a permanent tenure provides that for a certain number of years the land shall be held rent free and that for a certain number of years subsequently a progressively increasing rent be paid the inference is that the maximum rent so provided was to remain the fixed rent and was not to be liable to enhancement PORT CANNING AND LAND IMPROVEMENT COMPANY v KATYANI DEBI (1919)
L R 46 I A 279

LAND TENURE IN BENGAL—*contd*

———— *Sarbarakars in Khurdah—Absence of heritable or transferable Rights—Liability to dismissal for misconduct* Sarbarakars in Khurdah have no heritable or transferable right in their office or in the Sarbarakari Jagir lands They are liable to dismissal for misconduct and upon dismissal lose all rights in the jagir lands *Saddanando Maiti v Nowrattan Maiti 8 I L R 280* discussed KARUNANANDA DAS GOSWAMI v KHIRASINDHU ROY (1918) **I L R 46 Calc 378**
L R 45 I A 246

———— *Char acquired in 1833—Purpose of letting—Tenure holder—No accrued right as raiyat—Bengal Tenancy Act (VIII of 1885) ss 5 19* The appellant s predecessors in 1833 acquired from the Government extensive Char lands in Bengal for the purpose of reclaiming them and then letting them at a profit to cultivators There was some evidence that on occasions prior to 1885 the Board of Revenue and its subordinates had regarded the holding as raiyati *Held* that the appellants were tenure holders within s 5 of the Bengal Tenancy Act 1885 and that s 19 which saves occupancy rights accrued to raiyats prior to the Act did not apply as neither the appellants nor their predecessor had held a raiyati interest in the land RAJANI KANTA GHOSE v THE SECRETARY OF STATE FOR INDIA (1918) **L R 45 I A 190**

LAND TENURE IN MADRAS

See MADRAS ESTATES LAND ACT

1 ———— *Inam Grant—Kudivaram—Absence of Presumption—Estate—Madras Estates Land Act (I of 1908 Mad) s 3 sub s 2 (d)* In determining whether an inam village is an estate within s 3 sub s (2) (d) of the Madras Estates Land Act 1908 there is no presumption of law that an inam grant even if it was made to a Brahman did not include the Kudivaram Each case must be determined upon the terms of the grant and all the circumstances so far as they can be ascertained In 1783 in confirmation of a grant in 1748 which was not in evidence a village together with gardens holy shrines wells and tanks was granted as a *sarva agraharam* to be cultivated and enjoyed by the grantee hereditarily the grantee was referred to in a document of 1788 as being resident in the place The documents in evidence including inam registers extending to 1865 and the subsequent dealings with the property were inconsistent with any person other than the inamdars having rights of permanent occupancy In 1907 the inamdar let to tenants lands which at the time of the grant had been waste lands of the village and upon the terms expiring in 1908 sued to eject them *Held* that the lands in suit were not an estate within the Madras Estates Land Act 1908 and that the appellant could eject the tenants by suits in the Civil Courts *Suryanarayana v Potanna L R 45 I A 209* followed UPADRASHTA VENKATA SASTRULU v DIVI SEETHARAMUDU (1919)
L R 46 I A 123

2 ———— *Occupancy Right—Permanently Settled Estate—Partial substitution of other Land—Estate—Madras Estates Land Act (Mad Act I of 1908) ss 3 6 8* By s 3 of the Madras Estates Land Act 1908 an estate

LAND TENURE IN MADRAS—*contd*

for the purpo e of that Act includes any per manently settled e tate or temporarily ettled zamindari Land forming part of a permanently settled estate in Madras was taken by the Gov ernment under the Land Acquisition Act 18 0 and the revenue attributable to it ascertained The Zamindar petitioned that instead of a corre sponding reduction being made in the r venue for the e tate he should r ceive as compensation other land which he already held und r a Govern ment ryoti patta That land accordingly was tran ferred to him in 1893 In 1901 h let it to tenants who upon the terms expiring after the Act of 1908 came into force refu ed to give up po e sion —*Held* that the land so transferred was not part of an e tate within the Act and that a suit to eject the tenants could be main tained in a Civil Court ZAMINDAR OF SANIVARA PUPET *v* ZAMINDAR OF SOUTH VALLUR (1918)
L R 46 I A 38

LANDS CLAUSES CONSOLIDATION ACT (8 & 9 VICT C 18)

——— ss 63 68—

See RECOUPMENT **I L R 45 Calc 343**

LAPSE TO MONASTERY

——— custom of—

See HINDU LAW—SUCCESSION **14 C W N 191**

LARCENY

See PENAL CODE (ACT XLV OF 1860) s 379 **I L R 34 All 89**

LATHI PLAY

See PENAL CODE s 121A **16 C W N 1105**

——— association for seditious—

See CONSPIRACY TO WAGE WAR **I L R 38 Calc 559**
16 C W N 1105

LAW

——— in part Repugnant—

See GOVERNOR GENERAL IN COUNCIL **I L R 1 Lah 326**

——— question of—*Decision that there is no evidence to support finding* A decision that there is no evidence to support a finding is a deci sion of law HARENDRA LAL ROY CHOWDHURI *v* HARI DASI DEBI (1914) **18 C W N 817**

LAWFUL APPREHENSION

——— resistance to—

See RESCUE FROM LAWFUL CUSTODY **I L R 43 Calc 1161**

LEADING QUESTIONS

See CHARGE **I L R 42 Calc 957**
See JURY **I L R 37 Calc 467**

LEASE

See ADVERSE POSSESSION **I L R 38 Bom 53**
See BEMIADI PATTA **2 Pat L J 180**

LEASE—*contd*

See BOMBAY RENT ACT 1918 ss 3 9 12 **I L R 45 Bom 535**
See BUSTEE LAND **I L R 41 Calc 164**
See CIVIL PROCEDURE CODE (ACT V OF 1908) O II R 2 **I L R 38 Bom 444**
See CONTRACT **I L R 46 Calc 771**
See CUSTOMARY LAW OF SOUTH KANARA **I L R 41 Mad 118**
See DEKKHAN AGRICULTURISTS RELIEF ACT (XVII OF 1879) s 3 CL (*y*) AND s 10A **I L R 40 Bom 397**
See ESTOPPEL **I L R 39 Calc 513**
See KABULIYAT **I L R 39 Calc 1016**
See KHOTI SETTLEMENT ACT (BOM I OF 1880) ss 9 10 **I L R 38 Bom 709**
See LAMBARDAR AND CO SHARER **I L R 33 All 17**
See LAND ACQUISITION **I L R 45 Bom 725**
See LANDLORD AND TENANT (LEASE)
See LAND REVENUE CODE (BOM V OF 1879) s 3 (*19*) **I L R 35 Bom 463**
See LEASEHOLD PROPERTY
See LIMITATION ACT (IX OF 1908) SCH I ARTS 92 93 **I L R 40 Bom 22**
See MADRAS ESTATES LAND ACT (I OF 1908) s 42 CL. (*a*) AND (*b*) AND 2 **I L R 38 Mad 524**
See MALABAR COMPENSATION FOR TENANTS IMPROVEMENTS ACT (MADRAS I OF 1900) s 19 **I L R 40 Mad 603**
See MINERAL RIGHTS **I L R 38 Calc 845**
See MINOR **3 Pat L J 518**
See MINING LEASE
See MOKARARI LEASE
See MORTGAGE **I L R 35 Bom 371**
See MULGENI LEASE
See OCCUPANCY RAIYAT **I L R 40 All 228**
See PERMANENT LEASE
See REGISTRATION LEASE
See REGISTRATION ACT (XVI OF 1908) s 17 **I L R 41 Bom 458**
I L R 45 Bom 8
See RENT **I L R 41 Calc 347**
See RES JUDICATA **I L R 37 Bom 224**
See STAMP ACT (II OF 1899) s 29 SCH I ART 35 CL. (*a*) SUB CL. (iii) **I L R 37 Bom**

LEASE—*contd*

See STAMP DUTY I L R 37 Calc 629
I L R 46 Calc 804

See SURVEYS AND BOUNDARIES ACT s 12 I L R 34 Mad 108

See TRANSFER OF PROPERTY ACT (IV OF 1882)—
s 10 I L R 38 Mad 867
s 105 14 C W N 73
s 107 I L R 36 Bom 500
s 105 107 I L R 38 All 178
s 108 (j) I L R 37 All 144

———— Agreement to not admissible if unregistered—

See REGISTRATION ACT 1908 s 49
26 C W N 329

———— agreement to renew—

See SPECIFIC PERFORMANCE
I L R 40 Calc 565

———— by Collector—

See EMBANKMENT
I L R 46 Calc 825

———— by Mahomedan co heirs—

See TENANTS IN COMMON
I L R 39 Mad. 1049

———— by wife, repudiation of—

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 10 I L R 38 Mad 867

———— construction of—

See RESUMPTION
I L R 39 Bom 279

———— determination of—

See EJECTMENT I L R 45 Calc 469

———— determined by one lessor—

See TENANTS IN COMMON
I L R 39 Mad 1049

———— document varying terms of—

See REGISTRATION
I L R 39 Calc 284

———— Ejectment of Tenant in arrear with rent—

See REGISTRATION ACT 1908 s 17
I L R 2 Lah 300

———— for a term—

See LESSOR AND LESSEE
I L R 39 Mad 1042

———— for a term of years construction of—

See CONSTRUCTION OF DEED
I L R 40 Bom 74

———— forfeiture of—

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XXII r 10
I L R 39 Bom 568

See EJECTMENT I. L. R 45 Calc 469

———— From future date—

See REGISTRATION
I L R 45 Bom 8

LEASE—*contd*

———— Intention to determine—

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 111 CL (*h*)
I L R 42 Bom 195

———— of mutt properties—

See HINDU LAW—ENDOWMENT
I L R 40 Mad 709

———— of palmyra juice—

See REGISTRATION ACT (III OF 1877) s 17 (*I*) ETC I L R 38 Mad. 883

———— registration of—

See TENANCY AT WILL
I L R 44 Calc 214

———— repudiation of—

See LIMITATION ACT (XV OF 1877) SCH II ART 91 I L. R 38 Mad 321

———— surrender of—

See LANDLORD AND TENANT
I L R 46 Calc 552

———— Taraga Lease for reclamation—
See MALABAR LAW
I L R 44 Mad 509

———— Unregistered lease for six months—

See TRANSFER OF PROPERTY ACT 1882 s 4 I L R 44 Mad 55

———— variation in the terms of—

See REGISTRATION
I L R 39 Calc 284

1 ———— Solehnama—*Unregistered Soleh nama admissibility in evidence of—Registration Act (III of 1877) s 17 cls (d) and (8)* A soleh nama by which no immediate interest in immove able property is created and whereby there has been no demise does not amount to a lease within the meaning of clause (*d*) of s 17 of the Registra tion Act and is merely an agreement to create a lease on a future day Such a document falls within clause (*I*) of s 17 of the Indian Registra tion Act and is admissible in evidence without registration PANCHANAN BOSE *v* CHANDI CHARAN MISRA (1910) I L R 37 Calc 808

2 ———— Multifarious document—*One lease with several parties concurring to it—Stamp Act (II of 1899) ss 5 28 (3) 35 57 (1)* The con currence of several parties to one and the same lease does not make it a multifarious document within the meaning of s 5 of the Stamp Act The stamp duty on such a lease is the same as on a conveyance for a consideration equal to the amount or value of the fine or premium for which the lease is granted *In re* TARASEA COLLERIES LTD (1910) I L R 37 Calc 629

3 ———— Letter containing all the ele ments of a lease whether admissible in evidence without registration—*Payment of rent at a reduced rate on the basis of that letter effect of—Conflicting descriptions of the subject matter of a grant—Lessee not put in possession of specific area mentioned in the lease effect of—Mistake of fact—Abatement of rent* In a suit for rent at a certain rate the lessee pleaded that by virtue of a letter addressed to him by the lessor the latter was entitled to get rent only at a reduced rate The letter contained a definition of the reduced rental recited the area of the land demised under the

LEASE—contd

le se the nature of the in erest granted by the lea e and the in aln ent in which rents were payabl *Held* that the letter being a non te ta mentary in rument which purported to limit in futu e a vested interest of the value of Rupees one hundred and upwards in immovable property was no adm ible in evidence without being re is tered *I ru Mohree Da ee v Kedar Nath Karmakar I L R* ... *Cal 1910* referred to *Held* also that the mere fact that rent for some years had been received at the reduced rate did not bind the l or *to accept rent at that rate in futur in* a much a even if the letter had been tr ated as an agreement for reduction of rent it was not en forceable in law having been made without con sideration Where there are two conflictin de cript ons of the subject matter of a grant t wo conflicting parts of the a n d scripti n that which is the more certain and tabl and the least lik ly to have been mistaken or to have been in erted in advertently mu t prevail if it suffici ntly identi fies the subject matter *Newsom v Pryerr s Lessee 7 Wheaton U S 7* referred to But where the e two elements—the boundari s and the quan tity—are equally certa n and exactly d fined or the boundaries are as prec e and definite as the quantity s specific and exact and there i gross divergency betwe n the quantity specified and the quantity found to be included within the defined boundaries preference should be given to that ele ment of the de cription of the subject matter which is more consistent with the intention of the parties to be collected from the other parts of the deed illuminated if nece ary by the surroundin cir cumstances and the subsequent conduct of the parties *Lord v The Comm s oner for the City of Sydney 12 Moo P C 4 3 14 Eng R 991 White v Luning J L ...14 Croghan v Nelson 3 H w L S 187* and *Holmes v Trout 7 Pet U S 171* referred to Where a lease is taken of a sp cific quantity of land within definite boundaries both the lessor and the lessee being under a common mistake that such quantity exists within the boundarie while in fact it is much le s there i no valid contract and the parties are entitled to recession thereof but the defendant has the option to affirm the contract and hold the lease for the les er quantity with proportionate abatement of rent *Pag t v Marshall 28 Ch D 255 Harris v Pepperell 5 Eq 1* and *Garrard v Frankel 30 Beav 145* referred to DURGA PRASAD SINGH v RAJENDRA NARAIN BAGCHI (1909)

I L R 37 Calc 293

4 ——— **Tarward**—*Lea e by senior member alone—Validity of* A lease by the senior member of a tarwad alone is valid *Koroth Amman Kutti v Perungotti Appu Nambiar I L R 29 Mad 322* explained and distinguished CHAKKANTA VIDA CHALKAN ABDULLA v THAZATH CHEEK KOOTI (1910) **I L R 34 Mad 245**

5 ——— **Oral agreement to lease**—*Petition of compromise—Matte s extrane s to the uit in wh ch the petition of compro n e was filed—Spec fic performance—Abwab* By a peti tion of compromi e which was filed in a previous suit between the parties concerning certain lands the plaintiffs undertook to recogni e the defend ant as their tenant in respect of lands not includ d in that suit and they further gave up their claim of *abwab* for the recognition on the defendant agreeing to pay an additional sum to what was payable by the original tenant Upon a uit brought by the plaintiffs for recovery of arrears of rent on the basis of this compromise defence was that the petition of compromi e was not admis sible in evidence for want of registration *Held* that although the petition of compromise in so far a it related to properties which were not the subject matter of the suit in which the decree was made was not operative to affect such properties it was admissible in evidence as indicating the existence of an oral agreement to grant a lease which was specifically enforceable and the position of the parties was the same as if a proper docu ment had been executed and registered and that therefore the plaintiff was entitled to a decree *Birbhadra Rath v Kalpataru Panda 1 C L J 388* and *Girdeo Singh v Chandrikah Singh I L R 36 Calc 193* referred to The principle of *Walsh v Lonsdale 21 Ch D 9* applied *Held* further that the sum agreed to be paid by the de fendant being in c nsideration of the land occu pied by him and al o in view of the remi sion of the *elarn* was not an *abwab* SARAT CHANDRA GHOSE v SHYAM CHAND SINGH ROY (1912)

I L R 39 Calc 663

6 ——— **Unexpired term of lease bequeathed to widow—Widow holding over**—*on expiry of lea e—Grant by Government to widow of property the subject of the lea e—Nature of estate taken by widow* A lease of a village in Kumaon was granted by the Government in 1844 for a period of twenty years The lessee died in 1859 having left his interest in the village (without clearly specifying what it amounted to) to his widow for life and after her to her daughter for life with a reversion in favour of a certain temple The widow however continued in posse sion of the village down to 1871 when the Government granted her proprietary interest in it which she subsequently sold *Held* on suit for po sess on after the death of the widow and her daughter by a person claiming as rever sioner to the origin l lessee that the estate which the widow acquired in 1871 as the grantee of th Government was her own personal estate and not merely an enlargement of the leasehold estate of her husband and that the plaintiff had conse quently no right to succeed RAJ KISHORE DAS v JAINT SINGH **I L R 36 All 257**

7 ——— **Rent if enhanceable beyond the maximum fixed**—*When land was let o t for* purpo es of reclamation to *be effected by the* lessees at their expense thou h *the le sors also* undertook to make a contribution th reto, and was to be held for the first four years without r nt which wa thereafter to be progre sive till a maximum was reached and there was no pro vision for a further rise the reasonable inference to draw from these circumstances was that the parties intended that when the spec fied maximum was reached there would be no further increase KATYANI DEBI v PORT CANNING AND LAND IMPROVEMENT CO (1914) **19 C W N 56**

8 ——— **Istemrari mokarari**—*Mean ing of the expression lex graphical and cus tomary—Tenure* ... *What* ... *and circ mstances* ... *Meaning of w rds* ... *of fact or law*— ... *concerned* The expression ... does not *per se* convey either lexicogr ... by way of custom an ... e of inher ... an *istemrari m* ... *patta* not ...

LEASE—*contd*

absence of words indicative of heritability such as *ba farzandan naslan bad naslan* or *al aulad* may indicate a perpetual grant if the other terms of the instrument the circumstances under which it was made or the subsequent conduct of the parties show such an intention with *sufficient certainty* Clauses in a lease which impose a restraint on transfer or cutting down of fruit bearing or income yielding trees by the lessee are not consistent with the theory of a perpetual lease Clauses which throw the cost of improvement on the lessee indicate some measure of continuity but not necessarily perpetuity A lease in favour of two persons points to the conclusion that though some measure of continuity was desired perpetuity was not intended A substantial premium for a lease is one of the surest indications of a permanent grant *Tulshi Pershad Singh* v *Ramnarain Singh* *I L R 12 Calc 117* *L R 12 I A 205* analysed and followed *Tulsinarain Sahu* v *Piboo Mod narain Singh (1849) S D A 752* *10 I D (O S) 532* *Ameeroonnissa Begum* v *Hetnarain Singh (1853) S D A 618* *The Government of Bengal* v *Nawab Jafur Hossein 5 Moo I A 467* *Sarobur Singh* v *Raja Mohendranarain Singh (1860) S D A 577* *Raja Lilanand Singh Bahadur* v *Thakur Munorunjun Singh 13 B L R 124* *L R Sup Vol 181* *Sheo Pershad Singh* v *Kally Dass Singh I L R 5 Calc 543* *Bilasmoni Dasi* v *Raja Sheo Pershad Singh I L R 8 Calc 664* *L R 9 I A 33* *Beni Pershad Koeri* v *Dudhnath Roy I L R 27 Calc 156* *L R 26 I A 216* *Agin Bindh Upadhya* v *Mohan Bikram Shah I L R 30 Calc 20* *Narsingh Dyal Sahu* v *Ram Narain Singa I L R 30 Calc 883* and *Choudhri Gridhari Singh* v *Maharaj Ram Narain Singh 10 C W N celxxxi* followed *Munrunjun Singh* v *Rajah Lelanund Singh 3 W R 84* *Tekait Manoraj Sing* v *Raja Lilanand Sing 9 B L R 1 C 15n* *Rajah Leelanund Singh* v *Thakoor Monoranjun Singh 5 W R 101* *Lakhi Kowar* v *Roy Hari Krishna Singh 3 B L R A C 226* *12 W R 5* and *Karunakar Mahati* v *Niladhro Choudhry 5 B L R 652* *14 W R 10* overruled *Watson* v *Mahesh Narain Roy 24 W R 176* referred to The meaning of words in a document is a question of fact though the effect of words is a question of law *Chatenay* v *Brazilian Submarine Telegraph Company [1891] 1 Q B 79* followed The rights of parties to a contract are to be judged by that law by which they may justly be presumed to have bound themselves *Lloyd* v *Guibert 6 B & S 100* *122 E R 1134* and *Abdul Aziz Khan* v *Appayasami Naiker I L R 27 Mad 131* *L R 31 I A 1* followed Where a lease is in favour of two persons and the lease would not terminate till the death of the survivor of the two lessees no question of limitation can arise before the death of both the lessees *Quære* Whether the mode in which registration of a lease is effected is relevant to an enquiry as to the nature of the lease *Nasirulla Mulla* v *Nur Mistri I L R 7 Calc 190* *Jagatdhar Narain Prasad* v *Brown I L R 33 Calc 1133* and *Indra Bibi* v *Jagan Sarkar Ahiri I L R 35 Calc 845* *Sartaj Kuari* v *Deoraj Kuari I L R 10 All 272* *L R 15 I A 51* referred to RAM NARAIN SINGH v CHOTA NAGPUR BANKING ASSOCIATION (1915) **I L R 43 Calc 332**

9 ——————— Limitation—lease of Government land in writing registered—*Possession of part not given from inception of lease—Suit for damages—Time from which limitation begins to run—Limitation Act (XV of 1877) Art 116—Failure to give possession whether a continuing breach—Equivocal or ambiguous acknowledgment whether a valid one under s 19 of the Limitation Act (XV of 1877)—Transfer of Property Act (IV of 1882) applicability of to Crown grant* The plaintiff obtained in March 1896 from the defendant the Collector of Godavari district acting as Agent to the Government a lease in writing registered for five years of a piece of land whose "probable extent" was described as 777 acres The plaintiff was given possession of only 668 acres and unsuccessfully demanded possession of the rest in July 1896 After some correspondence the Tahsildar in 1898 communicated to the plaintiff the Collector's order that "pending the disposal of the dispute the collection of one third of the *kist* (rent) should be stopped and the remaining sum collected." The plaintiff brought this suit in 1903 for damages for non delivery of possession of 109 acres *Held* (a) that the cause of action for breach of the covenant to give possession occurred at the inception of the lease *i e* in March 1896 and that as more than six years had elapsed from that date the suit was barred under Art 116 of the Limitation Act and (b) that breach of a covenant to give possession is not a continuing breach and such a covenant is not part of a covenant for quiet enjoyment which is a continuing covenant *Held* further that the Tahsildar's communication which was as consistent with a temporary suspension or an *ex gratia* remission of a claim for rent as with an acknowledgment of liability was not such an unequivocal acknowledgment as is required by s 19 of the Limitation Act *Held* also that though the Transfer of Property Act is not applicable to Crown grants like the one in question the principle of its provision as to leases *e g* 108 etc is applicable to them *Quære* Whether the Tahsildar or Collector had authority to acknowledge *Per* SRINIVASA AYYANGAR *J*—The plaintiff was barred even if limitation be reckoned from July 1896 when he demanded and failed to obtain possession from the Government SECRETARY OF STATE FOR INDIA v VENKAYAYYA (1915) **I L R 40 Mad 910**

10 ——————— Assignment of a lease—Repudiation of lessor's title—*By the original lessee—Forfeiture* A mere repudiation by the original lessee of the lessor's title will not work a forfeiture against the assignee of the lease *Per* HEATON *J* The Transfer of Property Act does recognise that his interest in the property may be transferred by a lessee to an assignee and this may be done without the consent of the lessor and if that can be done it seems to me to follow as a matter of reason that when the *entire interest* is transferred by the lessee to the assignee then the assignee is not responsible for acts done by the lessee GOPAL JAYVANT *v* SHRINIWAS VITHAL (1918) **I L R 42 Bom 734**

11 ——————— Mokarari Lease—*Grant of Land* *mai hak hakuk* *(with all rights)—Mineral and other subsoil rights—Rights not expressly included in terms of lease* *Held* (reversing the decision of the High Court) that the expression "*mai hak hakuk*" ("with all rights") in a mokarari lease of land did not add to the true scope of the grant nor cause mineral rights to be included within it The essential characteristic of a lease is that the subject of it is one which is occupied and enjoyed

LEASE—*contd*

and the corpus of which does not in the nature of things and by reason of the user disappear Unless there be by the terms of the lease an express or plainly implied grant of mineral rights they remain reserved to the zemindar there being no evidence of his having parted with them *Hari Narain Singh Deo* v *Sriram Chakravarti I L R 37 Calc 723 L R 37 I A 136* *Durga Prasad Singh* v *Braja Nath Bose I L R 39 Calc 696 L R 39 I A 133* and *Shashi Bhushan Misra* v *Jyoti Prasad Singh Deo I L R 44 Calc 585 L R 44 I A 46* followed *Megh Lal Pandey* v *Rajkumar Thakur I L R 34 Calc 358* overruled By the terms of the lease trees on the land were expressly transferred to the grantee but mineral rights were not so included in its terms and the presumption was therefore that the zemindar had not intended to transfer them and they did not pass under the lease RAJ KUMAR THAKUR GIRDHARI SINGH v MEGH LAL PANDEY (1917)

I L R 45 Calc 87

12 ——— **Darpatni**—*Conditions in—Bengal Tenancy Act (VIII of 1885) ss 159 cl (b) 179—Transfer of Property Act (IV of 1882) s 10—Receiver—Appointment of Receiver in administration suit—Civil Procedure Code (Act XIV of 1882) ss 503 505* A a *patnidar* created a *darpatni* in 1886 in favour of B which contained the following terms like yourself we shall have full rights to grant leases or make settlements of land in the mofussil but if these *darpatni* mahals be sold at auction for arrears of malikana (rent) due to you then all agreements entered into by us shall be extinct (stand annulled) The common manager of B s estate granted to the defendants a permanent under tenure in 1901 B having defaulted to pay rent to A the latter in execution of a decree for arrears of rent purchased B s interest on the 21st September 1904 the sale was confirmed in due course on the 20th March 1905 The Receiver of the estate of A appointed by a decree in an administration suit without permission from the District Judge granted a *darpatni* to the plaintiff in 1906 *Held* that A and B were competent to enter into a contract of permanent tenancy subject to the restriction actually imposed which was one of the incidents of the under tenure and ran with the land so as to be operative not only between the grantors and grantees but also their representatives in interest and the holders of derivative titles from them *Held* also that the condition in the lease not being an absolute restraint on alienation and being for the benefit of the lessor neither the provisions of s 159 of the Bengal Tenancy Act nor s 10 of the Transfer of Property Act had any application *Held* further that the Receiver not being appointed under s 503 of the Civil Procedure Code of 1882 but by a decree in an administration suit the provision of s 505 requiring permission of the District Judge did not apply and the *darpatni* granted by such Receiver was valid and unassailable M DHUNDUD v MAHTON v MIDNAPORE ZEMINDARI CO (1917)

I L R 45 Calc 940

13 ——— **Lessee given the option of purchasing the land leased**—*Within a certain time for a fixed price—Assignment of the lease—Legal assignee of the lessee entitled to the benefit of the option to purchase—Conveyance—Vendor and purchaser—Purchaser to accept such title as the vendor possessed—Recitals about the title—Originating summons—Estoppel* By an Indenture dated 1st March 1913 the defendants leased to one B P M a plot of land for a term of ninety nine years Under cl 7 of the Indenture the lessee obtained a right to purchase the premises demised at a price named within eighteen years from the date of the lease the purchaser accepting such title as the vendors had By an Indenture of Assignment dated 22nd May 1916 the lessee assigned the lease for the then residue of the said term to the plaintiff The plaintiff intimated to the defendants by a notice in writing his intention of purchasing the said plot under the provisions of cl 7 The defendants called upon the plaintiff to submit for their approval a draft conveyance of the said plot The draft conveyance forwarded by the plaintiff to the defendant contained certain recitals tracing the title of the vendors from the last purchaser of the property The defendants objected to the insertion of the said recitals and sought on their part to incorporate certain covenants in the draft Correspondence between the parties showed that the dispute between them was solely confined to the insertion of the recitals and the covenants The plaintiff took out an originating summons for the determination of the question whether the recitals and the convenants proposed by the respective parties should be embodied in the conveyance The summons was adjourned into Court for hearing At the trial the defendants conceded that they could not at that stage insist on the covenants set out by them The defendants however contended that the plaintiff was not entitled to the benefit of the option to purchase as he was not the original lessee but only an assignee of the lessee and as the option to purchase was a personal covenant and not a covenant which ran with the land it did not ensure to the benefit of the assignee *Held* (i) that the plaintiff being bound to accept such title as the vendors had the recitals set out by him in the proposed conveyance were unnecessary and should be struck out (ii) that as the plaintiff was the legal assignee of the residue of the term of lease he was entitled to the benefit of the option to purchase (iii) that as the correspondence between the parties proceeded on the assumption that the plaintiff though an assignee of the lessee was entitled to exercise the option of purchase under the lease the defendants having acquiesced in the same were estopped from disputing it *Woodall* v *Clifton 92 L T 292* distinguished *Friary Holroyd and Healey's Breweries Limited* v *Singleton [1899] 1 Ch 86* referred to LADHABHAI LAKHMSI v SIR JAMSETJI JIJIBHOY (1918) **I L R 42 Bom 103**

14 ——— **Surrender or relinquishment of**—*If requires a document—Co-sharer working mine—The other co-sharer's remedy—Accounts or partition—Equity* A surrender or relinquishment of a lease does not require to be in writing but can be inferred from the act of the parties In the absence of proof of actual ouster or destruction of property one co sharer cannot demand accounts from another co sharer for minerals taken by him out of joint property unless it is shown that he had worked more than his fair share No claim for account is maintainable where the co sharer knowing that the other co sharer had been spending large sums of money to develop the mines acquiesced His remedy is by a suit for partition in which the other co-sharer should if possible be maintained in possession of the portion

LEGACY

See LIMITATION ACT 1877 SCH II ART 123 I L R 36 Bom 111

See WILL I L R 40 Calc 192

——— depending on uncertain event—

See SUCCESSION ACT (X OF 1865) I L R 37 Bom 644

——— vesting of—

See SUCCESSION ACT (X OF 1865) s 187 I L R 38 Mad 474

LEGAL INTEREST

See DECLARATORY DECREE SUIT FOR I L R 43 Calc 694

LEGAL JUSTICE

——— as opposed to moral—

See CONTRACT I L R 37 Mad 385

LEGAL MISCONDUCT

See ARBITRATION I L R 41 Calc 313

LEGAL NECESSITY

See HINDU LAW—ALIENATION

See HINDU LAW—DEBT I L R 33 All 242 255

See HINDU LAW—JOINT FAMILY I L R 34 All 4 126 135

See HINDU LAW—LEGAL NECESSITY

See HINDU LAW—MORTGAGE I L R 41 All 571 609

LEGAL OWNER

See MAHOMEDAN LAW (ENDOWMENT) I L R 47 Calc 866

LEGAL PRACTITIONER

See BARRISTER I L R 44 Calc 741

See CIVIL PROCEDURE CODE 1908 O III R 4 2 Pat L J 259

See HIGH COURT DISCIPLINARY JURISDICTION I L R 44 Bom 418

See LIMITATION I L R 40 Calc 898

See LEGAL PRACTITIONERS ACTS

See LETTERS PATENT (ALL) s 8 I L R 42 All 450

See PLEADER

——— duty of—

See LAND ACQUISITION ACT (I OF 1894) I L R 34 Bom 486

——— Lien of—

See COSTS I L R 46 Calc 1070

——— admission by—As against client discussed DIGBI OY I OY v A A I ... 17 C W N 156

——— Compromise by —Without authority discussed RASANC NDA v JOGA ONDA I L R 34 Bom 408

LEGAL PRACTITIONER—*contd*

——— Counsel to be instructed by attorney—Custom and etiquette discussed *In re* an ADVOCATE I L R 44 Calc 741

——— Misconduct of—*Cheating client out of the subject matter of suit—Penalty—Removal from practice—Suspension* Where it was found by the Chief Court before whom the appellant practised as a pleader that he had taken advantage of his position of trust in order to cheat his client out of the subject matter of the suit and obtain it for himself and on the appellant s application for a review of the finding he instead of pressing it deliberately admitted the charge made against him in the sense in which those charges were understood by the Judges *Held* that the Chief Court was amply justified in passing orders removing the appellant permanently from the list of pleaders on the ground of misconduct and the subsequent order of the Court upon the application for review reducing the penalty to suspension from practice for three years went as far in the direction of mercy as it properly could go *In the matter of* CHANDRA SINGH (1910) 14 C W N 521

——— *Legal Practitioner dismissed for misconduct if may be re admitted* Where a legal practitioner has been dismissed for misconduct of any description it is open to the High Court to re admit him afterwards if he satisfies the Court that in the interval he has borne an unimpeachable character and may with propriety be allowed to return to practice The test to be applied to such cases is whether the sentence of exclusion has had the salutary effect of awakening in the delinquent a higher sense of honour and duty and whether in the interval his conduct had been so irreproachable that he might be safely entrusted with the affairs of his clients and admitted to the profession without the profession suffering degradation Where therefore a mukhtear was dismissed upon conviction for a grave offence and it appeared that in a closely connected transaction he had sworn a false affidavit and where in the petition for re admission he had not made a full disclosure of his previous history the Court in the exercise of its discretion refused the application *In re* ABIRUDDIN AHMED (1910) I L R 38 Calc 309 15 C W N 357

——— *Legal practitioner dismissed for misconduct—Reinstatement on proof of good conduct* Case in which a legal practitioner who when yet a comparatively young man had been dismissed from the rolls for misconduct was after five years reinstated on his furnishing certificates showing that during the interval his conduct has been so irreproachable that notwithstanding his previous delinquency he could be entrusted with the affairs of clients and admitted to an honourable profession without that profession suffering degradation *In re Abiruddin 15 C W N 357 s c 12 C L J 625* followed *In re* HARA KUMAR CHATTERJEE (1911) 16 C W N 237

——— *Witness—Whether can appear for accused person* The rule as to the exclusion of witnesses from Court until they have been examined does not extend to counsel or accused who is cited as a prosecution witness There may be circumstances which may make it

LEGAL PRACTITIONER—contd

de irable for coun el not to appear in a ca e in which he is a witne but they would not tender his appearance illegal *In re* BABU REDDI
(1921) I L R 44 Mad 916

——— *Impropriety of counsel who appeared for one party appearing in subsequent proceedings for the other—Professional honour* It is improper on the part of a legal practitioner who has acted for one party in a dispute to act for the other party in subsequent litigation between them relating to or arising out of that dispute It is a matter which concerns the honour of the profe ion HIRA DEVI v DIGBIJAI SINGH (191) **21 C W N 1137**

——— *Rules of Court of the 10th August 1901 pt II r 26—Professional misconduct—Entering into trade or business* *Held* on a construction of r 26 pt II of the Rules of Court of the 10th August 1904 that the carrying on by a vakil of occasional speculations in grain salt and other commodities whilst he was practising as a vakil did not amount to entering into a trade or busine s within the meaning of the rule so as to render him amenable to the disciplinary jurisdiction of the High Court *In the matter of* TIKARAM VAKIL **I L R 42 All 125**

——— *Negligence—refusal to argue when an application for adjournment has been rejected* Refusal by a Vakil to argue a ca e when an application has been rejected amounts to gross neglect of his client s interests SRI RANG BEHARI LAL v PACHEYA LALL **1 Pat L J 65**

LEGAL PRACTITIONERS' ACT (1 OF 1846)

——— ss 4 12—

See PLEADER **I L R 44 Calc 290**

LEGAL PRACTITIONERS ACT (XX OF 1853)

See PLEADER **I L R 44 Calc 290**

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

——— s 6—

See PLEADER **I L R 44 Calc 290**

——— s 12—*Pleader guilty of keeping a common gaming house—Suspension of pleader—Procedure for cases under s 12* The conviction of a pleader under s 6 of the Madras Towns Nuisances Act (III of 1889) for keeping a common gaming hou e implies a defect of character which unfits him to be a pleader within s 12 of the Legal Practitioners Act for which the pleader may be suspended by the High Court The procedure pre cribed for enquiring into charges mentioned in s 13 and 14 of the Legal Practitioners Act need not be pursued in cases coming under s 12 of the Act IN THE MATTER OF A SECOND GRADE PLEADER (1918)
I L R 42 Mad 111

——— ss 12 14—*Mukhtear—Conviction of rioting—Liability to suspension from practice—Conviction if conclusive* Two mukhtears who were parties to a proceeding under s 145 of the Criminal Procedure Code in the course of which a *chur* the subject of the proceeding was attached under s 146 and placed in charge of a receiver collected a number of armed men who formed an unlawful

LEGAL PRACTITIONERS ACT (XVII OF 1879)—contd

——— ss 12 14—*contd*

assembly with a view to of take forcible po session the *chur* *Held* that having regard to the character of the offence an order under s 12 of the Legal Practioners Act could properly be pa sed against them That in such a proceeding it was not open to them to go behind their conviction by the Criminal Court and invite the Court to examine the facts with a view to showing that the conviction was erroneou *In re Rajendra Nath Mukerjee 6 I L 12 sc I L R 2 All 49 3 C W N 736* followed But the Court in such a case will look into all the facts as found to determine the position of the persons concerned *In re* KALI PRASANNO BOSU CHAUDHURY (1910)
14 C W N 1073

——— Rule 25 of the rules of the High Court made under the Legal Practitioners Act laying down that with his application for the renewal of his certificate a pleader should file a certificate of character from the presiding officer of the court in which he practises is inconsistent with s 12 to 14 of the Legal Practitioners Act unless the expres ion certificate of character is con trued as meaning nothing more than a certificate that the presiding officer of the Court is not aware of any misconduct of the pleader justifying action under those sections *Held*—That the District Judge had no authority to refuse to renew the certificate of a pleader practising in the Mun if s Court merely because he had formed an unfavourable opinion of his character in the cour e of the trial of a case in which the pleader was a party when the pleader produced with his application for renewal a certificate from the Munsif to the effect that he knew nothing against the pleader s character —In the matter of JADAB CHANDRA CHAKARAVATI PLEADER
13 C W N 415

——— s 13—

See PLEADER **I L R 35 Mad 543**

——— *Misconduct by practitioner as suitor Jurisdiction of courts to deal with professional misconduct*—Misconduct by a legal practitioner as a suitor cannot be investigated under the Act There is ample jurisdiction in a court to inve t gate cases of moral turpitude unconnected with the di charge by a prac itioner of his profe ional duties and the court has complete juri diction to remove and suspend plead rs and mukhtars for causes rendering them unfit for the continued exerci e of their profe ion but the case of a suitor tands on a different footing though the suitor be a pleader or mukhtar NARENDRA NATH DAS v SIVA KUMAR JHA
5 Pat L J 601

——— *Whether appeal lies to His Majesty in Council—Letters Patent of the Patna High Court cl 9 to 31* There is no provision in the Legal Practitioners Act 1879 conferring a right of appeal to His Majesty in Council from an order pa ed by the High Court under 13 The right of appeal to His Majesty in Council is confined to appeals from judgments decrees and orders pas ed in exe ci e of one or other of the clas es of juri diction conferred by cls 9 to 27 of the Letters Patent and not to the adminis

LEGAL PRACTITIONERS' ACT (XVIII OF 1879)—*contd*

——— s 13—*contd*

trative or disciplinary powers conferred on the court by earlier clauses or by statute BRI KISHORE LOY v KING EMPEROR
4 Pat L J 423

——— *Gross misconduct—Wilful neglect of pleader to appear after receipt of full fees—Actionable claim purchase of by a pleader—Transfer of Property Act (IV of 1882) ss 3 and 136—Pleader engaging in trade without intimating to the High Court—r 27 of the Rules under Legal Practitioners Act* *Held* by the full Bench The judgment and evidence given in a civil suit filed by a party against his pleader for refund of fees on account of non appearance of the pleader are admissible as evidence in an enquiry instituted for the purpose against the pleader under the Legal Practitioners Act but they are not conclusive proof in the enquiry Wilful neglect by a pleader to appear without any justification whatever and conduct a case after receipt of full fees is unprofessional conduct for which the pleader could be punished under s 13 of the Legal Practitioners Act MUNI REDDI v VENKATA ROW (1914) **I L R 37 Mad 238**

——— *Pleader refusing to appear in Court in pursuance of a resolution of the Bar Association to boycott that Court propriety of—Duties and obligations of pleaders—Proper course for pleaders when ill treated by any Court* Some pleaders refused to appear in a certain Court in pursuance of a resolution of the Bar Association to boycott that Court as a protest against its ill treatment of pleaders Proceedings under s 14 of the Legal Practitioners Act were drawn up against several pleaders for failure to appear in Court in matters which had been entrusted to them by their clients The pleaders concerned having intimated their unqualified regret to the High Court for the course adopted by them—*Held*—That having regard to their unqualified expression of regret the proceedings should be dropped In the matter of TARINI MOHAN BARARI
26 C W N 580

——— s 13 (b)—*Gross negligence—appearance for both sides* The conduct of a pleader in acting for both sides in the same case is grossly improper conduct within the meaning of s 13 (*b*) of the Legal Practitioners Act 1879 When a pleader negligently or intentionally disobeys the rules of his profession he is guilty of grossly improper conduct and it is no excuse that his action does not involve a moral stigma or that it has not resulted in actual injury to his client IN THE MATTER OF BIR KISHORE RAI PLEADER
3 Pat L J 390

——— s 13 (f)—*Mukhtar—Conduct rendering legal practitioner amenable to disciplinary powers of the Court—Writing insulting letters to an officer* A mukhtar practising in the Criminal and Revenue Courts of a sub division addressed certain grossly insulting letters to the Sub divisional Officer in his character as officer in charge of the copying department *Held* that such conduct on the part of a mukhtar fell within the purview of s 13 of the Legal Practitioners Act 1879 and rendered the writer amenable to the disciplinary jurisdiction of the High Court IN THE MATTER OF A MUKHTAR **I L R 42 All 86**

LEGAL PRACTITIONERS' ACT (XVIII OF 1879)—*contd*

——— s 13 (f)—*contd*

——— *Interpretation of clause—Words "other reasonable cause" explained—Ejusdem generis* The words "for any other reasonable cause" in cl (*f*) of s 13 of Legal Practitioners Act (XVIII of 1879) include general misconduct and are not restricted to professional misconduct Where two legal practitioners were the President and a Director respectively of a so called Provident Society which was in no sense a Provident Society but a means of furnishing profit to the Directors by enabling those who desired to gamble in the lives of parties who were willing to become applicants to the society—*Held* that there was reasonable cause under s 13 (*f*) for an order being made against the legal practitioner *Per* MILLER J—The principle of *ejusdem generis* cannot be applied to the words "any other reasonable cause" since the genus "professional misconduct" is not large enough to include the case of s 12 (where pleader may be suspended or dismissed for having committed a criminal offence implying a defect of character which unfits him to be a pleader *Tillmanns & Co v Knutsford Ltd* [1908] 2 K B 385 followed The intention of the Legislature was to give to the High Court powers of control over pleaders and mukhtears as extensive as those which are given by the Letters Patent s 10 over advocates and vakils *Per* KRISHNASWAMI AYYAR J—Cl (*f*) of s 13 is not confined to professional misconduct but may be interpreted so as to include any dishonest or dishonourable conduct whether or not in discharge of professional duty It is difficult to limit cl (*f*) to professional misconduct because cl (*b*) deals with grossly improper conduct in the discharge of professional duty and it is not possible to name any species of professional misconduct which does not fall within cl (*b*) itself The fact that the Legislature has restricted the power of Subordinate Courts under s 14 of the Act is no reason for fettering the power of the High Court *In re Ghalab Khan Mukhtear 7 B L R 179* approved *In re* SECOND GRADE PLEADERS (1911)
I L R 34 Mad. 2[illegible]

——— ss 13 14—

See PRACTICE **I L R 37 Calc 17[illegible]**

See UNPROFESSIONAL CONDUCT
I L R 43 Calc 68[illegible]

——— *Mukhtear acting as go between for bribing police of punishable under cl (f)—Enquiry commenced under cl (b) but ultimately disclosing act coming within cl (f) if irregular—S 14 cl (f) enquiry under if can be made by subordinate Court* Where a mukhtear was found to have received a sum of money from a person against whom some police cases were pending for the purpose of bribing the police and acted as a go between *Held* that his action furnished reasonable cause for punishment under s 13 cl (*f*) of the Legal Practitioner s Act A subordinate Court can take proceedings under s 13 cl (*f*) of the Legal Practitioner s Act and even if the High Court be the only Court which can order such an enquiry it is open to the High Court to avail itself of the inquiry already made by a subordinate Court and proceed to deal with

LEGAL PRACTITIONERS' ACT (XVIII OF 1879)—contd

——— s 13 14—*contd*

the cas it 'f An enquiry by the lower Court is not irregular on the groun l that the act dis clo ed as the re ult of the enquiry is found to come under 13 cl. (f) and not under s 13 cl (l) *Re* HARI BRASANNA MUKHERJEE (1917) **21 C W N 516**

——— *Specific charge under 13 (b) ne e ary—Taking instruction from unauthorised p rsons—Conduct improper* In a reference under the Legal Practitioners Act the High Court confines it elf to the charge framed by the Primary Cour The finding that the pleader was guilty of the fraudulent or gro sly improper conduct in the discharge of his profes sional duty within the meaning of s 13 (b) of the Legal Prac itioners Act was disregarded as the pleader was not charged with that Where a pleader was found to have received instructions from a per on about whom he made no enquiries as to his right to instruct him on behalf of certain minors or their mother and also that he filed a written statement which was not prepared by him and that he accepted the *vakalatnama* at the instance of another party in the suit and that he filed a receipt whi h on the face of it was not genuine without even examining it it was held that his conduct was most improper although *no injury re ulted from it* The pleader was susp nded for nine months *In the matter of* JUGAL CHANDRA MAZUMDAR (1916) **20 C W N 1016**

———In a case which arose out of certain Pleaders observing a hartal their status was fully discus ed also the effect of filing a Vakalatnama KING EMPEROR v RAJANI KANTA BOSE **26 C W N 589**

——— *Mukhtear abusing Court s Officer if liable to dis plinary action—Contempt—Object of puni hment—Subordinate Court if may start enquiry under 14 in ca es other than und r cls (a) and (b) to s 13—High Court if may adopt a report made by subordinate Court in a proceeding wrongly initiated but properly conduct d* S 14 of the Legal Practitioners Act invests a Subordinate Court with authority to inquire into any case of mi conduct alleged against a pleader or Mukhtear practi ing before it covered by s 13 of the Act as amended by Act XI of 1896 and not merely ca es covered by cl (a) and (b) of s 13 *In the matter of Southekal Krishna Rao L R 14 I A 154* s c *I L R 15 Calc 1 ?* explained *In re Purna Chandra Pal I L R 27 Calc 1023* s c *4 C W N 389* commented on Whether an enquiry is made by or under the orders of the High Court under s 13 or is instituted by the Subordinate Court of its own motion the final order can be passed only by the High Court The law does not require an inquiry ordered under s 13 to be conducted directly by the High Court Therefore even if it were incompetent for a Subordinate Court to initiate an inquiry into certain kinds of charges of mi conduct if such an inquiry has been properly held after notice there is nothing to pre vent the High Court from adopting it as one which could be directed under s 13 The Court at least when in se sion is present in every part of the place set apart for its own use and for the u e of its officers jurors and witn es and dis orderly conduct anywhere in such place amounts to a contempt of Court The power of suspension or removal is distinct from the power to puni h for contempt but a contempt may be of such character as to warrant the exercise of the disciplinary powers of the Court When the Court takes notice of a misconduct which consi ts in the obstruction of or an interference with one of its officers the object of the di cipline enforced is not so much to vindicate the dignity of the Court or the person of the officer as to prevent undue interference with the admini tration of justice Where a mukhtear in the course of an altercation with the Court s accountant in the latter s office used abusive language which was heard by the Munsif from his Court *Held* that for such con duct the Court could take disciplinary action a ainst he mukhtear *In re matt r of* PASUP LAL NAG (1916) **I L R 44 Calc 639** **20 C W N 1284**

——— *It is incumbent upon a Mukhtyar to take his instructions directly from his client* If he takes them from an agent he must ascertain that the agent is duly empowered A *Mukhtyar* is liable to be punished when he has acted in violation of his duty in circumstances which show gross negligence on his part even though he may be not guilty of fraud *In re* LEAKUT HUSSAIN MUKHTYAR **2 Pat L J 36**

——— s 14—

See CIVIL PROCEDURE CODE 1908 O 111 R 2 **2 Pat L J 259**

See PLEADER **I L R 47 Calc 1115**

——— *Transfer of enquiry under s 14—Nature of proceedings under the Act* The procedure provided by the Legal Practitioners Act 1879 is self contained It is neither criminal nor civil but purely de igned for the purpo e of discipline in controlling the procedure and the conduct of practitioners practising in the Subor dinate Court The enquiry provided for by s 14 of th Legal Practitioners Act 1879 cannot be delegated or tran ferred to ano her officer who is not the presiding officer of the Court in which the malpractices complained of were com mitted Disciplinary proceedings taken under s 14 of the Legal Practitioners Act 1879 are not proceedings in a Court of Civil Jurisdiction The Code of Civil Procedure 1908 is not applicable to enquiries under s 14 of the Legal Practitioners Act 1879 S 141 of the Code of Civil Procedure 1908 is controlled in its operation and effect by the concluding words of the section which limit its application to proceedings in Courts exerci ing Civil Juri diction S 10 of the Government of India Act 1915 did not alter the position *In the matter of* JANAK KISHORE ABINASH AND OTHERS **1 Pat L J 576**

——— *Reference a ising out of criminal charge against mukhtear—Proc ed ngs under the Act should be distinct from criminal proceedi g—Procedure for enquiry to be strictly followed* Where in the course of c iminal proceed ings against the mukhtear a re erence purport ing to be made under the Legal Practitioners Act was made again t him to the High Court *Held* that the procedure pre cribed in s 14 of the Act should have been strictly followed from

LEGAL PRACTITIONERS' ACT (XVIII OF 1879)—contd

——— s 14—contd

first to lust and that not having been done the Reference was bad *Held* further that the proceeding under the Act must be separate and distinct and cannot be made part of the criminal proceedings *In re* FAZALAR RAHAMAN (1914) **15 C W N 761**

——— *Mukhtear—Suspension by District Magistrate before report to High Court—Right to be heard before suspension—Order for prosecution—Criminal Procedure Code (Act V of 1898) s 476* A legal practitioner cannot be provisionally suspended pending investigation (under s 14 of the Legal Practitioners Act) of a charge of misconduct brought against him without being heard in defence under s 40 of the Act and before a report has been submitted to the High Court in terms of s 14 The investigation referred to in the section is investigation by the High Court Where upon a reference by the Sub Divisional Officer relating to the conduct of a mukhtear in a case tried before that officer the District Magistrate suspended the mukhtear and on a perusal of the records directed his prosecution under s 182 Penal Code *Held* that the order of suspension was without jurisdiction *Per* WOODROFFE J —That the order for prosecution could not be passed by the District Magistrate under s 476 Criminal Procedure Code as the proceeding not being properly before him was not a judicial proceeding *Per* CARNDUFF J —The District Magistrate was not acting in the course of a judicial proceeding *In re* BAJRANGI SAHAI (1911) **15 C W N 209**

——— *Vakalatnama altered after execution by inserting name of mukhtear actually engaged at the request of party's agent—Conduct if grossly improper* A written *vakalatnama* for the purpose of engaging certain pleaders to conduct an appeal on behalf of a prisoner was taken by his maternal uncle to the prisoner in jail where it was executed by the prisoner by affixing his mark in the presence of a jail officer and was handed over to the maternal uncle who brought it to the petitioner a *mukhtear* and instructed him to appear in the appeal The petitioner pointed out to the uncle of the prisoner that he could not appear as his name was not mentioned in the *vakalatnama* and then at the request of the latter inserted his own and other names in it and made certain other alterations *Held* that although the petitioner certainly acted improperly in altering the *vakalatnama* the alterations were not made from improper motives and his conduct was not grossly improper within the meaning of s 14 of the Legal Practitioner Act *In the matter of* PURNA CHANDRA CHATTERJI (1912) **17 C W N 328**

——— *Legal practitioner—Prosecution ordered—Certificate not to be cancelled until result of prosecution is known—Practice* Where a District Judge having the alternative to take action against a pleader practising in his judgeship under s 14 of the Legal Practitioners Act 1879 or to initiate criminal proceedings against him takes the latter he ought to wait until the result of the criminal proceedings is known before refusing to renew the pleader's certificate *In the matter of* A PLEADER (1916) **I L R 38 All 182**

LEGAL PRACTITIONERS' ACT (XVIII OF 1879)—contd

——— s 14—contd

——— *Gross contempt of a Subordinate Court by a second grade pleader by unjustly attacking its impartiality in the discharge of its duties—Jurisdiction of Subordinate Courts to take proceedings under s 14 for all cases coming under s 13 cl (f) not ejusdem generis* In the course of an enquiry before a District Munsif a second grade pleader who appeared for one of the parties to the enquiry swore an affidavit and filed the same in Court requesting that Court should not proceed with the enquiry The affidavit contained unjust aspersions imputations and insinuations couched in insulting language charging the District Munsif with rancour and prejudice against the pleader and with a desire to injure him both as a pleader and also as a public man The Munsif thereupon took these proceedings under s 14 of the Legal Practitioners Act (XVIII of 1879) charging the pleader under s 13 cl (f) of the Act with contempt of Court *Held* (i) that Subordinate Courts have jurisdiction to take proceedings not only under cl (a) and (b) of s 13 but also under all the other clauses of the sections (ii) that cl (f) is not confined to misconduct *ejusdem generis* as those referred to in the previous clauses and (iii) that the pleader was guilty of misconduct by his outrageous attack upon the Court in the exercise of its function Their Lordships accordingly suspended the pleader from practice for a period of four month The decision of KNOX J in *In the matter of the Petition of Mahomed Abdul Hai I L R 29 All 61* and *In the matter of a Pleader I L R 26 Mad 448* followed THE DISTRICT JUDGE OF KISTNA v HANUMANULU (191) **I L R 39 Mad 1045**

——— ss 27 28—*Pleader and client—Fees agreement for payment of not in writing and not filed in Court if may be enforced—Pleader's lien on moneys realised on behalf of client—Quantum meruit* An agreement by a client to pay certain amount to his pleader as fees for professional service cannot be enforced by the latter when it has not been embodied in writing signed by the client and filed in the proper court in the manner provided by s 28 of the Legal Practitioners Act even when the amount agreed to be paid is not in excess of that prescribed under the rules framed under s 27 of the Act for payment by any party to his opponent in respect of the fees of the pleader employed by his adversary The language of s 28 is comprehensive enough to include every agreement between a pleader and his client for the payment of fees for professional service and cannot be restricted by reference to s 27 which does not apply to such agreement *Quære* Whether in the absence of a written agreement a pleader can claim reasonable compensation for his services KAMINI DEBI v KHETRA MOHAN GANGULY (1911) **17 C W N 45**

——— s 28—*Pleader and client—Lien on client's moneys for fees agreed upon if enforcible when agreement not in accordance with s 28 Legal Practitioners Act (XVIII of 1879)* An agreement between a pleader and his client in regard to fees for professional service which the pleader cannot sue on owing to its not conforming to the provisions of s 28 of the Legal Practitioners Act cannot also be relied upon in defence to an action by the client to recover moneys deposited in Court

LEGAL PRACTITIONERS ACT (XVIII OF 1879)—*contd*

——— s 28—*contd*

by the client and withdrawn by the pleader The plea of the pleader that he had a lien on the money to the extent of the fees agreed upon could not therefore be entertained *Quære* Whether the pleader could claim reasonable remuneration for his services in view of s 28 of the Legal Practitioners Act KAMINI DEBI v KHETRA MOHAN GANGULI (1910) 15 C W N 681

See ALSO ANTE 17 C W N 45

——— *Pleader's suit for fee upon oral agreement if maintainable* Where a suit by a Pleader for fees against his client is based on an agreement he cannot succeed unless the agreement is both in writing signed by the party to be charged and filed as provided in s 28 of the Legal Practitioners Act Consequently no suit upon an oral agreement can succeed under the section BRAJARAM LAHARI v SUDEBI DASI 26 C W N 709

——— s 35 36—Tout order declaring a person—*Evidence to justify* Where witnesses merely proved that a person declared by the District Magistrate to be a tout had been seen in Court looking after cases one witness only saying that he had heard that the mukhtears regarded him as a tout *Held* that the evidence was clearly insufficient to justify the order of the District Magistrate SUNDAR UPADHYA v THE PRESIDENT OF THE MUKHTEARS ASSOCIATION CHAPRA (1911) 15 C W N 1000

——— s 36—*Touts—Procedure to be followed by a Court taking action under s 36—Revision—Statute 5 & 6 Geo V Ch 61 s 107—Evidence—Criminal Procedure Code s 117 (3)* It is competent to the High Court to entertain an application in revision against an order passed by a District and Sessions Judge under s 36 of the Legal Practitioners Act 1879 and this without invoking the aid of the Government of India Act 1915 s 107 *In the matter of the petition of Madho Ram I L R 21 All 181 In the matter of the petition of Kedar Nath I L R 31 All 59 Raju Sahib v the District Judge of Madura I L R 26 Mad 592* and *Hari Charan Sarcar v the District Judge of Dacca 11 C L J 213* referred to In a proceeding under s 36 of the Legal Practitioners Act 1879 the Court may properly apply as regards the nature of the evidence adducible the provisions of s 117 (3) of the Code of Criminal Procedure Where a person's name has once been included in a list framed under s 36 the mere fact that the exhibition of such list in any particular court room is discontinued has no effect on the validity of the original order *In the matter of the petition of* KALKA AND OTHERS (1917) I L R 40 All 153

——— An order under s 36 declaring a person to be a tout can be made only by one of the authorities specified in that Section and upon evidence taken by such authority himself *In the matter of* NAFAR CHANDRA MANDAL 24 C W N 1074

——— s 40—

See s 14 15 C W N 269

LEGAL PROCEEDINGS

See AGREEMENT I L R 37 Mad 408

LEGAL REMEMBRANCER

See CONTEMPT OF COURT I L R 41 Calc 173

See PUBLIC PROSECUTOR I L R 41 Calc 425
I L R 46 Calc 544

LEGAL REPRESENTATIVE

See APPEAL TO PRIVY COUNCIL I L R 3 Mad 406

See BENGAL TENANCY ACT 1885 SCH III ART 6 14 C W N 971

See CIVIL PROCEDURE CODE (ACT XIV OF 1882) ss 244 252 647 I L R 34 Bom 546

s 373 I L R 38 Mad 643

See CIVIL PROCEDURE CODE (ACT V OF 1908) —

ss 2 (11) 53 I L R 42 Bom 504

s 2 (11) O XXII r 1 I L R 39 Mad 382

s 2 (11) O XXI r 22 I L R 45 Bom 1186

ss 47 and 50 I L R 38 Mad 1076

O XXII rr 3 5 I L R 43 Bom 168

See DEFENDANT DEATH OF I L R 38 Mad 682

See GUARDIAN AND WARDS ACT 1890 ss 34 35 AND 36 I L R 44 Bom 852

See HINDU LAW—REVERSIONER I L R 33 All 15

See MAHAMMADAN LAW I L R 42 All 497

See SPECIFIC PERFORMANCE I L R 41 All 515

——— of the receiver—

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XL r 4 I L R 39 Mad 584

LEGAL REPRESENTATIVES' SUITS ACT 1855

See CIVIL PROCEDURE CODE O XXI r 1 I L R 44 Mad 357

LEGALITY

See SEARCH WARRANT I L R 45 Calc 905

LEGATEE

See ESTOPPEL I L R 44 Calc 145

See RESIDENCY LEGATEE I L R 41 Calc 271

——— disclaimer by—

See SUCCESSION ACT (X OF 1865) s 187 I L R 38 Mad. 474

——— right of, to sue—

See WILL I L R 38 Calc. 327

——— suit for maintenance against—

See HINDU LAW—MAINTENANCE I L R 39 Mad. 396

LENDER AND BORROWER

—— *Suit on promissory note —Undue influence and want of consideration pleaded in defence—Indian Contract Act not principles of English equity to be applied—Renewal of loan with capitalised interest at intervals when unconscionable—Excessive amount becoming due from debtor's failure to pay if to be regarded as oppressive —Contract Act (IX of 1872) s 16—Onus* Where in a suit brought on certain promissory note the defendant pleaded that he had received no consideration that the notes were procured by the exercise by the plaintiff upon him of undue influence and that the whole transaction was an unconscionable bargain made with the defendant as an expectant heir *Held* that the questions raised were to be decided on the provisions of the Indian Contract Act and on those alone the principles upon which English Courts of Equity deal with similar questions being entirely inapplicable A borrower who obtains a loan secured by a promissory note on a quite reasonable basis by neglecting to pay the note at maturity further neglecting to pay the accruing interest for the several years following and then giving a renewal note for the original debt plus the capitalised interest could produce a result which might at first sight appear oppressive and yet there would be nothing harsh or unconscionable in the creditor's demand since the added interest only accumulated while he forebore to enforce the payment of the sums from time to time due to him On the other hand it would be quite possible for a money lender by making loans for short period on apparently fair terms and then insisting on capitalising the interest immediately on its becoming payable to pile up compound interest on the initial debt at such a rate as would make the result after a few years most oppressive and unconscionable But there is nothing inherently wrong or oppressive in a lender's securing for himself compound interest after the borrower has for a considerable time neglected to pay the debt he owes or the interest accrued due upon it which he has contracted to pay The borrower cannot acquire merit simply by breaking his contract The promissory notes in this case so far from being renewed with undue frequency were frequently allowed to remain overdue for periods of from two and a half to four and a half years before the renewal was taken and the overdue interest capitalised in some instances the renewal being given after the period of limitation had run out *Held* that the transactions between the parties were not on the face of them unconscionable contracts within the meaning of s 16 of the Contract Act as amended by the Act of 1899 To prove the unconscionable character of the bargain evidence was given to show that the defendant (who undoubtedly was a spendthrift of depraved and licentious habits) was heavily indebted to several other creditors during the years covered by his transactions with the plaintiff *Held* that it was legitimate to prove these facts in order to establish that the defendant was a person of weak and debauched character unable to resist the pressure of creditors if applied or to resist the temptation to borrow money recklessly to gratify his lusts but it was wholly illegitimate to give any evidence as to the terms on which he succeeded in compromising with creditors other than the plaintiffs *Held* on the evidence agreeing with the District Judge (that assuming that the plaintiff was in a position to dominate the will of the defendant the latter had utterly failed to prove further that the plaintiff had in fact exercised undue influence upon him in any of the transaction out of which his liability for the debt sued for arose and that if the defendant having been an expectant heir the plaintiff was in consequence in a position to dominate his will and therefore bound to prove that he had not used that position to obtain an unfair advantage over him the plaintiff had discharged that burden PATLA MAL *v* AHAD SHAH (1918) 23 C W N 233

LESSEE

See LANDLORD AND TENANT

See LEASE.

See LESSOR AND LESSEE

See MADRAS LAND REVENUE ACT (I OF 1876) s 2
I L R 38 Mad 1128

See MADRAS ESTATE LAND ACT
I L R 39 Mad 1018

See TENANTS IN COMMON
I L R 39 Mad 1049

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 10 I L R 38 Mad 867

s 108 (J) I L R 40 Mad 1111

s 6 I L R 43 Bom 28

See USUFRUCTUARY MORTGAGE
I L R 40 All 429

——— dispossession of—

See LESSOR AND LESSEE
I L R 39 Mad 1042

——— for years or for life—

See MINERAL RIGHT
I L R 38 Calc 845

——— from Bombay Government—

See KASBATIS I L R 39 Bom 625

——— from Government in Firozepore—whether land is ancestral—

See CUSTOM I L R 2 Lah 195

——— in perpetuity—

See MINERAL RIGHTS
I L R 38 Calc 845

——— interest of—

See LIMITATION ACT (IX OF 1908) SCH I ARTS 91 AND 120
I L R 35 All 149

——— liability of—

See BOMBAY MUNICIPAL ACT (BOM. ACT III OF 1888) 30
I L R 34 Bom 593

——— right of to eject trespasser—

See EJECTMENT I L R 37 Mad 281

——— right of—to give monthly tenant notice to quit—

See TRANSFER OF PROPERTY ACT 1882 ss 105 & 109 I L R 1 Lah 241

——— right of to improvements—

See MALABAR TENANTS IMPROVEMENT ACT (MAD I OF 1900) ss 3 AND 6
I L R 38 Mad 954

——— right of to relief against forfeiture—

See TENANTS IN COMMON
I L R 39 Mad 1049

See TRANSFER OF PROPERTY ACT 1882 s 1 I L R 43 Bom 28

——— *Transfer by lessee—Liability of lessee to pay rent after transfer—Privity of estate—Transfer of Property Act (IV of 1882) s 108* The duration of liability of a lessee to pay rent to the lessor lasts as long as his estate remains in his possession and no longer and after an assignment of the lease the privity of estate between him and the lessor ceases and the assignee becomes liable for the rent METHA v GADADHAR RAI (1910) I L R 37 Calc 683

——— *Assignment by lessee—Assignee's right to apportionment as against lessor—Transfer of Property Act (IV of 1882) ss 36 and 108—Apportionment in English Law under Statute Law in England and under the English Common Law—Rent—Interest accrues de die in diem English Statute Law principle of to be followed in India—No Statute Law in India—Apportionment as between lessor and lessee's assignee* An assignee from a lessee is entitled to claim as against the lessor apportionment of rent accruing due after the date of assignment to him up to the time of a transfer (if any) of his interest as assignee to a third person There is privity of estate between the lessor and the assignee and the latter is bound to perform the covenants of the lease after the assignment Possession is not the ground of his liability but the privity of estate which is created by the assignment itself It is settled law that the privity of estate between the lessor and the lessee's assignee is terminated by an assignment by the latter of his interest to a third person On principle there seems to be no reason why an assignee should not be entitled to apportionment as between himself and the lessor and why rent should not be deemed to accrue due from day to day as between them In England the Law of apportionment has long been regulated by statutes and all rents etc are like interest on money lent considered as accruing from day to day and apportionable in respect of time accordingly In India there is no reason for not applying to rent the principle adopted in England in the case of interest KUNHI SOU v MULLOLY CHATHU (1913) I L R 38 Mad 86

LESSOR AND LESSEE

See LANDLORD AND TENANT

See LESSEE

——— *Forfeiture for non payment of rent—Joint lessors—Separation of their ownership in the lands—Receipt by one of the joint lessors of his share of rent from the lessee—Right of the other joint lessor to enforce the forfeiture—No act done by the lessor previous to the institution of the suit to determine the lease—Election previous to suit not necessary—Waiver—Transfer of Property Act (IV of 1882) s 111 (g)—Right of re entry under the old English Common law* One of several joint lessors who had become separately entitled to his share of the lands leased is entitled to enforce the forfeiture clause in the lease deed separately as regards his share of the lands *Sri Raja Simhadri Appa Rao v Prattipati Ramayya I L R 29 Mad 9* followed *Gopal Ram Mohuri v Dhakeswar Pershad I L R 35 Cal 807* dissented from Mere breach by the lessee of a covenant involving forfeiture contained in a lease of lands executed for agricultural purposes gives a sufficient cause of action to the lessor to bring the suit in ejectment and it is not necessary that the lessor should do some act showing his intention to determine the lease before he brings his suit in ejectment *Venkataramana Bhatta v Gundaraya I L R 31 Mad 403* distinguished *Padmanabhayya v Ranga*

LESSOR AND LESSEE—contd

I L R 31 Mad 161 followed *Per* SADASIVA AYYAR J As the breach of the condition gives rise to a cause of action at once there is strictly no question of election between two different rights but there is only an election whether the lessor is to retain the right created by the breach or to give up the right The retention requires no definite physical act while the waiver does KOPPAPALU v NARAYANA (1913)

I L R 38 Mad 445

——————— *Lease for a term—Dispossession of lessee within term by trespassers—Right of suit of lessor for actual possession—Lessee joined as defendant—Decree—Declaration of title—If formal possession can be given* A lessor whose lessee is dispossessed by a stranger can maintain a suit against the stranger during the term of the lease and obtain a decree not only declaring his title to the reversion but also awarding him formal possession of the land as provided by O XXI r 36 Civil Procedure Code *Bissessuri Dabeea* v *Baroda Kanta Roy Chowdry I L R 10 Calc. 1076* and *Sita Ram* v *Ram Lal I L R 18 All 440* followed TIRUVENGADA KONAN v VENKATACHALA KONON (1915)

I L R 39 Mad 1042

——————— *Suit for rent—Unliquidated claim for damages which has become barred—Equitable set off whether available if possession disturbed* In a suit by the lessor for rent it is not open to the lessee to set up by way of equitable set off an unliquidated claim for damages which was barred at the date of the suit English case law reviewed VYRAVAN CHETTY v SRIMATH DEIVASIKAMANI NATARAJA DESIKAR (1915)

I L R 39 Mad 939

——————— *Lessee agreeing in the lease deed to pay a debt of lessor—Non payment by lessee—Suit by lessee to recover possession of lands demised—Subsequent usufructuary mortgage by lessor for discharge of debt—Right of lessee to possession under lease—Transfer and executory contract distinction between—Indian Contract Act (IX of 1872) s 39 applicability of to leases—Specific Relief Act (I of 1877) s 35 whether applicable to default after lease* Where a lessee having agreed in the lease deed to discharge a debt of the lessor secured on the demised lands failed to pay the debt and the lessor being sued by the mortgagee executed a usufructuary mortgage to other persons and with the *proceeds* thereof paid off the debt and thereupon the lessee sued to recover possession of the demised lands from the lessor and the usufructuary mortgagees who pleaded that the former was not entitled to recover possession under his lease on account of his default in not discharging the debt as agreed to in the lease deed *Held* that the lessee was entitled to recover possession of the lands under his lease though he had not paid the debt as agreed to in the lease deed A lease is an executed contract it is a transfer of property or of an interest in property and all the considerations which apply to the enforcement of mere contracts do not necessarily apply to a transfer consequently the doctrine regarding mutual promises contained in s 39 of the Indian Contract Act has no application to a lease S 35 of the Specific Relief Act did not apply to the *case* as the plea did not relate to any facts which vitiated the contract

LESSOR AND LESSEE—concld

culminating in the lease but to something which happened after the grant of the lease namely non payment of the debt mentioned in the lease deed *Chhotu Rai* v *Baldeo Shukul I L R 31 All 659* dissented from *Subba Rau* v *Devu Shetti I L R 18 Mad 126* distinguished KANDASAMI PILLAI v RAMASAMI MANNADI (1918)

I L R 42 Mad. 203

——————— *Suit in ejectment from part of a holding maintainability of—Right of suit of lessor or of assignee of part of the reversion—Payment of compensation for tenant's improvements Payment for improvements whether on the whole or part of the holding necessary—Malabar compensation for Tenants Improvements Act (I of 1900) ss 5 and 6— Holding construction of Held* by the Full Bench (SESHAGIRI AYYAR J dissenting) that a lessor is not entitled to eject a tenant from a part only of the holding but the assignee of the reversion in part of the demised premises is entitled to eject a tenant for due cause from such part on payment of the value of the improvements to that part and that this rule applies to tenancies in Malabar *Per* SESHAGIRI AYYAR J —Neither the lessor nor the assignee of a part of the premises can evict a tenant from a part of the premises during the continuance of tenancy in the case of a terminated tenancy the Malabar Compensation for Tenants Improvements Act does not contemplate the possibility of a partial eviction on payment of the value of improvements on a part of the holding KANNYAN BADUVAN v ALIKUTTI (1919)

I L R 42 Mad 603

——————— If by an inundation of sea water part of land leased for agricultural purposes becomes unfit for cultivation and the lessor brings a suit to recover the whole rent reserved the lessee can claim abatement s 108 B of Transfer of Property Act not being applicable *Shaikh Enayatolah* v *Shaikh Elaheebuksh 1864, W R Gap (Act X rulings 42* followed SUBRAMANIA PATTAR v KATTAMBALLI RAMA (1920)

I L R 43 Mad. 132

——————— *Assignment of lease—Consent not to be unreasonably withheld—Assignment to a limited company—Refusal to consent—Procedure* The plaintiff took out an originating summons for the determination of the following questions namely whether upon the true construction of the Indenture of lease mentioned in the plaint herein relating to premises No 4 Madge Lane in the town of Calcutta commonly known as the Grand Opera House and in the circumstances mentioned in the plaint the plaintiff is entitled to assign the remainder of the term under the said lease to the Bijou Limited without the consent of the defendant E M D Cohen and whether the defendant should pay the costs of and incidental to these proceedings —*Held* that the procedure adopted by the plaintiff was entirely correct *Young* v *Ashley Gardens Properties Ltd 1903 2 Ch 112 Re Spark's Lease [1905] 1 Ch 456 Evans* v *Levy [1910] 1 Ch 452* and *Mills* v *Cannon Brewery Co Ltd 36 T L R 513* followed. *Held* further that in the circumstances of the present case the defendant's refusal to consent to the assignment was unreasonable and capricious and that the questions must be answered in the affirmative DUCASSE v COHEN (1920)

I L R 48 Calc 176

LETTERS OF ADMINISTRATION

See ADMINISTRATION BOND
I L R 39 Calc 563

See ADMINISTRATOR GENERAL'S ACT (II OF 1874) s 20 52 AND 51
I L R 38 Mad. 1134

See COURT FEES ACT s 19
I L R 33 Mad 93
I L R 40 All 279

See HINDU LAW—SUCCESSION
I L R 37 Calc 214

See PROBATE I L R 37 Calc 224
I L R 40 Bom 666

See PROBATE AND ADMINISTRATION ACT s 50 14 C W N 119
I L R 37 All 380

See SUCCESSION ACT (X OF 1865) s 190
I L R 38 Bom 618

See SUCCESSION CERTIFICATE ACT (VII OF 1889) s 4 I L R 38 All 474

——— application for—

See PARTIES I L R 45 Calc 862

——— *Probate and Administration Act (V of 1881) ss 23 64—Hindu death of leaving widow who survived over 30 years—Application for letters of administration when no estate left to be administered* It is no doubt not necessary for the Probate Court to decide what assets are likely to come to the hands of a petitioner for letters of administration but it is also the duty of the Court in granting letters of administration to consider whether there is any estate whatever to be administered *In the goods of Nursing Chander Bysack 3 C W N 635 Lakshmi Narain v Nanda Lani 9 C L J 116* relied on *Raghu Nath v Pate Koer 6 C W N 345* distinguished Where the object of the litigation appeared to be not to administer the estate of the deceased (a Hindu who had died so long ago as 1875 and was survived by his widow in possession till 1907) but really to obtain a declaration of heirship so as to fortify the successful party in any regular suit that may be instituted *Held* that no grant should be made although objection on this ground was taken for the first time upon appeal from the order of the District Court granting letters of administration LALIT CHANDRA CHOWDHURY v BAIKUNTHA NATH CHOWDHURY (1910)
14 C W N 463

——— *Presidency Insolvency Act (III of 1909) s 108—Letters of administration application by creditor—Debtor dying in insolvent circumstances* Letters of administration may be granted to a creditor although the liabilities of the deceased debtor appear to be in excess of the assets Application in the Insolvency Court is not the creditor's only remedy *In the goods of* MAKHAN LALL CHATTERJEE (1911) 15 C W N 350

——— *Revocation—Probate and Administration Act (V of 1881) s 50 Expl (4)— Just cause — Useless or inoperative meaning of—Disagreement between administrators whether a just cause for annulling letters of administration* A mere disagreement between administrators is not a just cause for annulling the letters of administration under s 50 expl (4) of the Probate and Administration Act The words becomes useless and inoperative in 50

LETTERS OF ADMINISTRATION—*contd*

expl (4) of the Probate and Administration Act imply the discovery of something which if known at the date of the grant would have been a ground for refusing it *e g* the discovery of a later will or codicil or subsequent discovery that the will was forged or that the alleged testator is still living *Bal Gangadhar Tilak v Sakwarbai I L R 26 Bom 792* and *Annoda Prasad Chatterjee v Kalikrishna Chatterjee I L R 24 Calc 95* followed GOUR CHANDRA DAS v SARAT SUNDARI DASSI (1912) I L R 40 Calc 50

——— *Practice—Colonial Probate Act (55 & 56 Vict c 6)—Power of attorney construction of* The Colonial Probates Act and the procedure therein indicated as to send an exemplification of the probate granted in any part of the United Kingdom to be re sealed by the Court to which it is sent has not been extended to British India where the practice is to require administration with will annexed to the estate of deceased British subject leaving property there Authority in a power of attorney granted by the executrix of a will which has been confirmed *in Scotland to produce to the Supreme Court in* India in the probate jurisdiction at Calcutta or elsewhere in India the said confirmation and to procure the same to be sealed with the seal of the Supreme Court in India in accordance with the laws thereof does not authorise the donee to obtain grant of Letters of Administration *In the goods of* WILLIAM RENNIE (1912)
I L R 40 Calc 74

——— *Probate and Administration Act (V of 1881) s 16—General citation issue of—Special citation to executor to accept or renounce not issued—Will validity of—Proper procedure* In a proceeding under the Probate and Administration Act general citation was issued to the executor to attend and watch the proceeding but no appearance was entered by him and letters of administration with a copy of the will annexed was granted to the applicant — *Held* that the validity of the will was established but letter of administration should not have been granted without calling upon the executor by a special citation under s 16 of the Act to accept or renounce his executorship SAROJINI DASI v RAJLAKSHMI DASI (1920)
I L R 47 Calc 838

——— *Whether grant of in respect of part of estate is valid—Probate and Administration Act (V of 1881) s 50—Compromise of probate proceedings whether binding on minors—Equitable estoppel* Although an executor who has been appointed by the testator for the administration of a particular fund is competent to take out probate limited to that particular fund yet where there is no direction as to any particular fund and where the applicants for letters of administration apply in their capacity as heirs there is no provision of law which empowers the court to refuse administration of the whole estate and to limit it to a fractional undivided portion thereof. The only issue before a Probate Court is whether the Will has been proved to be genuine and duly executed and the court has no concern with the devolution of property Although it can record a contract or agreement made between the applicant for administration and a *caveator* in consideration of the withdrawal of the latter's objection

LETTERS OF ADMINISTRATION—*concld*

the court is wholly powerless to enforce such contract or agreement SARADA PRASAD TEJ *v* TRIGUNA CHARAN ROY **3 Pat L J 415**

———— *Practice—whether Court should go into question of—paramount title—Probate and Administration Act (V of 1881) ss 23 64 69 70 and 73* The question as to whether an estate exists for the administration of which letters of administration can be granted must be decided upon the allegations in the petition To entitle an applicant to a grant of letters of administration it is sufficient if the petition shews that the applicant is according to the rules for the distribution of the estate of the deceased entitled to the whole or a part of the property and alleges the fact that there is property of that nature A Court of Probate is bound to enter into questions of title if it is necessary to decide that question in order to determine which of the two contesting parties is entitled to a grant of letters of administration but is not entitled to do so where one of the contesting parties asserts that no one is entitled to such a grant *e g* where such party objects to a grant being made to his opponents on the ground that he has himself taken the entire estate of the deceased by survivorship as his adopted son In such a case the question of the *factum* of the adoption would become relevant to the inquiry only if the alleged adopted son claimed to be preferentially entitled to the grant of letters of administration DEBENDRA PRASAD SHUKUL *v* SURENDRA PRASAD SHUKUL **5 Pat L J 107**

LETTERS PATENT (HIGH COURT 1865)

See CIVIL PROCEDURE CODE 1908 s 115 **15 C W N 848**

———— cl 10—

See PROFESSIONAL MISCONDUCT **I L R 41 Calc 113**

———— *Appeal—from a dissentient judgment in an appeal under s 10—Pre emption—Wajib ul arz—Custom or contract—Partition of village—No new wajib ul arz framed—Construction of document— Hissadar deh Held* that an appeal will lie under s 10 of the Letters Patent from the judgment of a Judge who has differed from his colleague in an appeal under the same section The *wajib ul arz* of an undivided village gave a right of pre emption first to a near co sharer (*hissadar karib*) and then to a co sharer in the village (*hissadar deh*) Subsequently the village was divided by perfect partition into two mahals No new *wajib ul arz* was prepared In a suit for pre emption by the co sharers in one of the mahals consequent upon a sale of property situated in another mahal to a stranger *Held* that the right might be enforced notwithstanding the partition The meaning of the words *deh* and *mahal* discussed by KARAMAT HUSAIN J *Dalganjan Singh v Kalka Singh I L R 22 All 1* and *Dris v Jiwan Ram I L R 3 All 265* referred to JIWAN RAM *v* TONKI SING (1911) **I L R 34 All 13**

———— cls 10 39—

See APPEAL TO PRIVY COUNCIL
I L R 41 Calc 734
I L R 39 Mad 128

LETTERS PATENT (HIGH COURT 1865) —*contd*

———— cl 12—

See ARBITRATION **I L R 47 Calc 611**

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 11 **I L R 37 Bom 563**

See CONTRACT **I L R 47 Calc 583**

See EQUITABLE MORTGAGE **I L R 38 Calc 824**

See HUNDI SUIT ON **I L R 40 Bom 473**

See JURISDICTION OF HIGH COURT **I L R 34 Mad 257**

See JURISDICTION
I L R 39 Calc 739
I L R 40 Calc 308
I L R 42 Calc 942
24 C W N 582
I L R 48 Calc 882

See LETTERS PATENT (BOM)

See MORTGAGE **24 C W N 633**

See THIRD PARTY NOTICE **I L R 45 Bom 24**

See WAIVER **I L R 44 Calc 10**

———— *State Railway suit for damages against by servant if may be brought against the Secretary of State for India in Council—Jurisdiction of High Court—Cl 12 Letters Patent Calcutta High Court 1865 leave to file plaint under if defendant may question propriety when once granted—Secretary of State for India in Council if a Body Corporate and if represents Government of India in all suits maintainable against Government—S 65 of 21 and 22 Vict c 106—Government carrying on business for State purposes where may be sued—Railway Company if a person carrying on business and where suit may be brought against it—Decision of a Bench of two Judges sitting on Original Side if binding on a single Judge* A servant of the Eastern Bengal State Railway was prosecuted at Rungpur on a charge of criminal breach of trust which resulted in his acquittal He thereupon filed a plaint claiming damages for false and malicious prosecution against the Secretary of State for India in Council in the Calcutta High Court in which he craved leave under cl 12 for the Letter Patent of the High Court 1865 for the institution of the suit in the said Court and the Court granted such leave *Held* that as the cause of action had arisen wholly outside the jurisdiction of the Calcutta High Court the leave was not properly granted and that the fact of the leave having been granted did not preclude the defendant from questioning the jurisdiction of the Court at the trial Under s 65 of 21 and 22 Vict c 106 the Secretary of State in Council is a Body Corporate for purposes of a suit and as such represents the Government of India in such suits as may be maintained against the Government By 21 and 22 Vict c 106 such right of suit as individuals had against the East India Company were continued as against the Secretary of State A Railway Company is a person carrying on business within the meaning of s 12 of the Letters Patent and it may be sued at the place of its principal office where the directors meet and the general business of the company is transacted or the brain power of the business is A Government may be presumed to dwell in its own capital and a Govern

LETTERS PATENT (HIGH COURT 1865) —contd

——— cl 12—contd

ment engaged in trade though it may be for purpose of the State carry on business there *Deyi Narain Tewary v Secretary of State for India I L R 11 Calc 65* dissented from The judgment of Pigot J in *Pyro Dasi Deyi v The Secretary of State for India I L R 14 Calc 670* approved *Held* that the former being the decision of two Judges sitting on the Original Side presumably upon a reference by one of the Judges sitting singly on the Original Side the decision is binding on a single Judge so sitting RODRICKS v THE SECRETARY OF STATE FOR INDIA (1912)

16 C W N 747

——— *Leave to sue—Leave granted by Registrar but not ratified by Court—Leave if may be endorsed as if granted on the date of presentation of plaint—Waiver of objection by defendant—Costs of unnecessary application* Where leave under cl 12 of the Letters Patent as prayed for in the plaint was granted by the Registrar subject to its ratification by Court but it did not appear that the plaint was ever placed before a Judge *Held* on the matter being brought before the Judge on a later date after defendant had filed written statement and taken several other steps toward the trial and had entered on the cross examination of the plaintiff who was being examined on commission that the granting of leave was a judicial act performable only by the Judge and leave could not now be endorsed on the plaint as given on the date on which the plaint was presented before the Registrar *Iltessur Sing v Lameshur Sing I L R 34 Calc 619 6 C W N 649* followed That by the steps they had taken in the suit defendant had waived objection as to want of leave *A J King v Secretary of State for India I L R 35 Calc 394 12 C W N 705* The application being thus unnecessary plaintiff was ordered to pay defendants cost SARASWATI DASSEE v LIRAJ MOHINI DASSEE (1913)

17 C W N 512

——— cls 12 14—*Cause of action arising partly within jurisdiction—Joinder of cause of action arising wholly outside jurisdiction—Joinder—Time of application* An application under cl 14 of the Letters Patent to join a further cause of action arising wholly outside the jurisdiction can be made in a case in which leave to sue has to be obtained under cl 12 nor is there anything in cl 14 to show that this application must be made before the plaint is filed There is nothing to prevent the plaintiff making the application at any time before the hearing but it would certainly be advisable for him to make it at the time the plaint is presented JOHN GEORGE DOBSON v THE KRISHNA MILLS LTD (1910)

I L R 34 Bom 564

——— cls 12 and 18—

See PRESIDENCY TOWNS INSOLVENCY ACT (III of 1909) ss 7 36 AND 90

I L R 40 Mad 810

——— cls 13 15 20—

See APPEAL **I L R 47 Calc 1104**

See MINOR **I L R 41 I A 314**

——— ss 13 27 and 44—

See DEFENCE OF INDIA ACT 1915 s 4

3 Pat L J 537

LETTERS PATENT (HIGH COURT 1865) —contd

——— cl 15—

See AMENDED LETTERS PATENT **I L R 42 Bom 260**

See APPEAL **I L R 42 Mad 352**

I L R 45 Calc 502 818

I L R 42 Calc 735

I L R 44 Calc 804

See ARBITRATION—RIGHT OF APPEAL **I L R 39 Calc 822**

See CRIMINAL PROCEDURE CODE 1898—

ss 15 AND 478 **I L R 43 Mad 361**

ss 435 439 AND 133 **I L R 39 Mad 537**

s 488 **I L R 39 Mad 472**

See LETTERS PATENT (BOM) **I L R 44 Bom 272**

See MISJOINDER **I L R 45 Calc 111**

See REVIEW **I L R 40 Mad 651**

——— *Appeal under—Order of a single Judge in revision against order to give security to keep the peace—No appeal— Criminal trial meaning of* Proceedings taken for binding over persons to keep the peace under Ch VIII Criminal Procedure Code are criminal trials within the meaning of s 15 of the Letters Patent *and hence there is no appeal from the judgment* of a single Judge disposing of a Revision Petition presented against an order of a Magistrate under s 118 of the Code of Criminal Procedure *In the matter of Ramasamy Chetty I L R 27 Mad 510* followed *Re* DEVAKACHARI (1915)

I L R 39 Mad 539

——— *Order of Judge refusing to decide whether arbitrators are going beyond scope of their authority— Judgment —Appeal—Construction of submission to arbitration* An order of a Judge dismissing a petition to revoke a submission to arbitration on the ground that the arbitrators are going beyond the scope of the reference is a judgment within the meaning of cl 15 of the Letters Patent and as such is appealable Such an order compels a party to submit to the jurisdiction of arbitrators though he complains that no such jurisdiction exists It decides a question of right namely whether or not he is by the terms of reference to arbitration deprived of his right at common law to have the dispute decided in the ordinary way in a Court of law It goes to jurisdiction and is not passed as an exercise of discretion ATLAS ASSURANCE COMPANY LIMITED v AHMEDBHOY HABIBBHOY (1908)

I L R 34 Bom 1

See ARBITRATION **I L R 36 All 354**

——— *Judgment—Order of single Judge refusing to frame an issue not appealable as a judgment* An order of a single Judge on the Original Side refusing to frame an issue asked for by one of the parties is not a judgment within cl 15 of the Letters Patent and is not appealable *Per* ARNOLD WHITE C J —An adjudication is a judgment within the meaning of the clause if its effect whatever its form may be and whatever may be the nature of the application in which it is made is to put an end to the suit or proceeding so far as the

LETTERS PATENT (HIGH COURT 1865) —*contd*

——— cls 15 36——*contd*

maintainable—s 98 (2) Civil Procedure Code (V of 1908) and cl (36) Letters Patent applicability of to appeals in Land Acquisition cases—R 2 of Appellate Side Rules applicability of to such appeals The decision of the High Court in a Land Acquisition appeal is not a judgment within cl (15) of the Letters Patent so as to enable a party to file a further appeal to the High Court under that article *Rangoon Botatoung Co Ld v The Collector Rangoon I L R 40 Calc 21*, and *The Special Officer Salsett Building Sites v Dessabhai Basanji Motivala 17 C W N 121* followed S 98 of the Civil Procedure Code applies to Land Acquisition appeals and if a bench of two Judges hearing an appeal differ as to the amount of additional compensation awardable the proper order to pass on the appeal is to confirm the award of the lower Court under that section and not to give a decree up to the lower limit of additional compensation *Kishen Dayal v Irshad Ali 22 C L J 5?0* distinguished An award is a decree or order of a Civil Court within r 2 of the Appellate Side Rules of the High Court Per SESHAGIRI AYYAR J S 98 Civil Procedure Code is not strictly applicable to the facts of the case MANAVIKRAMAN TIRUMALPAD v THE COLLECTOR OF THE NILGIRIS (1918)

I L R 41 Mad 943

——— cls 15 36, 39—

See LETTERS PATENT APPEAL
I L R 43 Calc 90

——— cls 15 44—

See APPEAL I L R 43 Calc 857

See LIMITATION ACT (IX OF 1908) ARTS 11 AND 13 I L R 39 Mad 1196

——— cl 24—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) SS 177 187 526 AND 531
I L R 42 Mad 791

——— cls 25 26—

See EVIDENCE I L R 47 Calc 671

See JURY TRIAL BY
I L R 44 Calc 723

——— cl 26—

See COUNTERFEIT COIN
I L R 44 Calc 477

——— Review of criminal case decided by High Court in Original Criminal Jurisdiction on certificate of Advocate General KING EMPEROR v UPENDRA NATH DASS (1914)
19 C W N 653

——— *Advocate General if has power to grant fiat regarding misdirection on point of fact* On a conviction of kidnapping in the Criminal Sessions of the High Court the Advocate General granted a fiat under s 26 of the Letters Patent that the question whether the direction to the jury was a sufficient direction and whether certain alleged omissions to direct the jury did not amount to a misdirection should be further considered by the High Court At the hearing objection was taken to the competency of the fact *Held* (on a consideration of the facts and circumstances of the case) that there was no misdirection and in that view it was

LETTERS PATENT (HIGH COURT 1865) —*concld*

——— cl 26—*concld*

not necessary to decide as to the competency of the fiat Duty of prosecuting counsel in Sessions trials in the High Court to take notes of the Judge's charge to the jury pointed out KING EMPEROR v PEARY AND LAKSHI PESHAKAR (1919)
23 C W N 426

——— cls 27 28—

See CONTEMPT OF COURT
I L R 41 Calc 173

——— cl 30—

See DEFAMATION I L R 48 Calc 388

——— cl 32—

See ARREST OF SHIP
I L R 42 Calc 85

——— cl 36—

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 98 I L R 43 Bom 433

See HIGH COURT JURISDICTION OF
I L R 40 Calc 955

——— *Procedure—Bombay High Court—Original Civil Jurisdiction—Appeal—Disagreement of Judges—Code of Civil Procedure (V of 1908) ss 4 and 98 sub s 2* Section 36 of the Letters Patent of the Bombay High Court which provides that if the Judges composing a division bench are equally divided in opinion the opinion of the senior Judge is to prevail is not affected by s 98 sub s 2 of the Code of Civil Procedure 1908 which provides a different procedure in these circumstances The Judicial Committee allowed an appeal where the procedure of s 98 sub s 2 had erroneously been followed without objection by the appellant but their Lordships being in a position to dispose of the appeal on its merits reserved for the ultimate decision the question whether the appellant should not be ordered to pay the whole of the costs since the date when the mistake was first made Decree of the High Court reversed BHAIDAS SHIVDAS v BAI GULAB (1921) I L R 45 Bom 718

See REVISION I L R 47 Calc 438

——— cl 39—

See APPEAL TO PRIVY COUNCIL
I L R 40 Calc 685
I L R 41 Calc 734
I L R 39 Mad 128

See CIVIL PROCEDURE CODE 1908 s 115
15 C W N 848

——— cls 39 44—

See LEAVE TO APPEAL TO PRIVY COUNCIL
I L R 42 Calc 35

——— cl 140—

See LAND ACQUISITION ACT (I OF 1894) s 54 I L R 37 Bom 506

LETTERS PATENT (ALL)

——— cl 8—

——— *Legal practitioner—Disciplinary powers of High Court—Professional misconduct—Petition presented by a vakil purporting to be the petition of his clients but which was in fact entirely the invention of the vakil and contained statements made recklessly and without any reasonable grounds of belief* A vakil was

LETTERS PATENT (ALL)—contd

——— cl. 8—contd

retained to defend in the Court of Session certain persons accused of murder In the course of such engagement he prepared and put before the Sessions Judge a statement which purported to be a petition issuing from his clients and drafted on their instruction whereas in truth and in fact it was a petition which originated with him and in respect of which he had received no instructions from his clients and he put therein allegations which were made recklessly and without any reasonable grounds of belief *Held* that the vakil was guilty of professional misconduct and in exercise of the powers conferred by s 8 of the Letters Patent the vakil was suspended from practising his profession *In the matter of* A VAKIL I L R 42 All 450

——— cl 10—

See CIVIL PROCEDURE CODE 1908—ss 104 AND 41 R 1 I L R 39 All 191

See CRIMINAL PROCEDURE CODE—s 195 I L R 39 All 147

LETTERS PATENT (BOM)

See LETTERS PATENT 1865

——— cls 11 and 36—

See HIGH COURT ACT (24 & 25 Vict cl 104) I L R 39 Bom 604

——— cl 12—

See HUNDI SUIT ON I L R 40 Bom 473

See THIRD PARTY NOTICE I L R 45 Bom 24

——— *Ordinary original civil jurisdiction of the Bombay High Court—Suits for land and other immoveable property—Title deeds—Suit to compel the delivery of title deeds to land outside the ordinary original jurisdiction of the Bombay High Court* In a suit to enforce inter alia the delivery to the plaintiff of the title deeds of certain immoveable property situated outside the ordinary original civil jurisdiction of the Bombay High Court where it appeared on the pleadings that the substantial point to be decided in the suit was the title of the plaintiff to the property to which the title deeds related *Held* that the suit in so far as it related to such title deeds was a suit for land or other immoveable property and that the Bombay High Court had no jurisdiction to entertain the same ZULEKABAI v EBRAHIM HAJI AYEDINA (1913) I L R 37 Bom 494

——— cl 15—*Judgment meaning of—Order refusing injunction to restrain prosecution of suit in a foreign Court not a judgment—No appeal lies against such order—Jurisdiction—Motion* An order refusing to grant injunction to restrain the defendant from prosecuting a suit filed by him in the Court of a Native State is not a judgment within the meaning of cl 15 of the Letters Patent and no appeal lies against that order *The Justices of the Peace for Calcutta v The Oriental Gas Co (1872) 8 Ben L R 433* referred to *Sonabai v Trilloweindas (1905) 3? Bom 60?* distinguished VENECHAND v LAKHMICHAND MANEKCHAND (1913) I L R 44 Bom 272

LETTERS PATENT (BOM)—contd

——— cl 35—

See DIVORCE ACT (IV OF 1869) ss 2 4 7 AND 45 I L R 38 Bom 125

LETTERS PATENT (CAL)

See LETTERS PATENT 1865

LETTERS PATENT (MAD)

See LETTERS PATENT 1865

LETTERS PATENT (N-W P)

See CIVIL PROCEDURE CODE (1908) s 104 O XLIII R 1 O XLI R 90 I L R 39 All 191

See CRIMINAL PROCEDURE CODE s 195 I L R 39 All 147

See PROFESSIONAL MISCONDUCT I L R 40 Mad 69

LETTERS PATENT (PAT)

——— cls 9 to 34—

See LEGAL PRACTITIONERS ACT 1879 s 13 4 Pat L J 423

——— cl 10—

See DEFENCE OF INDIA ACT s 7 3 Pat L J 581

——— *Point not argued before single Judge if may be urged in appeal* The conduct of a case before a single Judge of High Court must not be regarded as a preliminary canter in which the parties and their legal advisers are not called upon to exert themselves Ordinarily a point which had not been taken before a single Judge would not be allowed to be taken in appeal under cl 10 of the Letters Patent *Saminatha Ayyar v Venkatasula Ayyer I L R 27 Mad ?1* and *Habib Chand v Harmukh Pai I L R 34 All 41* referred to *The Tanjore Palace Estate and Fanmuals 11 I L 3?9* dissented from *Beni Madhab v Matungini I L R 13 Cal 104* and *Bechi v Ahsanullah Khan I L R 12 All 461* referred to DEBI CHARAN LAL v SHEIKH MEHDI HUSSAIN (1916) 20 C W N 1303

——— *Rules of the Patna High Court 1916 Ch VII rr 2 and 16 Ch VIII rr 3 and 4 Letters Patent of the Patna High Court cl 10—Appeal from decision of single Judge—procedure* The procedure in appeals under cl 10 of the Letters Patent is laid down in Ch VII rr 2 and 16 and Ch VIII rr 3 and 4 which provide that the appeal must first be presented to the Registrar whose duty it is to lay it before a Divisional Bench The Bench hears the appellants and either dismisses the appeal or causes notice to be served upon the respondent In dismissing an appeal under these rules without issuing notice upon the respondent the High Court does not act without jurisdiction JAGDIS CHANDRA DAS v CHANDRA MOHAN DAS 4 Pat L J 695

——— *Single Judge whether question not raised before can be raised before Division Bench* The plaintiff obtained a decree on the 27th September 1913 The decree was prepared and signed on the same day The Court was closed from the 28th September to the 31st

LIBEL—contd

by law *Held per* MOOKERJEE J—The language of exceptions 7 and 9 to s 499 Penal Code do s not import such absolute immunity as is recog nised by English law but in civil suits for damages for defamation the Court is not fettered by any statutory provisions and the principle recognised in England that neither party witnes coun el jury nor Judge can be put to answer civilly or criminally for words spoken in office should not be dissented from *Per* BEACHCROFT J—Witne ses and parties stand on a different footing and a party making a defamatory statement in the cour e of a judicial proceeding does not enjoy the absolute privilege of immunity from prosecution accorded by the English law CROWDY v L O REILLY (1912) **17 C W N 554**

——— *Resolution of pancha yat of Hindu caste community affecting member of community adversely—Question of sea voyages by Hindus—Implied exclusion from caste—Publication by Chaudhri to other ca te people under rules of the community—Privilege—Absence of proof of express malice* In an action for libel brought by the appellant against the respondent both of whom were members of the Agarwala Vai hya caste of Hindus the latter was sued as chaudhri and chairman of the *panchayat* in one section of that community The libel was contained in the following resolution pas e l on the 19th of June 1910 by the *panchayat* of the community — It was settled by the *panches* that since B Cobind Das B Bhagwan Das publicly circulated among the *biradris* and the non *biradris* a pamphlet about the *biradri* against the practices of the *biradri* and did not attend the *panchayat* on being called to do so these facts show that the e gentlemen circulated the pamphlet simply to disgrace the *biradri* and their not signing the *chitla* shows that their views are against the *panchayat* there fore it is ordered that until B Covind Das and B Bhagwan Das clear themselves the family of B Madho Das be *bartao band* This resolution was admittedly communicated by the respondent in his capacity of chaudhri to the chaudhri of another section of the community and to others of the ca te p ople generally by which action it was alleged that the appellant and his brother were put in the position of being virtually decl re to be outcastes The defence was that the publi cation was part of the duty of the respondent as chaudhri and was therefore privileged *Held* by the Judicial Committee that the *onus* of establishing the fact that the re pondent s con duct was the outcome of some improper motive or private spite was on the appellant and he had not discharged it The respondent had acted in good faith in the execution of his duty and in the absence of exp ess malice the communica tion of the re olution of the *panchayat* was privi leged The members of the appellant s family had notice of the meeting at which it was pas ed and some of them could have attended the *pan ch yat* ev n if the appellant him elf could not do so they were all affected by the re olution passed *Toogood* v *Spyring 1 C M & R 181 London Assoc ati n for the Protection of Trade* v *Greenland* [1916] 2 A C 15 and *Adam* v *Ward* [191] A C 309 referred to as enunciating the accepted rule as to privilege To def at or rebut privilege the law does not recognize anything short of actual or expre s malice in the publica tion of the matter wh ch is charged to be libellous

LIBEL—concld

There was no ground for supposing that there was any duty imposed on the respondent beyond properly and duly giving effect to the rules of the *panchayat* GOVIND DAS v BISHAMBHAR DAS (1917) **I L R 39 All 561**

——— *Defamation—Privilege—Civil liability of petitioner for statement made by him in a petition presented to Criminal Court* A person presenting a petition to a Criminal Court is not liable in a civil suit for damages in re pect of statements made therein which may be defamatory of the person complained against In the ab ence of Statute law in India regarding civil liability for libel there is no reason why the English law applicable thereto should not be followed accord ing to the ruling of the Privy Council in *Waghela Rajsanji* v *Shekh Masluddin I L 14 I A 89 Abdul Hakim* v *Tej Chandra Mukarji I L R 3 All 815* overruled *Augada Ram Shaha* v *Nemai Chand Shaha I L R 23 Calc 867* dis sented from CHUNNI LAL v NARSINGH DAS (1917) **I L R 40 All 341**

——— *Letter written by one member of the Bohra caste to another member of the same caste accusing a third person of having been instrumental in breaking off a betrothal* A member of the Bohra caste residing in Jodhpur wrote a letter to a caste fellow of his at Aligarh informing him that one *N D* another member of the caste had been instrumental in breaking off a certain betrothal and in getting the betrothed girl married to another per on It was in evidence that the breaking off of a betrothal was regarded in the caste as a very bad or improper act The writer and the recipient of this letter were made defendants to a libel action by the person therein referred to and the writer pleaded that the person referred to in the letter was not the plaintiff but a different person bearing a similar name No plea of privilege in a matter regarding the caste was rai ed or if adumbrated was not substantiated *Held* that the plaintiff was entitled to a decree for substantial damages against the writer of the letter in question and that the recipient who had shown the letter to another member of the caste was also liable though to a lesser degree NARSINGH DAS v SADA RAM (1919) **I L R 41 All 329**

——— *Fair comment—Privi lege—Malice—One of a class—Public document* The plaintiff was a member of Champaran Agrarian Enquiry Committee and as such settled some questions of rent between the indigo planters and the tenants The defendant an indigo planter in a series of three letters to the Press made certain allegations against the plaintiff suggesting that his consent to the settlement was obtained by mi representation *Held* that the cumulative effect of the letters was libellous It was not a fair comment on a matter of public interest and the defendant was not entitled to any privilege *Merivale* v *Carson 20 Q B D 275 Lefroy* v *Burnside L R 4 Ir 556 Davis* v *Shepstone 11 A C 187 Adam* v *Ward* [1917] *A C 309 London Association* v *Greenlands* [1916] *2 A C 15 Royal Aquarium Society* v *Parkinson* [1892] *1 Q B 431* referred to *Mangena* v *Wright* [1909] *2 K B 958* distingui hed IRWIN v REID (1920) **I L R 48 Calc 304**
25 C W N 150

LICENSE

See Arms Act (XI of 1878) ss 13 19(e) I L R 37 Bom 181

See Bengal Excise Act 1898 s 19, 15 C W N 169

See Bombay Abkari Act (Bom Act V of 1878)
ss 16 43 I L R 37 Bom 390
ss 3, 67 I L R 37 Bom 101

See Contract Act (IX of 1872) s 23 I L R 40 Bom 64

See Contract with Enemy I L R 41 Bom 390

See Easements Act (V of 1882)—
ss 59 and 60 I L R 37 All 91
s. 60 I. L. R 39 All 621

See Excisable Articles I L R 39 Calc 1053

See Forest Act (VII of 1878) s 25 cl (i) r 3 (a) I L R 42 Bom 406

See Limitation Act (IX of 1908) Sch I Arts 120 144 I L R 42 Bom 333

See Railways Act s 7 I L R 34 Bom 252

See Trade mark I L R 42 Calc 262

See Transfer of Property Act (IV of 1882) s 108(j) I L R 37 All 148
ss 105 and 107 I L R 38 All 17

———— For erection of stables—

See Nuisance I L R 40 Bom 401

———— for sale of drugs—

See United Provinces Excise Act 1910 s 40 I L R 39 All 107

———— to carry on trade—

See United Provinces Municipalities Act 1916 s 298 I L R 42 All 294

———— under Motor Vehicles Act—

See Motor Vehicles Act (VIII of 1914) s 8 I L R 43 All 123

———— *Calcutta Municipal Act (Beng III of 1899) ss 193 198 466—Trade License—License for keeping animals and license for the use of premises for keeping animals for hire—Hire under s 466 (1) of the Act* A company carrying goods by means of horses and wagon to and from stations under contracts with Railway Companies for a fixed monthly sum keep horses for hire within the meaning of s 466(1) of the Calcutta Muncipal Act License should be taken out not only for the trade under s 198 and for keeping animals under s 193 but also for the use of premises for keeping animals for hire under s 466 of the Act S N Banerjee v The Manager W Lewis & Co (1920) I L R 47 Calc 809

———— *Prohibition to sell the privilege without permission—Taking partner without permission legality of—Loan to such*

LICENSE—contd

partnership with knowledge of prohibition—Onus on lender to prove legality of partnership—Right of lender to recover loan from licensee Where a license to sell arrack contained the condition that the privilege of supplying and vending shall not without the permission of the Collector previously obtained be sold exchanged or sub leased nor if the Collector has ordered can an agent be appointed without his permission previously obtained for exercise of any such privilege *held* that it was illegal for the licensee to take a partner in the business without obtaining permission and that the plaintiff must be taken to have had notice of the illegality but he was allowed to recover half the loan Brahmayya v Pamiah I L R 43 Mad 141

———— *Storing of oils without license* It is no defence to a prosecution for storing oils without a license to say that the Commissioner wrongfully refused to grant a license Emperor v Naranda I L R 45 Bom 1076

LICENSEE

See Negligence I L R 38 Bom 552

———— liability of—

See Petroleum I L R 40 Calc 356

———— suit to recover possession from—

See Title I L R 41 All 669

LICENSOR AND LICENSEE

See Trade mark I L R 40 Calc 814

LIEN

See Civil Procedure Code 1882 ss 282 287 I L R 35 Bom 275

See Solicitor's lien for costs

———— declaration of—

See Execution of Decree I L R 45 Calc 530

LIEUTENANT GOVERNOR

See Bail I L R 37 Calc 412

———— power of to pass Act—

See Jurisdiction of Civil Court I L R 40 Calc 391

LIFE ASSURANCE COMPANIES ACT (VI OF 1912)

See Trade Name I L R 40 Calc 570

LIFE ESTATE

See Jaghir I L R 42 Calc 305
I L R 46 Calc 683

See Wakf I L R 37 Bom 447

See Will I L R 38 Bom 697

LIFE INSURANCE

See Civil Procedure Code (Act V of 1908) s 60 I L R 37 Bom 471

LIFE INSURANCE—*contd*

See MARRIED WOMEN S PROPERTY ACT 1874 ss 2 4 AND 6
18 C W N 1335

See TRANSFER OF PROPERTY ACT (IV OF 1882 AS AMENDED BY ACT II OF 1900) s 130 I L R 37 Bom 198

——— money payable under—*Policy of Life Insurance —Money payable under—Such money forms part of estate of assured and is recoverable by his representatives* Where the assured does not, in his life time create any trust in respect of the money payable under a policy of Life Insurance for the benefit of his wife and children such money in cases where the provisions of the Married Woman s Property Act do not apply forms part of his estate and is recoverable by his legal representatives The contract between the Company and the assured gives no right of action to the beneficiaries named Where the Company refuses payment on the death of the assured the legal representatives and not the beneficiary will be entitled to enforce the contract The Company will be bound to pay the amount to a person who has obtained a Succession certificate under s 16 of the Succession Certificate Act *Cleaver* v *Mutual Reserve Fund Life Association [1892] 1 Q B 147* referred to ORIENTAL GOVERNMENT SECURITY LIFE ASSURANCE LTD v VANTEDDU AMMIRAJU (1911)
I L R 35 Mad 162

——— *Policy holder—Alteration of rules—Effect on policy effected before alteration—Refund of premia paid* A policy holder in a Life Insurance Company is not bound by any alterations in the rules made after the contract between himself and the company had become concluded If a policy holder who is permitted by the rules of an Insurance Company to discontinue payment of premia after stipulated period does so after that period the policy does not lapse and the company is liable to refund the sums actually paid TANJORE LIFE ASSURANCE Co v KUPPAINA RAU (1920)
I L R 43 Mad 333

——— *Agent—Dismissal of agent—Commission—Renewals meaning of—Premia paid by policy holders subsequent to dismissal of agent—Right of agent to commission on renewals or subsequent premia paid after dismissal—Express contract for such commission necessary for* In the absence of a definite agreement to that effect an agent of a Life Insurance Company who has secured policy holders for the Company and whose duties as agent do not cease with the first introduction of the customer has no right to commission on renewals that is subsequent premia paid in by such policy holders after he ceased to be its agent *In re The Albert Life Assurance Arbitration (Lewine s Case) 15 S J 898 Poyd* v *Mathers (1893) 9 T L R 443 Original Side Appeal No 49 of 1899 and Civil suit No 178 of 1903* followed EMPIRE OF INDIA LIFE ASSURANCE CO LTD v NANU AIYAR (1921) I L R 44 Mad 170

LIFE INTEREST

See HINDU LAW—WILL
I L R 42 Calc 561

LIGHT AND AIR

See EASEMENT I L R 39 Calc 59
I L R 42 Calc 46

LIGHT AND AIR—*contd*

——— *Damages for infringement of light and air—Injunction when to be granted* A mandatory injunction will be granted to remove an obstruction of an easement to light and air where the character of the obstruction is such that its consequence is to darken the plaintiff s house so as to make it uncomfortable and in part useless In such a case damages would not be an adequate remedy MUTHU KRISHNA AIYAR v SOMALINGA MUNINAGANDRIEN (1913) I L R 36 Mad 11

LIGHTERS OR BOATS

See BILL OF LADING
I L R 38 Mad. 941

LIMITATION

See ABKARI ACT (BOM ACT V OF 1878) ss 32 67 L R 37 Bom 101

See ACCOUNT SUIT FOR
I L R 40 Calc 108

ACCOUNTS 26 C W N 61

See ADMINISTRATION
L R 40 I A 236

See ADVERSE POSSESSION
I L R 32 All 389
I L R 45 Bom 661
I L R 33 All 224 229 463
I L R 38 Bom 227
I L R 44 Calc 425

See ALIEN ENEMY
I L R 46 Calc 526

See AMENDED LETTERS PATENT CL 15
I L R 42 Bom 260

See AMENDMENT
I L R 48 Calc 110

See AMENDMENT OF PLAINT
I L R 36 All 370

See APPEALS CRIMINAL
I L R 1 Lah 508

See APPEAL TO PRIVY COUNCIL
I L R 39 Calc 760

See ASSESSMENT I L R 43 Calc 973

See BENGAL TENANCY ACT 1885—
ss 69 AND 70 2 Pat L J 24
s 111 A 1 Pat L J 73

See BENGAL REGULATION (XV OF 1793)
I L R 34 All 261

See BENGAL ALLUVION REGULATION 1825 5 Pat L J 632

See BILL OF COSTS
I L R 46 Calc 249
I L R 48 Calc 817

See BOMBAY DISTRICT POLICE ACT (BOM IV OF 1890) ss 63 (b) 80 (a)
I L R 41 Bom 737

See BOND I L R 43 All 38

See CHEQUE PAYMENT BY
I L R 42 Calc 1043

See CHAUKIDARI CHAKARAN LAWS
I L R 46 Calc 173

LIMITATION—*contd*

See CIVIL PROCEDURE CODE (ACT XIV OF 1882)—

s 43 I L R 33 All 244
s 54 14 C W N 882
s. 230 I L R 37 Mad 186
I L R 32 All 136
I L R 34 All 396
ss 230 AND 230 I L R 33 All 517
s. 315 I L R 35 All 419
s. 325 A I L R 46 Calc 183

See CIVIL PROCEDURE CODE 1908—

s 47 O XLI R 1
I L R 40 All 12
s 48 I L R 40 All 198
I L R 37 All 639
I L R 36 Bom 368
I L R 34 All 20
s. 48 SCH I O XXI
I L R 35 Bom 103
s. 48 SCH III I L R 42 All 118
s 60 I L R 33 All 529
s. 92 I L R 40 Mad. 212
s 115 3 Pat L J 376
s 122 I L R 40 All 1
O 1 R. 9 O 34 R 1 1 Pat L J 468
O XXI—
R. 2 I L R 38 All 204
R 58 I L R 40 All 325
I L R 41 All 623
RR 64 89 AND 92
I L R 35 All 65
RR 97 AND 103 I L R 1 Lah 57
O XXII—
R. 4 I L R 39 All 551
R 7 I L R 2 Lah 164
R 8 I L R 43 All 621
O XXXIII R 5
I L R 41 Mad 620
O XXXIV—
RR 4 5 AND 10 I L R 41 All 473
R 5 I L R 38 All 21
I L R 39 All 641
I L R 40 All 203
R 6 I L R 40 All 553
I L R 41 All 581
O XXXIX R 1
I L R 43 All 383
SCH II CLS 17 AND 20
I L R 38 All 85

See COMPANIES ACT (VI OF 188)—
s 169 I L R 33 All 641
I L R 35 All 177

See COMPANY I L R 36 All 412

See CONTRACT I L R 34 All 429
I L R 39 Mad 509

See CONTRACT ACT 18?? ss 126 AND 140
I L R 42 All 70

See COURT FEES 3 Pat L J 484

LIMITATION—*contd*

See CRIMINAL PROCEDURE CODE (ACT V OF 1898)—
s 195 I L R 42 Bom 281
I L R 1 Lah 602
s 476 I L R 37 All 344

See DECREE I L R 40 Bom 504
I L R 42 Bom 728
I L R 44 Bom 227 840

See DECREE ASSIGNMENT OF
I L R 43 Calc 990

See DECREE NISI I L R 39 Bom 175

See DEKKAN AGRICULTURISTS RELIEF ACT—
ss 39 48 I L R 36 Bom 183
s 48 I L R 42 Bom 367

See DISTRICT MUNICIPAL ACT (BOM ACT III OF 1901)—
ss 2 46 AND 167
I L R 39 Bom 600

See EJECTMENT SUIT IN
I L R 41 Mad 641

See EXECUTION OF DECREE
I L R 35 All 178
I L R 36 All 482
I L R 37 All 527
I L R 39 All 193
I L R 40 All 211
I L R 38 All 258
I L R 43 All 520
1 Pat L J 359
3 Pat L J 571

See EXECUTION PROCEEDINGS
I L R 37 All 518

See EX PARTE DECREE
I L R 39 Calc 506

See GUJRAT TALUKDAR S ACT S 29E
I L R 35 Bom 324
s 31 I L R 37 Bom 380

See HINDU LAW—ALIENATION
I L R 40 Calc 968
I L R 43 Calc 417

See HINDU LAW—CONVERSION
I L R 33 All 356

See HINDU LAW—ENDOWMENT
L R 46 I A 204

See HINDU LAW—INHERITANCE
I L R 42 Calc 384

See HINDU LAW—JOINT FAMILY PROPERTY
I L R 38 All 1?6
I L R 47 Calc 274

See HINDU LAW—MORTGAGE.
I L R 42 Calc 1068

See HINDU LAW—REVERSIONER
I L R 41 All 492
I L R 43 Bom 869

See HINDU LAW—SUCCESSION
I L R 38 All 117
I L R 1 Lah 554

See HUSBAND AND WIFE.
I L R 37 Bom 393

See IDOL I L R 33 All 735
I L R 36 Bom 1 5

LIMITATION—*contd*

See INJUNCTION I L R 42 Calc 550

See INSOLVENCY I L R 47 Calc 721

See JUDICIAL DISCRETION 4 Pat L J 381

See LANDLORD AND TENANT I L R 45 Bom 508

See LIMITATION ACT (XV OF 1877)

See LIMITATION ACT (IX OF 1908)—

See MADRAS LAND ENCROACHMENT ACT (III OF 1905) I L R 38 Mad 674
ss 4 5 6 7 AND 14 I L R 39 Mad 727

See MAHOMEDAN LAW—(ALIENATION) I L R 34 All 213

See MAHOMEDAN LAW—(ENDOWMENT) I L R 47 Calc 866

See MAHOMEDAN LAW—(WIDOW) I L R 43 All 127

See MAINTENANCE GRANT I L R 37 Calc 674

See MORTGAGE I L R 37 Calc 790
I L R 38 Calc 342
I L R 34 All 620
I L R 38 All 92 540
I L R 40 All 407
I L R 42 All 575
I L R 47 Calc 125
I L R 43 All 539

See MORTGAGE DECREE 3 Pat L J 478

See MUTT I L R 41 Mad 121

See NEGLIGENCE 5 Pat L J 359

See NEW CASE I L R 48 Calc 832

See NORTH WESTERN PROVINCES AND OUDH MUNICIPALITY ACT (XV OF 1883) s 10 I L R 35 All 308

See POSSESSION 2 Pat L J 280

See PRELIMINARY DECREE I L R 37 Bom 60

See PRINCIPAL AND AGENT I L R 41 All 635
I L R 43 Calc 248

See PRINCIPAL AND SURETY I L R 44 Calc 978

See PRIVY COUNCIL—LEAVE TO APPEAL TO I L R 39 Calc 510

See PROBATE I L R 41 Calc 819

See PROVINCIAL INSOLVENCY ACT (III OF 1907)—
ss 22 30 AND 52 I L R 35 All 410
s 46 (4) I L R 33 All 738
I L R 34 All 496

See PROVINCIAL SMALL CAUSE COURTS ACT (VII OF 1887)
s 25 I L R 38 All 690

See PUBLIC DEMANDS RECOVERY ACT
s 10 14 C W N 607

See PUNJAB COURTS ACT 1914 I L R 1 Lah 245

See RECORD OF RIGHTS 2 Pat L J 557

See REGISTRATION ACT III OF 1908—
ss 72 (1) 76 AND 77 I L R 40 Mad 759
s 77 24 C W N 4 29 304

See RESIDUARY LEGATEE I L R 41 Calc 271

See REVIVOR I L R 43 Calc 903

See SALE I L R 46 Calc 975

See SALES OF ARREARS OF REVENUE I L R 43 Calc 779
I L R 44 Calc 412

See SANCTION FOR PROSECUTION I L R 40 Calc 239 534

See SECOND APPEAL I L R 2 Lah 227

See SPECIFIC RELIEF ACT (I OF 1877)
s 30 I L R 34 All 43

See SUCCESSION CERTIFICATE ACT 1889
s 4 I L R 43 All 440

See SUIT I L R 45 Calc 934

See TRANSFER I L R 40 Calc 259

See TRANSFER OF PROPERTY ACT (IV OF 1882)—
s 82 AND 100 I L R 33 All 708
s 90 I L R 34 Bom 540

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901) s 121 I L R 35 All 541

See UNITED PROVINCES MUNICIPALITIES ACT II OF 1916
s 326 I L R 42 All 207

See VATAN I L R 37 Bom 81

See WASTE LANDS L R 43 I A 303

See WITHDRAWAL OF SUIT I L R 44 Bom 939

——— by adverse possession—

See LANDLORD AND TENANT I L R 41 Calc 683

——— for declaratory suit—

See REGISTRATION ACT 1908 I L R 2 Lah 5

——— for Second appeal—

See SECOND APPEAL I L R 2 Lah 1

——— instalment decree—

See LIMITATION ACT 1908 SCH I ART 181 I L R 2 Lah 155

——— suit between co mujawars of a Khankah—

See LIMITATION ACT 1908 ART 120 134 AND 144 I L R 1 Lah 66

——— question of—

See HIGH COURT JURISDICTION OF I L R 39 Calc 473

——— recording adjustment of decree—

See CIVIL PROCEDURE CODE 1908 O XXI R. 2 I L R 45 Bom 91

——— respecting claim for rent—

See MADRAS ESTATES LAND ACT (I OF 1908) I L R 37 Mad 540

LIMITATION—*contd*

———— suit to set aside compromise by guardian—

See CIVIL PROCEDURE CODE O XXXII r 7 I L R 2 Lah 164

———— None for recording payment of decree—

See CIVIL PROCEDURE CODE 1908 O XXI r 2 I L R 45 Bom 91

———— Suit to recover excess paid for redemption—

See LIMITATION ACT 1908 ART 83 I L R 2 Lah 316

———— Suit to recover money under an award—

See LIMITATION ACT 1908 ART 1 0 I L R 2 Lah 320

———— tenant claiming adverse pro session against landlord—

See LANDLORD AND TENANT I L R 45 Bom 508

———— whether suspended by arbitration—

See GUARDIAN AND WARDS ACT 1890 6 Pat L J 273

———— whether time can be extended or ground not shewn in plaint—

See CIVIL PROCEDURE ACT 1908 O VII r 6 I L R 2 Lah 13

———— whether plea of—can be raised at trial for first time—

See BOMBAY LAND REVENUE CODE 1879 ss 68 AND 79 I L R 45 Bom 920

1 ———— Endowment—*Adverse possession —Dispute between senior and junior chelas as to succession to Hindu maths—Ekrarnama allotting one math to senior chela in perpetuity and the other to junior chela as adhikari—Suit instituted within twelve years from senior chela s death but 27 years from date of ekrarnama—Hindu Law* The mohant of the temple of a Hindu idol who was in possession of two *maths* one at Bhadrak and the other at Bibisarai died leaving two *chelas* or disciples between whom a controversy arose as to the right of succession to the *maths* and the property annexed to them The dispute was settled by an arrangement embodied in an *ekrarnama* dated 3rd of November 1874 executed by the senior *chela* in favour of the junior *chela* by which the *math* at Bhadrak was allotted in perpetuity to the senior *chela* and his successors while the *math* at Bibisarai and the properties annexed to it were allotted to the junior *chela* (described therein as an *adhikari*) and his successors for the purposes connected with his *math* subject to an annual payment of Rs 15 towards the expenses of the Bhadrak *math* Less than twelve years after the death of the senior *chela* but considerably more than that period after the date of the *ekrarnama* the appellant the successor of the senior *chela* brought a suit against the junior *chela* to recover possession of the properties annexed to the Bibisarai *math* on the allegation that they were *debutter* property dedicated to the worship and service of the plaintiff s idol and held by the respondent (representing the junior *chela*) as an *adhikari* in charge of the Bibisarai *math* and asserting it to be a *math* subordinate to the Bhadrak *math* —*Held* (affirming the decision of the High Court) that the property dealt with by the *ekrarnama* was prior to its date to be regarded as vested not in the mohant but in the idol the mohant being only its representative and manager and consequently that from the date of the *ekrarnama* the possession of the junior *chela* by virtue of its terms was adverse to the right of the idol and of the senior *chela* as representing that idol and that the suit was barred by limitation DAMODAR DAS v LAKHAN DAS (1910)

I L R 37 Calc 885

2 ———— Adverse possession against Crown—*Party relying on title by adverse possession against Crown must prove sixty years adverse possession—Burden of proof shifted on Crown by proof of adverse possession for shorter period* A party who rests his title on possession adverse to the Crown must prove such possession for sixty years *Secretary of State for India* v *Vira Rayan I L R 9 Mad 175* explained Where lands have been notified as a reserved forest under the Madras Forest Act a claimant desirous of establishing his title against the Crown by adverse possession must prove adverse possession for sixty years before the notification Where adverse possession for a shorter period is proved it lies on Government to show that it has a subsisting title by showing that such possession commenced within sixty years before such date In this part of India it is a well established rule of common law that waste land not being the property of an individual or community belongs to Government Islands formed within 3 miles of the mainland vest in the Crown CHELIKANI RAMA RAU v SECRETARY OF STATE FOR INDIA (1909)

I L R 23 Mad 1

2 (*a*) ———— Acknowledgment What is sufficient —Where an insolvent has written down a debt in his schedule as owing that debt to a person named and has signed the Schedule that is a sufficient acknowledgment under s 19 of the Limitation Act to extend the period of limitation CHOBEY SHRIGOPAL CHIRANJILAL v DHANALAL GHASIRAM I L R 35 Bom 383

2 (*b*) ———— Courts of Wards —Act 1879 does not contain any express power authorising the Court to execute Promissory Notes But there can be no doubt on the authorities that the Court has power to give an acknowledgment so as to give a new period of limitation LASHBEHARY LAL MANDAR v ANAND RAM

I L R 43 Calc 211

3 ———— Adverse possession—*Rent free tank—Setting up hostile title to the knowledge of the landlord—Lakhiraj title* In a suit for recovery of possession of a tank with its banks by establishment of plaintiff's zamindari title thereto and in the alternative an assessment of rent the defendant pleaded that the tank was rent free and that the suit was barred by limitation It appeared that the defendant more than twelve years ago in the settlement proceedings claimed the tank as rent free without any reference to any *sanad* and the plaintiff's agent denied the claim *Held* that inasmuch as a complete hostile right was claimed by the defendant to the knowledge of the plaintiff and as no suit was brought until more

LIMITATION—*contd*

than twelve years after the suit as framed was barred by limitation BIRENDRA KISHORE MANIKYA v ROSHAN ALI (1912)

I L R 39 Calc 453

4 ———— Symbolical possession—*Court sale—Symbolical possession by purchaser—Judgment debtor remaining in actual possession—Civil Procedure Code (Act XIV of 1882) ss 263 264 318 and 319—Civil Procedure Code (Act V of 1908) O XXI r 5 (2)* Merely formal possession of immoveable property by a purchaser at a Court sale cannot prevent limitation running in favour of the judgment debtor where the latter remains in actual possession and the property is not in the occupancy of a tenant or other person entitled to occupy the same Symbolical possession is not real possession nor is it equivalent to real possession under Civil Procedure Code except where the Code expressly or by implication provides that it shall have that effect *Gopal v Krishnarao I L R 25 Bom 275* and *Mahadeo v Parashram Bhaunanchand I L R 25 Bom 358* overruled MAHADEV SAKHARAM v JANU NAMJI HATLE (1912) I L R 36 Bom 373

5 ———— Conciliation—*Dekhan Agriculturists Relief Act (XVII of 1879) ss 39 48—Time taken up in conciliation proceedings—Exclusion of time* The plaintiff sued on a promissory note dated the 12th of June 1905 He first applied on the 23rd May 1908 for a conciliator s certificate under s 39 of the Dekkhan Agriculturists Relief Act 1879 and obtained it on the 31st August 1908 then on the 10th September 1908 both he and the defendant made a joint application for conciliation The conciliator held that the first certificate that he had granted had become useless and gave a fresh certificate on the 3rd December 1908 The suit was brought on the 11th December 1908 It was contended that the suit was barred by limitation *Held* that the suit was within time inasmuch as the whole proceeding from the 23rd of May 1908 to the 3rd of December 1908 was one and continuous and that period should be excluded under s 48 of the Act DEVIDAS v VITHALDAS (1911) I L R 36 Bom 183

6 ———— Suit for sale on mortgage—*Period of limitation changed with provision for pending suits at passing of Act—Limitation Act (XV of 1877) Sch II Arts 132 147 Limitation Act (IX of 1908) s 31 sub s (1)—Order of His Majesty in Council holding applicable—Shorter period of limitation than provided by Act subsequently passed* The Limitation Act (IX of 1908) which came into force on 7th August of that year after providing by s 31 sub s 1 for a suit for sale by a mortgagee a period of sixty years from the date when the money secured by the mortgage became due enacts that no suit instituted within the said period of sixty years and pending at the date of the passing of the Act shall be dismissed on the ground that a twelve years rule of limitation is applicable In a suit for sale on a mortgage dated 22nd September 1883 instituted on 23rd September 1899 the defence was limitation which the plaintiff avoided by alleging payments of interest and settlement of accounts The first Court found that part of the claim was barred by the twelve years period of limitation provided by Art 132 Sch II of the Limitation Act 1877 The High Court in appeal held that the suit was governed by Art 147 which allowed a period of sixty years and that no part of it was barred On appeal to His Majesty in Council the decision of the High Court was reversed and by an order in Council it was declared that Art 132 is the article which provided the period of limitation applicable and the case was remitted to the High Court to be disposed of in accordance with such declaration So remitted the case came before the High Court on 16th August 1908 after the passing of the Limitation Act IX of 1908 and that Court holding that s 31 of that Act applied disposed of the suit as they had previously done in favour of the plaintiff *Held* by the Judicial Committee (affirming that decision) that the suit was pending at the time of the passing of Act IX of 1908 The judgment remitting the case did not end the suit nor finally determine it It was remitted for further procedure and enquiry on allegations of fact and at the passing of Act IX of 1908 that procedure was not concluded and the enquiry not entered upon The suit in fact was neither adjudged upon nor ready for judgment VASUDEVA MUDALIAR v SADAGOPA MUDALIAR (1912)

I L R 35 Mad 121

7 ———— delay in filing process fee—The question of granting time is always one of discretion and that discretion cannot be properly exercised until the general conduct of the party applying for time has been scrutinised When a date is fixed for a case it is the business of a litigant to see that the processes for the attendance of witnesses are placed in the hands of the Court within reasonable time for the securing of their attendance upon the date fixed If he files process fees only two days before the date fixed for hearing an order passed by the Court for the issue of those processes must be understood to have been issued at the risk of the party in fault and the Court will not grant an adjournment when the case comes on for hearing JAGABANDHU CHOWDHARY v GOUREY LALL CHOWDHARY I Pat L J 173

8 ———— Hindu Deities—*Suit for removal of Hindu Deities from one s custody to another s—Limitation Act (XV of 1877) Sch II Arts 49 120 145* A suit by *Thakurs* (deities) themselves for removing themselves from the custody of the defendants to the custody of the plaintiffs other than themselves is not a suit for a moveable property It would be a suit for which no provision is made in the Limitation Act and would therefore naturally come under Art 120 of Sch II of the Act unless any other article also applied Art 49 has no application to such cases BALI PANDA v JADUMANI SANTRA (1910)

I L R 38 Calc 284

9 ———— Agreement between joint trustees—*If one of several joint trustees barred the others also barred—Agreement between joint owners or trustees effect of* Two joint trustees *A* and *B* entered into an agreement which recited that the families of *A* and *B* were entitled to the management of the trust and further provided that *A* s right shall after his death be exercised by his heirs and *B* s right shall after his death be exercised by his heirs *Held* that the effect of this agreement was to constitute the heirs of *A* and *B* joint trustees and not to create a right in severalty between the two branches Where an adult joint trustee takes no steps to protect

LIMITATION—*contd*

the trust and his right to take steps becomes time barred the rights of other joint trustees even though minors become time barred THIYAGARAJA PILLAI v PATTASABAPATHI PILLAI (1910) I L R 34 Mad 284

10 ———— Execution of joint decree—*Decree set aside as against one of several joint judgment debtors against whom it had been ex parte—Decree passed subsequently against the exempted party—Civil Procedure Code 1882 s 108—Order on a former application whether res judicata* A decree for sale on a mortgage was passed against several defendants jointly on the 25th August 1900 and made absolute on the 21st December 1901 As against one defendant however the decree was *ex parte* and it was set aside as against her on appeal on the 11th March 1902 Subsequently a decree was passed on the merits against this defendant on the 15th August 1902 and her appeal was dismissed by the High Court on the 16th November 1904 and as against her that decree was made absolute on the 27th November 1905 An application for execution was made against all the defendants on the 21st December 1905 based on the decrees of the 25th August 1900 the 15th August 1902 the 16th November 1904 the 21st December 1901 and the 27th November 1905 The defendants filed an objection to the application on the 7th February 1906 alleging that they were no parties to the decrees of the 15th August 1902 and the 27th November 1905 and that as to the decrees of the 25th August 1900 and the 21st December 1901 they were time barred. *Held* (affirming the decision of the High Court) that the decrees of the 25th August 1900 and the 16th November 1904 were steps in granting the plaintiff the relief to which he was entitled. The latter decree supplemented and completed the former and for the first time justified the plaintiff in applying for the joint execution of the decree Time under the Limitation Act (XV of 1877) began to run from the date of the latter decree or rather from the date it was made absolute—the 27th November 1905 and consequently the application was not barred *Held* also that the plaintiff was not estopped in the present proceedings by the order of the 27th November 1905 dismissing his former application for execution of the 15th February 1905 which was based on the decree of the 15th August 1902 alone whereas the present application was based on the joint effect of the two orders absolute of the 21st December 1901 and the 27th November 1905 which were in effect one decree of the latter date The applications therefore were different and the former did not operate as a *res judicata* ASHFAQ HUSAIN v GAURI SAHAI (1911) I L R 33 All 264

11 ———— Suit by an auction purchaser to recover the purchase money—*from a person who attached money in deposit in Court as representing the surplus sale proceeds belonging to the judgment debtor—Limitation Act (XV of 1877) Sch. II Art 120* Limitation applicable to a suit brought by an auction purchaser to recover a certain sum of money from one who had after the sale and the deposit of money in Court attached that sum in execution of his decree against the judgment debtor as representing the surplus sale proceeds belonging to the original judgment debtor after satisfaction of the decree obtained against the debtor by the decree holder is that provided by Art 120 Sch II of the Limitation Act (XV of 1877) *Nilkanta v Imam Sahib I L R 16 Mad 361* relied on. *Hanuman Kamat v Hanuman Mandur I L R 19 Calc 123* and *Ram Kumar Shaha v Ram Gour Saha I L R 37 Calc 67* distinguished AMRITA LAL BAGCHI v JOGENDRA LAL CHOWDHURY (1912) I L R 40 Calc 187

12 ———— Suit for Conspiracy to maliciously prosecute—*Conspiracy as a cause of action—Evidence Act (I of 1872) s 3 114 ill (g) 125—Standard of proof—Claim of privilege whether adverse inference can be drawn from—Disclosure of source of information by privileged person duty of Court regarding—Presumption as to possession of article found in common room of joint family dwelling house—Arrest and Search—Professional conduct of counsel—Counsel making charges of misconduct powers of Court regarding—Counsel s instructions no privilege as against Court—Professional Etiquette affecting counsel—Bar Council resolutions of—Counsel accepting retainer when likely to be witness—Counsel engaged in case propriety of appearing as witness—Adverse inference where counsel not called as witness—Inspection by counsel of book produced by witness during cross examination—Reference to medical works by Court without knowledge of parties—Tort* Per WOODROFFE AND COXE JJ On the question of the standard of proof there is but one rule of evidence which in India applies to both civil and criminal trials and that is contained in the definition of proved and disproved in s 3 of the Evidence Act The test in each is would a prudent man after considering the matters before him (which vary with each case) deem the fact in issue proved or disproved? The Court can never be bound by any rule but that which coming from itself dictates a conscientious and prudent exercise of its judgment There is a presumption against crime and misconduct and the more heinous and improbable a crime is the greater is the force of the evidence required to overcome such presumption The English rule in these matters does not as such apply in India *Jarat Kumari Dassi v Bissessur Dutt I L R 39 Calc 245* explained Where a document is privileged from production no adverse inference can be drawn from its non production. This rule applies as regards the party claiming privilege and *a fortiori* it applies where the privilege is claimed by a third party Although s 125 of the Evidence Act does not in express terms prohibit a witness if he be willing from saying whence he got his information the protection afforded by that section does not depend upon a claim of privilege being made but it is the duty of the Court apart from objection taken to exclude such evidence *A fortiori* where privilege is claimed no adverse inference can be drawn therefrom Where articles are found in a part of a house to which several persons living in the house have access such as a *baitakhana* there is no presumption that they are in the possession or control of any person other than the *karta* or head of the house *Queen Empress v Sangam Lall I L R 15 All 129* approved *Semble* It is immaterial in an action for malicious arrest under what section of an Act an arrest is made if in fact the circumstances are such that the Act justified arrest and a person making a search is entitled to call in aid any statute which justifies his action,

LIMITATION—*contd*

quite irrespective of whether it was present or not to his mind when he made the search The Court is entitled to ask counsel who during the conduct of a case makes charges of misconduct whether he makes the charges on instructions and if so on whose It is not sufficient to plead instructions Counsel have a responsibility in the matter and are not justified in making serious charges of fraud and crime unless they are personally satisfied that there are reasonable grounds for putting them forward Instructions to counsel are only privileged in the sense of being protected from disclosure to the opponent There is no privilege as against the Court The latter cannot use them as evidence in the case and for the purpose of the trial would have to treat them as confidential but they could be called for then and there and be used after the trial for determining whether disciplinary action should be taken against counsel by the Full Court Whenever a Court relies on a book of reference such as a work on medical jurisprudence it should be made known at the trial to the parties so that they may have an opportunity of adducing evidence or argument on the point *Durga Prosad Singh* v *Ram Doyal Chaudhury I L R 38 Calc 153* referred to The following resolutions of the Bar Council approved — (a) If counsel knows or has reason to believe that he will be an important witness in a case he ought not to accept a retainer therein (b) If he accepts a retainer not knowing or having reason to believe that he will be such a witness but at the opening or at any subsequent stage before evidence is concluded it becomes apparent that he is a witness on a material question of fact he ought not to continue to appear in the case unless he cannot retire without jeopardising the interests of his client (c) If counsel knows or has reason to believe that his own professional conduct on matters out of which the action arises is likely to be impugned in the case he ought not to accept a retainer (d) If he accepts a retainer not knowing or having reason to believe that this own professional conduct in such matters is likely to be impugned but finds in the course of the case that it is so impugned he ought to adopt the same course of conduct as is mentioned in clause (b) *ante* (e) In either of the cases mentioned in clauses (b) and (d) there is no rule of professional ethics which debars counsel if he continues to act as counsel in the case from going into the witness box and being cross examined. Although the resolutions of the Bar Council are not binding on the Court the Bar Council is the recognised authority on matters of professional conduct and etiquette affecting counsel and its opinion is of the greatest weight and value There is nothing necessarily unprofessional in counsel giving evidence in a case in which he appears as such *Sethna* v *Mirza Mahomed Shirazi 9 Bom L R 1044 Cobbett* v *Hudson 1 E and B 11 Stones* v *Byron 4 Dowl and L 393 Deane* v *Packwood 4 Dowl and L 39*5 *Corea* v *Peiris [1909] A C 549 14 C W N 86 Nundo Lal Bose* v *Nistarini Dasi I L R 27 Calc 428* referred to *Curry* v *Walter 1 Esp 456* distinguished. As a general practice however it is undesirable when the matter to which counsel depose is other than formal that they should testify either for or against the party whose case they are conducting Under s 118 of the Evidence Act counsel although they may be engaged in the case are competent to testify whether the facts in respect of which they give their evidence occur before or after their retainer *Cobbett* v *Hudson 1 E and B 11* referred to The rule laid down in s 114 ill (g) of the Evidence Act that the Court may presume that evidence which could be and is not produced would if produced be unfavourable to the party who withholds it was held to apply to the case of counsel engaged in a suit who should not have been under the circumstances counsel but should have been called as a witness It is unprofessional for counsel to cross examine a witness as to facts within his personal knowledge *In the matter of certain Counsel* 4th August 1908 (unreported) approved Where counsel during the hearing of a case calls for the production of a book which is produced and handed to him by his opponent with certain pages marked as those only to which he may refer in respect of the subject matter of his cross examination it is improper for counsel who calls for the book to inspect any of the other pages If a suit on a tort is barred as against one person the period of limitation cannot be extended because it happens to be against three persons who are alleged to have committed the tort in conspiracy The same set of facts cannot constitute separate causes on action both for a tort and for a conspiracy to cause damage Where there is a joint tort the proper action is on the tort against the joint tort feasors and not on a cause of action to recover special damage by reason of a conspiracy to cause damage A suit for damages for false imprisonment or malicious prosecution against joint tort feasors is governed by the one year rule under Arts 19 and 23 of the Limitation Act There are instances in which two or more persons can render themselves liable to civil proceedings by combining to injure the plaintiff although if one of them did the same act by himself and without any preconcert with others he woud escape liability An action on such a conspiracy would lie in this country In an action on conspiracy special damage must be proved *Per* CHATTERJEE J There is no authority for holding that a tort when committed by several persons acting in concert is different from the same tort committed by a single individual. The combination in such cases may be an element of aggravation in the assessment of damages but does not suffice to make it a different tort *Quinn* v *Leathem [1901] A C 495* referred to Conspiracy or wrongful combination is not a material element in the constitution of a wrong *Giblan* v *National Amalgamated Labourer s Union [1903] 2 K B 600* referred to WESTON AND OTHERS v PEARY MOHAN DASS (1912)

I L R 40 Calc 898

13 ——— Land to support religious service—*Lease—Adverse possession* In the case of a lease for a term of years by the holder for the time being of lands assigned to support services rendered to a Makan and religious community by successive holders time begins to run not from the commencement of the tenancy of the person claiming to hold as a tenant but from the date when the claims of the parties became openly and undoubtedly adverse *Tekait Ram Chunder Singh* v *Srimati Madho Kumari L R 12 I A 197* and *Trimbak Ramchandra* v *Shekh Gulam Zilani I L R 34 Bom 329* referred to MAHAMADOAUS v PAJABAKSHA (1912)

I L R 37 Bom 224

LIMITATION—*contd*

14 ———— Adverse possession—*Title—Bombay Regulation V of 1827 s 1—Rule of positive law—Limitation Act (XIV of 1859) s 2—Limitation Act (IX of 1871) s 2—Repeal of s 1 of Bombay Regulation V of 1827—Effect of repeal—Construction of statute—Rule of positive law not affected by law of limitation—Endowment of village for the purpose of performing Karpur Mangalarti—Trustee—Alienation by trustee—Adverse possession by alienee* In 1678 a village was given in *inam* to the then *Swami* of the Uttaradhi Math for the purpose of meeting the expenses of a religious service called the *Karpur Mangalarti* at the temple of the Math A successor of the *Swami* gave away the village in gift (*i e* as *Krishnarpana*) to the defendants predecessor in title who went into possession as proprietor At first they paid *judi* on the land at the rate of Rs 20 per year but after 1840 this payment was stopped The defendants continued to hold the village as before In 1911 the present *Swami* of the math sued to obtain a declaration that the village belonged to him and to recover its possession from the defendants The plea of the defendants was that the suit was barred by limitation *Held* that inasmuch as the original grant vested the legal property in the *Swami* and the equitable estate in the juridical person the idol the original grantee took as a trustee and his successors held by the same title *Hardoon* v *Belilios* [1901] A C 118 124 followed *Held* further that since the defendants went into possession of the village in 1850 their title ripened in 1860 into ownership under the provisions of s 1 of the Bombay Regulation V of 1827 *Held* also that the operation of s 1 of the Bombay Regulation V of 1827 was not affected by the enactment of s 2 of the Limitation Act (XIV of 1859) *first* because the Act did not come into force till the 1st January 1862 and *secondly* because it being a statute of limitation did not affect s 1 of the Bombay Regulation V of 1827 which was an enactment of positive prescription *Sitaram Vasudev* v *Khanderav Balkrishna I L R 1 Bom 286* and *Rambhat Ajnilo* v *The Collector of Puna I L R 1 Bom 592* followed Where a later Act of Legislature does not purport or affect to supersede an earlier Act the Court will endeavour to read the two enactments together and to avoid conflict if possible RANGACHARYA v DASACHARYA (1912)
I L R 37 Bom 231

15 ———— Redemption of mortgage *made in 1793—Act XIV of 1859 s 1 cl 15 and s 4—Act IX of 1871 s 20 and Sch II Art 148—Act XV of 1877 s 19 and Sch II Art 148—Acknowledgment of title—Receipt by mortgagees—Interest after date of suit—Damdupat—Discretion as to award or not of interest—Assumed exercise of discretion not interfered with* A suit was brought by the predecessors in title of the respondents for redemption of a mortgage dated 4th November 1793 in favour of the predecessors in title of the appellants The deed mortgaged with possession a certain *desaigiri dastur* and certain *pasaeta* lands situate in the district of Broach and after that district finally came under British rule the *desaigiri dastur* was commuted into a fixed money allowance payable from the treasury since which settlement the appellants had received that allowance in lieu of the *desaigiri dastur* The defence was that the suit was barred by the Indian Statutes of Limitation which provide a period of sixty years for redemption and that more than that time had elapsed since the date of the mortgage The respondent however put in evidence documents signed by the mortgagees by which they contended the period of limitation had been extended *Held* (affirming the decision of the High Court) that an entry in a receipt book relating to the payment on 8th June 1843 of the fixed allowance from the treasury in respect of the year ending 1st May 1843 was an acknowledgment under the Indian Act of Limitation (XIV of 1859 s 1 cl 15 Act IX of 1871 s 20 and Act XV of 1877 s 19) made within the period of limitation and sufficient to prevent the suit from being barred The rights of the mortgagees were then vested in somewhat unequal shares in two persons named in the receipt whose names had in the ordinary course been entered in the Collector s books as mortgagees under the mortgage in suit as being entitled to the payment of the annual allowance into which the original rights had been commuted The entry in the book of the Government agent entrusted with the payment stated that it was made to the two persons named The amounts of the shares of each of them was set against their names and against those shares the mortgagees had written their respective names in acknowledgment of the receipt of their shares This acknowledgment created a new period of limitation from 8th June 1843 and consequently the suit was not barred The appellants claimed to be allowed interest on the redemption money for the period between the date of suit and the actual date of redemption Admittedly the rule of *damdupat* applied and therefore the amount of arrears of interest to be allowed was limited to an amount equal to the capital sum The District Judge gave no interest from the date of suit There was nothing to show that he had done so by an oversight or mistake The High Court treated the matter as if the District Judge had exercised his discretion and had declined to give interest and they thought that it had not been an unreasonable exercise of his discretion No application was ever made to the District Judge to amend his alleged omission to give interest and their Lordships agreed with the High Court decision and the grounds on which it rested HIRALAL ICHHALAL v NARSILAL CHATURBHUJDAS (1913) **I L R 37 Bom 326**

16 ———— Suit filed after limitation in wrong Court—*Return for presentation to proper Court—Bar of limitation in spite of Limitation Act (XV of 1877) s 14* If a plaint is returned for presentation to the proper Court on the ground of absence of jurisdiction in the Court to which it was originally presented the suit when presented to the new Court is a new suit and cannot be regarded as a continuation of the infructuous suit in the wrong Court This is the basis of s 14 of the Limitation Act (XV of 1877) Hence if the suit when originally filed in the wrong Court would have been ordinarily barred by limitation as by being barred during the holidays of that Court after which alone it was filed the suit when filed in the new Court must be held to be barred in spite of s 14 of the Limitation Act *Mohid n Pouthen* v *Nallaperumal Pillai 21 Mad L J 1000* followed *Taluroodeen Mahomed Eshan Chowdry* v *Kurimbox Chowdry 3 B L R Cr 20* *Khelat Chandar Ghose* v *Nusibunnissa*

LIMITATION—*contd*

the agreement which gave him the benefit of the Provision SITARAMA v KRISHNASWAMI (1913)
I L R 38 Mad 374

25 ———— **Hereditary office of shebait —Successor of shebait when bound by decree against predecessor**—*Decree holder and purchaser at sale in execution who by reason of low caste is not competent to hold office of shebait—Adverse misappropriation of temple income by trespasser incompetent to be shebait—Wrongful possession not constituting wrongful holder shebait—Res judicata* This was an appeal from the decision of the High Court in the case of *Jharula Das v Jalandhur Thakur I L R 39 Calc 887* in which the widow of the shebait of a temple (the shebaits of which were Brahmin Pandas) who succeeded her deceased husband in that office mortgaged land together with her interest in the income of the temple to the defendant (who was not a Brahmin) The defendant obtained a decree on his mortgage on 24th September 1880 in execution of which he put up for sale the share of the temple income purchased it himself and got delivery of possession in 1892 The widow died in May 1900 In a suit brought on 28th January 1910 for the land and mesne profits and for a declaration that the plaintiff was entitled to receive the share of the temple income as it was inalienable the defence was that the suit so far as it related to the temple income was barred as being *res judicata* and by limitation *Held* by the Judicial Committee (reversing the decision of the High Court) that Art 124 of the Limitation Act was not applicable The suit was not one for an hereditary office which could not be held by a person who was not a Brahmin and the defendant was therefore not competent to hold the office of shebait and had not taken possession of it By adversely taking and appropriating to his own use a share of the surplus daily income from the offerings the defendant acquired no title and no right to a share of that income On each occasion on which he received and wrongfully appropriated to his own use a share of the income to which the shebait was entitled the defendant committed a fresh actionable wrong in respect of which a suit could be brought against him by the shebait but it did not constitute him the shebait for the time being or affect in any way the title to the office *Held* also that the defence (which had been upheld by the High Court) that the suit was barred as *res judicata* by the decision in a former suit brought by the widow to set aside the sale of the temple income was not maintainable JALANDHAR THAKUR v JHARULA DAS (1914)
I L R 42 Calc 244

26 ———— **Mortgage suit**—*Civil Procedure Code (Act V of 1908) O XXXIV rr 3 and 6—Limitation Act (IX of 1908) Sch I Art 181—Transfer of Property Act (IV of 1882) s 90—Personal covenant* The plaintiff in a mortgage suit who has his personal remedy at the date of the institution of the suit would not lose his personal right by reason of his not having made the application for personal decree under O XXXIV r 6 within three years of the date of the confirmation of the mortgage sale since applications under O XXXIV r 6 are not governed by Art 181 of the Limitation Act any more than an application for order absolute under O XXXIV r 3 *Talmat Karim v Abdul Karim I L R 34 Calc 6 2* and *Madhabmoni Dasi v Pamela Lambert 12 C L J 328* referred to BISWAMBHAR SHAHA v RAM SUNDAR KAIBARTA (1914) **I L R 42 Calc 294**

27 ———— **Suits under special Acts**—*Limitation Act (IX of 1908) s 15 (2) applicability of—Madras Revenue Recovery Act (II of 1864) s 59 suits under* S 15 cl (2) of the Limitation Act (IX of 1908) which excludes from the computation of the period of limitation the time occupied by the notice legally necessary to be issued before instituting certain actions is applicable to suits brought under s 59 of the Madras Revenue Recovery Act (II of 1864) *Venkata v Chengadu I L R 12 Mad 168* and *Isuara Pattar v Karuppan 3 Mad L J 255* followed *Abu Baker Sahib v Secretary of State for India I L R 34 Mad 505* distinguished The question whether the general provisions of the Limitation Act should be applied to cases where a special period of limitation is prescribed by a special or local Act depends on whether the provisions of such Act should be regarded as enacting a complete body of provisions with regard to limitations of suits coming within the purview of the Act In other words the question is whether the special or local Act should be construed as excluding the applicability of the general provisions of the Limitation Act SRINIVASA AYYANGAR v SECRETARY OF STATE (1912)
I L R 38 Mad. 92

28 ———— **Madras Estates Land Act**—*(I of 1908) ss 210 211 cl (2) Art 8 of Sch Part A—Suit for rent under registered agreement more than three years but less than six years of the Act coming into force—Statutes—Construction—Retrospective operation when—Limitation Act (XV of 1877) Art 116 applicability of suits for rent in a Revenue Court* A suit to enforce an inamdar's right to rent under a registered agreement which accrued due more than three years but less than six years before the Estates Land Act came into force is not barred by the Limitation of three years enacted by its provisions but is governed by Art 116 of the Limitation Act S 210 and art 8 of Part A to the schedule of the Madras Estates Land Act (I of 1908) have no application to cases where the period of three years thereby provided had expired before the 1st July 1908 when the Act came into force and where to apply them would be to deprive the plaintiff of a right of action which was then vested in him The rule regarding vested rights is not confined to substantive rights but extends equally to remedial rights or rights of action including rights of appeal Retrospective operation of statutes considered *Colonial Sugar Refining Company v Irving [1905] A C 369* applied RAMAKRISHNA CHETTY v SUBBARAYA IYER (1912) **I L R 38 Mad. 101**

29 ———— **Preliminary Mortgage decree**—*Limitation Act (IX of 1908) Sch I Art 180 183—Application for sale of mortgaged property under decree—Transfer of Property Act (IV of 1882) ss 85 to 89—Civil Procedure Code (Act V of 1908) O XXXIV rr 4 5* In this case their Lordships of the Judicial Committee affirmed the decision of the High Court in *Amlook Chand Parrack v Sarat Chunder Mukerjee I L R 38 Calc 913* that an application for an order absolute for sale under a mortgage decree is an application to enforce a judgment or decree within the

LIMITATION—*contd*

meaning of Art 183 of Sch I of the Limitation Act (IX of 1908) and is therefore barred if not made within the period prescribed by that Article MUNNA LAL LAPRACK v SARAT CHUNDER MUKERJI (1914) I L R 42 Calc 776

30 ———— Registration Act—(XVI of 1908) s 77—*Thirty days after passing of decree under—Computation of for the purpose of that section—Civil Procedure Code (Act V of 1908) O XX r 7* For the purposes of s 77 of the Registration Act (XVI of 1908) the period of thirty days within which a document has to be presented for registration after the passing of a decree of Court directing its registration is to be reckoned not from the date the decree bears but from the time it was actually drawn up and signed by the Judge *Per CURIAM* It is desirable that in decrees of this nature the Judge should put the date on which they are signed by him under O XX r 7 Civil Procedure Code (Act V of 1908) MUTHIA CHETTI v SUPPAN SERVAI (1913) I L R 38 Mad. 291

31 ———— Court of Wards—*Competency of to acknowledge debt—Effect of acknowledgment of pre existing debt by the Court as regards limitation—Court of Wards Act (Beng IX of 1879) s 18—Limitation Act (IX of 1908) s 19* The Court of Wards Act 1879 does not contain any express power authorizing the Court to execute promissory notes But there can be no doubt on the authorities that the Court has power to give an acknowledgment so as to give a new period of limitation under s 19 of the Limitation Act *Beti Maharani* v *Collector of Etawah I L R 17 All 198 Ram Charan Das* v *Gaya Prasad I L R 30 All 422* and *Kondamodalu Linga Reddi* v *Alluri Sarvarayudu I L R 34 Mad 221* applied RASHBEHARY LAL MANDAR v ANAND RAM (1915) I L R 43 Calc 211

32 ———— Executor—*Accrual of right to sue—Testator domiciled abroad—Probate—Capable of instituting suit —Devolution of interest —Substitution of plaintiff—Straits Settlements Ordinance No 6 of 1896 ss 17 22—Straits Settlements Ordinance No 31 of 1907 ss 133 196* Straits Settlements Ordinance No 6 of 1896(*1*) which deals with the limitation of suits provides as follows —s 17 sub s (*1*) When a person who would, if he were living have a right to institute a suit or make an application dies before the right accrues the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting or making such suit or application S 22 When after the institution of a suit a new plaintiff or defendant is substituted or added the suit shall as regards him be deemed to have been instituted when he was so made a party *Held* (i) that the executor of a will capable of probate in the Straits Settlements is a legal representative capable of instituting a suit within the meaning of s 17 sub s (*1*) from the date of the testator s death and not only from the date when he obtains probate *Quære* as to an executor who renounces probates (ii) that according to the English practice (which is made applicable in the Straits Settlements in the absence of any other provision) the will of a testator domiciled in British India or elsewhere outside the Straits Settlement although not proved in the place of the testator s domicile is capable of probate in the Straits Settlements if (*a*) it is valid according to the law of the testator s place of domicile and (*b*) if there are assets of the testator in the Straits Settlements (iii) that s 22 contemplates cases in which a suit is defective by reason of the right persons not having been made parties but not cases in which the suit was originally properly constituted but has become defective owing to a devolution of interest in the latter circumstances a carrying on order should be made under s 169 of the Civil Procedure Ordinance No 31 of 1907 MEYAPPA CHETTY v SUPRAMANIAN CHETTY L R 43 I A 113 20 C W N 833

33 ———— Suspension of cause of action —*Limitation Act (XV of 1877) s 14*—In this appeal the Lordships of the Judicial Committee affirmed on the question of limitation the decision of the High Court in the case of *Lalhan Chandra Sen* v *Madhusudan Sen* which is reported in *I L R 33 Calc 99* KRITYAMONI DASSI v LAKHAN CHANDRA SEN (1916) I L R 43 Calc 660

34 ———— Valuable Consideration " and Transfer "—*If grant of permanent lease is—Suit to recover possession of property from lessee if maintainable without making mortgagee of same property party—Limitation Acts (XV of 1877) s 10 Sch II Art 134* and *(IX of 1908) ss 10 30 Sch I Art 134* In a suit by a *shebait* to recover possession of *debutter* property vested in the *shebait* in trust for the deity which had been transferred more than 12 years before the institution of the suit by the plaintiff s predecessor in title who had granted a *putni* lease of the property for consideration of a considerable fixed annual rent but without receipt of any bonus — *Held* that the suit was barred by limitation under Art 134 of Sch I of Act IX of 1908 *Abhiram Goswami* v *Shyma Charan Nandi I L R 36 Calc 1003 L R 36 I A 148 Ishwar Shyam Chand Jiu* v *Ram Kanai Ghose I L R 38 Calc 526 L R 38 I A 76* and *Damodar Das* v *Lakhan Das I L R 37 Calc 885 L R 37 I A 147* distinguished *Held* further that the grant of the permanent lease in this case was a transfer for valuable consideration. *Currie* v *Misa L R 10 Exch 153* followed *Held* also that no period of limitation was prescribed for a suit of the present nature under the Act of 1877 and therefore s 30 of the Act of 1908 has no application in this case Where in this case the plaintiff had granted a valid usufructuary mortgage of the property in suit to a third person for a term which did not expire before the institution of the suit it is not open to him to determine the lease to the defendant the benefit of which had been expressly assigned by the plaintiff to the mortgagee RAMESWAR MALIA v SRI SRI JIU THAKUR (1915) I L R 43 Calc 34

35 ——— Adverse possession—*Claim by person to lands notified by Government as reserved forest lands under Madras Forest Act (Madras Act V of 1882)—Onus of proof—Islands formed in bed of sea at mouth of tidal navigable river—Right of the Crown to such Islands—Limitation Act (XV of 1877) Arts 144 and 149—Right of appeal—to High Court from decision of District Court under Madras Forest Act —Right under general provisions as to appeals in Civil Procedure Code* In this appeal the question for deter

LIMITATION—*contd*

mination was whether the Secretary of State in Council (appellant) was entitled to incorporate the lands in dispute into a reserved forest under the Madras Forest Act (Madras Act V of 1882) such lands being islands formed in the bed of the sea near the mouth or delta of the river Godavari a tidal navigable river and within 3 miles of the mainland *Held* that such islands were the property of the Crown which was not bounded in its dominion of the bed of the sea by the rise or fall of the tide The Crown is the owner and the owner in property of islands arising in the sea within the territorial limits of the Indian Empire The onus of establishing title to property by reason of possession for a certain requisite period lies on the person asserting such possession. Objectors to afforestation preferring claims under the Forest Act against the Secretary of State for India are in the same position as persons bringing a suit in an ordinary Court for a declaration of right to which Art 144 of Sch II of the Limitation Act 1877, is applicable the period of twelve years however being extended to sixty years by Art 149 and the onus of establishing possession for the required period is upon the claimants *Radha Gobind Roy* v *Inglish 7 C L J 364* followed *Secretary of State for India* v *Vira Rayan I L R 9 Mad 175* distinguished In this case *held* (reversing the decision of the High Court) that on the evidence the claimants had not proved adverse possession for a period sufficient to establish a right against the Crown Though an appeal from the District Judge to the High Court is not provided for in the Madras Forest Act in a claim to lands which have been notified as reserved forest lands under the Act such an appeal will lie under the provisions of the Civil Procedure Code Where in such proceedings the District Court is reached, that Court is appealed to as one of the ordinary Courts of the country with regard to whose procedure orders and decrees the rules of the Civil Procedure Code are applicable In such a case the ordinary incidents of litigation could only be excluded by specific provisions to that effect *Kamaraju* v *Secretary of State for India I L R 11 Mad 309* approved *Rangoon Botatoung Company* v *Collector of Rangoon I L R 40 Calc 21 L R 39 I A 197* distinguished SECRETARY OF STATE FOR INDIA *v* CHELLIKANI RAMA RAO (1916) I L R 39 Mad. 617

36 ———— Suit for contribution—*Between joint debtors—Exoneration of defendant by the decree on the ground of limitation—Plaintiff paying the whole decree—Cause of action for contribution only after payment* The plaintiff and the defendant having each borrowed a certain sum of money from a stranger executed a joint promissory note in 1903 for the total amount in favour of the stranger After receiving some amounts from both the promisors the promisee sued them both in 1911 but the decree was for the balance due only against the present plaintiff the present defendant being exonerated on his plea of limitation After paying the decree amount in March 1912 the plaintiff immediately sued the defendant for contribution *Held* (i) that the right to sue for contribution arose on plaintiff's payment (ii) that the defendant was liable to contribute in spite of the fact that he was exonerated under the previous decree on the ground of limitation and (iii) that the suit was not barred by limitation the cause of action having arisen only on the date of plaintiff's payment *Gardner* v *Brookes 2 Ir R 6* and *Woolmershausen* v *Gullick [1893] 2 Ch 514* followed The liability to contribute is based on an equity arising out of the co debtor's payment and it has no reference to the original liability to the common promisee The *obiter dictum* in page 311 *Subramania Aiyar* v *Gopala Aiyar I L R 33 Mad 308* not followed ABRAHAM SERVAI *v* PAPHIAI MUTHIPIAN (1914) I L R 39 Mad 288

37 ———— Appeal—admitting when time barred—*Judicial Discretion—Abortive application for review—Settled Rule of Procedure—Abatement of suit—Ex parte order—Substitution of Party on Interlocutory Appeal—Limitation Act (IX of 1908) s 5—Civil Procedure Code (XIV of 1882) ss 366 368 371* The judicial discretion given by s 5 of the Indian Limitation Act 1908 to admit an appeal after the prescribed period of limitation should be exercised if the appeal has been prosecuted with due diligence the time occupied by an application in good faith for review although made upon a mistaken view of the law should be deemed as added to the period allowed for presenting the appeal The above rule being one of procedure laid down by full Bench decisions in India and acted on for many year their Lordships will not interfere with it When in the exercise of a judicial discretion a judge fails to apply a rule laid down for its exercise the Appellate Court should either remit the case or itself exercise the discretion The remedy by revision given by s 371 of the Code of Civil Procedure 1882 when a suit has been ordered to abate applies whether the abatement has been ordered under s 366 consequent upon the death of the plaintiff or under s 368 consequent upon the death of the defendant An order for abatement should not be made *ex parte* and without notice to the plaintiff The substitution of a new plaintiff or defendant for one stage of a suit for instance upon an appeal as to an interlocutory order is effective for all future stages of the suit BRIJ INDAR SINGH *v* KANSHI RAM (1917) I L R 45 Calc 94 L R 44 I A 218

38 ———— Suit for Royalties—*Due under a registered lease of land with the right to dig coal—Point not allowed to be taken which was not raised in the lower Courts nor in ground of appeal to High Court or Privy Council—Form of decree where a party has refused to join as a plaintiff and has been made a defendant—Power to alter decree without an appeal* To a suit for royalties due under a registered lease of certain land with the right to dig coal, Art 116 of Sch II of the Limitation Act 1877 for compensation for breach of a contract in writing registered and providing a six years period of limitation, and not Art 110 for a suit for arrears of rent and giving only three years, was held to be applicable There is a long established distinction in the Limitation Acts in favour of registered instruments and a long course of decisions in the Indian Courts in support of this interpretation of the Acts *Ram Narain* v *Kamta Singh I L R 26 All 138* dissented from A point that as the royalty for one kist was in any case barred the amount of the decree should be reduced was

LIMITATION—*contd*

held not to be open to the appellant to take it not having been raised in either of the lower Courts nor in the grounds of either the appeal to the High Court or that to the Privy Council One of the parties on refusing to join as a plaintiff was made the second defendant and included in his defence a claim for a decree against his co defendant which the first Court gave him separately from the decree in favour of the plaintiffs The High Court on appeal altered the form of the decree by giving a decree for the entire amount in favour of the plaintiffs and declaring that for a named portion it was for their share and as to the residue it was for the share of the second defendant The second defendant did not appeal but the principal defendant by his appeal brought the entire decree before the High Court disputing it *in toto* *Held* that in the absence of any provision in the Civil Procedure Code or in any other enactment which showed clearly that the High Court had no power to make the decree it had passed and the whole decree being before it, the High Court had jurisdiction to make the decree which should have been made by the first Court TRICOMDAS COOVERJI BHOJA *v* GOPINATH JIU THAKUR (1916) **I L R 44 Calc 759**

39 ———— **Suit to recover Land diluviated and re formed in situ**—*Dispossession—Adverse possession—Continuation of possession of land while diluviated—Definition s 3 of Limitation Act—Continuous possession of successive owners when it cannot be combined* The appellants sued to recover *khas* possession of *a 10 anna share* with mesne profits in portions of certain mauzas which after being diluviated had reformed *in situ* The question was whether the land in suit belonged to the plaintiffs mahal or to the principal respondents (defendants) mahal The suit was brought on 6th September 1904 The Subordinate Judge found in favour of the plaintiffs title and that the suit was not barred by limitation It was common ground that the period of limitation applicable was twelve years the main contest being as to whether Art 142 of Sch II of the Limitation Act 1877 was applicable or Art 144 The High Court decided the case on limitation alone holding that the suit was barred by Art 142 *Held* by the Judicial Committee (upholding the decision of the first Court both on title and limitation) that there had not been down to September 1892 any dispossession of the plaintiffs within the meaning of Art 142 An owner of land does not discontinue his possession of it whilst it is diluviated Constructively it continues until he is dispossessed and upon the cessation of the dispossession before the statutory period of limitation has elapsed constructively it survives *Leigh v Jack L R 5 Exch D 264 per* COTTON *L J* followed It seemed to follow that there can be no continuance of adverse possession when the land is not capable of use and enjoyment so long as such adverse possession must rest on *de facto* use and occupation *Secretary of State for India v Krishnamoni Gupta I L R 29 Calc 518 I R 29 I A 104* approved In the present case beyond temporary *utbandi* cultivation there was nothing down to 1892 to show an exclusion of the plaintiff by the Revenue authorities whether the land cultivated was the same each year or not does not appear at any rate it was annually submerged and there were no circumstances to link together various portions of ground so as to make the possession of a part as it emerged amount constructively to the possession of the whole *Mohini Mohan Roy v Promoda Nath Roy I L R 24 Calc 256* referred to No dispossession having occurred (except possibly within twelve years of the commencement of the suit) Art 144 and not Art 142 was the article applicable Whether or not in the circumstances of the case conduct which was insufficient to evidence dispossession can be used to evidence adverse possession available to the defendants they failed on the ground that the period of time necessary to bring them under the protection of Art 144 could not be made out unless to the period during which they were in possession there was added out of the prior period when it is contended the Revenue authorities had possession, a number of years going back to 1892 and that could not be done in this case for the reason shown in the definition s 3 that the defendants did not derive their liability to be sued from or through the Revenue authorities in any sense of the words They had in fact advanced a claim adverse to those authorities and had succeeded in it BASANTA KUMAR ROY *v* SECRETARY OF STATE FOR INDIA (1917) **I L R 44 Calc 858**

40 ———— **Payments towards debt**—*Court if it can find out whether it is for principal or interest—Limitation Act (IX of 1908) s 20* Where payments are made towards a debt but there is nothing to show whether they had been made in respect of principal or interest the Court is entitled to find out on the evidence for what purpose the payments were made HEM CHANDRA BISWAS *v* PURNA CHANDRA MUKHERJI (1916) **I L R 44 Calc 567**

41 ———— **Attachment in execution**—*Claim proceeding—Claim rejected for default and without investigation—Subsequent title suit—Limitation Act (IX of 1908) Sch I Art 11—Civil Procedure Code (Act V of 1908) O XXI rr 58 and 63* Where a claim is preferred under O XXI r 58 of the Civil Procedure Code and an order is passed either allowing or rejecting the party against whom the order is made may irrespective of whether any investigation took place or not bring a suit in the language of O XXI, r 63 to establish the right which he claims to the property in dispute or in the language of Art 11 of Sch I of the Limitation Act 1908 to establish the right which he claims to the property comprised in the order and the suit must be brought within the year allowed by Art 11 *Sardhari Lal v Ambika Pershad I L R 15 Calc 521 I R 15 I A 123 Jugul Kishore Marwari v Ambika Debi 16 C W N 88* and *Umacharan Chatterjee v Heron Moyee Debi 18 C W N 770*, referred to *Narasimha Chetti v Vijayapala Nainar 27 Ind Cas 944* and *Ponnusami Pillai v Somu Ammal 31 Mad L J 247* approved NAGENDRA LAL CHOWDHURY *v* FANI BHUSAN DAS (1918) **I L R 45 Calc 785**

42 ———— **Bengal Tenancy Act 1885**—*s 104H 111A—Scope of s 104H—Limitation governing suit under s 104H—Reliefs outside s 104H but within proviso to s 111A* S 104H of the Bengal Tenancy Act only refers to suits by a person aggrieved by an entry of rent settled in a Settlement Rent Roll prepared under ss 104F to 104H or by an omission to settle such a rent

LIMITATION—*contd*

and suits falling under that section are governed by the special limitation provided in that section Where reliefs claimed are outside the scope of s 104H and fall within the provision to s 111A the limitation applicable is that provided by Art 120 of the second schedule to the Limitation Act *Promoda Nath Roy* v *Anrudhin Mandal 13 C W N 896* followed RAJANI KANTA MOOKERJEE v SECRETARY OF STATE FOR INDIA (1917)

I L R 45 Calc 645

43 ———— Admission of appeal—*Period of limitation expired without notice to respondent—Power of Court to grant reconsideration of order admitting it at instance of respondent—Practice of Courts in India—Suggestion by Privy Council that such practice should be altered by the Indian Courts with the view of securing final determination of any question of limitation at time of admission of appeal—Limitation Act (IX of 1908) ss 4 and 5* The admission of an appeal after the period of limitation has expired deprives the respondent of a valuable right by putting in peril the finality of the order in his favour When an order admitting an appeal has been made in the absence of the respondent and without notice to him to preclude him from questioning its propriety would amount to a denial of justice Such an order so made should therefore be treated as open to reconsideration at the instance of the respondent This view is sanctioned by the practice of the Courts in India *Held* also that the Court was not exceeding its jurisdiction in permitting the question of limitation to be re opened when the appeal came before it for hearing and under the circumstances it had power to reconsider the sufficiency of the cause shown for the delay That practice was not peculiar to Madras but prevailed in other Courts in India Such a practice however was in their Lordship opinion open to grave objection and it was urgently expedient that in place of such a practice a procedure should be adopted by Courts in India which would secure at the stage of the admission of an appeal the final determination (after due notice to all parties) of any question of limitation affecting the competence of the appeal KRISHNASWAMI PANIKONDAR v RAMASWAMI CHETTIAR (1917) I L R 41 Mad 412

44 ———— Execution of money decree—*Part payment—Uncertified payment or adjustment—Civil Procedure Code (Act V of 1908) O XXI r 2 sub r (3) Limitation Act (IX of 1908) s 21 Sch I Art 182* Where a decree for money was made on the 24th November 1909 and an application for execution of the same was presented on the 7th June 1916 and where two payments were alleged to have been made in 1912 and 1913 respectively neither of which was certified to the Court *Held* that the application was *primâ facie* barred by limitation under Art 182 of the Limitation Act *Held* also that an uncertified payment or adjustment could not operate to prolong the period of limitation for an application for the execution of a decree under the Limitation Act *Held* further that under the Hindu Law in the absence of the father the mother was entitled to be the guardian of her infant sons in preference to their brother and was the lawful guardian under s 21 of the Limitation Act *Jogendra Nath Sarkar* v *Pramath Nath Chatterjee 19 C L J 126 Kutubullah Sarkar* v *Durga Charan Pulra 13 I C 494 Bhajan Lal* v *Chela Lal 19 All L J 895* and *Maltaloo* v *Ganesh Lal (1904) (Berg) S D A 379* followed BHUSHAN MUKERJEE v AMBIKA CHARAN BHATTACHARJYA (1917)

I L R 45 Calc 630

45 ———— Application for execution—*Civil Procedure Code (Act V of 1908) O XXI rr 18 and 17 cl (?)—Application in accordance with law—Properties specified in the list furnished under O XXI r 13 not competent to be proceeded with in execution—Filing of supplementary list of property if to be taken as part of the original application under the provisions of O XXI r 17 (?)—Fresh application for execution if necessary—Such application if to be treated as made in continuation of the original application for execution* A decree was passed on the 28th November 1911 and on the 23rd November 1914 an application for execution was made which on the face of it was in accordance with law Subsequently on the objection of the judgment debtor it was discovered that against the properties specified in the list furnished under O XXI r 13 proceedings could not be taken and accordingly on the 14th January 191 the decree holder made an application to the Court for acceptance of a further list of properties with a prayer that the execution should proceed by attachment and sale of those properties and the lower Appellate Court disallowed the prayer and held that the application for execution having been admitted and registered the proposed amendment could not be accepted and the decree holder was to make a fresh application in execution *Held* that the supplementary list should be taken as part of the original application under the provisions of O XXI r 17 (?) or if a fresh application were at all necessary then the subsequent application furnishing a supplementary list of properties should be treated as one made in continuation of the application first presented on the 23rd November 1914 that in this view no question of limitation arose and that the decree holder would be at liberty to proceed in execution as on his application dated 23rd November 1914 GNANENDRA KUMAR ROY CHOUDHURY v RISHINDRAKUMAR ROY CHOUDHRY (1918)

22 C W N 540

46 ———— Acknowledgment after attachment—*Effect of as against auction purchaser* An acknowledgment by the judgment debtor may save limitation against the auction purchaser but such acknowledgment if made after the attachment cannot prevail against the auction purchaser who is entitled to have the property purchased by him in the condition in which it was at the time of attachment RAJESWARI DASI v BINODA SUNDARI DASI (1916)

22 C W N 278

47 ———— Adverse possession—*Hindu Widow—Public Assertion of Ownership—Concurrent Findings—Inference from Documents—Limitation Act (XV of 1877) Sch II Art 144* Concurrent opinions of the Courts in India that the possession of properties by a Hindu widow was merely in lieu of maintenance and not adverse to the plaintiffs reversed on the grounds that the question being one of inference from documents not one of fact a wrong conclusion had been arrived at The widow of one of two joint Hindu brothers after the death of the surviving brother

LIMITATION—*contd*

and his widow successfully applied for mutation of names in respect of property of which she was in possession alleging that she was owner of it as heir to her husband's separate property Subsequently she put forward the same claim in written statements in suits she also made a gift of part of the property to religious uses *Held* that the abovementioned acts were public assertions by the widow of a right to exclusive possession and ownership and made her possession adverse within Sch II Art 144 of the Indian Limitation Act 1877 CHAUDHRI SATGUR PRASAD *v* KISHORE LAL (1919)
L R 46 I A 197

48 ——— *Adverse possession—Gift—Unregistered Document—Evidence—Ouster—Subsequent Joint Ownership—Transfer of Property Act (IV of 1882) s 123—Limitation Act (IX of 1908) Sch I Art 144* (i) A petition by which the petitioners recited that they had made a gift of two villages and prayed that the villages might be transferred into the name of the donee is admissible as evidence that the subsequent receipt of the rents by the donee was in the character of owner of the property so as to make her possession adverse to that of the petitioners although by reason of the Transfer of Property Act 1882 s 123 and the Indian Evidence Act 1872 s 91 the petition is not admissible to prove a gift (ii) Where a person has had such possession of land as to amount to an ouster of the two owners each being owner of a moiety and before the expiration of the statutory period of limitation succeeds to one moiety upon the death of its owner his possession continues to be adverse to the owner of the other moiety although he has become jointly interested with that other *Quære* whether the rule that the possession of one of several joint tenants or tenants in common is not adverse to the others applies to joint sharers in a village who are not members of a joint Hindu family VARATHA PILLAI *v* JEEVARATHAMMAL (1918)
L R 46 I A 285

49 ——— Bengal Tenancy Act—*s 104H cl (2) suit under—Limitation Act (IX of 1908) Parts II III ss 3 to 25 29 (1) (b)—Civil Procedure Code (Act V of 1908) s 80* A instituted a suit under s 104H of the Bengal Tenancy Act against the Secretary of State for India in Council The latter pleaded limitation The Courts below overruled this plea on the ground that *A* was entitled under s 15 cl *(2)* of the Limitation Act to a deduction of two months in respect of notice which s 80 of the Civil Procedure Code 1908 required *Held* that the Bengal Tenancy Act being a Local Act the saving clause in s 29 *(b)* of the Limitation Act applied and s 15 cl (2) thereof did not extend the limitation period of six months provided under s 104H of the Bengal Tenancy Act *Secretary of State for India* v *Gangadhar Nanda I L R 45 Calc 974* followed *Dropadi* v *Hira Lal I L R 34 All 496* distinguished *Held* also that the provisions of Part III of the Limitation Act did affect periods of limitation prescribed in the Act itself by s 3 which was the first and enacting section in Part III *Held* further that the language of s 104H of the Bengal Tenancy Act was not ambiguous and in interpreting the words of a positive enactment such as this any suggestion of hardship was out of place SECRETARY OF STATE FOR INDIA *v* SHIB NARAIN HAJRA (1918)
I L R 46 Calc 199

50 ——— Part payments in satisfaction of Execution of decree—*Within three years of date of decree—Application for execution within three years of such part payments if within time—Limitation Act (IX of 1908) Sch I Art 182 (5)* Application for execution of decree within three years of the date of part payments in satisfaction of the decree if the part payments were within three years of the date of the decree is within time within the meaning of Art 182 *(5)* of the first schedule of the Limitation Act *Rakhal Das Mazumdar* v *Jogendra Narain Mazumdar 10 C L J 467 Lakhi Narain Ganguli* v *Felamani Dasi 20 C L J 131* and *Khadibannessa Bibi* v *Sanchia Lal Nahata 20 C W N 279* referred to JATINDRA KUMAR DAS *v* GAGAN CHANDRA PAL (1918)
I L R 46 Calc 22

51 ——— Execution of Joint decree—*Decree set aside against one of several joint debtors if it gives a fresh starting point of limitation against others* A joint *ex parte* decree against several judgment debtors if set aside against only one of them without notice to others will not give a fresh starting point of limitation against others *Kharajmal* v *Daim I L R 32 Calc 296 L R 32 I A 23 Suresh Chunder Wum Chowdhry* v *Jugut Chunder Deb I L R 14 Calc 204* and *Hanuman Prasad* v *Muhammad Isha I L R 28 All 137* followed. *Mallarjun* v *Narhari I L R 25 Bom 337 L R 27 I A 216 Kali Prosunno Basu Roy* v *Lal Mohun Guha Roy I L R 25 Calc 258 Amar Chandra Kundu* v *Asad Ali Khan I L R 32 Calc 998 Gopal Chunder Manna* v *Gosain Das Kalay I L R 25 Calc 594 Abdul Khadir* v *Alammad Shaiwa Ravuthar I L R 35 Mad 670 Vydianatha Aiyar* v *Subramania Patter I L R 36 Mad 104* and *Ashfaq Husain* v *Gauri Sahai I L R 33 All 264 L R 38 I A 37* distinguished UMESH CHANDRA ROY *v* AKRUR CHANDRA SIKDAR (1918)
I L R 46 Calc 25

52 ——— Account suit—*Limitation Act (IX of 1908) Sch I Art 7—Civil Procedure Code (Act V of 1908) O VI r 17 O XXIII r 1 leave under* In a suit for the recovery of money alleged to be due on accounts between the parties Art 78 of the Limitation Act has no application *Paman* v *Vairavan I L R 7 Mad 392* distinguished Where a plaintiff sought to recover a sum of money upon certain allegations which were found untrue by the Trial Court and on appeal the District Judge came to the same conclusion but held that the plaintiff might be permitted to abandon his claim with liberty to institute a fresh suit under O XXIII r 1 of the Civil Procedure Code 1908 *Held* that in such circumstances the order under r 1 of O XXIII should not have been made Where in second appeal the plaintiff respondent applied for leave to amend his plaint the object being to abandon the claim deliberately put forward in the Trial Court and persistently reiterated in the Appeal Court below *Held* that such application could not be entertained *Kokila* v *Mohant Purnanand Goswami 15 C L J 527* referred to PADMA LOCHAN PATAR *v* GIRISH CHANDRA KIT (1917)
I L R 46 Calc 168

53 ——— Court of Wards—*Limitation Act (1908) Sch I Arts 142 144—Estate of dis*

LIMITATION—*contd*

qualified proprietor under management of Court of Wards—Suit by proprietor to recover possession of property sold by Collector during Court of Wards management—Court of Wards Act (Beng IX of 1879)—Purchaser's possession became adverse when obtained On 30th July the appellant was declared to be a disqualified proprietor and her estate was taken charge of by the Court of Wards under Bengal Act IX of 1879 By a deed of transfer dated 4th June 1890 part of the estate was sold by the Collector as manager to the father and predecessor in title of the respondent and the purchaser obtained possession on 30th April 1891 On 1st August 1911 the Court of Wards withdrew from the management of the estate In a suit brought by the appellant on 12th May 1912 to recover possession of the portion sold — *Held* that before the transfer and until the respondent acquired possession the estate was in possession of the appellant notwithstanding it was in the charge of the Court of Wards limitation therefore ran against her not from the release of the estate from management by the Court of Wards but from the date when the respondent obtained possession adversely to the appellant and the suit consequently became barred after twelve years of such adverse possession MANI SINGH MANDHATA *v* NAWAB BAHADUR OF MURSHIDABAD (1918) I L R 46 Calc 694 L R 46 I A 60

54 ———— Mortgage—*Limitation Act (IX of 1908) Sch I, Art 148—Transfer of Property Act (IV of 1882) ss 95 100* A B and C mortgaged a taluk in 1887 to X Thereafter in 1890 Z purchased the taluk in execution of a decree against A and B and subsequently in 1892 redeemed the mortgage of X and obtained possession of the same through Court In 1893 Z obtained from the superior landlord a settlement of the whole taluk in his favour In 1902 Z's sons granted a raiyati lease to G and in 1907 sold the superior right to F In 1907 K purchased the right of C which did not pass at the sale in execution and in 1911 instituted a suit claiming the right to redeem F and recover possession of the lands *Held* that as the Transfer of Property Act drew a clear distinction between a charge and a mortgage and the suit having been brought more than twelve years after both from the date when the charge came into existence and also when exclusive possession had been obtained by Z the provisions of Art 148 of the Limitation Act did not apply and the suit was barred by limitation *Vasudev Bhikaji* v *Balaji Krishna I L R 26 Bom 500* followed *Ashfaq Ahmad* v *Wazir Ali I L R 14 All 1* *Khial Ram* v *Tasik Ram I L R 38 All 540* discussed. PURNA CHANDRA PAL *v* BARADA PROSANNA BHATTACHARJYA (1918) I L R 46 Calc 111

55 ———— Pala or turn of worship—*Whether movable or immovable property—Limitation Act (IX of 1908) s 3 Sch I Arts 120 132* A *pala* or turn of worship is not an interest in immovable property and consequently governed by Art 120 and not by Art 132 of the First Schedule to the Limitation Act *Eshan Chunder Roy* v *Monmohini Dassi I L R 4 Calc 683* *Jati Kar* v *Mukunda Deb I L R 39 Calc 227* referred to NARASINGHA BAN GOSWAMI *v* PROLHADMAN TEWARI (1918) I L R 46 Calc 455

LIMITATION—*contd*

56 ———— Premature rent—*Suit effect of—Limitation Act (IX of 1908) s 14—Decree for rent obtained by ex landlord whether a rent decree—Bengal Tenancy Act (VIII of 1885) s 65—Construction of solenama decision on whether a question of law* Where the Court had refused to entertain a claim for rent because it was premature in a subsequent suit for the arrears said rent the plaintiff cannot rely upon the provisions of s 14 of the Limitation Act and say that time did not run against him while these proceedings were being prosecuted The decision in *Forbes* v *Maharaj Bahadur Singh I L R 41 Calc 926* did not decide anything more than that by virtue of the provisions of s 65 of the Bengal Tenancy Act a person who had ceased to be the zemindar at the time he sued for rent could not enforce his decree in accordance with the provisions of s 65 of the Bengal Tenancy Act A decree obtained by a landlord against the tenants who had ceased to be tenants cannot be called a decree for rent A question of the construction of a *solenama* must be of the legal effect of the terms and provisions of the *solenama* and is a decision on a question of law DWARKA NATH CHAKRAVARTI *v* ATUL CHANDRA CHAKRAVARTI (1919) I L R 46 Calc 870

57 ———— — Money paid consideration which fails—*Suit by purchaser at sale for arrears of rent of patni taluq which is subsequently set aside by darpatnidar—Sale under Bengal Patni Taluq Regulation (VIII of 1819) s 14—Right of purchaser to indemnity—Duty of Court on reversal of sale to see if purchaser has sustained loss—Limitation Act 1877 Sch II Art 97 91* The appellant on 14th September 1908 brought a suit against a zamindar to recover certain sums he had had to pay (*inter alia* the amount of arrears of rent due and paid by the Collector to the zamindar out of the purchase money) as purchaser of the patni taluq of a defaulting patnidar at a sale for arrears of rent under the Bengal Patni Taluq Regulation (VIII of 1819) the sale having been subsequently set aside in suits by the darpatnidars under s 14 of the Regulation to which the appellant was a party by decrees of the District Judge on 24th August 1905 which were affirmed by the High Court on 3rd August 1906 No indemnity under s 14 was given to the appellant in those suits On August 28th 1906 the appellant gave up possession of the taluq to the darpatnidars The appellant's suit was throughout treated as governed by Art 97 of Sch II of the Limitation Act 1877 as a suit for money paid on an existing consideration which afterwards fails and both Courts below had held that it was barred by that article as having been brought more than three years from 24th August 1905 the date of the decree of the District Court setting aside the sale at which time it was found the consideration failed The appellant contended that limitation only ran from the decree of the High Court of 3rd August 1906 or from 28th August 1906 when possession was given up and the suit was therefore not barred *Held* that owing to the particular course the litigation had taken and the way the suit had been treated here the case ought to be dealt with on the assumption made for the purpose of this present appeal alone but without affirming its correctness that the present suit is competent and that it comes within the terms of Art 97 and that it is barred

LIMITATION—*contd*

by lapse of time S 14 of the Regulation authorises a suit against the zamindar for the reversal of a sale under it and provides that "the purchaser shall be made a party in such suit and on decree passing for the reversal of the sale the Court shall be careful to indemnify him against all loss at the charge of the zamindar or person at whose suit the sale may have been made" *Held* the provision was unambiguous and imperative and imposes a duty on the Court without qualification To discharge such duty a distinct issue should be framed as between the purchaser and the person chargeable under the section whether in case the sale is reversed the purchaser has suffered any and what loss against which he ought to be indemnified by that person On that issue there ought to be a finding and a decision subject to such right of appeal as there might be Whether and if so how far the remedy provided by s 14 in a purchaser s favour excludes all other remedies was not decided *Radha Madhub Samonta v Sasti Ram Sen I L R 26 Calc 826* and *Brojo Kishore Rukhit v Bashi Mandal 21 Suth W R 252* referred to JUSCURN BOID v PIRTHICHAND LAL CHOUDHURY (1918) **I L R 46 Calc 670**
L R 46 I A 52

58 ———— **Timber Rights**—*Limitation Act (IX of 1908) Sch I Art 116—Bengal Tenancy Act (VIII of 1885) ss 184 193 Sch III Part I Art 3—Payment by authorised agent through messenger but entry made by agent if good under Limitation Act s 20— Punyaha payment if for arrears or for new year—Setting off of barred claims by Court if legal—Interest pendente lite Court s discretion as to* Under a registered document the plaintiff Bhawal Raj granted to the defendant the right to fell remove and sell all trees of specified kinds growing within certain local limits in so far as he might be able to do so within a period of five years and the grantee was further given the right to sublet and in certain eventualities to re enter and make other arrangements for the remainder of the term setting off the sums thereby realised against the sums due from the lessee but if the trees were not cut down or being cut down were not removed before the expiration of the term the grantee was to have no rights or interests or were to be divested of any such rights *Held* that the grant in this case was of forest rights within the meaning of the Bengal Tenancy Act and the rule of limitation applicable to a suit to recover the Raj s dues under it is governed under ss 184 and 193 of the Bengal Tenancy Act by the special rule of three years limitation provided by Art 2 Part I to Sch III of the Bengal Tenancy Act The General Manager of the defendants having general authority to make payments made a payment of Rs 15 through a Mohurrir and followed it up by an entry of such payment with his own hand in his account book *Held* that the Mohurrir merely acted as a messenger and the payment being by the Manager out of monies in his hand the Manager should be regarded as the person who made the payment for the purposes of s 20 of the Limitation Act A payment made on the *punyaha* was made not on account of a general arrear balance but on account of a special *kist* or instalment that is the *kist* of the newly opened year The Raj and the defendant having both sued upon the terms of the grant the former for rent and the latter for damages it was found that the Raj s demand for arrears was to a large extent barred by limitation and that the dues of the Defendant for damages fell far short of the arrears barred *Held* that the defendant having thus recouped himself the lower Court was right in refusing to make a decree for damages in his favour Though interest pending suit is in the discretion of the Court such discretion should be exercised on sound judicial principles SARAJUBALA DEBI CHOWDHURANI v SARADA NATH BHATTACHARJEE (1918) **23 C W N 336**

59 ———— **Appeal**—*Time to file an appeal from an order—Time requisite for obtaining a copy of the order—Indian Limitation Act (IX of 1908) ss 5 12 Art 151—Application to obtain copies after the expiry of the period effect of—Duty of drawing up the order—Calcutta High Court Original Side Rules Ch XVI r 27 Ch XXXII r 22 (1)—Memorandum of Appeal filed without a copy of the order effect of—Laches on the part of the appellant—Sufficient cause* An *ex parte* decree was made on the 14th of February 1918 as the defendant (appellant) failed to comply with an order of the Court On the 23rd of March an order was made on the application of the defendant that on the defendant s giving security for the amount of the claim within a certain date the *ex parte* decree would be set aside The defendant failed to give security though the time to supply the same was extended from time to time On the 26th of July the defendant again applied for further extension of time and to have the *ex parte* decree set aside which was refused on that day On the 5th of August the plaintiff (respondent) applied to have the order drawn up On the 7th of August the defendant was served with the order which was returned approved by his solicitor on the 16th of August On the 30th of August (which was the last day of the term) the Memorandum of Appeal was filed without a copy of the order of the 26th of July On the 3rd of September the order was filed by the plaintiff On the 9th of September the defendant applied for a copy of the order and the copy was supplied to him on the 12th of September *Held* that the time to file the Memorandum of Appeal expired on the 15th of August and as the defendant had failed to satisfy the Court that the period from the 15th of August to the 30th of August was requisite for obtaining a copy of the order appealed from the appeal was barred by the law of limitation *Held* also that the appeal could not be admitted under s 5 of the Limitation Act as there was no sufficient cause for not preferring the appeal within the prescribed period *Per* CHITTY *J*— On principle an appellant who has not within the period of limitation applied for a copy of the order appealed from and who has within that period taken no steps whatever towards procuring such copy cannot be allowed after the period of limitation has run out to claim exclusion of time requisite for procuring such copy PRAMATHA NATH ROY v W A. LEE (1919) **23 C W N 553**

60 ———— **Uncertified payments**—*If can save limitation Civil Procedure Code (Act V of 1908) O XXI r 2 (3)* O XXI r 2 (3) of the Code of Civil Procedure expressly provides that the executing Court shall not recognise any payment that has not been certified. The decree-holder can certify the payments made at any

LIMITATION—*contd*

time but the certification must take place within such time as is required to save the application for execution from being barred by limitation BAIDYANATH ROY v JOGESH CHANDRA BANERJEE (1918) 23 C W N 329

61 ———— Execution of decree—*Application for execution of original decree—Commencement of period of limitation whether date of original decree or of appellate decree—Execution against judgment debtor not joined in the appeal* Where an appeal has been preferred against a decree the period of limitation for an application to execute the original decree runs from the date of the appellate decree though the appeal was against one defendant and the application for execution was against the other *Hridnama Chariar v Mangammal I L R 26 Mad 91* and *T S Ari Chetty v Theerthamalai Chetty 34 Ind Cas 791* followed *Law v Benarashi Prosad Chowdhury 19 C W N 281 Lokenath Singh v Gaju Singh 20 C W N 1258 Umesh Chandra Roy v Akrur Chandra Sadar I L R 46 Calc 25* and *Har Prosad Roy v Enayet Hossein 2 C L R 471* distinguished *Gopal Chunder Manna v Gosain Das Kalay I L R 25 Calc 594* and *Abdul Rahaman v Maidin Saiba I L R 22 Bom 500* referred to SATISH CHANDRA CHOWDHURI v GIRISH CHANDRA CHAKRAVARTY (1920) I L R 47 Calc 813

62 ———— Mortgage—*Order absolute for sale—Application to enforce the order more than twelve years after the date of the order—Limitation Act (IX of 1908) Sch I Art 183* A suit was brought in 1904 for the enforcement of a mortgage security The usual preliminary decree under s 88 of the Transfer of Property Act, 1882 was made on the 30th June 1904 and on the 22nd March 1904 the decree holder applied for and obtained an order absolute for sale under the provisions of s 89 of the same Act The order was drawn up and signed on the 25th May 1907 but was not otherwise completed and no steps whatever had been taken under it The present application was made on the 19th May 1919 by the representative of the decree holder (who had died in the meantime) asking that the representatives of the parties deceased be substituted on the record, and that thereupon the order absolute for sale may be completed and the sale proceeded with —*Held* that a present right to enforce the judgment or order having accrued to the decree holder on the 22nd March 1907 when the order absolute for sale was pronounced the present application to enforce the said order is barred by Article 183 Sch I of the Limitation Act 1908 APURBA KRISHNA SETT v RASH BEHARI DUTT (1920) I L R 47 Calc 746

63 ———— Suit instituted in wrong Court—*in time but in proper Court beyond time —Registration Act (XVI of 1908) s 77—Limitation Act (IX of 1908) ss 14 29 (b)* The provisions of s 14 of the Limitation Act 1908 cannot be applied in computing the period prescribed under s 77 of the Registration Act 1908 *Abdul Hakim v Latifunnessa Khatun I L R 30 Calc 532* approved *Nagendra Nath Mullick v Mathura Mohun Parhi I L R 18 Calc 368* referred to *Khettur Mohun Chukerbutty v Dinabashy Shaha I L R 10 Calc 265* overruled KALIMUDDIN MOLLAH v SAHIBUDDIN MOLLAH (1919) I L R 47 Calc 300

LIMITATION—*contd*

64 ———— Accord and satisfaction—*Annulment of satisfaction on the ground of coercion effect of—Fresh cause of action for original claim on annulment* A debtor who satisfied by payment his creditor s claim for balance of money due sued to annul the satisfaction on the ground of coercion and obtained a decree for refund *Held* that the annulment gave the creditor a fresh cause of action upon the original claim and time began to run from the date of annulment *Mussumat Ranee Surno Moyee v Shooshee Mookhee Burmonia (1868) 12 M I A 244* and *Hurro Pershad Roy v Gopal Das Dutt (1883) I L R 9 Calc 255 at 265 (P C)* followed MUTHUVEERAPPA CHETTY v ADAIKAPPA CHETTY (1920) I L R 43 Mad 845

65 ———— Attorney's claim and set off —*R 69 Ch 36 of the High Court Rules (Calc original) is technically free from limitation—Defendant can prosecute a set off if the claim is not barred at time of issue of plaint* RAJAH NARENDRA LAL KHAN v TARUBALA DASSI 25 C W N 800

66 ———— Suit started on insufficient court fee—*Balance paid after expiration of period of limitation* Where a suit was instituted on the last day of limitation on an insufficiently stamped plaint and the balance of court fee was subsequently paid after the period of limitation had expired and the court accepted such payment *held* that the suit was not barred by limitation GAYA LOAN OFFICE LTD v AWADH BEHARI LALL 1 Pat L J 420

67 ———— Adverse possession—*Gift invalidity of as not following the requirements of s 123 of the Transfer of Property Act (IV of 1882)—Evidence as to possession only under it not of the gift—Joint ownership following intended gift—Limitation Act (IX of 1908) Sch I Art 144—Ouster* The suit from which this appeal arose was brought to establish the title of the appellants to a moiety of a mitta or estate consisting of two villages which belonged at one time to the ancestor of the parties and eventually became vested in *G* and *P* his two younger sons On the death of *G* in 1879 his share vested in his widow *R* and he left also a daughter *D* *P* died in 1867 leaving a will which the High Court held gave an absolute interest in the moiety to his widow *A* and their Lordships of the Judicial Committee upheld that construction On 10th October 1895 *R* and *A* who were then the registered owners of the two moieties of the mitta presented to the Collector a petition which after reciting that they had on 8th October given the two villages of which the mitta consisted to *D* prayed that an order be made transferring the villages into her name. On the same date (10th October) *D* presented a similar petition to the Collector reciting the gift of the villages to her and asked for the transfer of them to her on the register and the Collector thereupon on 8th May 1896 registered the two villages (being the whole mitta) in the name of *D* to hold and enjoy them with power to alienate them by way of gift mortgage sale etc and from that date *D* retained possession until her death in 1911 after which the mitta descended to the respondent as her successor *Held* that the gift was invalid as not being made by a registered deed as required by s 123 of the Transfer of Property Act (IV of 1882) that the recitals in the petitions could not be used as

LIMITATION—*contd*

evidence of a gift but might be referred to as explaining the nature and character of the possession thenceforth held by *D* and that the evidence proved that she in fact took possession of the mitta in her own right when it was transferred into her name and retained such possession with receipt of the rents until her death when the plaintiff's claim was barred by more than twelve years adverse possession Even if the rule of English Law that the possession of one of several co parceners joint tenant or tenants in common is the possession of the others so as to prevent limitation affecting them was applicable to sharers in an unpartitioned agricultural village in India not holding as members of a joint family which is doubtful it had on the facts of the case no application *Held* therefore that during the life of *R* the possession of *D* was adverse to both the co owners *R* and *A* and this being so when on *P s* death she became legally entitled to a moiety of the mitta the character of her possession of the other moiety as agains *A* was not changed There having been an ouster of *A* before *R s* death this ouster continued after her death and the possession of *D* was adverse to *A* throughout VARADA PILLAI *v* JEEVARATNAMMAL (1920) I L R 43 Mad 844

68 ———— End of adverse possession by the passing of decree *Possession prior to decree cannot be tacked to possession after decree—Party wishing to acquire good title by adverse possession must start afresh after the decree—Execution—Execution time barred—Right to recover possession not barred* The defendants had brought Suit No 96 of 1893 against the plaintiff for a declaration that they were entitled to a half share in the right to manage a Devasthan property The plaintiffs then pleaded that they were solely entitled to the management as they were in adverse possession for over twelve years prior to the suit It was however held that the plaintiffs adverse possession commenced only from 1885 and a decree declaring the joint management of the plaintiffs and the defendants was passed on the 7th July 1896 After the decree the plaintiffs remained in possession and the defendants took no active step to execute the decree in their favour until they were let into possession by the Collector s order dated the 1st August 1908 The plaintiffs thereupon brought a suit in 1912 to establish their sole right to manage the Devasthan property alleging hereditary right and ancient and immemorial custom and contended that by non execution of the decree in Suit No 96 of 1893 they became entitled to tack on the period of adverse possession before the date of that decree to the period after the decree thereby acquiring an absolute title by adverse possession *Held* (1) that the decree in Suit No 96 of 1893 put an end to adverse possession on 7th July 1896 (2) that although the execution of that decree was barred the right remained and therefore the plaintiff could not get absolute title by adverse possession *Bala v Abai (1909) 11 Bom L R 1093* relied on The period of adverse possession is calculated for the benefit of the party setting up adverse possession and if he loses then there is an end of that period and he must if he wishes to acquire a good title by adverse possession start afresh after the decree MIR AKBARALI *v* ABDUL AJIJ (1920) I. L. R 44 Bom 934

69 ———— Rent suit—*Suspension of the period of limitation—Pendency of a suit for ejectment* It is established as a general principle that the right to demand the rent which falls due during the pendency of a suit for ejectment is not in suspense during the pendency of a litigation *Surnamoyee s Case 11 W R 5 (P C)* was one of exception to this general rule NAGENDRA NATH SEN *v* SADHU RAM MANDAL (1920) I L R 48 Calc 65

70 ———— Contribution by co mortgagors —*One paying off mortgage decree in excess of his share Held* that the position of such co mortgagor was that of an assignee of the original security and therefore the period of limitation is that within which the original mortgagee could have brought his suit on the mortgage had he not been redeemed and that the suit having been brought more than twelve years after the due date of the original mortgage under Art 132 of the Limitation Act and having been brought more than six years after the dates of payments was barred whether Art 60 99 or 120 applied SREEMATI RAJ KUMARI DEBI *v* MUKUNDALAL BANDOPADHYAYA (1920) 25 C W N 283

71 ———— Letters Patent Appeal—*Whether any extension of time can be granted under Indian Limitation Act (IX of 1908) s 4 et seq* An appeal was filed on the 27th August 1920 from the judgment of a Single Judge dated 5th July 1920 The vacation of the Court began on 17th July 1920 and ended on the 27th September Under the rules framed by this Court an appeal under s 10 of the Letters Patent cannot be entertained if presented after the expiration of thirty days from the date of the judgment appealed from unless the Division Bench in their discretion for good cause shown extend the said period. *Held* that the Letters Patent together with the rules framed thereunder as to limitation for filing appeals are a complete Code in themselves and therefore the general provisions of the Limitation Act including s 4 do not apply to appeals filed under s 10 of the Letters Patent Letters Patent Appeal No 107 of 1920 (unpublished) followed S 29 of the Limitation Act referred to *Held also* that the fact that appellant was under the impression that the limitation was ninety days and the holidays could be deducted was no reason for extending the period and that the appeal was consequently barred by limitation DYAL SINGH *v* BUDHA SINGH I L R 2 Lah 127

72 ———— Execution application for—*Objection on the ground that decree had been satisfied out of Court—Objection and application both dismissed for default—Subsequent application for execution if in continuation of previous application* A decree holder after applying for execution filed processes and process fees as directed by the Court Thereafter the judgment debtor objected to the issue of execution on the allegation that the decree had been satisfied out of Court On a subsequent date on which both the application for execution and the objection had been fixed for hearing the latter case was dismissed for default and the Court recorded the further order the decree holder has no objection to his case being dismissed provided he gets his costs The execution case is dismissed for default The decree holder will get his costs *Held* that the order dismissing the

LIMITATION—*concld*

execution case must be treated as equivalent to an order for striking off the case or removing it from the file for the convenience of the Court and a subsequent application for execution made more than three years after the date of the first application was therefore to be regarded as one in continuation or revival of the previous application CHOWDHURY AJODHYA NATH LAHARY *v* CHOWDHURY S C PAHARY **26 C W N 328**

73 ———— **Adverse possession**—*Plaintiff proving title—Both parties having uncertain possession—Indian Limitation Act (IX of 1908) Sch I article 144* Adverse possession in order to bar by limitation a suit for the possession of land must be adequate in continuity in publicity and extent so as to show that it is possession adverse to the competitor When a person establishes his title to land and proves that he has been exercising during the currency of his title various acts of possession then the quality of those acts even though they might have failed to constitute adverse possession against another may be abundantly sufficient to destroy that adequacy and interrupt that exclusiveness and continuity which is required from any person challenging by possession the rightful title *Radhamoni Debi* v *The Collector of Khulna (1900) I L R 27 Calc 943 (P C) L R 27 I A 140* and *Secretary of State for India* v *Chellikani Rama Rao (1916) I L R 39 Mad 61 (P C) L R 43 I A 192* applied [*Judgment of the High Court reversed*] KUTHALI MOOTHAVAR *v* KUNHARAN KUTTY (1922)

I L R 44 Mad (P C) 883

74 ———————— *Suit to recover value of paddy charged upon immovable property nature of—Limitation Act (IX of 1908) Sch I Art 132* A suit to recover value of paddy charged upon immovable property is a suit to enforce payment of money charged upon immovable property within the meaning of Art 132 of the Limitation Act RAMCHAND SUP *v* ISWAR CHANDRA GIRI (1920) **I L R 48 Calc 625**

LIMITATION ACTS

See CIVIL PROCEDURE CODE (ACT XIV OF 1882) s 230 **I L R 37 Mad 186**

See HINDU LAW—ADOPTION **I L R 40 Mad 846**

LIMITATION ACT (XIV OF 1859)

———— **s 1 (12)**—

See BENGAL REGULATION XV OF 1793 **I L R 34 All 261**

———— **s 1 (15)**—

See LIMITATION ACT (XV OF 1877) s 19 SCH II ARTS 120 AND 148 **I L R 32 All 33**

———— **ss 1 (15) and 4**—

See LIMITATION (14) **I L R 37 Bom 231**

LIMITATION ACT (IX OF 1871)

———— **s 20 and Sch II Art 148**—

See LIMITATION **I L R 37 Bom 231**

———— **s 21**—*Act No IX of 1908 s 31—Limitation—Mortgage with possession—Realization of rents and profits equivalent to receipt of interest as such under the terms of the mortgage*

LIMITATION ACT (IX OF 1871)—*contd*

———— **s 21**—*contd*

Under the terms of a mortgage deed executed in 1850 the mortgagee was to take possession of the mortgaged property and appropriate the rents and profits in lieu of interest The mortgagee remained in possession up to 1889 when he was dispossessed In 1910 he brought a suit for sale *Held* that the realization of rents and profits in lieu of interest was equivalent to the receipt to interest as such under the terms of the mortgage and therefore under s 21 of Act IX of 1871 the mortgagee was entitled to compute limitation from the year 1889 Act XV of 1877 having by that time come into operation the plaintiff was in 1910 entitled to bring his suit within the limitation provided by s 31 of Act IX of 1908 INDARJIT *v* GAJADHAR SAHAI (1913) **I L R 35 All 270**

———— **Art 129 and s 29**—

See HINDU LAW—ADOPTION **I L R 40 Mad 846**

LIMITATION ACT (XV OF 1877)

See HINDU LAW—ADOPTION **I L R 40 Mad 846**

———— **s 2, Sch II, Art 35**—

See LIMITATION ACT (IX OF 1908) s 29 **I L R 34 All 412**

———— **s 3 Sch II, Arts 13 14**—*Civil Procedure Code 1882 s 310 A—Execution of decree—Suit involving the cancellation of an order setting aside a sale—Limitation* A Civil Court acting under s 310 A of the Code of Civil Procedure 1882 set aside a sale on an application made about 14 months after the sale The auction purchaser more than a year after this order sued for possession of the property and for a declaration that the order under s 310 A was passed without jurisdiction *Held* that the order whether passed rightly or wrongly was not a nullity and that the order having been passed in a proceeding other than a suit Art 13 of the second schedule to the Indian Limitation Act 1877 barred the present suit inasmuch as the plaintiff could not obtain a decree for possession without first having the order set aside KISHORI LAL *v* KUBAR SINGH (1910) **I L R 33 All 93**

———— **s 4 Sch II, Art 179 (2)**—*Limitation—Application of execution of decree—Practice of Privy Council—Order of dismissal for want of prosecution of appeals to Privy Council—Order of 15th June 1853 r V—Dismissal of appeal for want of prosecution without order made in the appeal* Under r V of the Order in Council of 15th June 1853 (1) where for a period specified in the order the appellant to His Majesty in Council or his agent has not taken any effectual steps for the prosecution of the appeal it stands dismissed without further order Such a dismissal for want of prosecution is not the final decree of an Appellate Court within the meaning of Art 179 cl 2 of Sch II of the Indian Limitation Act 1877 from which a period of limitation can be reckoned under that article in support of an application for execution of a decree In this case the application for execution having been made more than three years after the decree of the High Court was therefore barred by lapse of time and should

LIMITATION ACT (XV OF 1877)—*contd*

——— s 4 Sch II Art 179 (2)—*contd*

have been dismissed on that ground under s 4 of the Limitation Act BATUK NATH v MUNNI DEI (1914) I L R 36 All 284

——— s 5—*Suit for order directing registration of document—3 days expiring during a Court holiday—Suit instituted on re opening day if barred* The provisions of s 5 of the Limitation Act apply to suits under s 77 of the Registration Act (III of 1877) When therefore the period of limitation provided in that section for a suit for an order directing the registration of a document expired during the Xmas holidays *Held* that the suit if instituted on the day the Court re opened would not be barred by limitation *Mujabatoollah v Wazir Ali I L R 8 Calc 910* followed MATABDAR MOLLAH v SASI BHUSAN GHATAK (1911) 16 C W N 20

——— ss 5 and 7—*Application to file an appeal in forma pauperis—Delay in making the application—Minor applicant—Excuse of delay—Probate—Grant of probate—Question of title not affected by the grant—Res judicata—Civil Procedure Code (Act V of 1908) s 11* A suit filed in *formâ pauperis* was decided on the 10th February 1908 An application for leave to appeal in *formâ pauperis* was presented to the High Court on the 13th April 1908 but as it was beyond time it was rejected On an application to excuse the delay it was excused on the ground that the applicant having been a minor s 7 of the Limitation Act 1877 applied At the hearing it was objected that the application for permission to appeal in *formâ pauperis* must be treated as an appeal and that s 5 and not s 7 of the Limitation Act applied to it *Held* overruling the contention that whether the application was treated as falling under s 5 or under s 7 of the Limitation Act 1877 the result was the same If it fell under s 5 as an appeal, then under the second paragraph of that section which applied to appeal the Court had jurisdiction to excuse delay after the period of limitation prescribed for the presentation of an appeal had expired If on the other hand it be treated as an application and fell under s 7 of the Limitation Act it was clearly within time and there was no need of excusing delay because the section provided that a minor could apply after he had attained the age of majority within a certain period The probate is conclusive only as to the appointment of executors and the validity and the contents of the will and on the application for probate it is not the province of the Court to go into the question of title with reference to the property of which the will purports to dispose or the validity of such disposition CHINTAMAN VYANKATRAO v RAMCHANDRA VYANKATRAO (1910) I L R 34 Bom 589

——— ss 6 12—*Appeals under Indian Forest Act (V of 1882)—In calculating period of limitation for appeals under the Indian Forest Act time for obtaining copy of judgment not to be excluded* The provision in s 12 of the Limitation Act of 1877 that in computing the period of limitation prescribed for an appeal the time requisite for obtaining a copy of the order appealed against should be excluded does not apply to appeals under s 10 of the Madras Forest Act, 1882 The express power given to the Governor in Council by s 10 of the Forest Act to extend the time for appeal under this section shows that the Legislature did not intend that the general provisions of the Limitation Act should apply to such case The Madras Forest Act is a special and local enactment and the application of s 12 of the Limitation Act to appeals under that Act affects the period prescribed by that Act within the meaning of s 6 of the Limitation Act The provisions of s 6 of the Limitation Act exclude the applicability of s 12 of the Act in the case of appeals under s 10 of the Madras Forest Act *Reference under the Madras Forest Act 1882 I L R 10 Mad 210* dissented from *Veeramma v Abbiah I L R 18 Mad 99* followed VATTAKULAKARAN SOWDAKER ABU BACKER SAHIB v THE SECRETARY OF STATE FOR INDIA (1909) I L R 34 Mad 505

——— ss 7 and 8 and Art 44—*Alienation by guardian of the property of two wards members of an undivided Hindu family—Suit by both more than three years after elder s majority but within three years of the younger attaining majority—Limitation* According to ss 7 and 8 and Art 44 of the Limitation Act (XV of 1877) a suit brought by two brothers of an undivided Hindu family to set aside an alienation by their guardian more than three years after the elder attained majority is barred by limitation not only as regards the elder brother s share but also in respect of the younger brother s though the latter attained his majority within three years prior to the institution of the suit DORAISAMI SERUMADAN v NONDISAMI SALUVAN (1912) I L R 38 Mad. 118

——— s 8—*Putni Regulation (Reg VIII of 1819) s 14—Suit to set aside sale—All co sharers if must sue jointly—Parties—Right of minor co owner to sue separately—Limitation—Limitation Act (XV of 1877) s 8 Sch II Art 12—Ground of exemption from limitation if must be specified in plaint when plaintiff minor—Amendment—Civil Procedure Code (Act XIV of 1882) s 54* The decision in *Jogeshwar Roy v Raj Narain Mitter I L R 31 Calc 195 s c 8 C W N 168* did not lay down that under s 50 of the Civil Procedure Code (Act XIV of 1882) a plaintiff could not take advantage of any ground of exemption not set up in the plaint Nor did it lay down that in no circumstances should the plaintiff who has omitted to set up such a ground be allowed to amend his plaint When the plaintiff or all the plaintiffs is or are a minor or minors it is not usual for them to plead exemption from the law of limitation as prescribed by that section So too where one or more of several plaintiffs is or are a minor or minor if the provisions of s 8 of the Limitation Act (XV of 1877) apply time would not have commenced to run against any of them and it would not be necessary to expressly claim exemption One of several co owners of a *putni taluk* can alone institute a suit to set aside a *putni* sale as contemplated by s 14 of Reg VIII of 1819 provided the purchaser is made a party and the whole sale is sought to be set aside *Annoda Persad Roy v Erskine 12 B L R 370* referred to S 8 of the Limitation Act (XV of 1877) has no application to such a suit and a minor co owner would be entitled to bring such a suit even though the adult co owners have allowed their right to be time barred GANGADHAR SARKAR v KHAJA ABDUL AJIJ NAWAB SALIMULLA BAHADUR (1909) 14 C W N 128

LIMITATION ACT (XV OF 1877)—*contd*

——— s 8 Sch II, Art 179, expl I—*Limitation Act (IX of 1908) s 7—Minor decree holders—Applications for execution by guardian—Attainment of majority by one decree holder—Application by guardian takes effect in favour of all—Right of the major decree holder to give discharge to the judgment debtor in respect of the judgment-debt* Two minor sisters who were born in the years 1881 and 1887 obtained a decree against the defendants in May 1900 The minor decree holders were represented by a guardian appointed by the Court The said decree was confirmed by the High Court in appeal in March 1901 Subsequently the guardian presented applications for the execution of the decree in 1904 1905 and 1906 and while the last application was pending the guardian died Thereupon the decree holder presented an application for execution as majors in 1908 The defendants contended that as the elder decree holder had attained majority the application by the guardian was as to her unauthorized and the execution of the decree was barred as against her It was further contended that as the elder decree holder could from the time of her attaining majority make an application and give a good discharge to the judgment debtor to the decretal debt without the concurrence of the minor time had therefore run against both under s 8 of the Limitation Act (XV of 1877) or s 7 of the Limitation Act (IX of 1908) *Held* that by reason of the first explanation of Art 179 of the Limitation Act (XV of 1877) an application made by a representative of one of joint decree holders takes effect in favour of all Therefore though the elder decree holder had atttained majority the applications made by the guardian as the next friend of the minor decree holder took effect in favour of both *Held* further that th contention under s 8 of the Limitation Act of 1877 or s 7 of the Limitation Act of 1908 was inconsistent with the decisions in *Govindram v Tatia I L R 20 Bom 383* and *Zamir Hasan v Sundar I L R 22 All 199* the applicability of which had not ceased owing to any change in the words of s 7 of the Limitation Act of 1908 MANCHAND PANACHAND *v* KESARI (1910)
I L R 34 Bom 672

——— s 9—

See LIMITATION ACT (XV OF 1877) s 10 AND SCH II ART 148
I L R 35 All 227

——— s 10—*Will—Trustees—Suit by testator s sister for declaration of heirship and ownership of the residue of testator s estate—Resulting trust arising by operation of law—Limitation* One Jethabhai died on the 17th December 1889 after having made a will dated the 20th February 1889 The will gave certain legacies including one of Rs 300 to the plaintiff testator s sister Under the will five trustees were appointed and it provided as follows — Out of these five (trustees) Dave Gavrishankar Kushalji and my nephew (plaintiff s son) Desai Mojilal Premanand should both join and take possession of my properties after my death in accordance with the above will and with the consent of the remaining trustees they are to dispose of the properties in accordance with what is written in the above will and should any outstandings have to be recovered for giving effect to the said dispositions they are to do the same and I do by this will give them power to do

LIMITATION ACT (XV OF 1877)—*contd*

——— s 10—*contd*

whatever else they may have to do to carry out the will In the year 1906 the plaintiff having brought a suit for the declaration that she was the heir of the testator her brother and as such owner of the residue remaining after administering his property under the will and for the recovery of the residue a question arose as to whether the suit was time barred on the ground that there was no trust declared with regard to the residue and no direction given to distribute it among heirs at law *Held* that the suit was not time barred and that once the testator s property was vested in the trustees for a specific purpose it was not necessary that any resulting trust of the residue which necessarily arose by operation of law should be specified in words in the will in order to bring it within the scope of s 10 of the Limitation Act (XV of 1877) MOJILAL PREMANAND *v* GAVRISHANKAR KUSHALJI (1910)
I L R 35 Bom 49

——— s 10 Sch II Art 134—

See LIMITATION I L R 43 Calc 434

——— s 12—*Limitation Act (XV of 1877) ss 4 12—Appeal—Exclusion of time for taking copies—Decree signed after application—High Court—Practice—Rule treated as appeal* An appellant is entitled to the deduction of the time between the delivery of the judgment and the signing of the decree Where the intending appellant having applied for certified copies of the judgment and decree the copy of the judgment was delivered to him and at the same time an unused folio and the Court fee filed for the copy of the decree were also returned because the decree had not been signed and the applicant had to make a fresh application for a copy of the decree after it had been signed *Held* that the first application for a copy of the decree should be treated as pending all the time so that the applicant would be entitled to a deduction of the time between the signing of the decree and the date when the copy of the decree was ready to delivery When application for copy is made before the decree is signed the applicant is not entitled to a deduction of the time between the date of the application and the signing of the decree twice over when the same has been already excluded by reason of the decree not having been ready *Beni Madhub Mitter v Matungini Dassi, I L R 13 Calc 104* followed *Kali Sankar Bajpai v Baikunta Nath Sen 7 C W N 109* and *Dulali Bewa v Sarada Kinkar Palit 3 C W N 55* referred to The rule in this case was treated as an appeal subject to the condition that the order passed would take effect on payment by the successful applicant of proper Court fees *Mahomed Welluddin v Hakiman I L R 25 Calc 757* referred to TARABATI KOER *v* LALA JAGDEO NARAIN (1911)
15 C W N 787

——— s 12 Sch II, Art 152—*Party applying for portions of the record entitled to deduct time spent in obtaining them* Where a party appealing from the decree of a lower Court applies for copies of the judgment and decree at different times the time which he is entitled to exclude in computing the period of limitation for such appeal is the aggregate of the periods required to grant the copies after the applications were made *Raman Chetty v Kadirvelu 8 Mad L J 148*

LIMITATION ACT (XV OF 1877)—*contd*

——— s 12 Sch II Art 152—*contd*

referred to and approved SILAMBAN CHETTY v PAMANADHAN CHETTY (1909)
I L R 33 Mad 256

——— s 14—

See LIMITATION I L R 43 Calc 660
I L R 36 Mad 482

1 ——— *Court —Interpretation—Court in British India—Court in a Native State in India not included* The word Court as used in s 14 of the Limitation Act (XV of 1877) means a Court in British India and not a Court in a Native State of India CHANMALAPA CHENDASAPA v ABDUL VAHAB (1910)
I L R 35 Bom 139

2 ——— *Plaint returned for presentation in proper Court—Power of Court to fix a period of time for such presentation—Exclusion of time* For the purposes of determining limitation as governed by the provisions of s 14 of Act XV of 1877 the date of instituting the suit must be held to be the date on which the plaint was filed in the Court having jurisdiction to try it excluding only for the purpose of calculating limitation the period excluded under s 14 Where a plaint which had been presented on the last day of the period of limitation was subsequently returned by the Court for presentation within a week in the proper Court and was so presented five days later *Held* that the suit when so presented was barred by limitation as only the period during which the suit was pending in the Court without jurisdiction would be excluded under s 14 of the Limitation Act HARI DAS RAY v SARAT CHANDRA DEY (1913) 17 C W N 515

——— s 19—

See LEASE I L R 40 Mad 910

1 ——— Acknowledgment—*Step in aid of execution—Compromise to have part of decree executed at a later date* Whereupon a previous application for execution the case was compromised by a joint petition stating that a part of the decree had been satisfied and that the rest will be satisfied at a future date *Held* that this was an acknowledgment of the judgment debtor s liability which gave a fresh start to limitation under s 19 of the Indian Limitation Act *Held* further that s 19 of the Limitation Act applies to applications for executions of decrees *Pakhal Chander Tewari* v *Hemangini Debi 3 C L J 317 Ram Kumar Kur* v *Jakur Ali I L R 8 Calc 716* and *Toree Mahomed* v *Mahomed Mabood I L R 9 Calc 730* referred to *Quære* Whether a compromise made upon an application for execution reciting that the decree has been executed in part and that the rest of it would be satisfied hereafter and containing no reference to any further proceedings to be taken in execution is not a step in aid of execution *Ghansham* v *Mukh I L R 3 All 3 0* referred to BINDESWARI KOER v AWADH BEHARI LALL (1910)
15 C W N 82

2 ——— *Acknowledgment of debt by Collector or Deputy Collector as agent for Court of Wards save limitation under—Regulation V of 1804 s 2, Collector s powers under—Court of Wards powers of* Under Regulation V of 1804 as amended by Madras Act IV of 1899 the duties of the Court of Wards are not limited to the education of the minor but include the due preservation of the estate The Court of Wards has power to make an acknowledgment of a debt which would bind the ward and give a new starting point for limitation within the meaning of the Indian Limitation Act IX of 1877 s 19 By the power of delegation given in s 2 of Regulation V of 1804 the Collector has power to give such an acknowledgment as agent of the Court of Wards *Surya narayana* v *Narendra Thatraz I L R 19 Mad 255* distinguished *Beti Maharani* v *The Collector of Etawah I L R 17 All 198* commented on No distinction can be drawn between the powers of a Collector and those of Deputy Collector KONDAMODALU LINGA REDDI v ALLURI SARVARAYUDU (1910) I L R 34 Mad 221

3 ——— *Contract Act (IX of 1872) ss 208 and 209—Suit to recover money—Acknowledgment by defendant s Gumasta (agent) after his death—Death of the defendant not known to plaintiff—Limitation* Plaintiff s firm had dealings with one Haji Usman from the 5th January 1901 till the 25th October 1903 Haji Usman s business was managed by a *gumasta* (agent) Haji Usman died in or about March 1903 and the plaintiffs had no knowledge of his death On the 2nd June 1903 the *gumasta* wrote to the plaintiffs a post card stating you mention that there are moneys due as to that I admit whatever may be found on proper accounts to be owing by me you need not entertain any anxiety On the 30th May 1906 the plaintiffs brought a suit against the managers of Haji Usman s estate to recover a certain sum of money on an account stated The defendants pleaded the bar of limitation on the ground that there was no acknowledgment of the debt by a competent person *Held* that the suit was not time barred The *gumasta s* letter of the 2nd June 1903 was an acknowledgment within the meaning of s 19 of Limitation Act (XV of 1877) The case fell within the provisions of ss 208 and 209 of the Contract Act (IX of 1872) The termination of the *gumasta s* authority if it did terminate did not take place before the 2nd June 1903 as the plaintiffs did not know of the principal s death and the *gumasta* was bound under s 209 to take on behalf of his late principal all reasonable steps for the protection and preservation of the interests entrusted to him EBRAHAM HAJI YAKUB v CHUNILAL LALCHAND (1911)
I L R 35 Bom 302

4 ——— Acknowledgment—*Judgment debt acknowledgment of—Debt specified in insolvency petition* An application for execution of a decree was not time barred though made more than three years after a previous application where it appeared that the judgment debtor had in the meanwhile filed a petition of insolvency in which the judgment debt in question was specified The petition though it might not have been addressed to the creditors was nevertheless an acknowledgment within s 19 of the Limitation Act *Mani ram Sett* v *Seth Rupchand I L R 33 Calc 1047 10 C W N 874* relied on. RAMPAL SINGH v NAND LAL MARWARI 16 C W N 346

5 ——— *Mortgage—Redemption—Limitation—Acknowledgment* *Held* that an acknowledgment of the title of the mortgagor made by only one of two mortgagees would not avail to save the mortgagor s right to redeem being barred by limitation where the mortgage

LIMITATION ACT (XV OF 1877)—*contd*

was a joint mortgage and incapable of being redeemed piecemeal *Dharma v Balmukand I L R 18 All 458* followed JWALA PRASAD v ACHCHEY LAL (1912) I L R 34 All 371

6 ———— *Acknowledgment —Suit for redemption—Admission in plaint that a certain person had a right to redeem as a co mortgagor* Where in a suit for redemption of a mortgage the plaintiffs who were purchasers of a portion of the mortgaged property admitted in their plaint the right of a representative of one of the original mortgagors to redeem it was *held* that this was a good acknowledgment within the meaning of s 19 of the Indian Limitation Act 1877, and enured in favour of the representatives of the person so mentioned *Sukhamoni Choudhrani v Ishan Chunder Roy I L R 25 Calc 844 I R 25 I A 95* referred to BALESHAR v RAM DEO (1914) I L R 36 All 408

7 ———— *Limitation—Acknowledgment—Authority of managing partner to acknowledge a debt as due by the firm—Receiver* *Held* that the manager of a firm who has power to borrow and repay money on behalf of the firm has power also to acknowledge a debt by either immediately giving a promissory note or subsequently upon an adjustment of accounts or in any other way in the course of business making *bond fide* admissions in writing *Held* also that where in the course of a suit for dissolution of partnership a receiver has been appointed to discharge the debts and liabilities of the firm the mere fact that a claim which was within time when made is not adjudicated upon by the Court until after the expiration of more than three years does not render the claim a bad claim against the partnership assets LALTA PRASAD v BABU PRASAD (1909) I L R 32 All 51

———— ss 19 20—

See EXECUTION OF DECREE I L R 43 Calc 207

———— ss 19 20 21—

———— Acknowledgment by one partner binding on others —The mere fact that one of the partners of a going concern is in charge of a branch of such concern cannot lead to the inference that such partner has authority to bind the firm by an acknowledgment when pressed for payment A letter by one of two partners to a creditor acknowledging the debt due and asking such creditor to correspond with and supply goods to the other partner on behalf of the firm cannot be construed as authorizing such other partner to make an acknowledgment which will bind the firm for the purposes of limitation SHAIK MOHIDEEN SAHIB v THE OFFICIAL ASSIGNEE OF MADRAS (1911) I L R 35 Mad 142

———— s 19 Sch II Arts 120 and 148—*Acknowledgment by widow in possession of husband's estate not binding on reversioner—Limitation—Act No XIV of 1859 (Limitation) s 1 cl 15* *Held* that the widow and daughter of a mortgagee in possession as such of the mortgaged property are not competent to give an acknowledgment of the title of the mortgagor so as to save limitation within the meaning of the Indian Limitation Act 1877 *in respect* of a suit for redemption brought by the representative in interest of the original mortgagor against the reversioners *Bhagwanta v Sukhi I L R 22 All 33* and *Chhidu Singh v Durga Dei I L R 22 All 382* referred to *Held* also that unless there is a distinct provision to the contrary the validity of an acknowledgment set up by a plaintiff as saving limitation in his favour must be decided with reference to the law in force when the suit is brought and not with reference to that in force when the acknowledgment was made *Gurupadapa Basapa v Virbhadrapa Irsangapa I L R 7 Bom 459* referred to SHIB SHANKAR LAL v SONI RAM (1909) I L R 32 All 33

LIMITATION ACT (XV OF 1877)—*contd*

———— s 19 Sch II Arts 120 and 148—*contd*

———— s 19 Sch II Art 148—

See LIMITATION (1) I L R 37 Bom 326

———— *Acknowledgment effect of—Acknowledgment by widow in possession of husband's estate—Suspension of limitation—Act XV of 1877 s 9—Act XIV of 1859 s 1 cl 15—Res judicata—Contentions raised for the first time on appeal to His Majesty in Council—Practice of Privy Council* In a suit brought by the appellant on the 4th of March 1907 against the respondents for the redemption of a mortgage dated the 2nd of January 1842 made between the respective predecessors in title of the parties and in which no date for redemption was specified acknowledgments of the mortgagor s right had been made by the widow and daughter of a former mortgagee a predecessor in title of the respondents which the appellant contended extended the period of limitation *Held* that the law of limitation applicable to the case was not Act XIV of 1859 the law in force at the date of the acknowledgments but Act XV of 1877 which was in force at the time of the institution of the suit Under Art 148 of Sch II to that Act the period of limitation prescribed for a suit to redeem a mortgage was 60 years from the time when the right to redeem accrued and by s 19 an acknowledgment to be effective must be signed by the party against whom such right is claimed or by some person through whom he claims title *Held* that the respondents derived title through the last male owner and not through his widow and daughter who were therefore not competent under s 19 to make an acknowledgment of the right of redemption so as to bind any interests except their own To hold otherwise would be to extend the power of a Hindu female in possession of a limited interest to bind the estate to an extent which was not sanctioned by authority An acknowledgment of liability only extends the period of limitation within which the suit must be brought and does not confer title and with reference to s 2 of Act XV of 1877 was not a thing done within the meaning of s 6 of the General Clauses Consolidation Act (I of 1868) There was nothing in Art 148 of Sch II of Act XV of 1877 to justify a holding that by reason of the fusion of the interests of the mortgagor and mortgagee (which it was alleged took place between the years 1883 and 1898) the period of limitation which began to run on the 3rd of January 1842 was suspended which would be deciding contrary to s 9 of the Act this suit not being one to which the proviso to that section applied *Burrell v Earl of Egremont 7 Beav 205* distinguished. The present suit was not barred as *res judicata* by a former suit in 1904 With regard to contentions raised on this

LIMITATION ACT (XV OF 1877)—*contd*

———— s 19 Sch II Art 143—*contd*

appeal which had not been rai ed before at any stage of the case and consequently had not been considered by any of the Courts below nor were even sugge ted in the rea ons in the ca e of the appellant to England their Lordships adhered to the establi hed practice of the Board not to allow new ca es to be made for the first time on appeal to His Majesty in Council SONI RAM v KANHAIYA LAL (1913) I L R 35 All 227

———— s 20—*Payment of interest on behalf of minor by manager of a joint Hindu family effect of—Duly authorised Agent* A payment of interest by the manager of a joint Hindu family consi ting of himself and his minor brothers is a payment by the duly authorised agent of the minors within the meaning of s 20 of the Limitation Act 1877 SARADA CHARAN CHAKRAVARTI v DURGARAM DE SINGHA (1910) I L R 37 Calc 461

———— s 22—

See MORTGAGE I L R 38 Calc. 342

See NEGOTIABLE INSTRUMENT I L R 33 Mad 115

See PARTIES I. L R 37 Calc. 229
I L R 33 All 272

———— *Assignment of original plaintiff's rights—Addition of assignee as plaintiff—S 22 inapplicable—Jungle or forest lands in zamindari—Presumption of ownership of kudivaram in the zamindar—Onus of proving contrary on ryots* The presumption as regards waste land jungle or forest land in a zamindari is that the *zamindar* is the owner not only of the *melwaram* but also of the *kudivaram* and the *onus* is on the ryots to show that the *kudivaram* right is vested in them S 22 of the Limitation Act (XV of 1877) does *not* apply to a case where a plaintiff is added in the course of a suit in consequence of assignment of rights from the original plaintiff but is confined to cases where the new plaintiff is added or substituted in his own right so that he may himself be considered to be instituting a suit to enable him to litigate a right for himself independently of the rights of the original plaintiff ARUNACHELLA AMBALAM v ORR (1914) I L R 40 Mad 722

———— ss 22, 28—*Civil Procedure Code (Act XIV of 1882) s 31—Civil Procedure Code (Act V of 1908) O I r 9—Lands attached to vatan—Joint owners—Lease—Lease good till the death of the surviving joint owner—Gordon Settlement of 1864—Suit by representatives of one joint owner to recover possession—Representatives of the other joint owner joined as co defendants with the representatives of the lessee—Plaintiff's claim allowed to the extent of their share—Appeal by plaintiffs and co-defendants claiming their share—Limitation—Treatment of co-defendants as co plaintiffs—Amendment of plaint and decree* Certain lands attached to a vatan belonged jointly to two brothers V and D In the year 1872 the lands were let by V under a perpetual lease which was attested by D D predeceased V In the year 1905 within twelve years from the death of V his representatives brought a suit for the recovery of the lands let by V They sought to recover the entire lands on the ground of eldership The suit was brought against defendants 1a 1b and 1c as the heirs of the mortgagee of the les ee (the original 1st defendant) against defendants 2 and 3 as the heirs of the les ee and against defendants 4 and 5 as the heirs of D The heirs of defendant 1 and defendants 2 and 3 defended the suit on the ground *inter alia* of limitation the suit not having been brought within twelve years from the date of the lease Defendants 4 and 5 did not contest the plaintiff's claim The first Court allowed the plaintiff's claim to the extent of their share namely a moiety on the ground that their claim to that extent was not time barred On appeal by the plaintiffs and defendants 4 and 5 the latter of whom in appeal claimed their share namely the other moiety the Appellate Court awarded the other moiety to defendants 4 and 5 On second appeal by the heirs of the mortgagee *Held* affirming the decree tha the whole claim was within time A Vatandar is entitled to alienate vatan lands for the term of his natural life and his children although not separate in interest from him have no right to object to such alienation until after his death Where a lease of vatan property is effected by one joint owner with the consent of the other joint owner the time for the recovery of the vatan property from the lessee runs from the date of the death of the survivor of the joint lessors Defendants 4 and 5 having sought to recover in appeal their share which they had not asked for in the first Court *Held* allowing their claim that they being parties to the suit instituted within the twelve years during which their right to a share in the vatan property could be effectually determined the Court must deal with the matter in controversy so far as regards the rights and interests of the parties actually brought before it by the institution of the suit A party transferred to the side of the plaintiff from the side of the defendant is not a new plaintiff to whom the provisions of s 22 of the Limitation Act (XV of 1877) apply *Nagendrabala Debya* v *Tarapada Acharjee I L R 35 Calc 1065* concurred in Plaint and decree of the lower Appellate Court amended by entering defendants 4 and 5 as co plaintiffs NARSINGH v VAMAN VENKATRAO (1909) I L R 34 Bom 91

———— s 23 Sch II Parts 36 115 116—*Transfer of Property Act s 76 92—Mortgagor's right to compensation for property not delivered to him is based on a continuing obligation and time does not run till redemption—Time runs under Art 36 of Limitation Act from date of tort and not from date of knowledge* Under s 92 of the Transfer of Property Act the mortgagor on paying the mortgage debt is entitled to be put in possession of the mortgaged properties and the obligation to do so is a continuing obligation on the mortgagee which cannot cea e so long as the right of redemption is not barred The right of the mortgagor under s 76 of the Transfer of Property Act to have accounts taken and to debit the mortgagee with the loss caused to the mortgaged property is cumulative and does not take away the remedy *under s 92 of the Act* Where the mortgagee in po ses ion who is bound by the terms of the mortgage deed to pay the Government revenue due on the land neglects to do o and the mortgaged land is sold a suit for compen ation by the mortgagor brought more than six years after such *sale and less than six years from the date of the* decree in the redemption suit brought by the

LIMITATION ACT (XV OF 1877)—*contd*

——— s 23, Sch II, Parts 36 115 116 —*contd*

mortgagor is not barred under Arts 115 and 116 of the Limitation Act read with s 23 of the Act The express covenant in the mortgage deed by the mortgagee to pay the Government revenue only states in words the liability of the mortgagee under s 76 of the Act and does not curtail the general obligation of the mortgagee under the Act In suits for compensation for tort to immoveable property the period of limitation prescribed in Art 36 of Schedule II of the Limitation Act runs from the date of the tort and not from the time when the plaintiff has knowledge of such tortious Act SIVACHIDAMBARA MUDALIAR v KAMATCHI AMMAL (1909) I L R 33 Mad 71

——— s 26—

See FISHERY I L R 39 Calc 53

——— s 28 Sch II, Arts 124 144—

See RELIGIOUS FOUNDATION I L R 35 Mad 92

——— Sch II Arts 2 61 62 120—*Limitation—Suit to recover from a Municipal Board money alleged to have been illegally levied as octroi duty—Municipal Board s powers of taxation* A Municipal Board in disregard of certain lawful orders of the Government of India levied upon a Company trading within the municipal limits certain sums by way of octroi duty over and above what they were legally entitled to levy *Held* on suit by the Company to recover from the Board the sums so levied that (i) the suit would lie and (ii) that the suit was one for money had and received to the use of the defendant within the meaning of Art 62 of the second Schedule to the Indian Limitation Act 1877 *Morgan* v *Palmer 2 B & C 729 26 R R 537* and *Neate* v *Harding 6 Exch 349 86 R R 328* referred to *Seth Karimji* v *Sardar Kirpal Singh Punj Rec 1886 283* dissented from RAJPUTANA MALWA RAILWAY CO OPERATIVE STORES LD v THE AJMERE MUNICIPAL BOARD (1910) I L R 32 All 491

——— Sch II Art 11—*Civil Procedure Code Act XIV of 1882 ss 278 281 283—Art 11 of the Limitation Act not applicable where judgment debtor no party to proceedings under s 278 of the Civil Procedure Code* Where in a claim proceeding under s 278 of the Civil Procedure Code the judgment debtor has not appeared and there has been no adjudication between him and the claimant the period of limitation prescribed by Art 11 of Sch II of the Limitation Act will not apply to a suit brought by the defeated claimant to establish his right against the judgment debtor SADAYA PILLAI v AMURTHATHACHY (1910) I L P 34 Mad 533

——— Sch II, Art 12—

See MUTT HEAD OF I L R 38 Mad 356

——— Sch II Art 14—*Order—Suit to set aside order—Collector—Order ultra vires—Land Revenue Code (Bom Act V of 1879) s 37* Art 14 of the Second Schedule of the Indian Limitation Act only applies to orders passed by a Government Officer in his official capacity The article does not apply to orders which are *ultra vires* of the officer passing them When a Collector passes an order under the provisions of s 37 of the Land Revenue Code (Bom Act V of 1879) with reference to land which is *primâ facie* the property of an individual who has been in peaceful possession thereof and not of the Government, he is not dealing with that land in his official capacity but is acting *ultra vires* MALKAJEPPA v SECRETARY OF STATE FOR INDIA (1911) I L R 36 Bom 325

——— Sch II Art. 35—

See HUSBAND AND WIFE I L R 37 Bom 393

——— Restitution of conjugal rights, suit for—*Where after demand and refusal differences are made up time will not run until there is a fresh demand and refusal—Agreement between husband and wife providing for future separation how far valid under Hindu and English law—The Madras Civil Courts Act III of 1873 s 16* Where after demand by the husband and refusal by the wife to return to cohabitation the parties make up their differences limitation will not run under Art 35 of Sch II of the Limitation Act of 1877 until there is a fresh demand and refusal *A* a Hindu Brahmin after refusal by his wife *B* to return brought a suit for restitution of conjugal rights in 1903 The suit terminated in a compromise between *A* and *B* in July 1904 by which it was agreed that *B* should return and live with *A* and that if at any time thereafter she should desire to live apart from *A* she was to be paid Rs 300 by *A* *B* never returned to live with *A* who on 6th July 1907 brought a suit for restitution alleging a demand and refusal in February 1907 *Held* that the suit was not barred under Art 35 of Sch II of the Limitation Act and that the demand and refusal prior to 1903 did not furnish the starting point for limitation —*Held* also that the agreement between *A* and *B* in July 1904 providing for a future separation was invalid It was forbidden by the Hindu Law which ought under s 16 of Madras Act III of 1873 to be applied in determining the martial obligations between the parties *Tekait Mon Mohini Jemadai* v *Basanta Kumar Singh I L R 28 Calc 751* referred to Such agreement must also be considered as opposed to public policy and unenforceable *Meheraliy* v *Sakerkhanoobai 7 Bom L R 602* referred to Even under the English law the agreement providing for a future separation was invalid and would not operate as a bar to a suit for restitution of conjugal rights KRISHNA AIYAR v BALAMMAL (1910) I L R 34 Mad 398

——— Sch II Arts 36 115 and 120—*Contract to sell another s goods without authority breach of—Cause of action only in contract and not in tort as on misrepresentation—Contract Act (IX of 1872) s 235* A suit against a person for breach of contract to sell to the plaintiff certain goods of another on the implied representation that he had authority from his principal to sell them when in fact he had done is not one arising in tort or independent of contract but one arising out of and incident to a contract and is governed by Art 115 of the Limitation Act (XV of 1877) and not by Art 36 or 120 S 235 of the Contract Act discussed VAIRAVAN v AVICHA (1913) I L R 38 Mad. 275

——— Sch II Arts 39 109—*Art 109 not applicable where profits not received by defendant —Claim for mesne profits when plaintiff kept out of*

LIMITATION ACT (XV OF 18 7)—*contd*

——— Sch II, Arts 39 109—*contd*

possession is a suit for damages and falls within Art 39—Judgment for possession effect of A suit for mesne profits by a plaintiff who had been kept out of possession by the defendant does not for purposes of limitation fall within Art 109 of Sch II of the Limitation Act when no profits have been actually received by defendant Such a suit is one for damages for trespass on immoveable property and falls under Art 39 of Sch II *Abbas v Fasihud Din 24 Calc 463* not followed A judgment for possession against a defendant must be deemed to decide that the defendant was in possession at least at the date of judgment RAMASAMI PEDDI v AUYYI LAKSHMI AMMAL (1909) I L R 34 Mad 502

——— Sch II, Arts 44 91—

See EXECUTOR DE SON TORT I L R 36 Mad 575

See MAHOMEDAN LAW—ALIENATION I L R 34 All 213

——— Sch II Arts 48 49—*Illegal distraint and consequent removal and misappropriation of crops—Suit for damages* Where in execution of an illegal distraint the defendant cut the crop standing on plaintiff s land and removed the same *Held* that a suit by the plaintiff for damages in respect of these acts was a suit in respect of specific moveable property within one or other of the two Art 48 and 49 of Sch II of Act XV of 1877 *Hari Charan v Hari Kar 9 C W N 367 I L R 32 Calc 459* distinguished. *Sripati Sarkar v Hari Kar 1? C W N 1090* reversed JADU NATH DANDUPAT v HARI KAR (1913) 17 C W N 308

——— Sch II Art 49—

See LIMITATION (8) I L R 38 Calc 284

——— Sch II, Arts 49 120 145—

See LIMITATION I L R 38 Calc 284

——— Sch II Arts 49 145—*Where depositary refuses on demand to return thing deposited Art 145 and not Art 49 applies* Where moveable property is deposited and the depositary on demand by the depositor refuses to return the thing deposited the period of limitation applicable to a suit to recover such property is that provided in Art 145 and not that in Art 49 of the Limitation Act The fact that the possession after demand and refusal is wrongful does not make Art 49 applicable *Obiter* Where a thing is deposited for safe custody the depositor has the right to demand the return of the thing at any time although the deposit might have been for a term GANGENNI KONDIAH v COTTIPATI PEDDA KONDAPPA NAIDU (1909) I L R 33 Mad 56

——— Sch II Arts 61 83 116 120—*Contract Act IX of 187 ss 70 2—Suit by agent against principal to recover moneys spent by him fall under Art 61 of Sch II of the Limitation Act and not under Art 116 or 120* The duty of the principal under s 222 of the Contract Act to indemnify the agent is an obligation imposed by law and is attached to the relation of principal and agent constituted by act of parties Where a registered contract of agency does not provide for such indemnity such obligation cannot be treated as a term or part of such contract and a suit by

LIMITATION ACT (XV OF 1877)—*contd*

——— Sch II Arts 61 83 116 1[illegible] —*contd*

the agent for recovering moneys spent by on account of his principal will not for pu[rposes] of limitation fall within Art 116 of Sch II o[f the] Indian Limitation Act Art 83 of Limitatio[n] will not apply and even if it did limitatio[n] begin to run from the date of such paymen[t] not from the termination of the agency Th[e fact] that the agent has under s 217 a right of re[tainer] out of sums received on account of his pri[ncipal] and a right of lien under s 2 2 will not p[ostpone] the right of action until the termination o[f the] agency The right of the agent to reco[ver is] conferred by s 70 of the Contract Act and [there] is nothing to prevent his making his claim i[mme]diately after he expended his own moneys [The] article applicable to such cases is Art 61 o[f Sch] II of the Limitation Act That article i[s not] confined to cases where the defendant is un[der a] legal liability to make the payment but is applicable to cases falling under s 70 of the [Con]tract Act KANDASWAMY PILLAI v AVAYA[...] (1910) I L R 34 Mad

——— Sch II Arts 62 97—

See LIMITATION I L R 46 Calc

——— Sch II Art 85—*Limitati[on]* *Current mutual account* *Held* that a mu[tual] account within the meaning of Art 85 of [the] second schedule to the Indian Limitation [Act] 1877 is an account of dealings between two pa[rties] which are such as to create independent obliga[tions] in favour of one party against the other *Ga[...] v Gyanu I L R 2[.] Bom 606* and *Ram Ja[...] v Harbans Singh 6 C L J 158* follo[wed] *Bhawan Singh v Tila Ram All Weekly [...] (1896) 186* referred to CHITTAR MAL v B[...] LAL (1909) I L R 32 All

——— *Mutual account* *te[...]* Where the course of dealing between *A* and *B* [was] that *A* should finance *B* and that *B* should kee[p him] secured in respect of such advances by cons[ign]ments of coffee of a value equal to his indebtedn[ess] the account between *A* and *B* though current [and] open is not mutual within the meaning of [Art] 85 of Sch II of the Limitation Act Altho[ugh] the balance may shift from one side to the ot[her] such shifting balance is not conclusive as a te[st of] mutuality Payments made on account by [one] party and credited by the other whether in mo[ney] or goods do not render the account mutual Th[ere] must be independent obligations on both si[des] to make the account mutual *Hirada Basa[...] v Gadigi Muddappa 6 Mad H C R 142* refer[red] to SAMI GOWDA v FERNANDES (1910) I L R 34 Mad [...]

——— Sch II Art 89 s 8—

See ACCOUNTS SUIT FOR I L R 44 Calc

——— Sch II, Arts 89 115—*Suit [for] accounts against collecting agent—No express sti[pu]lation to account yearly* In the absence of [an] express contract that account should be rende[red] at the end of each year a suit by a landlord [for] accounts against his collecting agent is gover[ned] by Art 89 of Sch II of the Limitation Act ([XV] of 1877) *Mati Lal Bose v Arun Chand Ch[...] godlay 1 C L J 211* distinguished *Jo[...] Nath v Deb Nath 8 C W N 115* and *Shib Chan[...]*

LIMITATION ACT (XV OF 1877)—*contd*

——— Sch II Arts 89 115—*contd*

v *Chandra Narain I L R 32 Calc 719* followed DEBENDRA NATH GHOSH v SHEIKH ESHA HUQ MISTRI (1908) **14 C W N 121**

——— Sch II Arts 89 115 116 132—*Suit against gomasta for account—Hypothecation of immoveable property to secure agent s liability—Limitation—Registered contract—Stipulation to furnish periodical accounts* Ordinarily speaking a suit by a principal against his agent for an account is governed by Art 89 of the Limitation Act (XV of 1877) and the period in three years from either the demand for and refusal of such account or the termination of the agency Where however there is a definite contract to account at the end of each year the appropriate Art would be 115 as the contract would be broken by the failure of the agent to account at the end of each year In either case if the contract be registered Art 116 applies and the period is 6 years *Mati Lal Bose v Amin Chand Chattopadhyay 1 C L J 211* relied on The fact that the agent had executed a *kabuliyat* whereby he had hypothecated certain immoveable properties to secure his liability would not alter the nature of the suit so as to make Art 132 of same Schedule applicable JOGESH CHANDRA v BENODE LAL ROY CHOUDHURY (1909) **14 C W N 122**

BUT *See* PRINCIPAL AND AGENT **I L R 43 Calc 248**

——— Sch II Art 91—*Undue influence—Lease suit to set aside on the ground of—Applicability of the Article—Suit for possession—Whether setting aside lease by decree of Court necessary—Repudiation of lease by the plaintiff if sufficient—Suit for setting aside lease if barred suit for possession also barred—Trusts Act (II of 1882) ss 86 89 90 91 and 96—Transfer of Property Act (IV of 1882) s 126—Contract Act (IX of 1872) ss 64 and 66—Custom of inalienability in a zamindari onus of proof as to—Evidence nature of* Where the plaintiff sued in 1904 to recover possession of certain lands which had been leased by his deceased father under two registered lease deeds dated 5th November 1889 and 2nd June 1893 respectively to the deceased father of the defendants on the ground that the leases were obtained by undue influence exercised by the father of the defendants on the plaintiff s father and the father of the defendants had died in 1899 *Held* that the suit was barred by limitation under Art 91 of the Limitation Act (XV of 1877) A transfer which is voidable and which can be effected only by a registered instrument can be avoided only by a formal re transfer or by a decree of Court *Janki Kunwar v Ajit Singh I L R 15 Calc 58* explained and applied S 86 of the Indian Trusts Act even if it were applicable to the case is not available to the plaintiff because there was no allegation in the plaint that a notice of rescission was given to the defendants or their father before the suit and the suit itself can operate as a notice to the defendants only when a copy of the plaint was served on them after the suit was duly instituted The defendants therefore were not trustees as the date of the suit and the right to immediate possession had not then vested in the plaintiff by virtue of the said section Ss 86 and 89 of the Indian Trusts Act are not applicable because s 96 of the said Act will operate to prevent their application as it enacts that no obligations under Chapter IX of the Trusts Act (which contains ss 86 and 89) can be created in evasion of the provisions of any law The onus of proving in alienability in the case of a zamindari lies on the person who alleges it *Sundaram v Sitammal I L R 16 Mad 311* dissented from A perpetual lease reserving no rent to the Zamindar except a sum which was payable wholly to the Government towards the revenue due on the leased lands is really an absolute conveyance of the properties The case law on the subjects reviewed RAJA RAJESWARA DORAI v ARUNACHALLAN CHETTIAR (1913) **I L R 38 Mad 321**

——— Sch II Arts 91 141—*Limitation—Suit to recover property sold by guardian during minority of plaintiff—Cancellation of sale deed ancillary—Decree for possession conditional upon restoring such portion of the consideration as was for the minor s benefit* *Held* that in the case of a suit to set aside an alienation of the plaintiff s property made during his minority by his guardian the limitation applicable is that prescribed by Art 141 of the second Schedule to the Indian Limitation Act 1877 *Unni v Kunchi Amma I L R 14 Mad 26* followed *Abdul Rahman v Sukh dayal Singh I L R 28 All 30 Hamman Kunwar v Tiloki I L R 25 All 435* and *Ram Dei Kunwar v Abu Jafar I L R 27 All 494* referred to When however such a sale is in part for the benefit of the plaintiff he is in equity liable to make good to the purchasers the portion of the consideration by which he benefited and he would be entitled to recover the property only on condition of his paying to the purchasers that portion of the consideration *Gobind Singh v Baldeo Singh I L R 25 All 330* referred to BACHCHAN SINGH v KAMTA PRASAD (1910) **I L R 32 All 392**

——— Sch II Art 95—

See PRINCIPAL AND AGENT **I L R 37 Calc 81**

——— Sch II Arts 95 141—

See HINDU LAW—REVERSIONER **I L R 45 Calc 590**

——— Sch II Art 98—

See HINDU LAW—DEBTS **I L R 33 Mad 308**

——— Sch II Art 104—*Muhammadan law—Dower—Wife put into possession of husband's property in his lifetime and subsequently dispossessed—Suit by her heir for balance of dower debt—Limitation* *Held* that Art 104 of Sch II of the Indian Limitation Act 1877 (Art 104 Sch I Act IX of 1908) does not apply to a suit by one of the heirs of a Muhammadan widow who having been put into possession of her husband s property during his life time in lieu of her dower is dispossessed thereof subsequently to his death HAMID ULLAH KHAN v NAJJO (1911) **I L R 33 All 563**

——— Sch II Art 106—*Suit for partnership account—Presumption of dissolution of partnership from facts of case—Cessation of annual accounts rendered yearly for many years and rendering of final account showing division of capital and revenue* The question in this appeal which arose out of a suit brought in 1902 for a partnership account and to recover the plaintiff's share in the

LIMITATION ACT (XV OF 1877)—*contd*

——— Sch II Art 106—*contd*

Properties of a business carried on by them and the defendant was whether the suit was barred by limitation the defendants contending that there had been a dissolution of the partnership in 1891 which the plaintiffs denied *Held* (affirming the decision of the High Court) that when annual accounts of the partnership business which had been rendered year by year from 1868 to 1891 ceased in the latter year and on 12th April 1891 a final account showing the division of both capital and revenue was made out the defendants afterwards carrying on the business without any interference from the plaintiffs the presumption was in favour of the dissolution of the partnership as at the definite date of the year when the account was thus closed And their Lordships were of opinion that these facts taken with the other acts and conduct of the parties and the whole circumstances of the case which greatly strengthened the presumption made the inference in favour of the dissolution having occurred at the above date substantially conclusive The suit therefore not having been brought within three years from that date was barred by Art 106 of Sch II of the Limitation Act (XV of 1877) JOOROODY SARAYYA *v* LAKSHMANASWAMY (1913)
I L R 36 Mad [P C] 185

——— Sch II, Art 109—*Suit for mesne profits of putni taluk sold under Reg VIII of 1819* Art 109 of the Limitation Act (XV of 1877) which prescribes a three years rule of limitation is applicable to a suit for mesne profits where possession of the property in suit viz a *putni taluk* was obtained by the defendant under a sale held under Reg VIII of 1819 which was subsequently set aside SARAJ PANJAN CHOUDHURY *v* PREMCHAND CHOUDHURY (1917) **22 C W N 263**

——— Sch II, Art 110—*When arrear becomes due—Limitation runs under Art 110 only from date when rent is ascertained by proceedings under Rent Recovery Act* In the case of rents recoverable under the provisions of the Rent Recovery Act such rents become ascertained only when they have been ascertained by means of the procedure provided by the Act In a suit brought by the tenants against their landlord for a declaration that the latter was not entitled to vary the terms of previous pattas judgment in favour of the tenants was given by the High Court in August 1902 Prior to that date the landlord had instituted summary suits under the Rent Recovery Act against the tenants to enforce acceptance of pattas by them in respect of the same lands and the decision in those cases was given by the Sub Collector in May 1904 The landlord tendered pattas as directed in the summary suits and brought suits for rent within three years from the date of the summary decisions but more than three years from the date of the High Court judgment —*Held* in the circumstances that the rent was ascertained and the arrears became due within the meaning of Art 110 of Sch. II of the Limitation on the date of the judgment in the summary suits and not on the date of the Act on judgment of the High Court *Arunachalam Chettiar* v *Kader Rowthen I L R 9 Mad 506* distinguished. *Rangayya Appa Rao* v *Bobbi Sriramulu I L R 27 Mad 143* referred to SYED GULAM GHOUSE SHA SAHIB *v* SHUNMUGAM PILLAI (1910) **I L R 34 Mad 438**

LIMITATION ACT (XV OF 1877)—*contd*

——— Sch II, Arts 110 116—

See LIMITATION **I L R 44 Calc 759**

——— *Suit to recover rent on a registered lease—Limitation Held* that a suit for the recovery of rent based upon a registered lease is governed as to limitation not by Art 116 but by Art 110 of the Limitation Act 1877 *Ram Narain* v *Kamta Singh I L R 26 All 138* followed JAGGI LAL *v* SRI RAM (1912)
I L R 34 All 464

——— Sch II Arts 113 144—

See CHAUKIDARI CHAKARAN LANDS
I L R 46 Calc 173

——— Sch II, Art 116—

See CONTRACT **I L R 34 All 429**

See LEASE **I L R 40 Mad 910**

——— Sch II, Art 118—

See CUSTOMS **I L R 39 Calc 418**

——— Sch II Art 120—

See CIVIL PROCEDURE CODE 1882 s 103
I L R 33 Mad 31

See LIMITATION (8)
I L R 38 Calc 284

See LIMITATION (11)
I L R 40 Calc 187

See MAHOMEDAN LAW—ENDOWMENT
I L R 37 Calc 263

——— *Vatan—Suit by reversioner for declaration as nearest heir—Widow of the last male holder—Vested right* The right to sue for a declaration of heirship to a vatan does not accrue until the death of the widow of the last male holder of the vatan the widow having a vested interest in it as the nearest heir RAVZI VALAD MAHADU *v* SAKUZI VALAD KALOZI (1909)
I L R 34 Bom 321

——— *Limitation Act (XV of 1877) Sch II Art 120 123—Suit by widow of Mahomedan for share against son who got order for grant of letters of administration but did not take out same— Representative —Time from which limitation runs* Where on the death of a deceased Mahomedan a contest amongst his heirs as to who should take out letters of administration was decided in favour of the defendant No 1 but he did not furnish security and the order for grant of letters of administration was thus never completed *Held* that if Art 120 of Sch II of the Limitation Act applied to a suit by one of the other heirs to recover her share from the defendant No 1 who was in possession limitation ran at the earliest from the date of the decision of the Appellate Court affirming his right to take out letters of administration *Quære* The other members of the family of the deceased having also been joined as defendants whether defendant No 1 could be allowed to obtain for himself any advantage by urging that he never in fact became the legal representative of the deceased within Art 123 of Sch. II of the Act not having actually taken out letters of administration FAYEZ ALI KHAN *v* SITABA BEGUM (1910) **15 C W N 10**

——— *Attachment of wrong man s property —No suit filed—Subsequent sale of property under attachment—Fresh cause of action*

LIMITATION ACT (XV OF 1877)—*contd*

——— Sch II Art 120—*contd*

from date of sale—Art 120 applicable—Absence of suit questioning attachment no bar to subsequent suit on sale Though attachment of a person s land as if it belonged to another gives the owner a cause of action on which he could have brought a suit but did not yet the sale of the same at a later date is a fresh and greater invasion of his right and gives him a fresh cause of action on which he could sue within six years from the date of sale under Art 120 of the Limitation Act Though he might have sued after the attachment he was not bound to sue The sale though held in pur uance of the attachment was not a necessary consequence of it *Robert Skinner v Shank r Lal I L R 31 All 10 (note)* followed Per CURIAM The attachment gives the judgment creditor cer tain rights in execution but the title to the pro p rty continues in the owner notwith tanding the attachment and it so con inues even if the owner s objection to the attachment be di allowed *Narasimha Rau v Gangaram 18 Mad L J 590* referred to ANANTHARAZU v NARAYANARAZU (1913) I L R 36 Mad 383

——— *Suit by an ex trustee for re imburse m nt governed by—Rights of bond fide de facto trustees for bond fide expenses* A trustee of a public trust has a first charge on the trust properties for the purpose of reimbursing himself advances properly made for the trust and Art 120 and not Art 132 of the Limitation Act (XI of 1877) is the one applicable to a suit for recovery of monies so spent and the right to sue does not accrue before the date on which he judicially declared to be no longer a lawful trustee (though it may well be that it does not accrue till he is dis possessed of the trust estate in pursuance of the judicial declaration) *Peary Mohun Mukerjee v Narendra Nath Mukerjee I L R 37 Calc 229* followed The expenses of a suit in which a person posing himself to be a trustee unsuccessfully resists another s right to be the trustee cannot be allowed as a proper charge on the trust p operty *Obi er* The time occupied in defending such a suit as the rightful trustee when no counter claim is made therein for re imbursement of the expenses made by him but only a claim to remain in posses sion for such expenses cannot be deducted in his favour under s 14 of the Limitation Act *Maha rajah Jugutendur Bunwaree v Din Dayal Cha ter jee 1 W R 309* followed ABKAN SAHIB v SORAN BIVI SAIBA AMMAL (1913) I L R 38 Mad 260

——— Sch II Arts 120 123 144—*Period of Limitation applicable to suit by Muhammadan to re over his share of his decea ed wife s estate* Art 123 of Sch II of the Limitation Act of 1877 applies only when the suit is for a share of an estate which it is the legal duty of the defendant to distribute *Umardara Ali Khan v Wilayat Ali Khan I L R 19 All 169* followed Where a Muhammadan dies intestate his estate at once vests in his heirs as tenants in common and there is no one charged by law with its distribution In a suit by one of the he rs to recover his share Art 123 of the Limitation Act does not apply *Kasmi v Ayi shamma I L R 16 Mad 60* dissented from Art 144 will apply in the case of immoveables and Art 120 when the property sought to be recovered is moveable KHADERSA HAJEE BAPPU v PUTHEN VEETTIL AYISSA UMMAH (1910) I L R 34 Mad 511

LIMITATION ACT (XV OF 1877)—*contd*

——— Sch II Arts 120 125—*Applicability of—Suit by one adopted later to set aside his maternal grandmother s alienation after her death—Attesta tion and ratification by next presumptive reversioners to a female s alienation effect of* A Hindu widow sold the suit properties in 1881 and 1889 and died in 1899 Her daughter adopted the plaintiff in 1903 and he sued in 1907 to set aside the sales during the life time of his adoptive mother *Held* that (a) the suit was not barred (b) Art 120 and not 125 of the Limitation Act was applicable and (c) the cause of action for the plaintiff to question sales arose only from the date of his adoption when alone he became a reversioner Of the two sales in this case the first was assented to by the daughters and attested by the next male reversioner the second was acquiesced in by the daughters and in 1894 ratified by the then pre sumptive male reversioner *Held* that the plain tiff was estopped under the circumstances from questioning the sales as a reversioner For the application of Art 125 of the Limitation Act (a) the suit must be one brought during the life time of the alienating female and (b) the plaintiff must be the person entitled to the possession of the land if the female died at the date of the institution of the suit. *Chiruvolu Punnamma v Chiruvolu Perra u I L R 29 Mad 390* explained and distinguished *Gajjala Verrayya v Gajjala Gangramma 1912 Mad W N 912 Abinash Chandra Mazumdar v Harinath Shah I L R 32 Calc 6? ?1* and *Govinda Pillai v Thayammal I L R 28 Mad 57* followed Per SADASIVA AYYAR J Con ent to an alienation by the next reversioner and a ratification of past alienations stand on the same footing Effect of attestation by a reversioner to a female s alienation consi dered NARAYANA v RAMA (1913) I L R 38 Mad 396

——— Sch II, Arts 120 131—*Right of tenant to sue in respect of excess collections arises on every occasion when excess collection is made—Art 120 and not Art 131 of Sch II of the Limitation Act applies to such suits* A landlord had been collecting excess rents from his tenant from 1872 In respect of the excess collection made in October 1898 the tenant brought a suit in December 1909 for a declaration that the landlord was not entitled to collect such excess —*Held* that the right to sue for such declaration arose on each occasion the excess was collected that the period of limita tion was six years from the date of collection under Art 120 of Sch. II of the Limitation Act and that Art 131 of the schedule did not apply to such suits SRIMAN MADHABUSHI ACHAMMA v GOPISETTI NARAYANSAWMY NAIDU (1909) I L R 33 Mad 17

——— Sch II Arts 120 132—

See HINDU LAW—MORTGAGE.

I L R 42 Calc 1068

——— *Second mortgagee for surplus proceeds after sale by first mortgagee—Sale proceeds wrongfully withdrawn from Court in exe cution of decree on later mortgage suit for money—Suit to enforce mortgage—Civil Procedure Code 1882 ss 244 and 295 cl (c)* Certain immoveable property was mortgaged on 21st May 1887 to the appellants and on 10th September 1887 the same property was mortgaged by the same mortgagor to the respondents (the mortgage money being repayable on the 18th November 1888) and again

LIMITATION ACT (XV OF 1877)—*contd*

———— Sch II Arts 120 132—*contd*

on 19th July 1889 to the appellants On 8th October 1890 the appellants in a suit in which the respondents though made parties did not appear obtained a decree on their mortgage of 21st May 1887 in execution of which the mortgaged property was sold and after satisfying the decree the sale proceeds were deposited in Court On 14th January 1891 the appellants obtained a decree on their mortgage of 19th July 1889 in a suit to which they did not make the respondents parties and in execution of that decree without giving any notice to the respondent they drew out of Court the surplus proceeds of the former sale though they were aware of the respondents mortgage of 19th September 1887 and of its priority to their own In a suit brought on 17th November 1900 by the respondents against the appellants for the surplus sale proceeds it was contended that the suit was one for money governed by Art 120 of Sch II of the Limitation Act of 1877 and barred as not having been brought within 6 years from the 18th November 1888 when the money became due *Held* (affirming the decision of a majority of a Bench of the High Court) that the suit was one to enforce payment of money charged upon immoveable property within the meaning of Art 132 of Sch. II of the Act and having been brought within 12 years from the date when the money became payable was not barred by limitation The surplus sale proceeds represented the security which the respondents had under their mortgage of 19th September 1887 and did not cease to represent that security by the fact of the appellants having wrongfully withdrawn the surplus sale proceeds from the Court where they were deposited. Under the circumstances of the case s 295 cl (c) of the Civil Procedure Code 1882 was not applicable BARHAMDEO PRASAD *v* TARA CHAND (1913)

I L R 41 Calc 654

———— Sch II Arts 120 144—*Suit by Mahomedan for partition of immoveable property governed by Art 144 and not 120* Where a Mahomedan sues for partition of moveables and immoveables his claim as regards immoveables falls within Art 144 and not 120 of Sch II of the Limitation Act SYED NOORDEEN SAHIB *v* SYED IBRAHIM SAHIB (1910) I L R 34 Mad 74

———— Sch II Art 123—*Suit to recover legacy—Legacy not assented to by executor—Probate and Administration Act (V of 1881) s 112—Mahomedan Law—Shiah —Wakf—Bequest for Gadi ul Khum feast—Fattiah dinners—Valid bequest—Cy pres* Art 123 of the Second Schedule of the Limitation Act 1877 applies to a suit where the substantial claim is to recover a legacy even though not assented to by the executor and whether or not the suit involves the administration of the whole estate A Shiah Mahomedan directed his executors by his will to spend a portion of the income of his property upon the following charitable or religious objects (i) the Gadi ul Khum feast at Mecca (ii) The Gadi feast at Rehmanpura in Surat and (iii) a Fattiah dinner on the testators and his wifes account The Gadi feasts were to celebrate the appointment of Ali as successor of the Prophet *Held* that the first two bequests were valid but the validity of the third bequest was doubtful *Kaleeloola Sahib v Nuseerudeen Sahib I L R 18 Mad 201 Zooleka Bibi v Zynul Abedin I L R 6 Bom. L R 1058* and *Biba Jan v Kalb Husain I L R 31 All 136* followed. Where the testator has indicated a general charitable intention in the bequest made by him and if these bequests fail the Court can devote the property to religious or charitable purposes according to the *cypres* doctrine SALEBHAI ABDUL KADER *v* BAI SAFIABU (1911)

I L R 36 Bom 111

———— Sch II Art 124—

See SHEBAIT I L R 39 Calc 887

See LIMITATION (2)

I L R 42 Calc 244

———— Sch II Art 126—

See HINDU LAW—JOINT FAMILY PROPERTY I L R 38 All 126

———— Sch II, Art 127—*Joint property —Exclusion of a co parcener—Knowledge of exclusion—Decree by another excluded co parcener for share by partition does not prevent time from running* Certain joint family property was in the possession of some of the co parceners (defendants Nos 1 to 3) who began to hold it adversely to the remaining co parceners from 1890 In 1895 defendant No 5 one of the excluded co parceners sued all the co parceners to recover his share in the property by partition. His share which was one sixth in the property was decreed to him in 1908 and he recovered possession of it in due course In 1907 another of the excluded co parceners brought a suit to recover his share by partition of the property He sought to bring his suit within time by alleging that the possession of defendants Nos 1 to 3 became adverse only after 1898 The lower Courts held that the plaintiff was excluded to his knowledge from enjoyment of the property from 1890 and that his suit was barred under Art 127 of Sch II of the Limitation Act On appeal —*Held* by CHANDAVARKAR J that the decree of 1898 gave a sixth share to defendant No 5 and left the remaining five sixths untouched the mutual relations of the defendants in the first suit with reference to their five sixths having been left to continue as before the property in their hands remained joint and that the judgment and decree of 1898 did not disturb as between them the previous state of things and stop the limitation that had begun to run as against the plaintiff from 1890 *Held* by BATCHELOR J concurring that the finding of fact against the plaintiff that he was excluded to his knowledge from enjoyment of joint property by defendants Nos 1 to 3 from 1890 was wholly independent of and unaffected by the decree of 1898 which only decided that the family and the property were joint and that the property was consequently partible BABAJI AKOBA *v* DATTU LAXMAN (1912) I L R 37 Bom 64

———— Sch II Arts 127 142—*A co-parcener in possession of joint lands on behalf of all co parceners—Alienation by the co-parceners without knowledge of the rest—Adverse possession of his vendee* Certain lands belonging to the joint family of plaintiffs and defendant No 1 were in the possession of defendant No 1 on behalf of the family In 1880 he alienated them to defendant No 2 but remained in possession on executing a rent note in favour of the vendee The plaintiffs brought a suit in 1906 to recover by partition their

LIMITATION ACT (XV OF 1877)—*contd*

———— Sch II Arts 127 142—*contd*

share in the lands The defendant No 2 pleaded in defence his adverse possession of the lands from 1880 *Held* that the possession by defendant No 1 before the alienation being for himself and his co parceners and being thus of a fiduciary character it could not begin to be adverse to the co parceners in the absence of intimation conveyed by him to them that he intended to exclude them MALKAPPA v MUDKAPPA (1912)

I L R 37 Bom 84

———— Sch II *Arts* 132 147—

See LIMITATION I L R 35 Mad 191

———— Sch II Arts 131 162—*Cash allowance—Tastik—Arrears of cash allowance suit to recover* The plaintiff the manager of the temple of Shri Laxmi Narayan Dev at Hulekal sued to recover from the defendants the managers of the temple of Shree Madhukeshwar at Banawasi a sum of Rs 96 as arrears of a cash allowance (tastik) which the former was entitled to receive from the property of the latter The defendants admitted the title of the plaintiff to the allowance but pleaded limitation as to the arrears for two out of the six years The lower Courts applied Art 131 of the Limitation Act 1877 and allowed the whole of the claim On appeal *Held* that the claim was properly allowed A cash allowance of the nature as in the present case is according to Hindu law *nibandha* or immoveable property where it is annually payable the right to payment gives to the person entitled a periodically recurring right as against the person liable to pay The right to any amount which has become payable stands as to such person on the same footing as the aggregate of rights to amounts which are to become payable and which have become actually due But where there are more than one person entitled to the payment as co sharer and the payment is made to one of them by the person liable to pay the co sharer receiving the amount holds it minus his share on behalf of the rest as money had and received for their use though as to him with reference to the aggregate of rights it is *nibandha* or immoveable property in the nature of a periodically recurring right The important question is who is the person sued and what is it that is sued for? If what is sued for is the establishment of a title to the right itself then Art 131 applies whether the defendant is the person originally liable to pay or is a co sharer who has received payment from that person If on the other hand what is sued for is the amount of arrears which has become actually payable to the plaintiff then there is a distinction between the person originally liable to pay and a co sharer of the plaintiff who has actually received payment from that person. Art 131 applies in that case to the person originally liable to pay and Art 62 applies to the co sharer who has received the payment SAKHARAM HARI v LAXMIPRIYA TIRTHA SWAMI (1910) I L R 34 Bom 349

———— Sch II Art 132—

See MORTGAGE I L R 39 Calc 527

———— Sch II Arts 132 134 148—

See MORTGAGE 14 C W N 439

———— Sch II, Arts 132 144—*Mortgage—Third person redeeming the mortgage at mortgagor's desire—Sale by mortgagor of his rights—Sale deed unregistered—Sale deed could be looked at for evidence of payment of money—Suit by mortgagor to redeem ignoring sale—Lienor's rights—Adverse possession by lienor —Registration Act (III of 1877) s 17—Evidence Act (I of 1872) s 91* The plaintiff mortgaged certain property with possession with defendant No 1 for Rs 601 on the 4th April 1873 On the 25th November 1878 defendants Nos 2 to 4 at the request of the plaintiff paid off the mortgage to defendant No 1 and for the sum so paid and for a further payment of Rs 50 the plaintiff sold the property to defendants Nos 2 to 4 The document as to the sale was not registered but ever since the purchase the defendants Nos 2 to 4 were in possession as owners In 1907 the plaintiff filed a suit to redeem the mortgage of 1873 The defendants Nos 2 to 4 set up in reply the sale of 1878 and contended that the suit was barred by limitation —*Held* that the sale deed being unregistered could not be looked at for proving the sale but it could be looked at as evidence of payment of money *Mahadnappa bin Danappa* v *Dari bin Bala* (1875) *P J 299* and *Waman Ramchandra* v *Dhondiba Krishnaji I L R 4 Bom 126* followed *Held* further that the redemption having been made by the defendants for the plaintiff with his knowledge and consent they became entitled to hold the property as lienors and the plaintiff could not recover it from them without paying the amount of Rs 651 *Mahomed Shumsool* v *Shewukram L R 2 I A 17* followed *Held* further that the defendant's lien was alive for twelve years after 1878 that is up to the year 1890 (Art 132 of the Limitation Act of 1877) that when that period expired the lien was gone and their possession after that was without any right and that their title by adverse possession was perfected in 1902 *Ramchandra Yeshwant Sirpotdar* v *Sadashiv Abaji Sirpotdar I L R 11 Bom 422* explained. *Held* therefore that the plaintiff's suit was barred by limitation SAMBHU BIN HANMANTA v NAMA BIN NARAYAN (1911) I L R 35 Bom 438

———— Sch II, Art 134—

See HINDU LAW—ENDOWMENT

I L R 38 Calc 526

———— Sch II Arts 134 148—*Mortgage—Redemption by one mortgagor—Nature of possession—Subsequent sale under another mortgage decree—Suit by another representative of mortgagor for redemption—Limitation* G in 1850 mortgaged certain property and died leaving a son a daughter and a widow The son obtained a decree for redemption of the whole which was sold to *M H G M* and *A* who redeemed the mortgage After the passing of this decree *G's* son and widow mortgaged certain shares in the villages affected by the original mortgage and in 1891 these shares were sold in execution of a decree for sale and purchased by *M H* and the representatives of *G M* and *A* *Held* on suit by the representative of *G's* daughter to redeem her share that Art 148 and not Art 135 of the second Schedule to the Indian Limitation Act 1877 applied and the suit was not time barred SAID UD DIN KHAN v RATAN LAL (1909)

I L R 32 All 160

LIMITATION ACT (XV OF 1877)—*contd*

———— Sch II, Arts 137 142 144—*Adverse possession— Defendant —Successive but independent trespassers* Plaintiffs purchased certain property at an execution sale on the 20th November 1891 the property being at the time of purchase in the possession of trespassers and formal possession was given to them on the 25th November 1892 In 1897 other person also trespassers obtained possession of the property against and not through the persons originally in possession. In 1905 the plaintiffs sued the second set of trespassers for possession *Held* that Art 144 of the second Schedule to the Indian Limitation Act 1877 applied and the suit was not time barred. *Ram Prasad Janra v Lakhi Narain Pradhan I L R 12 Calc 197* followed RAM LAKHAN RAI v GAJADHAR RAI (1910)

I L R 33 All 224

———— Sch II, Art 139—

See GRANT I L R 37 Calc 674

———— *Lease of endowed land for a term by* Mohunt—*No rent paid for over 12 years after the expiry of lease—Successor of* Mohunt *if may sue to recover possession* The *Mohunt* of a *math* granted a lease of land belonging to the *math* for a term which expired in 1880 It was found that no rent was ever paid since the expiration of the lease more than 12 years after which the succeeding *mohunt* sued to recover the land from the successors of the lessee *Held* that the High Court was right in holding that the suit was barred under Art 139 of Sch. II of the Limitation Act of 1877 MOHUNT BHAGWAN RAMANUJ DAS v RAM KRISHNA BOSE

[P C] 26 C W N 722

———— Sch II Arts 139 144—*Suits against representatives of deceased tenant governed by Art 139 and not 144* A suit against the representatives of a tenant after the determination of the tenancy to recover the property leased is governed by Art 139 and not by Art 144 of Sch II of the Limitation Act Such a suit would be barred against the representatives if it would be barred against the tenant if alive *Vadapalli Narasimham v Dronamraju Seetharama Murthy I L R 31 Mad 16 167* doubted SUBBAYETI RAMIAH v GUNDALA RAMANNA (1909)

I L R 33 Mad 260

———— Sch II, Art 141—*Hindu law—Suit by reversioner for possession—Adverse possession by widow of predeceased son of last male owner—Limitation* A separated Hindu died leaving him surviving two widows and a daughter in law the widow of his predeceased son Upon the death of the survivor of the two widows the daughter in law took possession of the property and remained in possession thereof for more than twelve years adversely to the reversioners *Held* on suit by the reversioners to recover possession that their claim was time barred their cause of action having commenced from the death of the survivor of the two widows of the last owner *Sham Koer v Dah Koer L R 29 I A 132* referred to GAJADHAR PANDE v PARBATI (1910)

I L R 33 All 312

———— Sch II Arts 142 144—

See LIMITATION (39)

I L R 44 Calc 858

LIMITATION ACT (XV OF 1877)—*contd*

———— Sch II Arts 142 144—*contd*

See MUTT HEAD OF

I L R 38 Mad 3?6

———— *Suit to recover possession—Dispossession—Discontinuance of possession—Possession as an agent of minors—Decree by the minors on attaining majority against the agent for possession of the property—Decree not executed and barred by limitation—Agent wrongfully dispossessed by a third person—Money decree against the original owners—Decree holder seeking to attach property—Adverse possession—Civil Procedure Code (Act XIV of 1882) s 283* N died in 1879 leaving behind him two minor sons *R* and *D* and a mistress *A* The latter looked after the minors and managed their property When they arrived at the age of majority they found that *A* claimed the property in her own right In 1891 *R* and *D* sued *A* for the possession of the lands and obtained a decree on the 30th of August 1892 which was confirmed on appeal on the 15th June 1894 This decree was sought to be executed on the 26th June 1897 but the application was dismissed as barred by limitation *A* was then wrongfully deprived of the possession of the property by *V* who sold it to *B* in 1898 *B* mortgaged the property to *E* in 1900 In the same year the plaintiff obtained a money decree against *R* and *D* and in execution of it he had an attachment placed on the property but the attachment was removed in 1904 at the instance of *B* and *E* In 1905 the plaintiff brought a suit for a declaration that the property was liable to be attached and sold in execution of his decree against *R* and *D* The defendants *B* and *E* contended that the suit was barred under Art 142 of the Limitation Act 1877 inasmuch as neither the plaintiff nor his predecessors in title *R* and *D* were in possession of the property within twelve years preceding the suit *Held* that the suit having been brought by the plaintiff under 283 of the Civil Procedure Code of 1882 to establish his right to attach and sell the property in dispute as that of his judgment debtors *R* and *D* in execution of his money decree all that he had to prove was that on the date of attachment the judgment debtors had a subsisting right to the property and that the suit must therefore be tried as if it were a suit for possession by the judgment debtor *Held* also that as *A's* possession must be deemed to have begun in 1879 as that of bailiff or agent for the minors *R* and *D* and to have continued as such until after they had arrived at the age of majority and as there had never been any dispossession by *A* of *R* and *D* while they had been in possession in a suit against *A* her plea of limitation would be decided by the application not of Art 142 but of Art 144 of the Limitation Act 1877 *Morgan v Morgan 1 Atk 489* followed *Taylor v Horde Sm L C Vol II (10th Edn) 644 645* followed *Lallubhai Bapubhai v Mankuvarbai I L R 2 Bom 388 at p 413* followed and *Dadoba v Krishna I L R 7 Bom 34* followed *Held* further that though the decree for possession obtained by *R* and *D* against *A* had become incapable of execution by reason of their failure to apply to the Court for its execution within the period prescribed by the law of limitation the right established by it remained and though that right could not be enforced as against *A* by execution through the Court the decree holders could enter by ousting any trespasser *A* included *Bandu v Naba I L R 15 Bom 238* followed.

LIMITATION ACT (XV OF 1877)—*contd*

——— Sch II Arts 142 144—*contd*

Held therefore that there having been no allega tion of possession in *R* and *D* lost by dispossession or discontinuance of possession but the case put forward having been a title in them established by their decree against *A* and a wrongful pos es ion obtained from her after the decree by *V* under whom *B* and *E* claimed the limitation applicable to the suit was that provided by Art 144 not Art 142 of the Indian Limitation Act (XV of 1877) *Fali Abdulla* v *Babaji Gungaji I L R 14 Bom 458* followed and *Gangaayal Nagu Kaval Mhatra* v *Nago Dhaja Mhatra (1884) P J 242* followed VASUDEO ATMARAM JOSHI v EKNATH BALKRISHNA THITE (1910)

I L R 35 Bom 79

——— *Sole owner permitting another under mistake to hold joint possession for more than 12 years—Suit to recover exclusive pos session—Limitation—Consent—Acquiescence—Estoppel—Mistake—Co-sharers adverse possession as between—Unity of possession of tenants in common consequences of* Where *A* is the owner of an estate in which the disputed land is situated and *A* and *B* are joint owners in an adjoining state and the land in dispute has been held by *A* and *B* by mutual cons nt as part of their joint estate for a period of more than 12 years before suit in ignorance of their rights limitation arises either by discontinuance of possession by *A* under Art 142 or by adverse possession of *B* under Art 144 of the Limitation Act *Vasudeva* v *Maguni I L R 24 Mad 387* referred to *Per* JENKINS *C J*—The mere fact of consent does not prevent possession being adverse The test is whether the person who sets up adverse possession is able to show that he held for himself and if he did the mere fact that there was acquiescence or consent on the part of the other person concerned would in circumstances like these make no difference *Purshottam* v *Sagaji I L R 28 Bom 87* referred to *Per* CHAPMAN *J*—Art 142 rather than Art 144 of the Limitation Act applied to the case DWARKA NATH CHOWDHURY v ATUL SHIB BANER JEE (1913)

17 C W N 595

——— Sch II, Art 144—

See HINDU LAW I L R 34 Mad 402

See LIMITATION L R 46 I A 197
I L R 39 Mad 617

See REGISTRATION ACT 1877 s 17 AND 49 I L R 47 Calc 288

——— *Summary Cess—Interest in immoveable property* The right to levy summary cess whether it originated in agreement or in unlawful exaction is an interest in immove able property and is governed by twelve years limitation under Art 144 of the Limitation Act (XV of 1877) PANMALSINGJI v MAHASHANKAR (1911)

I L R 36 Bom 174

——— *Adverse pos ession—Posses ion of the d fendant meaning of if incl des possession of—Defendant s lessor—Nature of adver e posses ion which can be set up—Effect of s 3* The words posses ion of the defendant in Art 144 cannot by reference to the definition in s. 3 be held to include the possession of another person, a co defendant still in possession under a different title *Padajirav* v *Ram Rav I L R 13 Bom 160* distinguished. The adverse posses

LIMITATION ACT (XV OF 1877)—*contd*

——— Sch. II, Art 144—*contd*

sion of a defendant must be of the same nature as that sought by the plaintiff and the defendant cannot set up his po session as a permanent lessee as adverse in a suit by the plaintiff for possession as proprietor *Umrunnessa* v *Md Yar Khan I L R 3 All 24* followed Where the plaintiff brought a suit for pos ession of certain property purchased by him at an auction sale within 12 years from the date of sale but after the expiry of 12 years brought the defendant appellant on the record on the ground that subsequent to the plaintiff's purchase he had been granted a permanent lease of the property by the original defendants the previous owners who had wrong fully retained posse sion since the plaintiff's pur chase *Held* that the defendant appellant was not entitled to add the period of his le sor s adverse possession to his own in answer to the plaintiff's suit LAHURI BIBEE v BEJOY CHAND MAHATAP (1913)

17 C W N 784

——— *Pos ession of Hindu widow—Assertion in public documents of owner ship—Que tions decided on inferences from docu ments—Nature of possession of widow whether in lieu of maintenance or adverse* Where a question as to the nature and effect of the possession of property by a Hindu widow i e whether the possession is only in lieu of her maintenan e and not adverse possession is one decided by legal inferences drawn from documents opinions of the courts though concurrent are not findings of fact and where wrong conclusions from such inferences have been formed they are open to be reversed by the Judicial Committee on appeal. When the widow asserted that she was entitled as full heir to the separate share held by her hus band when in a written statement in a suit brought against her she asserted that she and her co widow were the heirs of their husband and had all along been in po ession and it was only as an alternative pleading that she set up a title to pos session as a right to maintenance when in an application to the court she made an as ertion publicly that she and her co widow were the heirs and the only heirs to the property from which assertion mutation of it to her name followed and when the widow made an absolute gift of part of the property—when she made such public as ertion of a right to exclusive pos ession from 1859 to her death in 1895—the true inference was that her posse sion was adverse and the plaintiff's (respondent s) title was barred by limitation under Art 144 of Sch II of the Limitation Act (XV of 1877) SATGUR PRASAD v RAJ KISHORE LAL

I L R 42 All 152

——— Sch II, Art 146 A—

See MUNICIPAL COUNCIL.

I L R 38 Mad. 6

——— Sch II Art 148—*Limitation—Suit for redemption—Mortgage by conditional sale—Specified period for redemption—Payment of mort gage debt within specified time—Accrual of cause of action* Ordinarily and in the absence of a special condition entitling the mortgagor to redeem during the term for which the mortgage is created the right of redemption can only arise on the expiration of the specified period But there is nothing in law to prevent the parties from making a provision that the mortgagor may discharge

LIMITATION ACT (XV OF 1877)—*contd*

——— Sch II Art 148—*contd*

the debt within the specified period and take back the property Such a provision is usually to the advantage of the mortgagor The father of the plaintiff executed a mortgage by way of conditional sale on the 6th of January 1830 in respect of 12 villages in favour of the predecessor in title of the principal defendant and there was at the time of execution a contemporaneous agreement that the sale would be cancelled on payment of the amount of consideration in nine years In a suit brought on the 6th of January 1899 for redemption the High Court held on the construction of the contract that the suit was not barred as the right to redeem only arose on the expiry of the nine years *Held* by the Judicial Committee that the case must be decided not on the construction of the contract but on the case made by the plaintiff on the pleadings which was that she was entitled under the agreement to redeem the property within the period of nine years and by the statement of account produced with the plaint which showed that the mortgage debt was actually satisfied under the contract on the 4th of September 1838 and that being so the right to redeem then accrued and the whole suit was therefore barred not having been brought within 60 years from that date (Art 148 of Sch II of the Limitation Act XV of 1877) BAKHTAWAR BEGAM *v* HUSAINI KHANUM (1914)

I L R 36 All 195

——— Sch II Art 164—

See EX PARTE DECREE
I L R 39 Calc 506

See LIMITATION ACT (IX OF 1908) SCH I ART 164 **I L R 37 All 597**

See SUBSTITUTED SERVICE
I L R 38 Calc 394

——— Sch II Art 170—

See CIVIL PROCEDURE CODE 1882 s 234
I L R 32 All 404

——— Sch II Art 178—

——— *Limitation Act (IX of 1908) s 15—Execution of decree—Limitation—Execution stayed by injunction* In execution of a decree certain property was attached by the decree holder by means of an application made on the 8th of July 1904 Objection was taken to the attachment which was disallowed on the 10th of March 1908 This was followed up on the 5th of April 1905 by a declaratory suit against the decree holder An injunction was also granted on the 6th of April 1905 whereby the sale of the property in suit was stayed The suit terminated on the 26th of June 1907 but the injunction lasted until January 1909 The next application for execution was made on the 14th of April 1910 *Held* that this last application was within time whether the Limitation Act of 1877 or that of 1908 applied. It was not relevant that the decree holder might possibly have obtained execution of the decree against other property of his judgment debtor *Behari Lal Misir* v *Jagannath Prasad I L R 28 All 631* followed GHULAM NASIR UD DIN *v* HARDEO PRASAD (1912)

I L R 34 All 436

LIMITATION ACT (XV OF 1877)—*contd*

——— Sch II Arts 178 179—

See TRANSFER OF PROPERTY ACT (IV OF 1882) ss 88 89
I L R 40 Bom 321

——— *Article 179 applies to initiate proceedings—Previous orders in execution effect of as res judicata—Civil Procedure Code (XIV of 1882) attachment under when ceases a question of intention—Erroneous order on a question of law when res judicata* Previous orders passed in execution and allowing execution on a construction of a decree as to mesne profits or as to interest or the like have the force of *res judicata* though the later application be in respect of a different subject matter Thus if under the old Civil Procedure Code (Act XIV of 1882) attachment of several properties had been made and more than three years after such attachment sale of some of those properties was ordered the supposition that the attachment was then subsisting that order to sell will act as *res judicata* when a subsequent application for sale is made within three years thereafter to sell other properties originally attached Under the old Civil Procedure Code the question whether a particular attachment subsists at a certain time was a question of intention *Ram Kripal* v *Rup Kuari I L R 6 All 269 Venkatanarasimha Naidoo* v *Papammah I L R 19 Mad 54* and *Subbarama Ayyar* v *Nagammal I L R 24 Mad 683* followed. The rule that an erroneous decision on a question of law has not the force of *res judicata* does not apply to such a case *Palanippa Chettiar* v *Savari Naidoo 18 Mad L J 548* and *Mangala thammal* v *Narayanasami Ayyar I L R 30 Mad 461* distinguished It is well established that an application intended to revive and carry through a pending execution is not covered by Art 179 of the Limitation Act (XV of 1877) as it is not an application to initiate a new execution *Qamar ud din Ahmed* v *Jawahir Lal I L R 27 All 334* and *Suppa Reddiar* v *Avuda Ammal I L R 28 Mad 50* followed The right to apply to continue execution in such cases accrues from day to day and will not be barred until three years have elapsed after the proceedings have ceased to be pending So the application is not barred under Art 178 either *Chalaiadi Kotiah* v *Poloori Almelammah I L R 31 Mad 71* followed. SUBBA CHARIAR *v* MUTHUVERAN PILLAI (1913)

I L R 36 Mad 553

——— Sch II, Art 179—

See LIMITATION **I L R 33 All 264**

See MORTGAGE **I L R 40 All 407**

1 ——— *Application against one judgment debtor if saves limitation against other—Civil Procedure Code (Act XIV of 1882) s 45* An application for execution which conforms to the requirements specified in ss 235 236 237 and 238 of the Civil Procedure Code and on which the Court permits execution is an application in accordance with law within the meaning of Art 179 of Sch. II of the Limitation Act 1877 Where a decree was for possession against one set of defendants, for possession through tenants against another set of defendants and for costs and mesne profits against all the defendants and an application was made for execution of so much of the decree as related to costs against some of the defendants but not

LIMITATION ACT (XV OF 1877)—*contd*

——— **Sch II Art 179**—*contd*

against the others *Held* that a subsequent application for execution of the unsatisfied portion of the decree against those defendants against whom the previous application was not directed is not barred if made within three years of the previous application. BARODA KINKAR CHOWDHURI v NABIN CHANDRA DUTTA (1909)

14 C W N 465

2 ——— **Application for execution in accordance with law**—*Decree—Execution—Execution made conditional upon payment of Court fees—Application for execution without payment—Dismissal—Second application with payment* A decree was passed on the 30th June 1900 whereby partition of immoveable property was ordered but the execution of the decree was made conditional on the payment of the proper Court fees On the 29th June 1903 an application to execute the decree was made but it was dismissed as it was not accompanied by payment A second application to execute the decree was presented on the 27th June 1906 it was accompanied by payment The lower Courts dismissed it on the ground that it was time barred inasmuch as the first application made in 1903 was not one in accordance with law as required by Art 179 of Sch II to the Limitation Act 1877 *Held* that the first application was made in accordance with law for upon that application it was competent for the Court to order that the execution should begin on the Court fees being paid within a certain date *Held* further that the second application was within time *Per* CURIAM An application for execution of a decree to be in accordance with law must ask for something *within* the decree and not *outside* it NATHUBHAI KASANDAS v PRANJIVAN LALCHAND (1909)

I L R 34 Bom 189

3 ——— **Application for execution returned for amendment of formal defect**—*Application amended but not refiled within time allowed and registered—Limitation—Limitation Act (XV of 1877) Sch II Art 179* Where an application for execution of a decree made in proper form under s 235 of the Civil Procedure Code (Act XIV of 1882) was returned by the Court for supplying within 10 days the necessary extracts from the Collector s register under s 238 regarding certain shares of a revenue paying mouzah and a correct valuation of this and other properties sought to be attached but the application was not refiled till long after the expiry of the 10 days and some days after the period of limitation expired and the decree holder along with the application filed a petition explaining the delay and it was registered *Held* that the previous application which was returned was a step taken in aid of execution such as would save the amended application from being barred by limitation *Gopal Shah* v *Janki Koer I L R 23 Calc 217* distinguished and explained. *Asgar Ali* v *Troilokya Nath Ghose I L R 17 Calc 631* *Kifayat Ali* v *Ram Singh I L R 7 All 359* *Jiwai Dube* v *Kali Charan Ram I L R 20 All 478* *Gopal Chandra Manna* v *Gosain Das Kolay I L R 25 Calc 594* referred to That the decree holder s application to the Collector for the extracts from the Collector s register was itself a step in aid of execution. Proper scope of s. 245 of the Code indicated MATHURA PRASAD v ANURAGO KOER (1910)

14 C W N 481

LIMITATION ACT (XV OF 1877)—*contd*

——— **Sch II Art 179**—*contd*

4 ——— **Rejected application for adjournment to prove service of notice**—*Civil Procedure Code (Act XIV of 1882) s 248* An application for adjournment to enable decree holder to adduce evidence of service of notice under s 248 Civil Procedure Code is an application made in order to obtain from the Court an order in furtherance of the execution of the decree Such an application even though it is refused is a step in aid of execution MOWAR NARSINGH DAYAL SINGH v MOWAR KALI CHARAN SINGH (1909)

14 C W N 486

5 ——— **Applications for execution presented by assignee of decree-holder**—*Dismissal of the application for non production of assignment deed* A decree was passed on the 12th October 1894 and an application to execute it was made by the decree holder on the 16th August 1897 The process fee not having been paid the application was struck off The second application to execute the decree was presented on the 16th August 1900 by the assignee of the decree holder but as he did not produce the assignment the application was struck off on the 27th October 1900 The third application was presented by a *mukhtear* of the assignee on the 11th August 1903 but as neither the assignment nor the *mukhtearnama* was produced it was struck off on the 9th October 1903 The same *mukhtear* presented a fourth application on the 19th December 1905 A notice was issued to the judgment debtor under s 248 of the Civil Procedure Code (Act XIV of 1882) and the application was disposed of the decree holder agreeing to accept a payment of Rs 45 from the judgment debtor On the 11th December 1906 the fifth application to execute the decree was filed. The lower Courts holding that the second and third applications could not be regarded as applications for execution made in accordance with law dismissed the fifth application as barred by the law of limitation — *Held* that the present application was not barred for the non production of the *mukhtearnama* and the assignment did not prove that they did not exist in fact *Abdul Majid* v *Muhammad Faizullah 13 All 89* followed VINAYAK VAMAN v ANANDA VALAD RAMJI (1909)

I L R 34 Bom 68

6 ——— **Application to certify payment made out of Court**—Although a decree under s 83 of the Transfer of Property Act 1882 may not be capable of adjustment under s 257A of the Code of Civil Procedure 1882 yet where the parties had professed to make such an adjustment and the judgment debtor having paid certain instalments of the decretal money the decree holder had applied to the Court to have such payments certified under s 258 of the Code, it was *held* that such applications operated to keep the decree alive although at the time there might have been no application for execution actually pending *Sujan Singh* v *Hira Singh I L R 12 All 399* followed *Tarini Das Bandopadhya* v *Bishtoo Lal Mukhopadaya I L R 12 Calc 608* referred to CHHOTEY SINGH v TIWARI (1910)

I L R 32 All 257

7 ——— **Withdrawal of informal application if is**—*Civil Procedure Code (Act XIV of 1882) ss 232 235—Retransfer of assigned decree to decree holder* Where a decree holder

LIMITATION ACT (XV OF 1877)—contd

—— **Sch II Art 179—contd**

applied for execution of a decree and withdrew the application on the objection of the judgment debtors that the decree had been transferred to a third person who had retransferred it to the decree holder and that therefore the execution could not proceed —*Held* that the application was a step in aid of execution and saved limitation *Gopal Sah v Janaki Koer I L R 23 Calc 217* distinguished MUSARAF ALI *v* AMIR JAN BIBEE (1910) **15 C W N 71**

8 —— **Applications when not "in accordance with law**—The plaintiff obtained a decree against the defendants He sought to execute the decree by filing six *darkhasts* all within time The lower Court held that the sixth *darkhast was not* filed in time for the first five *darkhasts* could not be taken into consideration for purposes of limitation as they were not in accordance with law because every one of them sought relief or reliefs which on considering the merits of the *darkhasts* the Court could not have granted On appeal *Held* that the *darkhast* in question was in time for the first five *darkhasts* were in accordance with law as each one of them claimed relief granted by and therefore within the decree and the question whether on a consideration of all the facts the Court could in the events that had happened grant the relief was only a question for trial on the merits BANDO KIRSHNA *v* NARASIMHA (1912) **I L R 37 Bom 42**

9 —— **Application for time to obtain copies**—*required by s 238 of the Civil Procedure Code (Act XIV of 1882)* In the course of proceedings to execute a decree the decree holder filed an application for time to obtain certified copies of extracts required by s 238 of the Civil Procedure Code 1882 The second application to execute a decree was filed more than three years after the date of the first application though it was within three years of the date of the application for time It was sought to bring the second application within time by relying on the application for time as a step in aid of execution *Held* that the second application to execute the decree was presented in time for the application for time to obtain certified copies required by s 238 of the Civil Procedure Code of 1882 was a step in aid of execution SHESHADASACHARYA *v* BHIMACHARYA (1912) **I L R 37 Bom 317**

10 —— **Mortgagor's petition for declaration of insolvency**—*Opposition by mortgagee judgment creditor—Step in aid of execution—Limitation* An application by mortgagee judgment creditor in execution of his decree opposing the insolvency proceeding of the mortgagor judgment debtor is a step in aid of execution under Art 179 Sch. II of the Limitation Act (XV of 1877) and Art 182 Sch I of the Limitation Act (IX of 1908) LAXMIRAM LALLUBHAI *v* BALASHANKAR VENIRAM (1914) **I L R 39 Bom 20**

11 —— **Application, oral for adjournment** An application to take a step in aid of execution under Art 179 of the Limitation Act need not be in writing *Amar Singh v Tika I L R 3 All 139* and *Moneklal Jagjivan v Nana Raddha I L R 15 Bom 405* followed An application by the decree holder for an adjournment to enable him to produce records or evidence necessary to effectively conduct the execution proceedings further is an application to get an order in aid of execution *Sheshdasacharya v Bhimacharya 14 Bom L R 1204 Haridas Nana bhai v Vithaldas Kisandas I L R 36 Bom 638 Pitam Singh v Tota Singh I L R 29 All 301* and *Kunhi v Seshagiri I L R 5 Mad 141* referred to ABDUL KADER ROWTHER *v* KRISHNAN MALAVAL NAIR (1913) **I L R 38 Mad 695**

—— **Sch II Arts 179 180—**

See PRIVY COUNCIL PRACTICE OF **I L R 36 All 350**

See REVIVOR **I L R 43 Calc 903**

1 —— **Sch II Art 180**—An order in Privy Council affirming a decree of the High Court includes the directions in such decree an application to enforce any such direction is in point of law an application to execute the order to the whole of which Art 180 of Sch. II of the Limitation Act is applicable KAMINI DEBI *v* AGHORE NATH MUKHERJEE (1909) **14 C W N 357**

2 —— **'Revival' of decree what is**—*Civil Procedure Code (XIV of 1882) s 248 notice under—No revival where notice not issued* Where on an application for execution of a decree more than one year old order for execution was issued without the notice to the judgment debtor required by s 248 of the Civil Procedure Code of 1882 such order for execution does not revive the judgment within the meaning of Art 180 of Sch II of the Limitation Act of 1877 It is only where such notice has been issued that the judgment or decree is 'revived' DESSOO VENKATESA PERUMAL CHETTY *v* SRINIVASA RANGA ROW (1909) **I L R 33 Mad 187**

3 —— *Execution of decree—Limitation—Terminus a quo—Order of His Majesty in Council dismissing an appeal for want of prosecution an affirmance of the decree appealed from* An order of His Majesty in the Privy Council dismissing an appeal for whatever cause is in effect an affirmance of the Court below and is the only order in the litigation capable of enforcement Where therefore an appeal to His Majesty in Council from a decree passed by the High Court for sale on a mortgage was dismissed for want of prosecution, it was *held* that limitation in respect of an application by the decree holder for an order absolute for sale was governed by Art 180 of the Second Schedule to the Indian Limitation Act 1877 time running from the date of the order of His Majesty in Council *Tassaduq Rasul Khan v Kashi Ram I L R 25 All 109* and *Oudh Behari Lal v Nageshar Lal I L R 13 All 278* referred to *Bipro Doss Gossain v Chunder Seekur Bhuttacharjee 7 W R 521* distinguished ABDUL MAJID *v* JAWAHIR LAL (1910) **I L R 33 All 154**

LIMITATION ACTS XV OF 1877 AND IX OF 1908—

—— **Comparative Statement.—**

The sections of the 1877 Act correspond to the same sections in the 1908 Act except the following—

Section of the 1908 Act	Corresponding section in the 1877 Act
2	3
3	4
4	5 para. 1
5	5 paras 2 & A
6	"
7	8

LIMITATION ACTS (XV OF 1877 AND IX OF 1908)—*concld*

——— Comparative Statement—*contd*

Section of the 1908 Act	Corresponding section in the 1877 Act
8	7 last clause
21 (1)	
21 (2)	21
29 (1) (a)	2 latter part
29 (1) (b)	6
29 (2)	1 (a)
29 (3)	
30	
31	
32	

Article in the First Schedule of the 1908 Act	Corresponding Article in the Second Schedule of the 1877 Act
11 (1)	11
11 (2)	
11 A	11
33 } 34 } 35 }	33
161	160 A
172	171
174	173 A
176	175 A
177	175 B 175 C
178	176
179	177
181	178
182	179
182 cl. (4) in the third column	
183	180

LIMITATION ACT (IX OF 1908)

See HINDU LAW—ADOPTION
I L R 40 Mad 846

——— inapplicability of, to insolvency proceedings—

See INSOLVENCY PROCEEDINGS IN
I L R 39 Mad. 74

——— *Cause of action* No thing in the Limitation Act can give rise to a cause of action unless a right to sue exists independently of its provisions BISHUN SINGH v A W N WYATT (1911) 16 C W N 540

——— s 2—

See LIMITATION ACT (IX OF 1908) SCH I ART 124 I L R 41 Mad 4

——— ss 2 and 5—

See COURT FEES 3 Pat L J 484

——— s 2 (8) Sch I, Art 144—

See ADVERSE POSSESSION
I L R 40 Calc 173

——— s 3—

See CONTRACT ACT (IX OF 1872) s 28
I L R 38 Bom 344

——— *Limitation—Amendment of plaint after expiry of limitation—Zamindari property—Incorrect statement of extent of share claimed* In a suit for pre-emption under the Muhammadan law of a zamindari share it was found that the necessary conditions of the Muhammadan law had been fulfilled but there being some doubt as to the exact share sold the plaintiff

LIMITATION ACT (IX OF 1908)—*contd*

——— s 3—*contd*

had specified it in his plaint as 15 biswansis when in fact it amounted to 17 biswanis *Held* that it was within the competence of the Court to allow the plaintiff to amend his plaint so as to claim the larger share even after the period of limitation for the suit had expired MUHAMMAD SADIQ v ABDUL MAJID (1911) I L R 33 All 616

——— *Question of limitation if may be considered for the first time in appeal* The Court can under s 3 take notice of the question of limitation although it has not been taken up in the Courts below NARASINGHA BANA GOSWAMI v PROLHADMAN TEOARI (1918)
22 C W N 994

——— ss 3 4 and 14—*Filing suit in a wrong Court on the day of its re opening after recess—Expiry of limitation during recess effect of—Meaning of prosecution in s 14— Court in s 4 meaning of* According to s 14 of the Limitation Act it is only the period during which a suit is actually prosecuted in a wrong Court that can be excluded in favour of a plaintiff but not the period before the filing of the suit though the Court was then closed for recess So if the period of limitation for the suit expired during the period of recess of the wrong Court wherein the suit was filed on the day of its re opening the suit must be held to be barred. It is only the period of closing of proper Court in which the suit must be instituted that can be taken account of under s 4 *Abhoya Churn Chuckerbutty* v *Gour Mohun Dutt* 24 W P 26 followed *Per* SPENCER J —Although the word Court in s 4 is not qualified by the adjective proper as it is in other parts of the Act it would not be reasonable to take account of the closing and re opening of any other Court in which the suit was rightly instituted *Per* CURIAM According to s 3 the concessions awarded by the different sections of the Limitation Act are independent and cumulative MIRA MOHIDIN ROWTHER v NALLAPERUMAL PILLAI (1913)
I L R 36 Mad 131

——— ss 3 to 25 29 (1) (b)—

See LIMITATION I L R 46 Calc 199

——— ss 3 7 Sch I Art 142—*Minor—Representative—Death of the minor after majority but pending disability—Right of personal representative to sue—Limitation* Where a minor acquired a cause of action to sue for possession of property and died within three years after attaining majority his personal representative can although twelve years have expired since the cause of action accrued institute a suit on the same cause of action at any time within the three years period which had already commenced in the life time of deceased In such a suit the deceased must be included in the term plaintiff for the purpose of Art 142 for according to s 3 of the Limitation Act plaintiff includes any person from or through whom the plaintiff derives his right to sue ARJUN RAMJI v RAMABAI (1916)
I L R 40 Bom 564

——— s. 3 Arts 120 132—

See LIMITATION I L R 46 Calc 455

——— s 3 Art 177—

See APPEAL, ABATEMENT OF
I L R 34 Mad 292

LIMITATION ACT (IX OF 1908)—*contd*

——— s 4—

See LIMITATION I L R 38 Bom 656
I L R 2 Lah 127

See MADRAS ESTATES LAND ACT (I OF 1908) s 192 I L R 38 Mad 295

——— *General Clauses Act (X of 1897) s 10—Pre-emption—Time for payment of pre emptive price not to be extended beyond period fixed by decree* *Held* that neither s 4 of the Indian Limitation Act 1908 nor s 10 of the General Clauses Act 1897 applies to the payment of money payable by the successful plaintiff under a decree for pre emption HIRDE NARAIN v ALAM SINGH (1918) I L R 41 All 47

——— ss 4 and 5—

See LIMITATION (43)
I L R 41 Mad 412

——— ss 4 and 28—

See MORTGAGE DECREE
3 *Pat L J* 478

——— ss 4 and 14—*Suit for dower—Period of limitation expiring during Christmas holidays—Suit filed in a Subordinate Judge s Court on its Small Cause side on the re-opening day—plaint returned for want of jurisdiction on the Small Cause side—Plaint presented as an Original Suit in the same Court on its regular side—Limitation bar of* Where the period limited for the institution of a suit for dower expired on a day when the Court was closed for the Christmas holidays and the suit was instituted on the re opening day as a Small Cause suit in the Court of a Subordinate Judge on its Small Cause side and on the plaint being returned after some days for want of juris diction it was filed on the next day in the same Court as an original suit and the defendant pleaded that the suit was barred by limitation *Held* that the time during which the suit was pending on the Small Cause side of the Court and which the plaintiff was allowed to deduct under s 14 of the Limitation Act could not be tacked on to the period during which the Court was closed under s 4 of the Act so as to save the bar of limitation UMMATHU v PATHUMMA (1921)
I L R 44 Mad 817

——— s 4 Arts 74 75 80 and 120—

See LIMITATION I L R 38 Mad 374
I L R 41 Mad 412

——— s 4 and seq—

——— not applicable to Letters Patent appeals—

See LIMITATION I L R 2 Lah 127

——— s 5—

6 Pat L J 625

See APPEAL I L R 1 Lah 508
I L R 42 Calc 433

See CIVIL PROCEDURE CODE 1908
O XXII R 9 I L R 42 All 540
XLI R 1 I L R 43 All 660

See COURT FEES ACT ss 4 6 28
3 Pat L J 74

See LIMITATION L R 44 I A 218
I L R 45 Calc 94
I L R 41 Mad 412

LIMITATION ACT (IX OF 1908)—*contd*

——— s 5—*contd*

See PROVINCIAL INSOLVENCY ACT (III OF 1907) ss 22 36 AND 52
I L R 35 All 410

See SECOND APPEAL I L R 2 Lah 1

1 ——— Miscalculation of time by pleader—*Appeal rejected—Discretion exercise of —Civil Procedure Code (Act V of 1908) s 2—Decree meaning of* A *bonâ fide* mistake com mitted by a pleader in calculating the period of limitation may constitute a sufficient cause within the meaning of s 5 of the Limitation Act Whether the miscalculation does constitute a sufficient cause in any particular case must be decided by the Court having regard to all the facts and circumstances of that case Where the Appellate Court refused to admit an appeal pre sented out of time because according to its view of the authorities a miscalculation by a pleader of the period of limitation was not a sufficient cause for not presenting the appeal in time within the meaning of s 5 of the Limitation Act *Held* that the decision could be reviewed on appeal as there was no exercise of discretion by the Court. It is neither necessary nor desirable that any attempt should be made to find precisely and exhaustively the meaning of the expression sufficient cause which should receive a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of *bond fides* is imputable to the appellant RAKHAL CHANDRA GHOSE v ASHUTOSH GHOSE (1913)
17 C W N 807

2 ——— Provisional admission to file in the absence of respondent—*Preliminary objection taken by the respondent at the hearing—Enter tainment of the question—Appeal dismissed with all costs—Second appeal* A time barred appeal having been provisionally admitted to the file in the absence of the respondent and at the hearing the respondent having taken a preliminary objection that the appeal was presented beyond time the Court allowed the objection and dis missed the appeal with all costs on the appellant On further appeal by the appellant *Held* that there being no sufficient cause as a matter of law for extending the time under s 5 of the Limita tion Act (IX of 1908) there was no objection to the question being entertained after the provi sional admission of the appeal to the file in the absence of the respondent *Held* further that the appeal against the order dismissing the appeal was a second appeal and not a first appeal because it was an appeal against the decree of an Appellate Court RAOJI v KRISHNARAO (1914)
I L R 38 Bom. 613

3 ——— Application for substitution of names filed beyond time—*Procedure* S 5 of the Indian Limitation Act 1908 does not apply to an application made under O XXII r 4 of the Code of Civil Procedure Where therefore, such an application is made after time the suit or appeal must be declared to have abated and the remedy for the plaintiff or appellant is to proceed by application under O XXII r 9 SECRETARY OF STATE FOR INDIA v JAWAHIR LAL (1914)
I L R 36 All 235

4 ——— Death of party pending judg ment—*Legal representatives not brought on record—Minority of one of the appellants—Negligence of*

LIMITATION ACT (IX OF 1908)—*contd*

section of a decree the section does not apply to such an application MIDNAPUR ZIMINDARY Co v THE DEPUTY COMMISSIONER OF MANBHUM
3 Pat L J 132

——— ss 5—18—
See CIVIL PROCEDURE CODE (1908) s 148 AND 115 4 Pat L J 428

——— s 5 and Art 156—
See BENGAL TENANCY ACT (1885) ss 105 AND 107 5 Pat L J 472

——— s 6—
See CIVIL PROCEDURE CODE (ACT XIV OF 1882) s 230 I L R 37 Mad 186

See CIVIL PROCEDURE CODE (1908) s 48 I L R 37 All 638

See GENERAL CLAUSES ACT s 6 CL. (c) 15 C W N 845

——— *Purchaser from minor if gets rights of minor* The view that the plaintiff having purchased the property from a minor has got by the assignment the rights of a person under disability under s 6 of the Indian Limitation Act cannot be supported after the decision of the Full Bench in the case of *Pudra Canta v Nobokissore I L R 9 Calc 663* BHAGABAN CHANDRA KAIBARTA DAS v ISHAN CHANDRA KAIBARTA DAS (1918) 22 C W N 831

——— ss 6 7—
See CIVIL PROCEDURE CODE (1908) O XXXIV RR 4 5 AND 10
I L R 41 All 473

——— ss 6 7 9 15—
See ALIEN ENEMY
I L R 46 Calc 526

——— ss 6, 8 9—*Disqualification saving limitation—Management of estate by Court of Wards if saves limitation* Under the Limitation Act 1908 no other cause of disqualification than those mentioned in the Act can be admitted to save limitation and the only disqualifications that ss 6 8 and 9 of the Act recognise are minority insanity and idiocy and the suit as regards the properties comprised in the *kobala* of 1890 was barred by limitation under Arts 91 and 142 of the Act The fact that the plaintiff was a disqualified proprietor whose estate was under the charge of the Court of Wards did not prevent the running of time against her during the period the Court remained in charge KUARMONI SINGHA v WASIF ALI MEERZA (1915) 19 C W N 1113

——— ss 6 10—*Receipt of interest by a mortgagee from a trustee knowing mortgage to be in breach of trust—Suit by beneficiary for such interest against mortgagee—Applicability of s 10 to such suit—Cause of action for beneficiary to recover such interest—No new cause of action on beneficiary attaining majority* Interest received by a mortgagee from a trustee in respect of a mortgage executed by the latter in breach of trust to the knowledge of the mortgagee *is not* property vested in the mortgagee in trust for any specific purpose within s 10 of the Limitation Act If on the dates of payment of interest the beneficiary be a minor his cause of action to recover the same arises from such dates and if he sues for the recovery of such interest after attaining majority he is bound to sue within the time limited by s 6 of the Act and he does not get a fresh cause of action on attaining majority RAJA OF RAMNAD v PONNUSAMI TEVAR (1921) I L R 44 Mad 277

——— ss 6 14, 15 and 19—*Assignee of a debt due to a minor—Suit by assignee—Limitation for such suit whether saved in right of minor assignor—Attachment of debt prior to sale—Time till sale whether can be deducted in computation—Causes of action for attachment and suit whether same—Acknowledgment in a deposition—Denial of a subsisting debt—Sufficiency of acknowledgment* Where a decree holder having attached in 1913 a book debt due in 1911 to a minor judgment debtor sold it in auction and purchased it himself in February 1915 sued in March 1915 to recover it from the defendant who pleaded the bar of limitation *Held* (i) that the assignee of a debt due to a minor could not avail himself of the privilege of the extension of limitation given by s 6 of the Limitation Act *Rudra Kant Surma Sarkar v Nobo Kishore Surma Biswas I L R 9 Calc 663* followed (ii) that s 15 of the Act did not operate to save limitation during the time the attachment was in force *Shib Singh v Sita Ram I L R 13 All 76* followed and *Beti Maharani v The Collector of Etawah I L R 17 All 198* referred to (iii) that s 14 of the same Act was also inapplicable as the attachment proceedings were not based on the same cause of action as the suit to recover the debt (iv) that on its appearing that the defendant stated in a deposition that there was once a debt but that he had discharged it the statement did not amount to an acknowledgment within s 19 explanation I of the Act *Bollaparagada Ramamurty v Tammana Gopayya 31 M L J 231* followed and (v) that the suit was consequently barred by limitation RANGASAMI CHETTI v THANGAVELU CHETTI (1919)
I L R 42 Mad 637

——— s 6 and Art 120—*Suit for declaration by after born sons* One *H B* sold his occupancy rights on 27th August 1900 On 6th May 1913 his four sons instituted the present suit for a declaration that the sale should not affect their reversionary rights The four plaintiffs were born in 1891 1904 1908 and 1911 respectively As regards the eldest son *L D* he being over 21 years of age when the suit was lodged it was admitted that the suit was barred by limitation The other three sons who were born after the alienation were minors at the time when the suit was instituted and it was claimed that so far as they were concerned the suit was in time having regard to the provisions of s 6 of the Limitation Act inasmuch as two of them were born before their eldest brother had attained the age of 18 and the period of limitation only began to run from that date *Held* that the three minor plaintiffs not having been in existence at the time when the right to sue accrued could not take advantage of the provisions of s 6 of the Limitation Act and that the suit was consequently barred by limitation *Ramkishore v Jainarayan I L R 40 Calc 966 979 (P C)* distinguished LACHMAN DAS v SUNDAR DAS I L R 1 Lah 558

——— s 6 and Art 125—*Widow s alienation—Right of several reversioners independent—Not questioned by deceased father f t twelve years—*

LIMITATION ACT (IX OF 1908)—*contd*

Right of minor son to question after twelve years but within three years of attaining majority For the purpose of questioning an alienation made by a Hindu female possessing a limited estate one reversioner does not claim through another and consequently laches on the part of a father who died without instituting a suit within twelve years from the date of the alienation does not disentitle his son from filing a suit for the purpose even after twelve years after the alienation if he was a minor at the time and files the suit within three years of attaining majority S 6 and Art 125 of Limitation Act considered *Govinda Pillai* v *Thayammal I L R 28 Mad 57 Bhagwanta* v *Sukhi I L R 22 All 33 Abinash Chandra Majumdar* v *Hari Nath Saha 9 C W N 25 Sakyahani Ingle Rao Sahib* v *Bhavani Bo i Sahib I L R 27 Mad 588* and *Chinna Veerayya* v *Lakshminarasimha 22 Mad L J 375* followed *Mullapudi Ratnam* v *Mullapudi Ramayya I L R 25 Mad 731* and *Chhaganram Astikram* v *Bai Motigavri I L R 14 Bom 512* not followed *Chiruvolu Punnamma* v *Chiruvolu Perraju I L R 29 Mad 390* referred to *Krishnier* v *Lakshmiammal 18 Mad L J 275* distinguished VEERAYYA v GANGAMMA (1913)

I L R 36 Mad 570

———— ss 6 7 and Art 144—*Mortgage—Mahomedan family—Sale by one co heir—Suit for redemption by other heirs—One of the plaintiffs a minor—Suit not barred* M a Mahomedan mortgaged the property in suit to *J* in 1895 *M* died in 1901 and his widow sold the equity of redemption to *J* who obtained possession of the property under the sale In 1914 *M s* son *G* and daughters *S* and *K* sued for redemption of the mortgage of 1895 and for possession Of these plaintiffs *G* and *K* had attained majority three years before suit while plaintiff *S* attained majority in July 1913 The lower Court held the suit barred as regards plaintiffs *G* and *K* under Art 144 read with s 6 of the Limitation Act on the ground that the possession of *J* became adverse in 1901 *Held* that the suit having been brought within three years of the date when the youngest plaintiff *S* attained majority was not barred by limitation under s 7 of the Limitation Act because the right to redeem was indivisible and neither of the plaintiffs *G* and *K* was qualified to discharge or release the equity of redemption GULAM GOUS v SHRIRAM PANDURANG (1918)

I L R 43 Bom 487

———— s 6 Art 164—*Application to set aside ex parte decree made after coming into force of Act governed by Art 164—S 7 of old Act XV of 1877 does not apply—S 6 of General Clauses Act (X of 1897) does not make the new Act inapplicable* A decree was passed *ex parte* against *A* a minor on the 4th September 1894 *A* became a major on 16th January 1909 and applied on 25th January 1909 to set aside the decree *Held* that the Limitation Act (IX of 1908) which came into force on 1st January 1909 applied and the application was barred under Art 164 of the Act Under s 6 of the Act the plea of minority was available only in the case of suits and applications for execution S 6 of the General Clauses Act (X of 1897) had not the effect of making the new Act inapplicable *Kali Amma* v *Palappakkara Manakal 20 Mad L J 347* followed CHIDAMBARAM CHETTY v KARUPPAN CHETTY (1912)

I L R 35 Mad 678

———— s 6 and Art 168—
See CIVIL PROCEDURE CODE 1908 s 151 AND O XLI I L R 45 Bom 648

———— ss 6 and 1 Arts 182 183—
See CIVIL PROCEDURE CODE (ACT V OF 1908 s 144 I L R 41 Bom 625

———— ss 6 7 9 and 15—
See ALIEN ENEMY I L R 46 Calc 526

———— s 7—

1 ———— Minor decree holders—*Applications for execution by guardian—Attainment of majority by one decree holder—Application by guardian takes effect in favour of all—Right of the major decree holder to give discharge to the judgment debtor in respect of the judgment debt* Two minor sisters who were born in the years 1881 and 1887 obtained a decree against the defendants in May 1900 The minor decree holders were represented by a guardian appointed by the Court The said decree was confirmed by the High Court in appeal in March 1901 Subsequently the guardian presented applications for the execution of the decree in 1904 1905 and 1906 and while the last application was pending the guardian died Thereupon the decree holders presented an application for execution as majors in 1908 The defendants contended that as the elder decree holder had attained majority the application by the guardian was as to her unauthorized and the execution of the decree was barred as against her It was further contended that as the elder decree holder could from the time of her attaining majority make an application and give a good discharge to the judgment debtor for the decretal debt without the concurrence of the minor time had, therefore run against both under s 8 of the Limitation Act (XV of 1877) or s 7 of the Limitation Act (IX of 1908) *Held* that by reason of the first explanation of Art 179 of the Limitation Act (XV of 1877) an application made by a representative of one of joint decree holders takes effect in favour of all Therefore though the elder decree holder had attained majority the applications made by the guardian as the next friend of the minor decree holder took effect in favour of both *Held* further that the contention under s 8 of the Limitation Act of 1877 or s 7 of the Limitation Act of 1908 was inconsistent with the decisions in *Govindram* v *Tatia I L R 20 Bom 383* and *Zamir Hasan* v *Sundar I L R 22 All 199* the applicability of which had not ceased owing to any change in the words of s 7 of the Limitation Act of 1908 MANCHAND PANACHAND v KESARI (1910)

I L R 34 Bom. 672

2 ———— Receiver—*If can give discharge of debt—Minor owner* A receiver upon whom the Court had conferred all the powers of realisation that an owner has can himself give a discharge in respect of a debt He is not fettered by the restrictions which are laid upon any one of several joint creditors or upon a next friend Where a decree on a bond was passed on 5th August 1904 in favour of the plaintiffs some of whom were minors the suit having been filed on 21st June 1904 through their manager and *ammukt*

LIMITATION ACT (IX OF 1908)—*contd*

tear who was appointed Receiver by the District Judge on 15th September 1905 in a suit between the plaintiffs and was put in charge of the whole business of the plaintiffs with all its pending and impending litigation and a Receiver was in charge from that time onwards and no steps were taken in execution of the decree until 11th May 1910 when one of the minors applied for execution alleging that he had attained majority on 5th June 1907 *Held* that the application for execution was barred by limitation That the decretal debt vested in the Receiver when he was appointed on 15 h September 1905 and from that date onwards he was competent to give a di charge when once the debt had vested in him the minority of one or more of the decree holders ceased to have any importance for the rights of the minor no less than the rights of the majors were all absorbed by the Receiver *Jagat Tarini Dasi* v *Noba Gopal Chaki I L R 34 Calc 305* referred to GIRJA NANDAN SINGH *v* KANHAYA PROSAD SAHU (1913) 18 C W N 138

3 ———————— *Suit to recover arrears of Deshpandegiri cash allowance—Three years arrears can be recovered* The plaintiffs one of whom was a minor being jointly entitled to a Deshpandegiri cash allowance sued to recover arrears for six years prior to the suit *Held* that the plaintiffs were entitled to recover the arrears for three years only for the minority of the second plaintiff could not help the plaintiffs inasmuch as the adult plaintiff was in a position to give a discharge on behalf of himself as well as the minor *Ganpat* v *Sheshgiri 6 Bom L R 647* distinguished HUCHPAO TIMMAJI *v* BHIMRAO GURURAO (1917) I L R 42 Bom 277

4 ———— Death of decree holder—*Persons entitled to execute decree being the decree holder s two sons one of age the other not—Application for substitution and death of elder son* A decree absolute for sale on a mortgage was obtained on the 19th of December 1906 The decree holder applied for execution on the 23rd of September 1909 but during the pendency of these proceedings he died leaving two sons—*J* of full age and *R* a minor On the 29th of September 1910 application for substitution was made by *J* and *R* *J* purporting to act as next friend to his brother and asking the Court to appoint him as such Before the date fixed for hearing however *J* died and the application was dismissed on the date fixed no one appearing on behalf of the decree holder On the 16th of July 1917 *R* who had attained majority earlier in the same year applied for execution praying that his application might be regarded as a continuation of the original application of 1909 *Held* that this application was time barred It could not be regarded as a continuation of the application of 1909 and inasmuch as *J* could as head of the joint family consisting of himself and *R* have given valid discharge on behalf of *R* as well as himself *R* could not claim the benefit of s 7 of the Indian Limitation Act 1908 RATI RAM *v* NIADAR (1919) I L R 41 All 435

5 ———— Joint Hindu family—*Eldest brother competent to give a valid discharge as manager of the family—Suit by minor brothers barred* In 1915 three brothers members of a joint Hindu family sued to recover possession of property after setting aside a sale deed passed by their mother during their minority on the 28th July 1905 Plaintiffs Nos 1 and 2 were minors and plaintiff No 3 was more than twenty one years of age at the date of the suit The suit was held barred as against plaintiff No 3 but a question having arisen whether it was barred as against plaintiffs Nos 1 and 2 under s 7 of the Limitation Act 1908 *Held* that it was barred as against plaintiffs Nos 1 and 2 also inasmuch as plaintiff No 3 on his attaining majority became the manager of the joint family and as such could give a valid di charge and acquittance of all claims against the defendants without the concurrence of the minor plaintiffs *Per* FAWCETT *J*—The main object of the Legislature in s 7 (of the Indian Limitation Act IX of 1908) is to limit the indulgence which is otherwise given to minors so that if there are several minors who can claim the benefit of s 6 that concession does not extend to cover the whole period of time up to the youngest of the minors becoming a major but can only be availed of by the eldest of them *Doraisami Serumadan* v *Nondasami Saluvan (1912) 38 Mad 118* followed BAPU TATYA *v* BALA RAVJI (1920) I L R 45 Bom 446

———— s 7 Sch I Art 44—*Joint Hindu family consisting of minors and widows—Manager—Mukhtiarnama executed by manager—Management by the mukhtiar during the life time and after the death of the manager—Sale by the mukhtiar after the death of the manager—Binding effect—Minor—Limitation to set aside sa e* *K* the manager of a joint Hindu family consisting of minors and widows executed a *mukhtiarnama* providing for the management of the family estate including settlement of money debts and pecuniary claims both during his life time and after his death until his eldest minor son attained majority The *mukhtiar* was empowered to manage the estate as he thought fit including the power of sale and settle claims as *K* himself could have done during his life time In connection with the registration of the *mukhtiarnama* the Sub Registrar examined the widows in the family including the widow of *K* the manager who had died in the meanwhile and the deed was registered as the widows admitted the same Subsequently the *mukhtiar* sold *mulgeni* (leasehold) rights of the family in certain lands for valuable consideration *K s* eldest son having attained majority on the 10th December 1894 he with his minor brother brought a suit on the 17th May 1899 to recover possession of the property alleging that the sale of the *mulgeni* (leasehold) rights was void *ab initio* The lower Courts having dismissed the suit on second appeal by the plaintiffs *Held* that (*i*) the sale by the *mukhtiar* was binding on plaintiffs as having been within the authority conferred by the *mukhtiarnama* (*ii*) The sale could not be treated as a nullity inasmuch as a dying adult Hindu might appoint a manager and trustee for the minors themselves without interfering with the succession to the property *Raj Lukhee Dabea* v *Gokool Chunder Chowdhry 13 Moo I A 209* and *Soobah Doorgah Lal Jha* v *Rajah Neelanund Singh 7 W R 74* referred to (*iii*) The right of plaintiff 1 if any to challenge the sale was barred at the date of the suit under Art 44 Sch I of the Limitation Act (IX of 1908) by reason of his failure to sue within three years of his attaining majority (*iv*) Plaintiff 2 a minor was also barred under s 7 of the Limitation Act (IX of 1908) inasmuch as

LIMITATION ACT (IX OF 1908)—*contd*

plaintiff 1 after attaining majority could have bound the minor plaintiff if he had chosen to give a discharge and acquittance of all claims to the defendants in respect of *mulgeni* (leasehold) interests as manager MAHABLESHVAR KRISHNAPPA v RAMCHANDRA MANGESH (1913)

I L R 38 Bom 94

——— s 7 and Art 44—*Sale by a Hindu mother as guardian of her only son—Second son in the womb at the time of sale—Subsequent sale by both the sons to another—First purchaser dispossessed by the latter—Suit in ejectment—Limitation* The plaintiff claimed under a sale deed executed by a Hindu widow as guardian of her only son at a time when she had another son in the womb The plaintiff was afterwards forcibly ejected by the appellant who had obtained a later sale deed from the elder son who executed it both on behalf of himself and his minor brother The plaintiff sued in ejectment more than three years after the first son s attaining majority but within three years of the attainment of majority by the second *Held* that no suit having been brought by the first son within the period prescribed by Art 44 of the Limitation Act to set aside the sale the plaintiff s right to the share of the first son became absolute and that as the mother did not execute the sale deed as guardian of the second son his share in the suit land did not pass to the plaintiff *Held* also that as the causes of action for the two sons were different s 7 of the Limitation Act had no application to the facts of the case *Doraisuami Serumadan* v *Nondisami Saluvan I L R 38 Mad 118* distinguished KANDASAMI v IRUSAPPA (1917) I L R 41 Mad 102

——— ss 8 and 9—

See s 6 19 C W N 1113

——— s 9—

See CIVIL PROCEDURE CODE 1908 s 48
I L R 36 Bom 498

See LIMITATION ACT 1877 s 19 ART 148 I L R 35 All 227

——— The 12 years prescribed by s 48 of the Civil Procedure Code must be computed from the day on which it begins to run and is not suspended during minority succeeding to Father who died after decree passed BHAGWANT RAMCHANDRA v KAJI MAHOMED ABBAS
I L R 36 Bom 498

——— ss 9 15—

See ALIEN ENEMY
I L R 46 Calc 526

——— s 10

See CIVIL PROCEDURE CODE (ACT V OF 1908) ss 92 AND 93
I L R 38 Mad 1064

See EQUITY OF REDEMPTION
2 Pat L J 587

See HINDU LAW—WILL
I L R 39 Mad 365

See KHOJA MAHOMEDANS
I L R 36 Bom 214

See TRUSTS PROPERTY
24 C W N 752

See WAKF I L R 37 Bom 447

LIMITATION ACT (IX OF 1908)—*contd*

——— *Whether applicable to suits in respect of property which has not been received by a trustee* The insertion in s 10 of the Indian Limitation Act 1908 of the words or the proceeds thereof or for an account of such property or proceeds has not had the effect of exempting from the ordinary rules of limitation suits against trustees for failure to reduce the trust property into possession *New Fleming Spinning and Weaving Company Limited* v *Kessowji Naik I L R 9 Bom 373 399* followed THOLASINGAM CHETTY v VEDACHELLA AIYAH (1917)

I L R 41 Mad 319

—*Straits Settlements Ordinance No 6 of 1896 s 10— Specific purpose meaning of* A specific purpose within the meaning of s 10 of the (Limitation) Ordinance No 6 of 1896 of the Straits Settlements (which in terms corresponds to s 10 of the Indian Limitation Act) must be a purpose that is either actually or specifically defined in the terms of the Will or settlement or a purpose which from the specified terms can be certainly affirmed The statement in *Balwant Rao* v *Puran Mal I L R 6 All* that the purpose of following the property in the hands of the trustees referred to at the end of the section must be the purpose of restoring it to the trust which is specified in the earlier part of the section provides a sound and critical test by which to consider whether or not any particular trust is within the provision of the section KHAW SIM TEK v CHUAH HOOI GNOH NEOH (P C)
26 C W N 405

——— ss 10 and 20—

1 ——— *Suits against Karta*—S 10 does not apply to suits against a *Karta* That section requires that the property must be vested in the trustee for a specific purpose but it cannot be said that a *Karta* is vested with the property belonging to a joint family The 6 year limitation under Art 120 applies to such suits BISWAMBAR HALDAR v GIRIBALA DASI
25 C W N 358

2 ——— *Trustee de son tort—Suit for account* A trustee *de son tort* stands in the same position as an express trustee The claim for accounts 6 years prior to the institution of the suit would be saved by Art 120 the obligation of the trustee being continuous Under the 1908 Article there is no limit to a suit for accounts against a trustee DHANPAT SINGH v MOHESH NATH TEWARI 24 C W N 752

——— s 10 Sch I Arts 14 120—*Deposit—Order of the Collector refusing payment vested in trust—Specific purpose—No bar of time for recovery* In 1835 *C* an ancestor of the plaintiffs had his immoveable property sold to satisfy his debt by the then Maharaja of Satara Out of the sale proceeds the debt was paid off and the balance of Rs 1 93 0 5 was credited in the Government Treasury in the name of *C* Subsequently when the Satara principality ceased in the year 1848 the said amount came to be credited in *C's* name in the British Treasury In 1859 *C's* descendants applied to the British Government for a refund of the amount when it was ordered that the amount be refunded after production of heirship certificate by the applicants and the order was communicated to the then applicants. Subsequently

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for a number of years there were litigations in Civil Court between *C's* descendants and the purchasers of *C's* property as regards the validity of sale Ultimately in 1906 *M* the father of the plaintiffs made an application to the District Court for a certificate of heirship and an order for the issue of a certificate was passed on the 23rd March 1907 *M* then made an application on 16th October 1907 to the Collector of Satara requesting for a refund of the amount of Rs 1 793 0 5 standing credited in *C's* name This application was decided against the plaintiff by the Collector on 6th March 1911 The plaintiffs then appealed to the Commissioner and the appeal was rejected on 17th July 1911 A further appeal to the Government met with a similar fate Plaintiff therefore on 15th June 1912 filed a suit against the defendant as trustee for the recovery of the amount alleging that the cause of action arose on 17th July 1911 the date when the Commissioner s order was received by the plaintiffs The defendant contended that the cause of action arose on 6th March 1911 when the Collector rejected the plaintiff's application and the suit was barred under Arts 14 and 120 of Sch I of the Limitation Act (IX of 1908) The Lower Court being of opinion that the money was at most held by the defendant on an implied trust held that s 10 of the Limitation Act did not apply to the case and that the plaintiff s claim could only be decreed on the ground that it was within time under Art 120 of the Limitation Act The defendant having appealed to the High Court *Held* that the money being vested in the Government when it took over the Satara Treasury in 1848 and the purpose of the credit in the name of *C* being specific s 10 of the Limitation Act did apply *Held* further that the plaintiffs were entitled to succeed on the ground not only that their claim did not fall within Art 14 and would be within time if it fell within Art 120 but that it was one to which the bar of limitation could not be pleaded SECRETARY OF STATE FOR INDIA *v* BAPUJI MAHADEO (1915) I L R 39 Bom 572

———— ss 10 30 Sch I Art 134—

See LIMITATION I L R 43 Calc 34

———— s 10 Sch I Art 120—

See ADMINISTRATOR 2 Pat L J 642

———— s 10 Sch I Arts 124 134 and 144—

See RELIGIOUS ENDOWMENTS 3 Pat L J 327

———— s 12—

See s 5 20 C W N 1303

See ARBITRATION I L R 46 Calc 721

See APPEAL TO PRIVY COUNCIL I L R 39 Calc 766

See CIVIL PROCEDURE CODE (1908) s 122 I L R 40 All 1

See DECREE AGAINST A MAJOR AS MINOR. I L R 39 Mad. 1031

See LEAVE TO APPEAL I L R 42 Calc 35

See LIMITATION (67) 22 C W N 553

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See PROVINCIAL INSOLVENCY ACT s 496 I L R 34 All. 46 I L R 39 Mad 593

See PATNA HIGH COURT RULES OF 1916 5 Pat L J 701

1 ———— Time requisite for obtaining copy—*Application for copy made on date the Court closed for annual vacation—Notice posted during the vacation—Copy received after vacation* Where an application for copies of a judgment and decree was made on the day when the Court rose for its annual vacation it was *held* that the applicant was entitled to the benefit of the whole period of the vacation notwithstanding that the copying department was kept open for some days and a notice posted during the vacation that the applicant s copies were ready KHUB CHAND *v* HARMUKH (1911) I L R 34 All. 41

2 ———— *Application for leave to appeal to Privy Council—Time taken for obtaining copy of decree if may be excluded—Indian Statue permitting exclusion if ultra vires—Order in Council of 1838—Government of India Act of 1858 s 64—Letters Patent cls 39 44—Privy Council Appeals Act (VI of 1874)* An application for leave to appeal to His Majesty in Council is not time barred if excluding the time taken for obtaining a copy of the decree appealed from it is found to have been made within 6 months S 12 of the Limitation Act of 1908 is within the legislative powers of the Government of India in permitting such exclusion ABDULLAH HUSAIN CHOUDHURY *v* ANANDA CHANDRA PAY (1914) 18 C W N 1066

3 ———— *High Court judgment—Application for review—Limitation if runs from before the signing of decree* In computing the period of limitation for an application for review of a judgment of the High Court the party applying for review is entitled to have excluded under s 12 of the Limitation Act the time requisite for taking a copy of the decree and the period of limitation cannot in such a case commence to run until at all events the day the decree was signed by the Judges GANGADHAR KARMAKAR *v* SEKHAR BASISNI DASYA (1916) 20 C W N 967

4 ———— *Appeal limitation for presenting—Copies of judgment and decree applied for at different times—Both periods if to be excluded—Rule when periods overlap* Under s 12 cls (2) and (3) of the Limitation Act the appellant is entitled to a deduction of the time requisite as well for obtaining a copy of the decree as for obtaining a copy of the judgment and if he has applied for copies of the judgment and decree at different times both these periods should be excluded in computing the periods of limitation allowed for presenting the appeal unless the two periods overlap partially or entirely in which case the appellant is not entitled to have a deduction of the same time twice over PAJANI KANTA KAPALI *v* KALI MOHAN DAS KAPALI (1916) 21 C W N 217

5 ———— *Appellant filing a copy of decree appealed from obtained by another party—Deduction of time taken to get the copy* An appellant who is required to file with his memorandum of appeal a copy of the decree appealed from may file a copy obtained by another party

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and under s 12 (2) of the Limitation Act he is entitled to a deduction of time taken to obtain that copy *Ram Kishan Shastari* v *Kashi Bai (1907) I L R 29 All 264* followed. *Ramamurthi Ayyar* v *Subramania Aiyar (1902) 12 M L J 385* dissented from AMIN UD DIN SAHIB v PIARI BI (1910) **I L R 43 Mad 633**

6 ——————— *Christmas holidays—Deduction of in computing time for appeal* The defendant against whom a judgment and decree were passed on 21st December 1919 i e on the first day of the Christmas vacation applied for copies of the same on the 7th January 1920 i e some days after the reopening *Held* that in computing the time for appeal the defendant was not entitled to deduct the period of the Christmas vacation as time requisite for obtaining copies within section 12 of the Limitation Act SUBRAHMANYA v NARASIMHAM (1920) **I L R 43 Mad 640**

7 ——————— *Limitation—Exclusion of time necessary for obtaining essential copies—Application for copies made after period of limitation had expired* In order to obtain the benefit of s 12 of the Indian Limitation Act an appellant must apply once and for all for copies of all essential documents before the period of limitation for appeal has run out He cannot seek in aid the extended period if he finds later that an essential document has been omitted MULRAJ v NIADAR MAL **I L R 42 All 260**

8 ——————— The time requisite for attaining a copy of the decree within the meaning of this section does not begin until the actual application for a copy has been made JYOTINDRANATH SARKAR v THE LODNA COLLIERY CO LTD **6 Pat L J 350**

9 ——————— *Appeal—Exclusion of time between delivery of judgment and signing of decree—Delay in filing folios—Practice.* Under s 12 of the Limitation Act 1908 an appellant is entitled to deduct the time between the delivery of judgment and the signing of the decree in computing the period of limitation prescribed for an appeal An applicant for a certified copy should deposit the required number of folios not later than the first day on which the office of the Court is open after that on which the number of folios was notified to him and in calculating the time required for obtaining a copy the applicant is not entitled to deduct the days during which the preparation of the copy was delayed by his own neglect to furnish folios. RAM ASRAY SINGH v SHEO NANDAN SINGH **1 Pat L J 573**

——— ss 12 29—

See PROVINCIAL INSOLVENCY ACT (III OF 1907) s 46 (4)
I L R 33 All 738
I L R 34 All. 496

——— s 12 Sch I Art 179—

See LIMITATION ACT (IX OF 1908) s 12 SCH I ART 179
I L R 39 Calc 510

——————— *Limitation—Application for leave to appeal to His Majesty in Council—Exclusion of time requisite for obtaining a copy of the decree* *Held* that s 12 of the Indian Limitation Act 1908 applies to applications for leave to appeal to His Majesty in Council The appellant is therefore entitled to exclude the day upon which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree from the period of limitation prescribed PAM SARUP v JASWANT RAI (1915)
I L R 38 All 82

——————— s 13—*Dissolution of partnership —Partnership business carried on outside British India—Absence of defendant out of British India—Suit for dissolution in British Indian Court—Exclusion of time—Cause of action—Jurisdiction of Court—Civil Procedure Code (Act V of 1908) s 20* A partnership consisting of plaintiff defendant No 1 and one S carried on business at Delagoa in South Africa and was managed by defendant No 1 who lived there In June 190- S died Defendant No 1 returned to British India in July 1908 and was there till November 1910 when he returned to Delagoa Thereafter in October 1915 he came back and settled in British India In April 1916 the plaintiff sued in a British Indian Court for dissolution of partnership The question of limitation arising —*Held* that the suit was in time for the periods during which defendant No 1 was absent from British India should be excluded from the period of limitation under section 13 of the Indian Limitation Act 1908 *Atul Kristo Bose* v *Lyon & Co (1887) 14 Cal 457* followed Where the parties to a suit reside within the jurisdiction of a British Indian Court one of them can sue the other for dissolution of partnership in that Court even although that partnership commenced and was carried on in foreign territory ISMAILJI v ISMAIL ABDUL **I L R 45 Bom 1228**

——— ss 13 19 and 20—*Loan to a partnership—One of the partners absent from British India—Suit for loan more than three years after loan but within three years after return of partner whether barred and against whom—Release by some partners of a partnership debt whether binding on legal representative of a deceased partner—Entries in debtor s accounts whether payment of interest or acknowledgment* The plaintiff's father was a partner along with the third the sixth and eighth defendants of a firm at *E* which advanced certain loans in 1903 and 1904 to a firm at *S* of which the first defendant and the former defendants were partners the first defendant was out of British India from 1903 to 1908 The plaintiff sued in 1909 to recover his share of the loans from the partners of the firm at *S* The defendant pleaded that the suit was barred by limitation the plaintiff relied in bar of limitation on s 13 of the Limitation Act and also on certain unsigned entries in defendants account books in which the interest accruing due were added to principal from time to time the first defendant further pleaded a release by defendants Nos 3 6 and 8 of the claim against him as binding on the plaintiffs. *Held* that the suit was not barred by limitation against the first defendant as the plaintiff was entitled to a deduction of the time during which the first defendant was out of British India but was barred against the other defendants under s 13 of the Limitation Act that the entries in the debtor s accounts could not be treated as payments of interest under s 20 of the Limitation Act or as acknowledgments under s 19 of the Act as they were not signed by the debtors. *Held* also, that a partner can release a partnership claim, and after the death of a partner the surviving partners

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——— ss 13 19 and 20—*contd*

have a right to release such a claim that if a release by any of the partners is fraudulent the other partners can avoid it and seek to recover their share of the released debt but the legal representative of a deceased partner is not entitled to avoid it as the right to do so is personal to the partners *Held* (on the facts) that the release of the first defendant by the third sixth and eighth defendants was *bona fide* and binding on the plaintiff PALANIAPPA CHETTIAR *v* VEERAPPA CHETTIAR (1917) I L R 41 Mad 446

——— s 14—

See s 4 I L R 44 Mad 817

See s 5 I L R 42 Bom 295

See CIVIL PROCEDURE CODE 1908 s 47 I L R 44 Bom 97

See INSOLVENCY I L R 39 Mad 74

See LIMITATION I L R 45 Calc 94

See LIMITATION (54) I L R 46 Calc 870

See LIMITATION (72) I L R 47 Calc 300

See LIMITATION ACT (IX OF 1908) SCH I ARTS 62 120 I L R 39 Mad 62

See REGISTRATION ACT 1908 s 77 24 C W N 4 & 29

See RENT SUIT (PREMATURE) I L R 46 Calc 870

1 ——— *Plaint filed on last day ordered to be returned for presentation in another Court on a later date—Plaint actually returned later—Interval between if bars suit* Where a plaint which was filed in a wrong Court on the last day of limitation was subsequently ordered to be returned for presentation to the proper Court but was not actually returned till three days later and was filed in the proper Court the day following *Held* that the suit was not barred by limitation Where the final order is promulgated on a later date than that on which it was signed the date of promulgation should be held to be the day on which the proceedings ended within the meaning of expl I of s 14 of the Limitation Act *Abhoya Charan Chakrabartty* v *Gour Mohun Dutt* 24 *W R* 26 distinguished MOHENDRA PROSAD SINGH *v* NANDA PROSAD SINGH (1913) 17 C W N 1043

2 ——— *Withdrawal of suit—Fresh suit filing of whether saved by* S 14 of the (Indian) Limitation Act (IX of 1908) applies only to cases where a Court itself decides that it is unable to entertain a suit for want of jurisdiction or other cause of a like nature and has no application to a case where the plaintiff himself withdraws his suit on discovery of some technical defect which would involve a failure *Varajlal* v *Shomeshwar I L R 29 Bom 219* and *Upendra Nath Nag Choudhury* v *Suryakanta Pay Chowdhury 20 I C 205* followed. ARUNACHELLAM CHETTIAR *v* LAKSHMANA AYYAR (1915) I L R 39 Mad. 936

3 ——— *Exclusion of time from period of limitation—Time taken up in proceedings bona fide before a Court—Proceedings before Collector under s 11A of the Bombay Hereditary Offices Act (Bombay Act III of 1874)—Time cannot be excluded* The time taken up in prosecuting an application before the Collector under s 11A of the Bombay Hereditary Offices Act (Bom Act III of 1874) cannot be excluded from the period of limitation under s 14 of the Indian Limitation Act 1908 LAXMAN GANESH *v* KESHAV GOVIND (1918) I L R 43 Bom 201

LIMITATION ACT (IX OF 1908)—*contd*

——— s 14—*contd*

4 ——— *Plaint—Return of plaint—Proceedings do not end until the party gets back his plaint—Suit filed on the opening date after vacation—Presentation of plaint into another Court—Exclusion of time—Calculation should be made as if the second Court had been closed for vacation* When a party is ordered to take back his plaint and present it in the proper Court the proceedings do not end until the party gets back his plaint within the meaning of Expl I to s 14 of the Limitation Act 1908 *The plaintiff sued to recover* a sum due on account of dealings with the defendant between 20th May 1913 and 3rd June 1913 The suit was filed in the Hubli Court on the 7th June 1916 the date the Court re opened after the vacation and was then in time On defendant s pleading that he was an agriculturist the plaint was ordered on the 15th January 1917 to be returned for presentation to the proper Court The plaintiff took away the plaint on the 25th January 1917 and presented it on the same day in the Haveri Court It was contended that even if the period from 7th June 1916 to 25th January 1917 was excluded the suit filed in the Haveri Court would still be four days out of time as the period which was allowed to be excluded owing to the Hubli Court being closed for the vacation when the plaint was filed in that Court could no longer be taken advantage of after the order had been made to take back the plaint and file it in another Court *Held* that the suit in the Haveri Court was in time as the plaintiff was entitled to take advantage of those days during which the Hubli Court was closed for the vacation and the calculation should be made in the same way as if the second Court had been closed for the vacation *Mira Mohidin Routher* v *Nallaperumal Pillai (1911) 36 Mad 131* not followed BASVANAPPA *v* KRISHNADAS (1920) I L R 45 Bom 443

5 ——— *Applicability of when the parties in the two proceedings are not the same—Art 6 and 97 which applies where an execution purchaser of a putni paid rent to the zemindar after the setting aside of the sale by the first Court and during the pendency of infructuous appeal—Existing consideration meaning of* Plaintiff purchased a *putni* at a sale held under Reg VIII of 1819 in May 1908 In October 1910 the purchaser paid rent to the zemindar after the sale was set aside by the Court of first instance in May 1910 and during the pendency of an appeal by the zemindar which was ultimately dismissed There were certain proceedings for assessment of mesne profits between the purchaser and the original *putnidar* on the basis of the decree for cancellation of the sale Thereafter the said purchaser in February 1916 sued for recovery of the money paid as rent to the zemindar *Held* that the suit was barred In view of the provisions of s 14 of the Limitation Act the Plaintiff was not entitled to a deduction of the time during which the mesne profits proceedings were going on as the zemindar was not a party therein nor was there

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———— s 14—*contd*

since October 1910 any period of time when the right of the Plaintiff to sue was suspended by reason of events over which he had no control That Art 6 of the Limitation Act applied to the case The fact that there was failure of consideration at the time the payment was made in October 1910 attracted the operation of the bar imposed by Art 62 Art 97 did not apply because at the time when the money was paid there was no subsisting Consideration JANAKI NATH SINHA v BEJOY CHAND MAHATAB 26 C W N 271

6 ———— Res Judicata does not constitute Other causes of a like nature within the meaning of s 14 of the Limitation Act 1908 BRAJA GOPAL MUKHERJI v TARA CHAND MARWARI 6 Pat L J 593

———— s 14 and 15—

See s 6 I L R 42 Mad 637

———— ss 14 and 29—

See LIMITATION I L R 47 Calc 300

———— 15—

See s 5 Pat L J 132

See CIVIL PROCEDURE CODE (1908) s 48 I L R 40 All 198

See LIMITATION (27) I L R 38 Mad 92

See LIMITATION ACT 18 SCH II ART 178 I L R 34 ALL 476

See LIMITATION ACT 1908 ss 5 AND 15 5 Pat L J 132

See SUIT I L R 45 Calc 954

1 ———— *Exclusion of time —Period during which execution of decree is stayed to be excluded in computing period of limitation* On the 8th August 1908 an application to execute a decree was made The Court having directed the execution to proceed and the judgment debtor of the decree the judgment debtor appealed against that order and pending the appeal the execution of the decree was stayed from the 5th January to the 18th February 1909 On the 12th August 1911 the decree holder applied again to execute the decree The Lower Courts held that the second application was barred by limitation it having been made more than three years after the date of the first application On second appeal — *Held* that the second application was filed within time for the applicant was entitled to exclude the period during which the execution of the decree was stayed in computing the period of limitation for the second application BAI LAXMI v BAI LAXMAN (1913) I L R 38 Bom 153

2 ———— An attachment before judgment is not an injunction or order within the meaning of s 15 of the Limitation Act MUNSHI ALI v ABHOY CHARAN DAS (1917) 21 C W N 1147

3 ———— *Suit against insolvent—Effect of adjudication—Subsequent annulment—Staying of limitation for suits—Adjudication whether a stay of suits—Obtaining of leave to sue from Court—Condition precedent to suit if sufficient to save limitation—Provincial Insolvency Act (III of 1907) s 16 cl 2* In computing the period of limitation for suits instituted against a person after an order adjudicating him an insolvent was annulled s 15 of the Limitation Act does not permit the deduction of time during which the order was in force as under s 16 cl 2 of the Provincial Insolvency Act an order of adjudication does not effect an absolute stay of suits against the insolvent but only makes it necessary that leave to sue should be obtained from Court before a suit could be filed against him while the adjudication was in force *Soni Ram v Kanhaiya Lal I L R 35 All* ... and *Doraisami Padayachi v Vaithilinga Padayachi 30 M L J 46* referred to *Shanmugam v Moideen I L R 8 Mad* ... distinguished RAMASWAMI PILLAI v GOVINDASAMI NAICKER (1918) I L R 42 Mad 319

4 ———— *Execution of decree—Order demanding security pending appeal—Security not furnished—Appeal subsequently dismissed whether period between order for security and dismissal of appeal to be excluded in calculating limitation for a second application for execution—Code of Civil Procedure (Act V of 1908) O XLI rr 10 11 13 and 14* A judgment debtor applied to the High Court for leave to appeal to the Privy Council and petitioned the Court to stay execution of the decree an application for which had been to the Lower Court on the 13th December 1913 pending the disposal of the appeal by the Privy Council It was alleged that the decree holder was a man of no substance The High Court accepted the allegation and by an order dated the 5th January 1914 allowed the decree to be executed only on condition that the decree holder furnished security The Lower Court fixed the security at Rs 30,000 and the decree holder being unable to furnish this amount dismissed the application for execution On the 18th October 1916 the judgment debtor's appeal to the Privy Council was dismissed for default and on the 15th April 1918 the decree holder again applied for execution of his decree The judgment debtor objected that more than three years having elapsed since the date when the last step in aid was taken viz the 13th December 1913 execution of the decree was barred by limitation *Held* that the Court's order of the 5th January 1914 was in effect an order staying execution within the meaning of s 15 of the Limitation Act 1908 because the decree holder was not in a position to furnish the security demanded and that therefore the decree holder was entitled to exclude the period between the 5th July 1914 and 18th October 1916 PANDEY SATLEO NARAIN v SRIPATI PANDEY LUPA 5 Pat L J 39

———— 16—

———— *Exclusion of time—Period taken by defendant in setting aside sale exclusion of in calculating limitation* That the word proceeding in s 16 of the Limitation Act is not restricted to an application for setting aside a sale but is comprehensive enough to include a suit as well as an application and the obvious intention of the Legislature was to allow an exclusion of the period during which the validity of the sale was in controversy whether the sale was impeached by a suit or by an application PROMOTHA NATH ROY v KISHORE LAL SHAHA (1916) 21 C W N 204

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——— s 17—Unlike cases governed by the Indian Succession Act and the Hindu Wills Act in a case governed by the Probate and Administration Act 1881 the obtaining of Probate is not necessary to clothe the executor with the right to sue for debts due to the estate within the meaning of s 17 and therefore time begins to run from the date of Testator s death as the obtaining of a succession certificate is not a condition precedent for filing a suit but only for getting a decree BALAKRISHNADU v NARAYANASWAMY CHETTY
I L R 37 Mad 175

——— s 18—

See LIMITATION ACT 1908 ART 95
I L R 37 Bom 158

See SALE IN EXECUTION
15 C W N 965

See SUCCESSION CERTIFICATE ACT 1889 s 4
I L R 43 All 440

1 ——— *Sale application made after time to set aside—Fraud antecedent to sale if may be proved* Where upon an application by a judgment debtor to set aside a sale on the ground of fraud made more than 30 days after the sale the Court refused to admit evidence of fraud antecedent to the sale on the ground that such fraud was not material for the purposes of s 18 of the Limitation Act *Held* that although proof of fraud antecedent to the sale does not necessarily indicate the continuance of that fraud subsequent to the sale it may have an important bearing in the determination of the question whether there was fraud subsequent to the sale sufficient for the purposes of s 18 The question of fraud should be considered as a whole TOOKOO MONI DASI v DWARKA NATH DPADA (1912)
17 C W N 478

2 ——— *Conditions to be fulfilled before involving section—Application for setting aside sale on the ground of frauds—Fraud subsequent to sale if necessary to be established* S 18 of the Limitation Act provide that where a person having a right to make an application has by means of fraud been kept from the knowledge of such right of the title on which it is founded the time limited for making the application against the person guilty of the fraud or accessory thereto shall be computed from the time when the fraud first became known to the person injuriously affected thereby Consequently whoever desires to avail himself of s 18 has to establish in the first place that there has been fraud and in the second place that by means of this fraud he has been kept from the knowledge of his right to make an application but it is not essential to prove that there has been fraud subsequent to the date of sale JOTINDRA MOHAN RAI CHOUDHURI v BROJENDRA KUMAR DUTTA (1914)
19 C W N 553

——— ss 18 20 21 Sch I Arts 65 739 115—

See PRINCIPAL AND SURETY
I L R 44 Calc 978

——— s 18 Sch I Arts 62 115 116—

See CONTRACT I L R 41 Mad 488

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——— s 19—

See s 6 I L R 42 Mad 637

See s 21 I L R 41 Mad 427

See ACKNOWLEDGMENT
I L R 39 Calc 789

See ACKNOWLEDGMENT OF DEBT
I L R 48 Calc 1046

See CIVIL PROCEDURE CODE 1908 s 2
I L R 42 Mad 52
I L R 2 Lah 13

See CONTRACT ACT 1872 s 25
6 Pat L J 121

See EXECUTION OF DECREE
1 Pat L J 214

See HATCHITTA I L R 46 Calc 746

See LIMITATION I L R 43 Calc 211

See LIMITATION, 1877 s 19
I L R 47 Calc 300

See LIMITATION I L R 35 Bom 383
I L R 43 Calc 211

1 ——— *Debt entered in schedule filed by Insolvent—Acknowledgment—Limitation* Where an insolvent has written down a debt in his schedule as owing that debt to a named person and has signed the schedule that is a sufficient acknowledgment under s 19 of the Indian Limitation Act (IX of 1908) to extend the period of limitation CHOBEY SHRIGOPAL CHIRANJILAL v DHANALAL GHASIRAM (1910)
I L R 35 Bom 383

2 ——— Acknowledgment—*Joint judgment debtors—Acknowledgment by one portion of debt—Effect* Acknowledgment of a judgment debt by one of several judgment debtors keeps alive the decree against such judgment debtor alone and not against the others *Pichardson* v *Younge, L R 6 Ch Ap 418 Bhogilal* v *Amritlal I L R 17 Bom 173 Dharma* v *Balmukund I L R 18 All 408* distinguished *Narayana* v *Venkata I L R 25 Mad 220 Lala Subramania Pillai* v *Ramanathan Chettiar I L R 32 Mad 421 Ahsanullah* v *Dakkhini Din I L R 27 All 575* relied on If a part only of the debt is acknowledged it is kept alive to that extent only CHANDRA KUMAR DHAR v PAMDIN PODDAR (1912)
16 C W N 493

3 ——— *Limitation—Acknowledgment by agent—Law to be applied to test the validity of an acknowledgment Held* that the criterion to be applied to test the validity of an acknowledgment of liability put forward by a plaintiff as extending the period of limitation in his favour is the law in force at the time when the plaintiff s suit would otherwise have been time barred and not that in force at the time when the acknowledgment relied upon was made *Yohesh Lal* v *Busunt Kumaree I L R 6 Calc 340 Rahmani Bibi* v *Halasa Kuar I L R 1 All 642* and *Hanuman Prasad* v *Raghunandan Singh 1 All L J 355* referred to ZAIB UN NISSA BIBI v THE MAHARAJA OF BENARES (1911)
I L R 34 All 109

4 ——— *Acknowledgment of liability* The following two letters were sent by first and second defendants respectively to plaintiff's vakil (i) Sir 10th June 1908 With reference to your letter of the 2nd instant I request

LIMITATION ACT (IX OF 1908)—*contd*

——— s 19—*contd*

you to be so good as to furnish me with a copy of a statement of accounts (ii) Dear Sir 18th June 1908 With reference to your letter of the 2nd instant onbehalf of landing contractor Madras I have to inform you that I wish to examine the accounts as my account does not show such an amount mentioned in your letter I therefore request you will please forward the copy of the account or to instruct your client to send his *gumastah* with his account books *Held* that neither of the letters amounted to an acknowledgment of liability under the Limitation Act s 19 ANDIAPPA CHETTY v ALASINGA NAIDU (1913)
I L R 36 Mad 68

5 ——— *Limitation—Acknowledgment—Requisites for valid acknowledgment* *Held* that an acknowledgment of a debt to be a valid acknowledgment within the meaning of s 19 of the Indian Limitation Act 1908 need not be addressed to the creditor but may be made to some other person as *e g* by means of deposition in Court *Held* also that a statement in the form the whole of Janki Prasad s mortgage money is owing there being in existence at the time two mortgages held by Janki Prasad, must be taken to apply to both in the absence of evidence indicating a different signification *Moniram Seth* v *Seth Rupchand I L R 33 Calc 1047* and *Mylapore Iyasawmy Vyapoory Moodliar* v *Yeo Kay I L R 14 Calc 801* referred to MEGH RAJ v MATHURA DAS (1913)
I L R 35 All 437

6 ——— *Acknowledgment of debt* A letter to the effect that the writers after looking into the account will sign it is not an acknowledgment of liability on an account stated within the meaning of s 19 of the Limitation Act BHAIRO PROSAD v GOJADHAR PROSAD SAHU (1914) 19 C W N 170

7 ——— *Acknowledgment of plaintiff's title in statement of boundary of neighbouring land in kabuliyat executed by defendant in favour of third party* Where in stating the boundaries of lands included in a kabuliyat executed by the defendant in favour of a third party he described the land in suit as plaintiff s *Held* that the statement amounted to an acknowledgment within the meaning of s 19 of the Limitation Act It is now settled that an acknowledgment to whomsoever made if it be an acknowledgment pointing with reasonable certainty to the liability in dispute or the right out of which that liability arises as a legal consequence is an acknowledgment of liability within the meaning of that section *Maniram Seth* v *Seth Rupchand 10 C W N 874 s c I L R 31 Calc 1047* *Majumdar Hiralal* v *Desai Narasilal 17 C W N 573* *Imam Ali* v *Baij Nath I L I 33 Calc 613* and *Mylapur Iyasawmy Moodaliar* v *Yeo Kay I L R 14 Calc 801* considered GURU CH SAHA v SURENDRA KRISTA RAI CHOWDRY (1913)
19 C W N 263

8 ——— *Letter of acknowledgment construction of—Conditional acknowledgment operation of—Performance of condition necessity for—Contract not to plead limitation legality of—Contract Act (IX of 1872) s 23—Estoppel against statute of limitation* The plaintiff filed a suit on the 19th September 1912 to recover damages for breach of an oral contract by the defendant of which performance was due in 1903 and relied on a letter dated 20th September 1909 written by the defendant to the plaintiff as saving the bar of limitation The letter was to the effect that if certain arbitrators should decide that the defendant should pay any amount he would immediately pay but that if the arbitrators failed to decide the plaintiff might sue and that the defendant would not plead limitation The arbitration failed The plaintiff sued as aforesaid on the 19th September 1912 but the defendant pleaded limitation in bar of the suit *Held* (i) that the letter amounted only to a conditional acknowledgment (ii) that where there is a promise to pay on a condition that condition in order that the promise may operate as an acknowledgment must be fulfilled *In re River Steamer Company L R 6 Ch App 822* *Maniram Seth* v *Seth Rupchand I L R 33 Calc 1047* and *Arunachella Rou* v *Rangiah Appa Row I L R 29 Mad 519* referred to (iii) that the plaintiff was not entitled to a deduction of time which elapsed between the date of the agreement to refer to arbitration and the date of the failure of the arbitration (iv) that an agreement by a debtor not to raise the plea of limitation is void under s 23 of the Contract Act as it would defeat the provisions of the Limitation Act and (v) that parties cannot estop themselves from pleading the provisions of the statute of limitation *Sitharama* v *Krishnasami I L R 38 Mad 374* referred to RAMAMURTHY v GOPAYYA (1916)
I L R 40 Mad 701

9 ——— *Parties referring unadjusted accounts for adjustment by arbitrators—Acknowledgment if need be addressed to any one and if should be by one willing to pay* Where the parties to an *ahchalnama* acknowledged that accounts remained unadjusted which the arbitrators were to adjust and each party distinctly agreed that he should have to pay such amount as might be found due from him on adjustment of accounts *Held* that this was sufficient acknowledgment within s 19 of the Limitation Act Under that section it is not necessary that the acknowledgment should be addressed to any particular person and it is a sufficient acknowledgment even if it be accompanied by a refusal to pay JANARDAN SHAHA PODDAR v RADHA BULLAB SHAHA (1919) 23 C W N 921

10 ——— *Acknowledgment—Court of Wards Act (Bom Act I of 1905) s 16 Proviso—Offer made by Collector in settlement of claim—Whether the offer can be used as an acknowledgment of debt* In 1886 the defendant s family passed in favour of the plaintiff simple mortgage bond for Rs 9 500 for a period of ten years The defendant was a minor and a ward of the Collector under the Court of Wards Act (Bom Act I of 1905) In 1916 the plaintiff sued to recover the amount due on the bond of 1886 Interest on the bond was paid regularly till 1903 On the 24th May 1913 the Collector wrote a letter to the plaintiff by which the Collector offered to pay Rs 17 000 in instalments in satisfaction of the whole of the amount due to the plaintiff The plaintiff relied upon this letter as an acknowledgment of debt to save the bar of limitation On behalf of the defendant it was contended that under the proviso to s 16 of the Court of Wards Act the letter could not be proved *Held* that the proviso did not plaintiff from using the letter

LIMITATION ACT (IX OF 1908)—*contd*

———— s 19 and Sch Art 64—*concld*

items are set off one against the other and a balance is struck in favour of one of the parties In such a case the law implies a new promise by the party from whom the balance is found to be due to pay such balance in consideration not merely of past debts but also in consideration of the extinguishment of the old debts on each side and hence it is not necessary that the balance would be struck within the period of limitation applicable to any of the items in the account Where the defendant was in the habit of taking loans from the plaintiff and an account of what was due from the former to the latter was made up after the last item in the account was time barred and the defendant signed the plaintiff s account book acknowledging the amount due on that date *held* that the account was not an account stated and that a suit to recover the amount was not saved by the defendant s acknowledgment *Horgonal* v *Abdul 9 Bom H C R* followed SURAJ PRASAD PANDAY v W W BOUCKE 5 Pat L J 371

———— s 19 and Sch I Art 135—

See CIVIL PROCEDURE CODE O VII R 6 I L R 2 Lah 13

———— s 19 Sch I Art 148—

See MORTGAGE I L R 38 All 540

———— s 19 and Sch Art 181—

See CIVIL PROCEDURE CODE (ACT V OF 1908) ss. 2 47 I L R 42 Mad. 52

———— s 19 Sch I Art 182 cl 5—*Written acknowledgment—Application made for certifying payments on the decree acknowledging the decree as an outstanding decree—Step in aid of execution* The plaintiff obtained a decree on the 3rd July 1900 whereby he was required to pay a sum of Rs 600 by annual instalment of Rs 50 and to redeem the mortgaged land The decree also provided that on failure to pay any two instalments the plaintiff s right to redeem was to be foreclosed and the defendant was to be placed in possession of the land The instalments for 1901 and 1902 were duly paid, while the one for 1903 was only paid in part No other payments were made On the 20th July 1905 the plaintiff made an application to the Court which was consented to by the defendant for certifying the above payments in satisfaction of the decree This application referred to the decree as an outstanding decree On the 14th December 1907 the defendant applied to foreclose the decree but the application was dismissed for want of prosecution He applied again on the 29th March 1909 for the purpose but his application was dismissed as barred by limitation The defendant having appealed —*Held* that the application was within time for the application of 1905 was sufficient to give a fresh starting point for limitation either as an acknowledgment within the meaning of s 19 of the Limitation Act (IX of 1908) or as a step in aid of execution under Art 182 cl 5 of the First Schedule to the Act BACHARAJ NYAHALCHAND v BABAJI TUKARAM (1913) I L. R 38 Bom 47

———— s 20—

See s 10 25 C W N 356

See s 21 I L R 41 Mad 427

LIMITATION ACT (IX OF 1908)—*contd*

———— s 20—*contd*

See CHEQUE (PAYMENT BY) I L R 42 Calc 1043

See CONTRACT ACT s 60 1 Pat L J 474

See EXECUTION OF DECREE 1 Pat L J 214

See EXECUTION OF PETITION I L R 41 Mad 251

See LIMITATION (40) I L R 44 Calc 567

See PRESIDENCY SMALL CAUSE COURTS ACT 1882, s 69 I L R 38 Mad 438

See PRINCIPAL AND SURETY I L R 44 Calc 979

1 ———— *Limitation—Interest—Payment of part of interest due—Suit for foreclosure* The word interest in s 20 of the Limitation Act means interest or any part of the interest due *Kollu* v *Halli I L R 18 All 95* and *Anwar Husain* v *Lalmir Khan I L R 26 All 167* distinguished ABDUL AHAD v MAHTAB BIBI (1913) I L R 35 All 378

2 ———— *Part payment—Payment—recorded by endorsement in the handwriting of the person receiving—Endorsements only signed by the debtor whether sufficient acknowledgment* To save the suit from being barred by limitation the plaintiff relied on part payments made by the defendant The part payments were recorded by endorsements which the plaintiff admitted were in his handwriting but he contended that the endorsement being signed by the defendant was a sufficient acknowledgment within s 20 of the Limitation Act 1908 *Held* that the fact of payment recorded being not in the handwriting of the person making the payment the provisions of the section were not satisfied *Santishwar Mahanta* v *Lakhikanta Mahanta I L R 35 Calc 813* applied NIWAJKHAN NATHANKHAN v DADABHAI (1916) I L R 41 Bom 166

3 ———— *Execution of decree bearing no interest—Payment saving limitation* Where on an application for execution of a decree which did not bear any interest made more than three years after the date of the previous application the decree holder relied on a payment which the judgment debtor was found to have made to the decree holder within three years of the first application for execution but there was nothing to show that it was paid by way of interest *Held* that though the decree holder might either apply to certify the payment before execution or might do so in his application for execution of the decree the provisions of s 20 of the Limitation Act would in no way be affected by it The decree not bearing any interest any payment made by the judgment debtor must be taken to have been made in part payment of the principal and such part payment must appear in the handwriting of the judgment debtor or of his agent duly authorised in this behalf in order that limitation might get a fresh start HARENDRA CHANDRA BHATTACHARYA v GAGAN CHANDRA DAS (1916) 22 C W N 325

LIMITATION ACT (IX OF 1908)—*contd*

——— s 20—*contd*

4 ——— *Mortgage—Suit for sale—Limitation—Payment of interest as such—Effect of such payment as against purchaser of part of mortgaged property* A payment made on account of interest as such due on a mortgage debt takes effect under s 20 of the Indian Limitation Act 1908 as much against a person interested in the mortgage as a purchaser of part of the mortgaged property as against the mortgagor himself who makes the payment *Krishna Chandra Saha* v *Bhairab Chandra Saha I L R 32 Calc 1077* and *Domi Lal Sahu* v *Roshan Dobay I L R 33 Calc 1278* referred to *Surji ram Marwari* v *Barhamdeo Persad 1 C L J 337* distinguished ROSHAN LAL *v* KANHAIYA LAL (1918) I L R 41 All 111

5 ——— *Endorsement of payment in handwriting of payer—Requirement of section where payer illiterate* In the case of an illiterate person if the payer affixes his mark beneath the endorsement written by some one else it is sufficient to satisfy the proviso to s 20 sub s (*1*) of the Limitation Act but where no such mark is affixed the provision of law has not been complied with BALERAM KOER *v* SOBHA SHEIKH (1918) 23 C W N 930

6 ——— *Part payment—Handwriting in respect of part payment—Part payment must appear in the handwriting of the person making payment* The defendant purchased certain goods from the plaintiff on the 10th September 1912 for which he owed Rs 1 350 He also owed another debt of Rs 301 to the plaintiff On the 4th and 5th July 1913 the defendant paid two sums of Rs 500 and Rs 235 accompanied by a letter which ran thus — I have sent currency notes of Rs 500 and a Hundi for Rs 235 in all Rs 735 Credit them The plaintiff applied the sum in wiping out the smaller debt and credited the balance as part payment of Rs 1 350 On the 14th October 1915 the plaintiff sued to recover the unpaid balance of Rs 1 350 with interest and sought to bring his claim in time by relying on the part payment in 1913 *Held* that the plaintiff s claim was in time for the requirements of s 20 of the Indian Limitation Act were statisfied as the fact of the payment appeared in the handwriting of the person making the same and it appeared that the payment was in part satisfaction of the principal of the debt SAKHARAM MANCHAND *v* KEVAL PADAM I (1919) I L R 44 Bom 292

7 ——— *Execution of decree for sale—Part of the hypotheca taken up under the Land Acquisition Act—Compensation paid into Court—Payment of amount to decree holder through Court—Paper showing payment signed by Judge—Judge whether an agent of judgment debtor—Signature of Judge whether sufficient under s 20* After a decree for sale on a mortgage was passed in 191 a part of the hypothecated property was taken up under the Land Acquisition Act and the Government paid the amount of compensation into Court to the credit of the suit and the same was paid out to the decree holder on the 11th August 1914 When the payment was made the Judge signed a paper showing that payment was made in his presence and through Court On the decree holder filing an application for execution of the decree on the 10th August 1917 the judgment-debtor pleaded the bar of limitation *Held* that the Judge should be deemed to have been an agent duly authorized by the judgment-debtor to make the payment and that the signature of the Judge on the paper showing the payment satisfied the condition that the fact of payment should appear in the handwriting of the person making it as required by s 20 of the Limitation Act and that consequently the application for execution was not barred *Chinnery* v *Evans (1864) 11 H L Cas 115* applied *Lakshmanan Chetty* v *Sadaiappa Chetty (1918) 35 M L J 5/1* referred to GOVINDASAMI PILLAI *v* DASAI GOUNDAN (1921) I L R 44 Mad 971

8 ——— *Mortgage decree against mortgagor and purchaser of the equity of redemption—Payment of interest as such by the purchaser effect of* A purchaser of the equity of redemption is a person liable to pay the mortgage debt within s 20 of the Limitation Act hence if under a mortgage decree for sale of the mortgage property to which he is a party though exempted from personal liability he pays interest as such such payment gives a fresh period of limitation for execution of the decree *Bolding* v *Lane (1863) 1 De G J & Sm 122 and Chinnery* v *Evans (1864) 11 H L Cas 115 at 135* followed ASKARAM SOWCAR *v* VENKATASWAMI NAIDU (1921) I L R 44 Mad 544

9 ——— *Uncertified payment of an instalment decree if saves limitation—Civil Procedure Code (Act V of 1908) Or 21 r 2—Certification of payment if can be made at any time* After the passing of an instalment decree some instalments were paid within three years of the date of the decree The payments were not certified to the Court before the application for execution but were certified by a petition presented after the application for execution was made and made a part of the said application The said application for execution was made more than three years after the date of the decree but within three years from the dates of the said payments *Held* that the payments which were evidenced by letter written and signed by the judgment debtor having been made within three years of the decree and within three years of the present application for execution and then having been certified by a petition which was made a part of the application for execution the application for execution was not barred by limitation MADAN MOHAN BANIKYA *v* HARULAL KUNDU 26 C W N 534

——— ss 20 and 21—

See PRINCIPAL AND SURETY I L R 44 Calc 978

——— ss 20 57 Sch 1 Art 57—*Suit for money payable for money lent—Payment of interest saving limitation—Creditor s discretion to apply money received to oldest debt—Second appeal—Tender of evidence (bahi khata) at hearing* The plaintiff brought a suit on the 8th May 1909 for money due on an adjustment of accounts The plaintiff alleged that the last adjustment took place within three years from the date of the institution of the suit when the defendant promised to pay The Courts below dismissed the suit The District Judge in appeal however found that the defendant took a loan of Rs 50 from the plaintiff on 21st June 1906 but he refused

LIMITATION ACT (IX OF 1908)—contd

——— s 23—

See MADRAS ESTATES LAND ACT (I OF 1908) s 192 I L R 38 Mad 655

——— ss 23 and 26—

See RIPARIAN RIGHTS 3 Pat L J 51

——— s 26—

See BENGAL FERRIES ACT 1885 5 Pat L J 500

See EASEMENT I L R 39 Calc 59
I L R 1 Lah 206

——— *Suit for declaration of right of way—Necessity of proving that enjoyment of the right ended within two years before suit—Affirmative proof of actual user if necessary—Distinction between enjoyment of a right of easement and actual exercise of the right* Plaintiff brought a suit for declaration of a right of way and for removal of an obstruction thereto The right was enjoyed for more than 20 years peaceably and openly without interruption as an easement and as of right There was no discontinuance of the enjoyment by reason of the obstruction by the Defendant till within a few days previous to the institution of the suit and there was no suggestion that the Plaintiff voluntarily abandoned or discontinued the exercise of the right at any time before such date *Held* that it was not necessary for the Plaintiff to prove affirmatively actual user of the way down to a date within two years before the suit A person may without violence to language be said to be in enjoyment of a right of way during a period of time though he does not actually use the way every moment Cessation of user does not necessarily mean abeyance in enjoyment GOPAL CHANDRA SEN *v* BANKIM BEHARI ROY 26 C W N 121

——— s 28—

See ADVERSE POSSESSION I L R 44 Calc 425

See ATTACHMENT I L R 45 Bom 1020

See CIVIL PROCEDURE CODE 1908 s 92 I L R 38 Mad. 1064

See LIMITATION I L R 39 Mad. 617

See MORTGAGE DECREE 3 Pat L J 478

See SARANJAMDAR I L R 45 Bom 694

——— *Several daughters of a Hindu jointly succeeding to their father's estate—Exclusive possession of one for more than twelve years—Right of survivors on her death to the estate by survivorship* Where on the death of a Hindu his daughters jointly succeeded to his estate but one of them excluded the others from the enjoyment of the estate for more than twelve years and then died after alienating some of the properties *Held* in a suit by a surviving daughter against the son of the deceased and the alienees to succeed to the estate by right of survivorship that with the extinction of the right to joint possession under s 28 of the Limitation Act the right of survivorship which is only an accretion to the right to joint possession was also lost *Katama Natchiar v Rajah of Shivaganga (1863) 9 M I A 539 at page 611* and *Sachindra Kishore Dey v Rajani Kant Chuckerbutty (1915) 27 I C 250* followed ATCHAMMA *v* PAPIAH (1921) I L R 44 Mad 131

——— s 28 Art 47—*Suit to recover possession of lands—Magistrate order of under Criminal Procedure Code (Act V of 1898) s 145—Order passed without proper inquiry—Notice not legally served on the plaintiff—Plaintiff aware of proceedings—Order not without jurisdiction—Applicability of Art 47—Tenant for a term—Landlord treating tenant as a trespasser after the expiry of the term—Subsequent registered notice to quit—Cause of action when* Art 47 of the Limitation Act (IX of 1908) is applicable to a suit for recovery of possession of lands in respect of which an order had been passed by a Magistrate acting under s 145 of the Code of Criminal Procedure although the Magistrate might not have made the proper inquiries which he ought to have made before he passed the order if the plaintiff had notice of the proceedings though the notice was not served on the plaintiff in accordance with law *Gangadaram Aiyar v Sankarappa Naidu 9 Mad L T 91* followed Where the defendants were tenants for a term under the plaintiff and continued in possession of the lands after the expiry of the term but the plaintiff did not treat the defendants as tenants holding over but as trespassers after the date of the expiry of the term and the magisterial order under s 145 of the Code of Criminal Procedure was passed in the defendant's favour subsequent to the said date *Held* that the suit for recovery of possession of the lands brought by plaintiff more than three years after the said order was barred under Art 47 of the Limitation Act *Tukaram v Hari I L R 28 Bom 601* *Bapu bin Mahadaji v Mahadaji Vasudeo I L R 8 Bom 348* and *Wise v Ameerunissa Khatoon L R 7 I A 73* referred to *Balai Chand Ghosal v Samiruddin Mandal I L R 19 Calc 646* distinguished PAPASURAMAYYA *v* RAMACHANDRUDU (1913) I L R 38 Mad 432

——— s 28 Arts 124 144—*Religious endowment—Adverse possession of sarbarakar—Suit by descendant of original dedicator to oust son of sarbarakar* Where a person had been appointed in 1899 by a Revenue Court *sarbarakar* of certain endowed property and had remained in possession until 1914 when he died it was held that a suit brought in 1915 by a descendant of the original dedicator to evict the son of the appointee of 1899 and to have herself declared *sarbarakar* of the endowed property was barred by limitation *Gnanasambanda Pandara Sannadhi v Velu Pandaram I L R 23 Mad 271* followed RAM PIARI *v* NAND LAL (1917) I L R 39 All 636

——— s 28 Art 144—*Right recurring at uncertain intervals—Right to take wood from trees when fallen or cut—Adverse possession* The father of the plaintiffs in 1867 obtained leave from the Collector to plant trees alongside a road on land belonging to Government He expressed his willingness to do so at his own expense and to tend them and the only right he asked for was to get the fallen dry wood from the trees Subsequently the village passed out of the possession of

LIMITATION ACT (IX OF 1908)—*contd*

——— s 28, Art 144—*concld*

the plaintiffs father and on two occasions in 1900 and in 1910 the defendant who had purchased the village got the proceeds of the sale of such wood The plaintiffs on both occasions asserted their claim to wood or the price thereof but were unsuccessful Within six years from the date of the last sale they brought a suit for a declaration of their right to get the dry wood by virtue of the agreement of 1867 The defendant pleaded adverse possession *Held* that the right being one which could only be exercised on uncertain occasions and not a right recurring at fixed periods and as there had been disputes as to the right between the parties on two previous occasions it could not be said that defendant had acquired a title by adverse possession *Quære* Whether s 28 of the Indian Limitation Act 1908 applies at all to a case like this DEBI PRASAD *v* BADRI PRASAD (1918)
I L R 40 All 461

——— s 29—

See LIMITATION I L R 47 Calc 300

See PROVINCIAL INSOLVENCY ACT s 46 cl (3) I L R 39 Mad 593

s 46 cl (4) I L R 33 All 738
I L R 34 All 496

1 ——— *Limitation Act (XV of 1877) s 2 Sch II Art 35—Suit for restitution of conjugal rights—Limitation* The plaintiff in a suit for restitution of conjugal rights filed in 1910 alleged that his wife had been taken away by two of the defendants under a promise that she should return to him shortly but subsequently they denied all knowledge of her whereabouts In 1909 he alleged he was informed that she was living at a certain place with one of the defendants *Held* that the plaintiff's suit was not barred by limitation *Binda* v *Kaunsilia I L R 13 All 2 7* referred to AYESHA *v* FAIYAZ HUSAIN (1912) I L R 34 All 412

2 ——— *Affect meaning of—Applicability of the Act to affect periods of limitation prescribed by Provincial Insolvency Act (III of 1907) Held* by the Full Bench that recourse cannot be had to the general provisions of the Limitation Act (IX of 1908) in dealing with the admission of petitions and appeals presented after the time prescribed under the provisions of the Provincial Insolvency Act (III of 1907) as such recourse would *affect* the specially prescribed period of limitation within s 29 (1) (*b*) of the Limitation Act *Abu Backer Sahib* v *The Secretary of State for India I L R 34 Mad 505* followed LINGAYYA *v* CHINNA NARAYANA (1917) I L R 41 Mad. 169

3 ——— The effect of s 29 (*1*) (*b*) of the Limitation Act is to make both Parts II and III of the Act inapplicable to a special period of limitation prescribed by a special or local law SECRETARY OF STATE FOR INDIA *v* SHIB NARAIN HAZRA (1918) 22 C W N 502

——— s 29 14—

See REGISTRATION ACT 1908 s —
24 C W N 29

——— ss 29 15 (2)—

See SUIT I L R 45 Calc 934

LIMITATION ACT (IX OF 1908)—*contd*

——— s 30—

See LIMITATION I L R 43 Calc 34

——— *Mortgage decree against mortgagor and purchaser of the equity of redemption—Payment of interest as such by the purchaser effect of* A purchaser of the equity of redemption is a person liable to pay the mortgage debt within s 20 of the Limitation Act hence if under a mortgage decree for sale of the mortgage property to which he is a party though exempted from personal liability he pays interest as such such payment gives a fresh period of limitation for execution of the decree *Bolding* v *Lane (1863) 1 De G J & Sm 122* and *Chinnery* v *Evans (1864) 11 H L Cas 115 at 135* followed ASKARAM SOWKAR *v* VENKATASWAMI NAIDU (1921)
I L R 44 Mad 544

——— s 31—

See LIMITATION I L R 35 Mad 191

1 ——— *Mortgage—Suit for sale—Limitation—General Clauses Act (X of 1897) s 10* The special period of limitation for suits for foreclosure or for sale by a mortgagee prescribed by s 31 of the Indian Limitation Act 1908 namely two years from the date of the passing of the Act expired on a Sunday *Held* that a suit for sale to which s 31 applied instituted upon the following Monday was within time *Sheidas Daulatram Marwadi* v *Narayen valad Asaji 13 Bom 1153* dissented from HIRA SINGH *v* MUSAMMAT AMARTI (1912)
I L R 34 All 375

2 ——— *Period of two years for filing suits—Period not prescribed —Last day Sunday—Suit filed on Monday next—Limitation* A question having arisen as to whether a suit for which provision is made under s 31 (*1*) of the Limitation Act (IX of 1908) if instituted on a Monday one day after the period of two years from the date of the passing of the Act has expired can be taken to have been instituted within the period of two years *Held* that the suit could not be taken to have been instituted within the period of two years and that two years specified in s 31 of the Limitation Act (IX of 1908) was not the period of limitation prescribed SHEVDAS DAULATRAM *v* NARAYEN (1911)
I L R 36 Bom 268

3 ——— *Limitation—Mortgage —Suit on mortgage barred under Limitation Act of 1871—Mortgagee s rights not revived by present Act Held* that s 31 of the Indian Limitation Act 1908 cannot be construed as reviving rights already time barred under the Limitation Act of 1871 JAI SINGH PRASAD *v* SURJA SINGH (1913)
I L R 35 All 167

——— Sch I Art 2—*Execution of decree —Sale in execution—Tender of decretal amount by judgment debtor—Refusal of sale-officer to accept tender—Suit for damages—Limitation* The plaintiff sued for damages against a Court Amin under the following circumstances The plaintiff alleged that in execution of a simple money decree certain immoveable property belonging to him had been advertized for sale On the day fixed for the sale and before it had commenced the plaintiff tendered the decretal amount to the defenda

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——— Sch I Art 2—*contd*

who was the officer deputed to conduct the sale The defendant however wrongfully refused to accept the money offered to him and went on with the sale and the plaintiff was subsequently obliged to get the sale set aside under O XXI r 89 of the Code of Civil Procedure The suit was instituted some nineteen months after the alleged cause of action assuming that to be the refusal of the Amin to accept the money tendered or his continuing the sale after the tender had been made had arisen *Held* that the suit was barred by limitation under Art 2 of the first schedule to the Indian Limitation Act 1908 *Ranchordas v Moorji v The Municipal Commissioner for the City of Bombay I L R 25 Bom 387* referred to MUKAT LAL v GOPAL SORUP (1918) I L R 41 All 219

——— Sch I Arts 2 62 120—*Limitation—Suit for refund of octroi duty alleged to have been illegally levied* The plaintiff sued a municipal board for a refund of octroi duty He did not allege that the duty had in the first instance been taken from him illegally but that he had after payment thereof become entitled to a refund *Held* that the suit was governed by Art 120 and not by Art 2 or Art 62 of the Indian Limitation Act 1908 *Pappa Rama Mahrattia Railway Co operative Stores v [illegible] Municipal Board I L R 2 All 491 Guru Das v Ram Narain I L R 10 Calc 860* and *Hanuman v Hanuman I L R 19 Calc 123* referred to MUNICIPAL BOARD OF GHAZIPUR v DEOKINANDAN PRASAD (1914) I L R 36 All 505

——— Sch I Arts 4 115 120—

See PARTNERSHIP [illegible] C I 882

——— Sch I Arts 4 7 101 102 120—*Hereditary archaka of a temple—Suspension by trustees—Suit by archakas for pay perquisites and damages against trustees—Limitation for suit—Provincial Small Cause Courts Act (IX of 1887) Sch II Art 13—Suit whether cognizable by a Small Cause Court—Appeal against order of remand whether competent* The plaintiffs who were hereditary archakas in a temple were suspended from their office in June 1912 by the trustees of the temple the order was passed on the 19th June 1912 and the suspension lasted till 3rd July 1913 The plaintiffs alleging that the suspension was illegal and unjust sued on the 28th June 1915 to recover their pay and perquisites as well as damages for mental distress loss of dignity etc for an amount below Rs 500 as against the trustees the *pesh kar* of the temple and the person who performed the duties of their office during their suspension The lower Appellate Court having held the suit was not barred by limitation as regards pay and perquisites and remanded the case to the Court of first instance one of the trustees preferred an appeal against the order of remand contending that the suit was wholly barred The respondents [plaintiffs] raised a preliminary objection that the appeal was incompetent as the suit was of a small cause nature *Held* that an appeal lay to the High Court against the order of remand as the suit was not cognizable by a Small Cause Court that Art 102 of the Limitation Act applied to the suit as against the trustees as regards the pay and the perquisites if payable by the temple and the suit was not barred as regards such claims that Art 36 applied to the claim for perquisites if payable by third persons as well as to the claim for damages and the claims were barred and that as against the *peshkar* there was either no cause of action or it was barred under Art 36 of the Limitation Act BARADWAJA MUDALIAR v ARUNACHALA GURUKKAL (1917) I L R 41 Mad 528

——— Sch I Art 11—

See CIVIL PROCEDURE CODE (ACT XIV OF 1882) ss 278 282 283 AND 287 I L R 41 Bom 61

See CIVIL PROCEDURE CODE (1908)—

O XXI r 58 I L R 40 All 225
I L R 45 Bom 531
I L R 41 All 623
I L R 41 Mad 985

O XXI r 97 1 Lah 57

O XXI r 100 3 Pat L J 652

See LIMITATION I L R 45 Calc 785

——— *Dekkhan Agriculturists Relief Act (XVII of 1879) ss 47 and 48—Transfer of Property Act (IV of 1882) s 85—Agriculturist Mortgagor—Suit—Conciliator s certificate—Mortgagor necessary party along with other persons interested—Exclusion of time spent in obtaining Conciliator s certificate—Limitation* Defendants 1 and 2 brought a suit on a mortgage against defendants 3 and while the suit was pending defendant 3 mortgaged the same property namely a house along with other properties to the plaintiffs Defendants 1 and 2 having obtained a decree they applied for execution and sought to recover the decretal debt by sale of the house Thereupon the plaintiffs intervened and applied that the house should be sold subject to their mortgage lien The plaintiff s application being disallowed they brought a suit against defendants 1 2 and 3 to establish their right founded on their mortgage The suit was brought within one year of the order rejecting their application after the exclusion of the time taken up in obtaining the Conciliator s certificate under ss 47 and 48 of the Dekkhan Agriculturists Relief Act (XVII of 1879) defendant 3 being described in their mortgage as an agriculturist Defendants 1 and 2 contended that defendant 3 being not a necessary party the Conciliator s certificate was unnecessary and the suit was time barred *Held* that under the provisions of the Transfer of Property Act (IV of 1882) defendant 3 was a necessary party to the suit which was brought on the strength of the mortgage and he being an agriculturist the Conciliator s certificate was necessary and the suit was therefore not time barred EKNATH PANDOBA v DAGADURAM (1918) I L R 43 Bom 621

LIMITATION ACT (IX OF 1908)—contd

——— Sch I Art 11—contd

——— *Period of limitation ... —Scope of application —Claim petition dismissed for default —Previous suit not brought within a year—Civil Procedure Code (Act XIV of 1882) ss ... 51* The operation of s 30 of the Limitation Act is not limited to cases in which the period of limitation has been expressly ... It applies also to a case where the period of limitation has been altered as the result of the alteration of the description of the suit. Art 11 of the Limitation Act does not apply where a claim preferred under s ... of Act XIV of 1882 was dismissed for absence ... and not been ... under s ... of that Act but under the ... sections of the Code which enabled a Court to dismiss a miscellaneous ... for default. LAKSHMAN CHATTERJEE v HARAN ... DEBI (1913) 18 C W N 770

——— *Attachment and release of moveable ... —Dismissal of claim petition—Suit for declaration and for value of moveable within one year of dismissal of claim petition but more than a year after attachment governed by Art 11 of the Limitation Act—Civil Procedure Code (Act V of 1908) O XXI r 63 nature of suits brought under* The plaintiff whose moveable property was attached in execution of a decree against a third party was unsuccessful in his claim petition and then filed the present suit more than one year after the date of the attachment but within one year of the date of the order dismissing his claim petition. In his plaint he prayed for a decree establishing his right to the moveables and directing the first defendant at whose instance the moveables were ... to pay him the value ... of *Held* that the suit was within time, that it was a suit contemplated by O XXI r 63 Civil Procedure Code and that it was governed by Art 11 of the Limitation Act. *Held* further that the words to establish the right which he claims to the property which occur both in Art 11 and in O XXI r 63 Civil Procedure Code are wide enough to cover not only a suit for a declaration but also one for relief consequential on such declaration. Nature of suits under O XXI r 63 considered. *Kishori Mohun Roy v Hursook Das I L R 17 Calc 696* and *Kunhamma v Kunhunni I L R 16 Mad 140* followed. *Phul Kumari v Ghanshyam Misra I L R 35 Calc 202* distinguished. BASIVI REDDI v RAMAYYA (1916) I L R 40 Mad 733

——— *Civil Procedure Code (Act V of 1908) O XXI r 99— Auction purchaser's petition to be given actual possession refused—Application to be given symbolical possession granted—Suit to recover actual possession—Limitation—Limitation Act (IX of 1908) Sch I Art 11 (a)* Plaintiff having purchased at Court sale an 8 anna share of certain property and being resisted in taking actual physical possession by the Defendant applied to be put into such possession but the application was refused under O XXI r 99 C P C on 12th January 1912. Thereafter he on a further application to be given symbolical possession was put in such possession on 12th April 1912. On 10th February 1913 Plaintiff brought the present suit in which he asked to be put in actual possession. *Held*— That as in the suit Plaintiff was asking for the very ... which had been refused to him on 12th January 1912, Art 11 (a) of Sch I of the Limitation Act applied and the suit was barred. The fact that he might not at that stage have a right to actual possession made no difference as the question was not what he might or ought to have asked but what he did ask. BALDEO v KANHAIYALAL 24 C W N 1001

——— Sch I Arts 11 ... *—Limitation Act (IX of 1908) ... —Attachment ... —Appeal ... —Order on appeal ... —Suit under O XXI r 63 after one year from date of original order but within one year from order on appeal—Starting point of limitation* A claim petition was filed by the second defendant objecting to the attachment of certain properties as belonging to the ... defendant in execution of a decree passed by the High Court on its original side. The petition was allowed in favour of the claimant by an order passed by a single Judge of the High Court on its original side. The plaintiff who was the decree-holder filed an appeal against the order to the High Court under the Letters Patent and the original order was confirmed on appeal. The plaintiff brought a suit under O XXI r 63 of the Code of Civil Procedure (Act V of 1908) to establish his right to attach the property *more than one year from the date* of the original order but within one year from the date of the order passed on appeal. *Held* that Art 11 and not Art 13 of the Limitation Act (IX of 1908) applied to the case but that the suit was not barred as the starting point of limitation under Art 11 was the date of the order passed on appeal. The word order in Art 11 of the Limitation Act should be construed *as meaning the only subsisting order in the case* which is the appellate order (when there has been an appeal) in accordance with the recognised principle of jurisprudence. An appeal lies under the Letters Patent against an order of a single Judge of the High Court on its Original Side passed on a claim petition filed therein. VENUGOPAL MUDALI v VENKATA ... CHETTY (1915) I L R 39 Mad 1196

——— Arts 11 13 and 120— *Attachment before judgment—Decree and order for sale—Claim to attached property filed after order for sale—Order allowing claim—Suit filed after more than one year to contest the order on claim—Limitation* Property was attached before judgment and after a decree in the suit and an order for sale in execution were passed a claim to the property was preferred and allowed by the Court. On a suit to contest the order on the claim being filed more than a year after such order *Held* that the property must be deemed to have been attached in execution of a decree by virtue of Order XXXVIII rule 11 Civil Procedure Code and that article 11 and not article 13 or 120 was applicable and that the suit was barred by limitation. ARUNACHALAM CHETTY v ... SERVAI (1921) I L R 44 Mad (F B) 902

LIMITATION ACT (IX OF 1908)—*contd*

———— Sch I, Art 11 and s 22—

———— Applicability of discussed

See CIVIL PROCEDURE CODE 1908 O XXI, RR 58 60 25 C W N 544

———— Sch I Art 12—

See DECREE AGAINST A MAJOR AS MINOR. I L R 39 Mad 1031

See CIVIL PROCEDURE CODE 1882 s 456 I L R 1 Lah 27

———— When in an execution of a decree against a father of a joint family property has been sold, the sons cannot claim to redeem without setting aside the sale within the time prescribed by this section BHOLA JHA v KELI PRASAD 1 Pat L J 180

———— Sch I Art 12A and ss 26 and 28—*Arrears of revenue—Sale by Revenue Court—Judgment debtor remaining in possession of property—Suit by purchaser for possession—Defence by judgment debtor that the sale was invalid—Judgment-debtor not precluded from raising the defence—Revenue sales to be treated differently from sales by Civil Courts—Purchaser s plea of want of notice of judgment debtor s title not valid* The defendants who owned plaint land in a *khoti* village brought a suit against the *khot* for a declaration that they held the land free of assessment The suit was dismissed by the lower Courts but on appeal to the High Court it was held in 1905 that the defendants had the right to hold the land free of assessment While the appeal proceedings were pending the land was sold by the Revenue Court under the provisions of the Land Revenue Code for arrears of assessment due from the defendants and it was purchased by the plaintiff s vendor The sale was confirmed on the 6th August 1904 After the sale the defendants continued to remain in possession of the property In 1915 the plaintiff sued to recover possession of the property The defendants resisted the claim on the ground that the sale was invalid It was urged on plaintiff s behalf that as he was a purchaser at a revenue sale without notice of defendants title his title was good as against the defendants. The lower Courts decreed the plaintiff's claim holding that as the defendants did not sue to set aside the sale within one year their right to impugn the sale was barred under Art 12A of the Limitation Act *Held* (reversing the decrees of the lower Courts) that the defendants could raise the defence that the sale was invalid though a suit by them would have been barred by limitation under Art 12A of the Limitation Act *Held* also that the plaintiff as a purchaser at a revenue sale could not succeed on the ground that he was a purchaser without notice inasmuch the sale held by the Revenue Court for arrears of assessment while proceedings were pending in a Civil Court became invalid when it was declared that the defendants were entitled to hold the land free of assessment Unless a suit falls under s 26 or s 28 of the Indian Limitation Act 1908 there is no bar of limitation to a defence. When a decree is passed against a defendant in a civil suit and his property is put up for sale in execution proceedings and he does not ask for a stay of execution the purchaser at the execution sale acquires a good title although it may happen that eventually the decree against the defendant is set aside in appeal. But there is a great distinction between sales in execution of Civil Court decrees and sales by the Revenue Courts for arrears of assessment If as a matter of fact the defendant in the revenue proceedings is entitled to hold the lands free of assessments any sale which takes place on the footing that he is bound to pay assessment is invalid and the purchaser at such a sale cannot acquire a good title except by adverse possession *Venkatachalapathi Ayyar v Robert Fischer (1907) 30 Mad 444* followed *Shivlal Bhagwan v Shambhuprasad (1905) 29 Bom 435* distinguished *Balkishen Das v Simpson (1898) L R 25 I A 151* referredto MAHADEV v SADASHIV (1920) I L R 45 Bom 45

———— Sch I Arts 12 95 166—

See CIVIL PROCEDURE CODE (ACT V OF 1908) ss 47 AND 50 I L R 38 Mad 1076

———— Sch I, Art 12 or 144—

See INAM I L R 42 Mad 673

———— Sch I Art 13—

See s 11 I L R 44 Mad 902

———— *Attachment of property before judgment—Order raising the attachment—Decree in the suit—Subsequent suit for a declaration that the property is liable to be attached for the decree—Existence of the order whether bar to such suit* An order releasing certain properties from attachment before judgment is no bar to a subsequent suit for a declaration that they are liable to attachment in execution of the decree in the prior suit and such suit is not governed by Art 13 of the Limitation Act *Bisheshar Das v Ambika Prasad I L R 37 All 575* not followed RAMANAMMA v KAMARAJU (1917) I L R 41 Mad 23

———— Sch I Art 14—

See s 10 I L R 39 Bom 572

See s 22 I L R 39 Bom 729

See BOMBAY LAND REVENUE CODE 1879 ss 68 AND 79 I L R 45 Bom 920

See INAM I L R 42 Mad 673

———— *Possession of land as owner for fifty years—User of land as graveyard and also as timber depôt—Order by Government for discontinuing the user as timber depôt—Order ultra vires—Land Revenue Code (Bom Act V of 1879) ss 65 66* The plaintiffs were in possession of the land in dispute as owners ever since 1860 and used a portion of it as a graveyard and on another portion of it as a shed which was used as a timber shop. In 1871 Government assessed the land and entered it in the Revenue Registers as Government waste land The plaintiffs

LIMITATION ACT (IX OF 1908)—contd

——— Sch I, Art 14—*contd*

paid no assessment on the land in 1908 the District Deputy Collector passed an order directing the Mamlatdar to cause the building and the wood to be removed forthwith from the said land. The order was finally confirmed by the Commissioner on the 24th April 1909 The plaintiffs filed the present suit on the 2nd February 1910 to obtain a declaration that they were absolute owners of the land to have set aside the order of 1909 and to get a permanent injunction restraining Government from disturbing the plaintiffs in their possession of the land *The lower Court dismissed the suit holding that* the plaintiffs were not absolute owners but occupants only and that the suits were barred under Art 14 of the first schedule to the Limitation Act 1908 The plaintiffs having appealed *Held* that as the land in dispute was not used for the purpose of agriculture neither s 65 nor s 66 of the Land Revenue Code (Bom Act V of 1879) applied to the case and the orders passed by the Revenue Authorities to evict the plaintiffs were *ultra vires* *Held* further that the suits were not barred by Art 14 of the Limitation Act (IX of 1908) inasmuch as it was not necessary for the plaintiffs to have the order set aside RASUL KHAN HAMADKHAN v SECRETARY OF STATE FOR INDIA (1915) I L R 39 Bom 494

——— *Official order—What is—* *Held* that Art 14 only applies to orders passed by a Government officer in his official capacity and not to orders which are *ultra vires* and that where a Collector passed orders under s 37 of the Bombay Land Revenue Act 1879 with reference to land *prima facie* the property of an individual *in peaceful possession he is dealing with the land in* official capacity but acting *ultra vires* MALKAJEPPA v SECRETARY OF STATE FOR INDIA

I L R 36 Bom 325

——— *Collector's Order—Forfeiture—Appeal—Exclusion of time—Limitation—Revenue Jurisdiction Act (X of 1876) s 11* On the 6th May 1911 an order was made by the Collector declaring that a survey number belonging to the plaintiff be forfeited to Government for arrears due on the khata Against the order of forfeiture the plaintiff preferred an appeal to the Commissioner The appeal being dismissed, the plaintiff filed a suit on the 14th October 1915 to get the order of forfeiture set aside as illegal and *ultra vires* It was contended that the time taken up in appealing to Revenue authorities be excluded in reckoning the period of limitation *Held* overruling the contention that the suit not being brought within one year from the date of the order of forfeiture was barred by limitation under Art 14 of the Limitation Act 1908 GANESH SHESHO v THE SECRETARY OF STATE FOR INDIA (1919)

I L R 44 Bom 451

——— Sch I Arts 14 and 91—Suit for a declaration of rights as Vatandar—

See BOMBAY REVENUE JURISDICTION ACT (X OF 1876) s 4(*a*)

I L R 44 Bom 261

LIMITATION ACT (IX OF 1908)—contd

——— Sch I Arts 19 23—

See LIMITATION (12)

I L R 40 Calc 898

——— Sch I Art. 22—

See ART 11 25 C W N 544

See Arts 28 26

See ART 12 I L R 45 Bom 45

See ARTS 26 and 8

See ART 1-A I L R 45 Bom 45

——— Sch I Arts 29 62 and 120—*Attachment of debt—Wrongful seizure of moveable property—Suit by claimant to the debt against the decree holder—Article applicable* Neither attachment of a debt nor voluntary payment of it into Court constitutes seizure of moveable property under legal process within the meaning of Art 29 of the Limitation Act A suit by a claimant to the debt attached against the decree holder to whom the amount of the debt was paid is governed by either Art 62 or 120 *Narasimha Rao* v *Gangaraju I L R 31 Mad 431* distinguished YELLAMMAL v AYYAPPA NAICK (1914)

I L R 38 Mad 972

——— Sch I Arts 29 36—*Execution of decree—Civil Procedure Code (1908) s 73—Money rateably distributed amongst decree holders to which they were subsequently declared not to be entitled—Suit to recover money so distributed—Limitation* One *S* brought a suit for money against V and *B* and attached before judgment a quantity of grain in their possession There upon one *M* from whom the grain had been purchased objected to the attachment setting up a lien on the grain for unpaid purchase money The Court allowed *M's* objection holding that *M* had a lien to the extent of Rs 2 000 whereupon *S* brought a suit for a declaration that *M* had no lien at all The property being of a perishable nature was sold by the Court and the proceeds were deposited in Court The suit of *S* against *M* was decreed by the Court of first instance on the 25th of June 1912 Thereafter certain other decree holders of *N* and *B* applied for rateable distribution under s 73 of the Code of Civil Procedure and the Court made the order asked for and paid the sale proceeds of the grain rateably to the decree holders and *S* on dates between the 19th and the 26th of September 1912 But *the declaratory decree obtained* by *S* was reversed on appeal on the 24th of September 1912 and the decree of the lower Appellate Court was affirmed in second appeal on the 30th of April 1914 In June and July 1915 *M's* son brought suits to recover by virtue of his lien the amounts paid to the various decree holders *Held* that the suits were not barred by limitation and that neither Art 29 nor Art 36 of the first Schedule to the Limitation Act was applicable to the suits *Yellammal* v *Ayyappa Naick 23 Mad L J 519* *Rajputana Malwa Railway Co-operative Stores Limited* v *The Ajmere Municipal Board I L R 32 All 491* and *Ward & Co* v *Wallis (1900) 1 Q B 675* referred to by WALSH J RAM NARAIN v BRIJ BANKE LAL (1917) I L R 39 All. 322

LIMITATION ACT (IX OF 1908)—*contd*

———— Sch I, Arts 29 36 49—

See ARREST OF SHIP

I L R 42 Calc 85

———— Sch I Arts 30 31 115—

See LOSS OF GOODS.

I L R 44 Calc 16

———— Sch I, Art 31—*Limitation—Suit by consignor for damage on account of non-delivery of goods—Effect of offer to compromise claim on the part of the Railway Company* On the 16th of January 1913 the plaintiff left at the Ramnagar station on the Rohilkhand and Kumaun Railway a bundle of gunny bags to be delivered to the Salt Superintendent Sambhar on the Bombay Baroda and Central India Railway The bundle was not delivered The plaintiff was subsequently informed that it was lying in the lost property office of the latter Railway and that the plaintiff might take delivery of it if he liked On the 17th of March 1916 the Bombay Baroda and Central India Railway wrote to the plaintiff and offered him R 20 as compensation The plaintiff did not accept this offer but on the 7th of July 1919 sued the Railway Company for R 500 damage for non-delivery of the bundle of gunny bags *Held* that Art 31 of the first schedule to the Indian Limitation Act 1908 applied and the suit was barred by limitation The plaintiff could not pray in aid the Railway Company's letter of the 17th of March 1916 as it was written long after the expiry of the period of limitation and could not be construed as a promise to pay anything It was at best an offer made without prejudice to compromise the plaintiff's claim *Great Indian Peninsula Railway Co v Ganpat Rai I L R 33 All 544 Haji Abdul Cooliss Hossein v Bombay and Persia Steam Navigation Co I L R 26 Bom* referred to MUTASADDI LAL v BOMBAY BARODA AND CENTRAL INDIA RAILWAY COMPANY I L R 42 All 390

———— Sch I Arts 31 49 115—

See SPECIFIC MOVEABLE PROPERTY

I L R 39 Mad 1

———— Sch I, Arts 31 and 62—*Railways Act (Indian) (IX of 1890) s 55—Suit by consignor of goods for surplus sale proceeds—Suit against the Company—Sale of goods under s 56 of the Railways Act—Suit for compensation distinct from suit for surplus proceeds—Money had and received—Applicability of Art 31 or 62 Limitation Act* A suit by the consignor of goods by a Railway Company for the recovery of the surplus sale proceeds realised by the Company by sale of the goods under s 56 of the Indian Railways Act is governed by Art 62 and not Art 31 of the Limitation Act *M & S M Ry Co Ltd v Haji Ismail Dinmahomed (1918) I L R 41 Mad 831* referred to TARACHAND v M & S M RY CO LTD (1921) I L R 44 Mad 823

———— Sch I, Art 32—

See HINDU LAW JOINT FAMILY

1 Pa L J 497

See MORTGAGE I L R 47 Calc 125

———— Where a suit for ejectment of a tenant under s 155 of the Bengal Tenancy Act for breach of condition compensation was also claimed *Held* that latter claim was governed by Art 32 of the Limitation Act. KRISHNA DAS ROY AND ANOTHER v MOHENDRA CHANDRA 25 C W N 950

———— Sch I Arts 32 143—*Bengal Tenancy Act (VIII of 1885) s 155—Suit to eject tenant under—Limitation* Art 32 and not 143 of the first schedule to the Limitation Act governed a suit by a landlord brought under s 155 of the Bengal Tenancy Act to eject a tenant who had allowed a portion of his holding to be encroached upon by a stranger and had exchanged another plot of land of the tenancy with the stranger in contravention of the terms of his *Kabuliyat Sharoop Dass Mondal v Joggessur Roy Chowdhry I L R 26 Calc 564 s c 3 C W N 461* relied on TARINI MONDAL v TAPARDI CHAPRASI (1915) 20 C W N 661

———— Sch I Art 36—

See [illegible] I L R 29 All 322

See ARREST OF SHIP

I L R 42 Cal 85

See LIMITATION ACT 1908 s 29 36 AND 120 I L R 29 All 322

———— Sch I Art 42—

See INJUNCTION I L R 42 Calc 590

———— Sch I Art 44—

See [illegible] I L R 41 Mad 112

I L R 38 Bom 94

See CONTRACT ACT 64

I L R 42 Mad 36

See HINDU LAW CUSTOM

I L R 38 Mad 1125

See LIMITATION ACT 18[illegible]

I L R 38 Mad 118

See LIMITATION ACT 1908 s [illegible] AND 44

I L R 41 Mad 102

See MUHAMMADAN LAW 25 C W N 298

———— *Sale of minor's property by his mother—Suit to set aside the sale brought more than three years after the minor attained his majority* The mother and natural guardian of a minor having sold the minor's property a suit to set aside the sale was brought more than three years after the minor attained majority *Held* that the suit was barred under Art 44 of the Indian Limitation Act 1908 *Balappa v Chandrappa I L R [illegible] and Annappa v Timappa I Bom L R [illegible]* footnote distinguished LAXMAVA v PACHAPPA (1918)

I L R 42 Bom 626

———— *Minor—Guardian—Alienation by natural guardian of minor—Suit by son after attaining majority—Limitation* A Hindu minor on his attaining majority cannot sue to recover possession of property transferred by his mother acting as his natural guardian during his minority without suing to set aside the transfer within the period of limitation provided by Art 44 of the Limitation Act A mortgaged his property to defendant's father in 18[illegible] After his death his widow S as natural guardian of his minor son sold the equity of redemption to the mortgagee in 18[illegible] without necessity The son attained majority in 1895 and died in 1901 leaving a widow S died in 1906 and the son's widow died in 1908

LIMITATION ACT (IX OF 1908)—*contd*

——— Sch I, Art 44—*contd*

In 1910 the plaintiff the next reversioner sued to redeem the mortgage —*Held* that the suit was barred under Art 44 of the Indian Limitation Act, 1908 for the son ought to have sued to set aside the alienation within three years of his attaining majority *Per* SHAH J —The scope of Art 44 is not limited to sales by guardians who are appointed under testaments or by the Court The language of the Article is general and wide enough to include sales by natural guardians who may have some authority however limited to alienate the property of the minor that is sales which are not wholly void but are voidable at the instance of the person interested in the property *Bhagvant Govind v Kondi valad Mahadu (1889) 14 Bom 279 Balappa v Chanbasappa (1910) 12 Bom L R 1134* and *Anandappa v Totappa (1911) 1 Bom L R 113* n overruled *Mallarjun v Narhari (1900) 25 Bom 337 Mata Din v Ahmad Ali (1911) 34 All 213 Mahableshvar Krishnappa v Ramchandra Mangesh (1913) 38 Bom 94* and *Laxman v Pachappa (1915) 42 Bom 626* referred to FAKIRAPPA LIMANNA v LUMANNA *bin* MAHADU (1919)

I L R 44 Bom 742

———*Suit to recover property transferred by natural guardian on behalf of minor* A suit for the recovery of property transferred during the minority of the plaintiff by his natural guardian must under Art 44 of Sch I to the Limitation Act be brought within three years of attaining majority such a transfer being voidable and not void BROJENDRA CHANDRA SARMA v PROSHONYO KUMAR DHAR 24 C W N 1016

——— Sch I, Arts 44 91—Suit to set aside a compromise decree—

See EXECUTOR

I L R 36 Mad. 575

——— Sch I Arts 44 91 95 120—

See CIVIL PROCEDURE CODE 1908 O XXII R 7 I L R 2 Lah 161

——— Sch I, Arts 44 144—

See HINDU LAW—GUARDIAN

I L R 38 Mad 1125

———*Alienation by mother as guardian of the sons—Decree against the sons represented by the mother as guardian ad litem—Sale in execution—Decree and sale whether nullities—Suit by minors to recover possession—Limitation—Civil Procedure Code (V of 1908) O XXXII r 4 (1)* Where a mother acting as the guardian of her minor sons mortgaged their property and a decree on the mortgage was passed against the minors represented by the mother as guardian *ad litem* and properties sold in execution and subsequently the sons sued to recover possession of the properties more than three years after the elder of them attained majority but within twelve years of the sale alleging that their mother was not competent to represent them in the previous suit as her interest was adverse to theirs *Held* that the decree against the minors was not a nullity and had to be set aside and that the suit was consequently barred by limitation KUPPUSWAMI AYYANGAR v KAMALAMMAL (1920)

I L R 43 Mad 842

LIMITATION ACT (IX OF 1908)—*contd*

——— Sch I, Art 47—

See s 28

I L R 38 Mad 432

———*Suit for recovery of land previously declared to be in defendant's possession under s 145 of the Criminal Procedure Code (Act V of 1898)—Limitation—Order not ultra vires because defective—jurisdiction meaning of* In a proceeding under s 145 of the Criminal Procedure Code regularly initiated by a preliminary order under sub s (1) the parties filed written statements The first party to the proceedings after some witnesses had been examined on his behalf applied to withdraw from the proceedings stating that he would conduct the case in Civil Court and would not enter upon the land till the matter should have been settled by the Civil Court The Magistrate reciting the above facts declared the second party to be in possession by an order passed on 24th August 1906 The first party instituted the present suit to recover possession on the 2 th January 1912 and contended that the suit was not barred by Art 47 of the Limitation Act because the order of the Magistrate was without jurisdiction *Held* that the suit was barred by Art 47 of the Limitation Act LAL MAHAMED SHAHA v HEYAT MAHAMED SAHA (1917) 22 C W N 342

———*Decree by Mamlatdar—Mamlatdars Courts Act (Bombay Act II of 1906) Order by Magistrate—Criminal Procedure Code (Act V of 1898) s 145—Suit for possession—Limitation* In 1913 the plaintiff filed a suit under the Bombay Mamlatdars Courts Act 1906 and obtained an injunction restraining the defendant from disturbing his possession The District Deputy Collector having purported to interfere in revision the plaintiff applied in 1914 for an order under s 145 of the Criminal Procedure Code but the Magistrate decided against him and allowed possession to the defendant In 1917 the plaintiff sued to recover possession *Held* that the order of the District Deputy Collector who had no jurisdiction to interfere should be considered as a nullity and that the suit being filed within three years from the order of the Magistrate was not barred under Article 47 of the Indian Limitation Act 1908 VENKATESH KEVAL v BHIKU VENKATESH I L R 45 Bom 1135

——— Arts 48 and 49—

———*Suit for goods misappropriated—Indian Contract Act (IX of 1872) ss 108 and 178* One *K* took a jewel of the plaintiff in May 1907 to find a purchaser for it stating that he would settle the price in the presence of the plaintiff but instead of doing so *K* in June 1907 pledged it with the third defendant who *bona fide* lent on its security Rs 175 Plaintiff came to know of *K's* conversion in 1909 and sued in 1911 for the jewel or its value the third defendant and the widow and son of *K* who died at the end of 1907 *Held* that Art 48 and not 49 of the Limitation Act (IX of 1908) was applicable and that the suit was not barred by limitation *Held* also that the *bona fides* of the third defendant does not preclude the plaintiff from recovering the jewel without paying the third defendant the amount of loan Effect of ss 108 and 178 of the Indian Contract Act considered SESHAPPIER v SUBRAMANIA CHETTIAR (1914)

I L R 38 Mad.

LIMITATION ACT (IX OF 1908)—*contd*

——— Arts 48 and 49—*concld.*

——— *Suit for goods mis appropriated—Contract Act (IX of 1872) ss 108 and 178* A commission agent employed to sell a jewel belonging to the plaintiff wrongfully pledged it in 1907 for Rs 175 to the defendant who lent the amount *bonâ fide* without any know ledge of the plaintiff's ownership Plaintiff coming to know of the wrongful pledge in 1909 sued in 1911 for the recovery of the jewel or its value *Held* (i) that the suit was in time and Art 48 and not Art 49 of the Limitation Act was applicable and time began to run from 1909 when the plaintiff came to know in whose possession the jewel was and (ii) that as the defendant was a pawnee in good faith from one who had juridical possession of the jewel the plaintiff was not entitled to recover the jewel without paying the defendant the amount due to him on the pledge Possession in s 178 of Contract Act (IX of 1872) means juridical possession and not custody *Rameshar Chaubey* v *Mata Bhikh I L R 5 All 341 Ram Lal* v *Ghulam Hussain I L R 29 All 579* and the observations of BACHELOR J in *Nandlal Thakrsey* v *The Bank of Bombay 12 Bom* L *R 316 335* followed SESHAPPIER *v* SUBRAMANIA CHETTIAR (1916)
I L R 40 Mad 678

——— Sch I Art 49—

See ARREST OF SHIP
I L R 42 Calc 35

See ART 31 I L R 39 Mad 1

See CONTRACT Act s 162
26 C W N 772

——— *Limitation begins to run upon refusal to return property detained* Where a person to whom moveable property is entrusted to be returned on the fulfilment of certain condi tions retains such property after such conditions are fulfilled, he will be deemed to be in possession on behalf of the person entitled, until he refuses delivery mere silence on demand being made will not constitute such refusal The period of limitation for a suit to recover the property thus detained will under Art 49 of Sch. I of the Limit ation Act run from the date when the defendant refuses to deliver such property GOPALASAMI AYYAR *v* SUBRAMANIA SASTRI (1912)
I L R 35 Mad 636

——— In a suit for recovery of property depo ited for safe custody with defend ant limitation does not begin to run against plaintiff until the return of the property has been demanded and refus d LADDO BEGAM *v* JAMAL UD DIN I L R 42 All 45

——— Sch I Arts 49 60 61 62, 81 89 120 and 145— *Specific moveable property meaning of in Art 49—Whether includes money—Residuary article when to be applied—Money had and received to the plaintiff's use* Where the karnavan of a Malabar tarwad sued a junior for recovery of a sum of tarward money received by th latter but withheld by him in denial of the plaintiff's ri ht to the same *Held* that the case was governed by Art 6 as the defendant had received monies belonging to the plaintiff which *ex aequo et bono* he ought to refund, and the cause of action was for money had and received to the plaintiff's use, and arose on the date of the receipt, and not on the date of the denial of the plaintiff's right to the money *Mahomed Wahib* v *Mahomed Ameer I L R 320 Calc 527* referred to Specific moveable property in Art 49 does not include money though money is move able property within Art 89 Specific pro perty is property which is recovered *in specie i e* the very property itself not any equivalent or reparation The residuary Art 120 should be applied only as a last resort if no other article is applicable *Sharoop Dass Mondal* v *Joggessur Roy Chowdhry I L R 26 Calc 564* referred to SANKUNNI *v* GOVINDA (1914)
I L R 37 Mad 381

——— Sch I Arts 49 60 145—*Limitation—Bailment—Suit to recover property bailed—Contract or tort* The plaintiff sued for the return of certain property which had been deposited with two persons as follows namely four hundred gold mohurs with Musammat Chun Kunwar and some pictures and manuscripts with Sobhag Mal *Held* that the limitation applicable to the former suit was that prescribed by Art 60 of the first schedule to the Indian Limitation Act 1908 and to the latter that prescribed by Art 145 or if the suit was looked upon as one in tort Art 49 would apply the period beginning to run from the date when the return of the property was demanded KALYAN MAL *v* KISHAN CHAND (1919) I L R 41 All 643

——— Sch I Arts 49 115 145—*Gold deposited with goldsmith to be made into ornaments—Suit to recover—Limitation* Where the allegation was that nearly eleven years ago the plaintiff had made over a *tola* of gold to defendant to be made into ornaments but no time was fixed and the latter put him off from time to time until being pressed by plaintiff on 24th March 1914 he promised to make and deliver the orna ments within 15 days but failed to do so *Held* that Art 145 of Sch. I to the Limitation Act applied to a suit for recovery of the gold deposited. Art 145 applies even when the property is not recoverable in spe ie and does not cease to be applicable merely because the defendant refuses to return the property Such refusal does not bring into operation Art 48 or 49 Even if Art 49 applied limitation would begin running from 8th April 1914 before whi h there was no refusal If Art 115 applied limitation would run from the same date when the contract was broken GANGAHARI CHAKRAVARTI *v* NABIN CHANDRA BANIKYA (1915) 20 C W N 232

——— Sch I, Art 51—

See s 19 I L R Lah 357

——— Sch I, Arts 52 56 115 120—*Limitation—suit for recovery of money due on account of materials supplied and work done for constructing a floor under a contract fixing a consolidated rate for both—Claim as laid in plaint an indivisible one—Meaning of compensation in art 115 and in Indian Contract Act IX of 1872 s 73* The de fendant who had taken a contract to con truct a building at Lahore employed the plaintiff as a sub contractor to do the work of flooring in the building The plaintiff was to supply Italian marble and other stones required for the flooring and was also to do all the work necessary for constructing the floor and was to be paid a certain sum of money for every square foot of the flooring done by

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——— Sch I, Arts 52, 56 115 120—*concld.*

him which rate included both the price of the materials supplied and the work done by the plaintiff The plaintiff sued for the balance of the money due to him on the basis of this contract and the plaint made no mention of the price of the materials as distinct from the price of the work The only question before the Full Bench was what article of the Limitation Act was applicable to the suit *Held* that the claim as laid in the plaint was an indivisible one and could not be split up into two portions and consequently neither article 52 nor article 56 of the Limitation Act was applicable but that the suit was governed by article 115 and not by article 120 *Padha Kishen* v *Basant Lal* (*103 P R 1913*) overruled in this respect Article 115 is a general provision applying to all actions *ex contractu* not specially provided for otherwise The word compensation in that article as well as in article 116 has the same meaning as it has in section 73 of the Indian Contract Act and denotes a sum of money payable to a person on account of loss or damage caused to him by the breach of a contract *Nobocomar Mookhopadhaya* v *Siru Mullick* (*I L R 6 Cal 94*) and *Hussain Ali Khan* v *Hafiz Ali Khan* (*I L R 3 All 600 F B*) followed MAHOMED GHASITA v SIRAJ UD DIN

I L R 2 Lah 376

——— Sch I, Arts 59 60—*Loan or deposit —Money left with a trader not being a banker if loan or deposit—Deposit in Art 60 meaning of* Under Art 60 of the Limitation Act (IX of 1908) money left in the hands of a trader who is not a banker will be a deposit in circumstances such as would make it money of a customer where the depositee is a banker Art 60 and not Art 59 of the Limitation Act (IX of 1908) applies to a suit to recover money so deposited even though it is payable on demand The word deposit in Art 60 is used in a non legal sense *Official Assignee of Madras* v *Smith I L R 32 Mad 68 Perundevitayar Ammal* v *Nammalvar Chetti I L R 18 Mad 390* and *Ishur Chunder Bhaduri* v *Jibun Kumari Bibi I L R 16 Cal 25* followed *Dharam Das* v *Ganga Devi I L R 29 All 773* and *Ichha Dhanji* v *Natha I L R 13 Bom 338* dissented from *Sinclair* v *Brougham* (*Birbeck Bank Case*) (*1914*) *A C 398* referred to SUBRAHMANIAN CHETTIAR v KADIRESAN CHETTIAR (1916) I L R 39 Mad. 1081

——— Sch I Arts 60 145—

See ART 49 I L R 41 All 643

——— *Limitation—Suit to recover money deposited with banking firm* There is no doubt since the passing of the Indian Limitation Act 1908 that a suit for the recovery of money deposited with a banker and repayable on demand is governed by Art 60 and not by Art 59 of the first schedule to the Act *Dharam Das* v *Ganga Devi I L R 29 All 773* referred to JUGGI LAL v KISHAN LAL (1915) I L R 37 All 292

——— Sch I Arts 60 61 62—

See ART 49 I L R 37 Mad 381

——— Sch I Arts 60 63—

——— ——— *Interest due on Thavanai transactions with Nattukottai Chettis—Hindu widow—Interest in her husband's assets—Acquiescence in treating it as part of her husband's*

LIMITATION ACT (IX OF 1908)—contd.

——— Sch I Arts 60 63—*concld*

estate—Effect on her death If a Hindu widow acquiesces in treating the interest on the investments of her husband's assets as part of her husband's estate it will descend on her death to her husband's heirs If money is deposited with Nattukottai Chettis on Thavanai with the understanding that at the end of each Thavanai period the interest for that period is not payable but is to be added to the principal and both are to be treated as a fresh deposit Art 60 of the Limitation Act is applicable to the recovery of such interest and it becomes payable only on demand Art 63 does not apply NARAYANAN CHETTI v SUPPIAH CHETTY (1920)

I L R 43 Mad 629

——— Sch I Art 61—

——— *Revenue paid by person in possession under an order which is subsequently reversed on appeal—Suit to recover revenue so paid from successful competitor—Limitation* A obtained possession of certain revenue paying property under an order passed in mutation proceedings and whilst in possession paid the revenue due in respect of the property But the order in favour of *A* was subsequently set aside and *B* obtained possession under the order of the appellate court *Held* that *A*'s claim to recover the revenue which he had paid during the period of his possession was a claim for money payable to the plaintiff for money paid for the defendant and the limitation applicable was that prescribed by Art 61 of the first schedule to the Indian Limitation Act 1908 ALAYAR KHAN v BIBI KUNWAR

I L R 42 All 61

——— Sch I Arts 61 99 120—*Contribution suit—Limitation when begins to run—Date of payment* One *P B* deposited a certain sum of money in a Bank owned by *R* and his two brothers *S* and *G* *P B* brought a suit and obtained a decree for the money deposited against *R* and the representatives of his brothers *S* and *G* On appeal the High Court exempted *G*'s representatives from liability under the decree in so far as they inherited the share of the family property from *G* *P B* executed his decree against *R* and advertised some properties exclusively belonging to *R* for sale On the 8th December 1900 one Raja *S* as the purchaser of certain mehals belonging to *R* and his son (the plaintiff) paid in the decretal amount and the execution case was finally struck off *R* put in an application stating that the petition filed by the decree holder stating satisfaction of the decree was without his knowledge and that the negotiations between Raja *S* and himself regarding the sale of the properties had not been concluded Raja *S* sued *R* for specific performance of the contract to sell and ultimately the High Court held that he could not get a decree for specific performance but was only entitled to get back the money advanced with interest from the 8th December 1900 On 11th January 1906 Raja *S* in execution of this decree sold certain properties belonging to the plaintiff the sale being confirmed on 21st June 1906 when Raja *S* obtained payment On 3rd February 1908 the plaintiff instituted a suit for contribution against the legal representatives of *R*'s brother *S* *Held* that it was doubtful whether Arts 61 and 99 Sch I of the Limitation Act were applicable to the present case and under Art 120 the

LIMITATION ACT (IX OF 1908)—*contd*

———— Sch I Arts 61 99 120—*concld*

period of limitation was six years from the time when the right to sue accrued The date of payment by Raja *S* was not the date of payment by *R* within the meaning of Art 99 of the Limitation Act The plaintiff's right to sue accrued when the decree obtained by Raja *S* was satisfied by sale of plaintiff's property and the suit being brought within two years from the date of that payment was not barred by limitation JANKI KOER *v* DOMI LAL (1913) 18 C W N 489

———— Arts 61 and 116—*Well jointly owned by parties—Registered agreement for effecting repairs of well jointly—Repairs made at plaintiff's costs—Suit for contribution of expenses—Claim not for compensation for breach of a contract in writing registered—Limitation three years* The plaintiff and the defendant jointly owned a well They entered into a registered agreement to the effect that the repairs of the well were to be made by them jointly The repairs were effected by the Municipality at the instance of the plaintiff who paid a certain amount to the Municipality in 1911 The plaintiff having sued the defendant in 1916 for the contribution claimable in respect of the repairs of the well it was contended that the suit being covered by Art 116 of the Limitation Act 1908 was not barred by limitation *Held* that the suit being in fact a suit for contribution in which the right of action did not rest upon the registered contract was time barred after three years SURAJPRASAD DWARKADAS *v* KARMALI ABDULMIYA (1919) I L R 44 Bom 591

———— Art 62—

See ART 2 I L R 26 All 555

See ART 31 I L R 44 Mad 823

See BENGAL ZAMINDARI REVENUE ACT 1 Pat L J 374

See BHAGDARI AND NARWADARI TENURES ACT (BOM V OF 1862) s 3 I L R 39 Bom 358

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 11 I L R 40 Bom 614

See CONTRACT I L R 41 Mad 488

1 ———— *Payment by cheque* In case of payment by a cheque limitation runs not from the date of the delivery of the cheque but from the date of the receipt of the money by the payee SECRETARY OF STATE FOR INDIA *v* MAJOR HUGHES (1913) I L R 38 Bom 293

2 ———— *Limitation—Debt due to all the heirs of a deceased recovered by some of them—Suit by remaining heir for recovery of her share* Some of the heirs of a deceased Muhammadan brought a suit upon a mortgage in his favour impleading as a defendant the remaining heir The plaintiffs obtained a decree and in execution thereof brought the mortgaged property to sale on the 21st of May 190[illegible] and purchased it themselves for a sum slightly in excess of the amount of the decree and costs The decree holders as auction purchasers paid in the excess and [illegible] On the 1st of June 191[illegible] the remaining heir sued to recover her share in the [illegible] or in the alternative a share in the property purchased *Held* that the plaintiff had no cause of action so far as the property was concerned and that as to the money her

LIMITATION ACT (IX OF 1908)—*contd*

———— Art 62—*concld*

suit was barred by Art 62 of the first schedule to the Indian Limitation Act 1908 *Mahomed Wahib v Mahomed Ameer I L R 32 Calc 527* followed. *Umardaraz Ali Khan v Wilayat Ali Khan I L R 19 All 169* and *Mahomed Riasat Ali v Hasin Banu I L R 21 Calc 157* referred to AMINA BIBI *v* NAJM UN NISSA (1915) I L R 37 All 233

3 ———— *Limitation—Suit for money had and received—Suit by heir to recover share of inheritance from person appointed to wind up estate* Where pending arbitration in respect of the distribution of the estate of a deceased person amongst his heirs the estate was by their consent put in charge of a third party who was to realize the assets and pay the debts it was held that a suit by one of the heirs to recover from such person her share by inheritance was a suit for money had and received and was governed by Art 62 of the first schedule to the Indian Limitation Act 1908 MASIH UD DIN *v* IMTIAZ UN NISSA BIBI (1914) I L R 37 All 40

4 ———— *Limitation—Succession certificate obtained by one of the heirs of a deceased person—Suit by remaining heir for recovery of her share* A certain Mahomedan in the year 1903 obtained a succession certificate to realize debts due to his deceased uncle and realised some of those debts In the year 1913 the widow of his brother who had died subsequent to the death of his uncle brought the present suit for her husband's share of the money realised *Held* that Art 62 of the first schedule to the Indian Limitation Act 1908 governed the suit and as no money had been realised by the holder of the succession certificate within three years of the suit it was barred by limitation *Amina Bibi v Najm un nissa Bibi I L R 37 All 233 Parsotam Rao Tantia v Radha Bai I L R 34 All 318 Masih ud din v Imtiaz un nissa Bibi I L R 37 All 40 Mahomed Wahib v Mahomed Ameer I L R 32 Calc 527* followed *Umardaraz Ali Khan v Wilayat Ali Khan I L R 19 All 169* distinguished ABDUL GHAFFAR *v* NUR JAHAN BEGAM (1915) I L R 37 All 434

5 ———— *Suit for refund of consideration money where there is a total failure of consideration* When there is total failure of consideration with regard to a lease a claim to a refund of the consideration money is governed by Art 62 of the First Schedule of the Limitation Act BISWANATH GORAIN *v* SURENDRA MOHAN GHOSE (1913) 18 C W N 120

6 ———— *Suit for money taken in execution of a decree—Compensation—Suit for money had and received* In execution of a decree certain rents due to the judgment-debtor from his tenants were attached Prior to the passing of this decree the judgment debtor had sold the property to a third party The decree holder got the court amin to realize the rent due from the tenants and they were deposited in Court and ultimately paid over to the decree holder The purchaser brought the present suit against the decree holder for the recovery of the money within three years of the payment to him *Held* that the suit was money had and received within the meaning of art 62 of sch I to the Indian Limitation Act *Jagjivan Javherdas v*

LIMITATION ACT (IX OF 1908)—*contd*

——— Art 62—*contd*

Gulam Jilani Chaudhuri I L R 8 Bom 17 dissented from NIADAR SINGH v GANGA DEI (1916) I L R 38 All 676

——— Arts 62 and 89—*Hindu joint family—Partition of immoveable properties—Cash securities kept joint—Manager failing to account—Suit for account—Manager holding as an agent—Limitation* Plaintiff and his two brothers lived jointly They divided their immoveable estate in 1898 but kept joint certain cash securities as they were all in the name of their elder brother Ramsing At the time of the partition it was orally agreed that Ramsing should realize the securities and divide the proceeds among the three brothers Ramsing did not divide the proceeds nor gave any account He died on the 6th January 1914 thereafter plaintiff demanded an account from Ramsing s son but he having refused a suit was filed by the plaintiff for an account on the 3rd January 1917 Both the lower Courts dismissed the suit as being barred under Art 62 of the Limitation Act 1908 On appeal to the High Court *Held* that the suit was not barred as it was governed by Art 89 of the Limitation Act inasmuch as Ramsing must be considered as an agent of his brothers and time would not begin to run until the account was demanded and refused *Lutoo Tewary v Doona Tewary (1896) 24 Calc 309* doubted CABU v JITRU (1920) I L R 45 Bom 313

——— Sch I Arts 62 and 97

See LIMITATION I L R 46 Calc 670

——— *Sale of land by one having a voidable title and putting purchaser in possession thereunder—Dispossession by person entitled to avoid—Cause of action for return of purchase money only on dispossession* A who had a title to certain immoveable property voidable at the option of *C* sold it to *B* and put *B* in possession thereof *C* then brought a suit against *A* and *B* got a decree and obtained possession thereof in execution *Held* that *B* s cause of action for the return of the purchase money arose not on the date of the sale but on the date of his dispossession when alone there was a failure of consideration and that the article applicable was Art 97 of the Limitation Act Cases on the subject reviewed SUBBAROYA v RAJAGOPALA (1914) I L R 38 Mad. 887

——— Arts 62 102—

See ART 2 I L R 36 All 555

——— Sch. I, Arts 62, 120—

See ART 29 I L R 38 Mad 972

See CIVIL PROCEDURE CODE 1882 s 315 I L R 35 All 419

1 ——— *Separate Hindu family—Property managed by one member—Receipt of money by that member—Suit for partition* Three brothers who had been living with their father as a joint Hindu family obtained under the will of their father in whose hands it was separate property a considerable amount of movable and immovable property The property bequeathed was divided by the will into three lots but the legatees still continued to live as a joint Hindu family and the property of all was managed for a series of years by one member of the family acting as if he were the *karta* of a joint Hindu family *Held* on suit by the widow of one of the members of the family to recover from the manager her deceased husband s share of money received by the defendant as manager but owned by all the three members of the family in equal shares that the suit was not a suit for money had and received but was one to which Art 120 of the first schedule to the Indian Limitation Act applied PARSOTAM RAO TANTIA v RADHA BAI (1915) I L R 37 All 318

LIMITATION ACT (IX OF 1908)—*contd*

——— Sch I Arts 62 120—*contd*

2 ——— *Suit for money on the ground of wrongful rateable distribution governed by Art 62 and not by Art 120 of the Limitation Act—S 14 of the Limitation Act—Time taken to file and to prosecute a revision petition against order of wrongful distribution not to be deducted under s 14* A suit for money under s 73 cl (2) Civil Procedure Code on the ground that the plaintiff and not the defendant was entitled to receive the same in proceedings in execution of a decree for rateable distribution is governed by Art 62 and not by Art 120 of the Limitation Act (IX of 1908) the cause of action arising on the date of wrongful payment to the defendant In computing the period of limitation for the filing of such a suit the plaintiff is not entitled to deduct under s 14 of the Limitation Act the period of time taken by him to file a revision petition in the High Court or the time during which the plaintiff was prosecuting the revision petition against the order of wrongful distribution *Vishnu Bhikaji Phadke* v *Achut Jogannath Ghate I L R 15 Bom 438* followed *Ramaswamy Chetty* v *Harikrishna Chettyar 21 Mad L J 705* not followed BAIJNATH LALA v RAMADOSS (1914) I L R 39 Mad 62

3 ——— *Civil Procedure Code (Act V of 1908) O XXII rr 11 and 9—Withdrawal of surplus sale proceeds belonging to the plaintiff by defendant—Suit instituted more than three years from date of withdrawal* Where an application for substitution was made more than six months after the appellant s death before the Registrar and the respondents did not put in any objection before the Registrar to the hearing of the appeal the application for substitution was treated as an application for the restoration of the appeal after abatement The plaintiff a purchaser at auction sale of a revenue paying estate made default in the payment of Government revenue and the estate was sold and the surplus sale proceeds were withdrawn by the defendants the original proprietors whose names still remained in the register and a suit was instituted by the plaintiff for the recovery of the money so withdrawn more than three years after the date of withdrawal *Held* that Art 62 of the Limitation Act applied and the suit was barred by Limitation *Muhammad Wahib* v *Muhammad Ameer I L R 32 Calc 527* and *Lachmi Narain Singh* v *Dhanukdhari Prasad Singh 17 Ind Cas 351* referred to Money paid to one party with the implied intention that it should finally reach the hands of the party to whom it actually belongs is money within the meaning of Art 62 paid to that party for the use of the actual person in whom the right to receive it vests HARIHAR MISSER v SYED MOHAMMED (1916) 20 C W N 983

LIMITATION ACT (IX OF 1908)—*contd*

———— Sch I Arts 62 120—*concld*

4 ———————— *Suit by one part owner of a jaghir against another who was also manager—Suit for account and recovery of income—Nature of suit—Suit in a District Munsif s Court for one year s income—Plaint returned for presentation to proper Court—Plaint not repre sented—Subsequent suit in a District Court for income due for previous years—Civil Procedure Code (Act V of 1908) O II r 2 suit if barred under* The plaintiff and the defendant were co sharers in a jaghir of which the latter was appointed by the Government as manager The former sued the latter in a District Munsif s Court for his share of the net income due for the year 1912 but the plaint was returned for presentation to the proper Court as the valuation of the suit exceeded the pecuniary limits of the jurisdiction of the said Court the plaintiff did not represent the plaint in any Court but subsequently insti tuted the present suit in 1913 in the District Court for an account and recovery of his share of income due for the years 1905 to 1907 The defendant pleaded that the suit was barred by limitation and by O II r 2 of the Civil Procedure Code *Held* that the suit was one for an account which was governed by Art 120 and not Art 62 of the Limitation Act and that the suit was not barred by limitation *Muhammad Habibullah Khan* v *Safdar Husain Khan I L R 7 All 25* followed *Held* also that the suit was not barred under O II r 2 of the Civil Procedure Code SUBBA RAO v RAMA RAO (1916)

I L R 40 Mad 291

5 ———————— *Money paid to one party with the implied intention that it should finally reach the hands of the party to whom it actually belongs to* within Art 62 HARIHAR MISSAR v SYED MOHAMED

1 Pat L J 374

———— Sch I Arts 62 120 132—

See TRANSFER OF PROPERTY ACT ss 82 100 I L R 33 All 708

———— Sch I Art 63—

See ART 60 I L R 43 Mad 629

———— Sch I, Art 64—

See LIMITATION ACT 1908 s 19 AND ART 64 5 Pat. L J 371

See SUBSTITUTED SERVICE

I L R 38 Calc 394

———— Sch I Arts 64 89 115—*Suit by principal against agent for recovery of money found due on adjustment of accounts—Limitation* A suit contemplated by Art 89 of Sch I of the Limita tion Act is a suit in which accounts have to be taken Where an account has been rendered Art 89 has no application Where an account has been taken and adjusted and a specific sum has been found due from the agent to the princi pal the principal becomes entitled to sue forth with for recovery of that money and the posi tion is not altered even if the agent continues thereafter to hold his office as agent of that princi pal Either Art 64 or Art 115 applies to such a suit KESHO PROSAD SING v SARWAN LAL (1915)

21 C W N 591

LIMITATION ACT (IX OF 1908)—*contd*

———— Sch I, Art 65—

See PRINCIPAL AND SURETY

I L R 44 Calc 978

———— Sch I Art 66—

See ART 115 I L R 38 Bom 177

See CIVIL PROCEDURE CODE (1908) O XXXIV, R 6 I L R 41 All 581

———— Sch I Arts 66 115 145—*Deposit of money repayable at a fixed date—Art 66 and 115 applicable Art 145 not applicable— Deposit, in Art 145 meaning of—Probate and Adminis tration Act (V of 1881)—Title of executor to sue even without Probate or Letters—Limitation Act s 17—Same word re enacted in a repealing Act—Construction same meaning as in the repealed Act* Art 145 of the Limitation Act (IX of 1908) is not applicable to deposits of money Deposit in Art 145 means only deposit of goods to be returned in specie when wanted it is the sort of bailment known to lawyers under that name in the Roman Law of Bailments which was accepted by Bracton and afterwards by Lord Holt in *Coggs v Barnard (1703) Sm L C 173 s c 2 Raym 909* as fit to be enforced in England *Ishur Chund r Bhaduri* v *Jibun Kumari Bibi I L R 16 Calc 25* and *Perundevitayar Ammal* v *Nam malwar Chetty I L R 18 Mad 390* followed *Administrator General Bengal* v *Kristo Kamini Dassee I L R 31 Calc 519* and *Lala Gobind Prasad* v *Chairman of Patna Municipality 6 C L J 655* not followed A loan repayable at a fixed date is governed by Art 66 and is not by Art 115 Unlike cases governed by the Indian Succession Act and the Hindu Wills Act in a case governed by the Probate and Adminis tration Act (V of 1881) the obtaining of probate is not necessary to clothe the executor with the right to sue for debts due to the testator and the estate is represented by the executor even in the absence of probate within the meaning of s 17 of the Limitation Act and time begins to run from death of the testator s death as the obtaining of a succession certificate is not a condition pre cedent to the filing of a suit but is only necessary before getting a decree Where a word which is used in one sense in one Act is re enacted in a subsequent Act which repeals the former then unless there is some strong reason to the contrary it must be read in the same sense in the subse quent Act in which it is re enacted *Mayor of Portsmouth* v *Smith I R 10 A C 364 3 1* referred to Testatrix lent money to the defen dant on 15th August 1900 and died on 16th January 1904 The will was governed by the Probate and Administration Act *Held* that a suit by the executor in 1910 was barred by limitation either under Art 66 or 115 of the Limitation Act BALAKRISHNUDU v NARAYANSA WAMY CHETTY (1914) I L R 37 Mad 175

———— Sch I Art 73—*Limitation—Pro missory note— Writing restraining or postponing the right to sue* Defendant borrowed money from a bank and executed a promissory note in favour of the bank on the 13th of June 1913. But on the same date he also wrote to the bank a letter in which he stated— The sum of Rs. 700 which I have borrowed from the Bank to day I undertake to pay principal and interest within one year If I cannot pay in within the time specified then they (the Bank) may realize (the

LIMITATION ACT (IX OF 1908)—*contd*

——— Sch. I Art 73—*concld*

money) in any way they please *Held* that this letter amounted to a writing restraining or post poning the right to sue within the meaning of Art. 73 of the first schedule to the Indian Limi tation Act, 1908 and limitation accordingly did not begin to run against the Bank until the period of one year from the date of the note had expired JWALA PRASAD v SHAMA CHARAN
I L R 42 All 55

——— Sch. I, Art 74 75 80 and 120—

See LIMITATION
I L R 38 Mad 374
I L R 41 Mad 412

——— Sch I Art 75—

See CONTRACT 3 Pat L J 412

1 ——— *Bond—Option of suing for whole amount due in default of payment of instalments—Limitation* A bond payable by instalments gave to the creditor the option of suing for the whole amount due on default in pay ment of any instalment or of suing for the instal ments separately Two instalments were paid the third was not and more than six years after default in payment of this instalment nothing further having been paid on the bond the creditor sued to recover the whole amount due stating that the cause of action arose on the date when the third instalment became due *Held* that the suit was time barred. *Ajudhia* v *Kunjal I L R 30 All 123* distinguished AMOLAK CHAND v BAIJNATH (1913) I L R 35 All 455

2 ——— *Limitation—Bond —Instalment—Power to sue for whole amount on default of payment of any instalment—Terminus a quo* Where a bond payable by instalments pro vides that the creditor shall have power to sue for the whole amount of the bond upon default being made in payment of any one instalment this does not mean that the creditor is obliged to sue for the whole within the period of limi tation from the first default made He may if he so chooses waive this right and sue for such instalments as remain due and are not barred by limitation *Ajudhia* v *Kunjal I L R 30 All 123* followed *Amolak Chand* v *Baijnath I L R 35 All 455* and *Chandan Singh* v *Bidhya Dhar 15 Indian Cases 806* distinguished MOHAN LAL v TIKA RAM (1918) I L R 41 All 104

3 ——— *Bond repayable by instalments the whole to become payable on demand on default in paying one instalment—Meaning of on demand —Waiver* A bond repayable by instalments contained the following stipulation — in default of our making such payment also the amount that may be found due for all future drawings shall be paid in a lump on your demand *Held* that the cause of action for recovery of all the instalments would not arise until demand is made by the obligee in terms of the stipulation and that in consequence the whole amount did not become due merely on failure to pay an instalment *Hanmantram Sadhuram* v *Arthur Boules I L R 8 Bom 561* followed The words on your demand mean when you require Failure to make the demand will constitute a waiver of the right stipulated for *Hurri Pershad Chowdhry* v *Nasib Singh I L R 21 Calc 542 547* and *Jadab Chandra Bakshi* v *Bhairab Chandra Chuckerbutty I L R 31 Calc 297* dissented from KARUNAKARAN NAIR v KRISHNA MENON (1913) I L R 36 Mad 66

LIMITATION ACT (IX OF 1908)—*contd*

——— Sch I, Art 75—*concld*

——— Sch I, Art 78—

See LIMITATION (53)
I L R 46 Calc 168

——— Sch I Art 80—

See LIMITATION ACT 1908 ARTS 73 AND 80 I L R 42 All 55

——— *Promissory note payable on demand—Agreement fixing time for payment —Suit by payee—Limitation from the expiry of the period fixed* Art 80 of the Limitation Act is the article applicable to a suit by the payee on a pro missory note payable on demand but accompanied by an agreement fixing a period for payment and time begins to run from the expiry of the period fixed in the accompanying agreement *Simon* v *Hakim Mahomed Sheriff I L R 19 Mad 368* and *Somasundaram Chettiar* v *Narasimha Chariar I L R 29 Mad 212* overruled ANNAMALAI CHETTY v VELAYUDA NADAR (1915)
I L R 39 Mad. 129

——— Sch I, Arts 81 89—

See ART 49 I L R 37 Mad 381

——— Sch I Art 83—*Limitation— Suit upon a covenant in a registered deed of sale to recover excess money paid for redemption of a mortgage on the property sold* One S B on 25th May 1890 sold certain immovable property The sale deed was registered the consideration money being Rs 3 900 out of which Rs 2 000 was to be paid by the vendees to a mortgagee and in the event of the mortgage money being in excess of Rs 2 000 S B was to liable for such excess The vendees were forced to sue the mortgagee for redemption and obtained a decree on 21st July 1911 on payment of Rs 3 176 9 0 This payment was made on the 5th December 1911 and on 20th July 1916 the vendees brought the present suit against the heirs of S B (who had since died) for recovery of Rs 1 176 9 0 and Rs 383 7 0 costs of the redemption suit *Held* that the combined effect of article 116 read with article 83 of the Limitation Act gave the period of 6 years for the suit time running from the date when the plaintiffs were actually dammified *i e* the 5th December 1911 when the payment was actually made by the plaintiffs and that the suit was therefore within time *Srinivasa Raghavar* v *Ramasami (I L R 31 Mad 452)* and *Ram Borai Singh* v *Mohardra Prosad Singh (16 Indian Cases 73)* followed *Raghubar Dial* v *Madan Mohan (I L R 16 All 3)* not followed *Hari Tiwari* v *Raghunath Tiwari (I L R 11 All 2?)* distinguished *Sheo Narain* v *Beni Madho (I L R 23 All 285)* *Kuldip Dube* v *Mahavi Dube (I L R 34 All 43)* *Bhajahari Saha* v *Behary Lal (I L R 33 Cal 881)* and 27 Mad. L J notes 46 referred to ABDUL AZIZ KHAN v MUHAMMAD BAKHSH I L R 2 Lah 316

——— Sch. I, Art 84—

See ATTORNEY AND CLIENT
I L R 46 Calc 249

LIMITATION ACT (IX OF 1908)—*contd*

——— Sch I, Art 85—

——— *Limitation—Mutual open and current account, where there have been reciprocal demands between the parties* *Held* that an account with a bank which commenced by the customer borrowing money from the bank and which at no time showed a balance in favour of the customer was not a mutual open and current account where there have been reciprocal demands between the parties within the meaning of Art 85 of the first schedule to the Indian Limitation Act 1908 *Ram Pershad v Harbans Singh 6 C L J 153* and *Hajee Syud Mahomed v Ashruf-oon nissa I L R 5 Calc 759* referred to BANK OF MULTAN LIMITED *v* KAMTA PRASAD (1916) I L R 39 All 33

——— *Limitation—suit for balance due on a current account where last item is within time but that item was advanced more than three years after the close of the year in which the last preceding item was entered* *Held* that where the last item in a mutual open and current account was advanced to defendants within limitation, but this item was advanced more than three years after the close of the year in which the last preceding item was entered the suit is barred by limitation in respect of the previous account —*vide* Art 85 of the Limitation Act *Rustomji's Law of Limitation II Edition page 308* referred to GOBIND RAM *v* JAWALA RAM I L R 1 Lah 12

——— Sch I Art 89—

See ACCOUNT SUIT FOR I L R 43 Calc 108

1 ——— *Death of principal—Agent continuing in service of heirs—Old agency if subsists—Contract Act (IX of 1872) ss 209 253 —Demand of accounts—Agent failing to comply if refusal—Agent not responding to demand for explanation of account papers submitted if refusal—Obligation to explain papers* The death of the principal terminates the agency Where on the death of the principal the agent continued in the service of his successors in interest *Held*—That a new agency not governed by the original contract was created Where under such new arrangement parties agreed that account should be submitted from year to year a suit against the agent would not be governed by Art 115 but by Art 89 of Sch I of the Limitation Act *Fazin v Baroda Kishore 11 C L J 43* not followed. *Shib Chandra Roy v Chandra Narain Mukerjee I L R 32 Calc 719 s c 1 C L J 23?* and *Asghar Ali Khan v Khurshed Ali Khan I L R 24 All 27* relied on. If there has been a demand for accounts and the agent has not responded to the call there is by implication a refusal within the meaning of Art 89 This is the case also where the agent has submitted accounts but has failed to respond to the principal's demand to explain them *Chandra Madhab Barua v Nalin Chandra Barua I L R 40 Calc 108* not followed MADHUSUDAN SEN *v* RAKHAL CHANDRA DAS BASAK (1915) 19 C W N 1070 I L R 43 Calc 248

2 ——— *Agent liability of to principal suit on—Limitation—Agency termination of—Indian Contract Act (IX of 1872)* Money is moveable property within the meaning of Art 89 of the Limitation Act *Ashgar Ali Khan v Khurshed Ali Khan I L R 24 All 27* followed Art 89 applies to suits by a principal against an agent for moveable property received by the latter and not accounted for and time begins to run when the account is during the continuance of the agency demanded and refused or when no such demand is made when the agency terminates An agency is determined when the agent ceases to represent the principal though his liability in respect of acts done by him as agent may continue *Lubu Ram v Ram Dayal I L R 12 All 541* and *Finch v Bullco Da I L R 26 Calc 715* dissented from *Joge h Chandra Chose v B node Lal Ioj 11 C W N 1?* not followed VENKATACHALAM *v* NARAYANAN (1914) I L R 39 Mad 376

——— *Omission to render accounts when amounts to a refusal* A rent collector employed under a registered agreement was called upon to render accounts up to 12th April on or before the 13th May 1914 No accounts were rendered as demanded and on 11th October 1915 the said rent collector was dismissed and ordered to render accounts up to date Subsequently a suit for accounts was instituted on the 27th August 1918 *Held* that Arts 115 and 116 of the Limitation Act did not apply to the case. In order to make them applicable it must be shown that the suit was not specifically provided for in the schedule Art 89 applied to the case as the term moveable property includes money and consequently excludes the operation of Arts 115 and 116 That there having been a demand for accounts non-compliance with the demand amounted to a refusal and the suit in so far as it claimed accounts up to 12th April 1914 must be deemed barred by limitation as it was instituted after the lapse of three years from the date of refusal *i e* 13th May 1914 *Madhusudan v Rakhal (1) Nabin v Chunra (4)* and *Bhabatrans v Sheik Bahadur (8)* and other cases referred to That the agency having been terminated by the dismissal on the 11th October 1915 and the suit having been brought within three years from that date the plaintiff was entitled to accounts from the Defendant other than the accounts demanded in April 1914 The suit was thus in time for the accounts from 13th April 1914 to 11th October 1915

PANDIT RAM RAM MUKERJEE *v* JAGADISH NATH ROY 26 C W N 81

——— Sch I Arts 89 115—

See ART 64 21 C W N 591

——— Sch I Arts 89 115 and 120—

See LAMBARDAR 4 Pat L J 304

——— Sch I Arts 89 115 132—

See PRINCIPAL AND AGENT I L R 43 Calc 248 I L R 41 Mad 1

——— Sch I Art 91—

See LIMITATION ACT 1877 ART 91

See TRUSTEES OF A TEMPLE I L R 39 Mad 456

LIMITATION ACT (IX OF 1908)—*contd*

——— Sch I, Art 91—*concld*

See ART 14 I L R 44 Bom 261

See ART 44 I L R 2 Lah 164

See KHOJAS I L R 38 Bom 419

———*Held* that in a suit to set aside an alienation of the Plaintiff s property made during his minority by his guardian the limitation applicable to Art 141 of Sch II of the Limitation Act 1877 BACHCHAN SINGH v KAMTA PRASAD I L R 32 All 392

———*Alienation by Hindu widow—Suit by reversioner to recover possession of property alienated—Alienation found to be sham—Limitation* A Hindow widow having alienated a property of her husband the reversioners sued more than three years after the date of alienation to recover possession of the property It was found that the alienation was merely a sham The lower Courts *held* that Art. 91 of the Second Schedule of the Limitation Act 1908 did not apply and decreed the suit The defendant having appealed *Held* that Art 91 of the Second Schedule of the Limitation Act had no application for the apparent obstacle presented by the mortgage proved usual and ineffectual MANCHHARAM v IANABHAI LALLUBHAI (1915)

I L R 40 Bom 51

———*Sale deed executed by a minor—Void instrument—Suit to recover possession—Suit for cancellation of sale deed whether necessary* Art 91 Sch. I of the Indian Limitation Act 1908 does not apply to a suit for possession where the plaintiff alleges and proves that a sale-deed is void because it was executed by him whilst a minor but does not claim expressly to have it cancelled or set aside NARSAGOUNDA v CHAWAGOUNDA (1918)

I L R 42 Bom 638

——— *Plaintiff fraudulently made to execute a deed of a different nature from that agreed upon—Suit to recover property affected—Limitation—Void or voidable* Where it is established that the plaintiff by defendants misrepresentation was got to execute a deed of sale believing the same to have been a deed of a different kind the transaction is void and not voidable only and Art 91 of the Limitation Act has no application to his suit to recover the property SANNI BIBI v SIDDIK HUSAN MUNSHI (1918)

23 C W N 93

———Sch I Arts 91 120—*Limitation—Suit for declaration that nominal lessee is not the beneficial lessees but merely benamidar or the plaintiff* *Held* that a suit for declaration that the defendant whose name appeared in a certain lease as lessee had no interest under the lease and that the person really interested in the lease was the plaintiff was governed as to limitation by Art 120 and not by Art 91 of the first schedule to the Indian Limitation Act 1908 the cause of action accruing to the plaintiff when his position as a lessee was challenged BASANT LAL v CHHIDAMI LAL (1913) I L R 35 All 149

LIMITATION ACT (IX OF 1908)—*contd*

———Sch I Arts 91 120—*Suit to set aside a mortgage—Mortgage deed executed without consideration and not intended to be operative—Cause of action* A suit to set aside a mortgage deed was brought nine years after its execution on the ground that the defendant only recently threatened to bring a suit on the basis of it though when it was executed it was never intended to be acted upon no consideration having passed for it *Held* that the suit was barred by limitation no matter whether Art 91 or Art 120 of the first schedule to the Limitation Act applied to the suit the fact entitling the plaintiff to have the documents set aside having been known to him from the very outset *Singarappa v Talari Sanjivappa I L R 28 Mad 349* and *Vithai v Hari I L R 25 Bom 78* referred to QASIM BEG v MUHAMMAD ZIA BEG (1915)

I L R 37 All 640

——— Sch I Arts 91, 95 and 120—*Suit or setting aside or cancelling a written instrument on the ground of fraud and declaration of title—Deed if need be set aside when instrument void* ab initio Plaintiff prayed inter alia (1) for a declaration that a deed of gift was void and inoperative in that the donor signed the deed believing owing to the fraud and misrepresentation of the donee that it was only a power of attorney and (2) for a declaration of title in certain Government Promissory Note the subject of the deed of gift The deed was signed on the 12th July 1906 and the donor came to know of the fraud on the 23rd January 1915 and the suit was instituted on the 22nd December 1919 *Held* that the three years limitation provided by Arts 95 and 91 of the Limitation Act did apply to the suit inasmuch as the principle laid down in *Foster v MacKinnon* (1) that the alleged deed is no deed was applicable so that the deed being void *ab initio* did not require to be seen aside or cancelled *Held further* with reference to the relief sought for in cl (2) of the prayer that Art 120 of the Act would apply and that Sec 18 would prevent the period of limitation from running until the fraud became known SARAT CHANDRA GUPTA v KANAI LAL CHAKRABARTY

26 C W N 48

——— Sch I Arts 91 and 124

See TRUSTEES OF A TEMPLE

I L R 39 Mad 456

——— Sch I Arts 92 93—*Suit to declare the forgery of an instrument—Attempt—Lease—Attempt to record a lease under the Record of Rights Act (Bom Act IV of 1903) is not an attempt to enforce* The defendant applied to the Mamlatdar to record under the Record of Rights Act 1903 a lease under which he claimed to be entitled to a rent of 400 cocoanuts from the plaintiff The application was made on the 4th August 1908 but the plaintiff having complained that the document was a forgery the Mamlatdar declined to record it The defendant then applied to the Collector who on the 11th August 1909 ordered that the lease should be recorded On the strength of the record the defendant sued in the Mamlatdar s Court for the enforcement of the terms of the lease and recovered in April and July 1912 cocoanuts of the value of upwards of Rs 40 Within three years of the recovery of these cocoanuts the plaintiff brought the suit to recover back the value of the cocoanuts on the footing of the alleged lease being a forgery The defen

LIMITATION ACT (IX OF 1908)—*contd*

——— Sch I Arts 92, 93—*concld*

dant contended that the suit was barred under Art 93 of the Limitation Act on the ground that it was filed more than three years after the 4th August 1908 the date of an attempt to enforce it against the plaintiff *Held* that the suit was not barred under Art 93 of the Limitation Act 1908 as the first real attempt to enforce the lease took place when the defendant attempted to recover the rent under the lea e and that attempt was made within three years of the institution of the suit The attempt to get the lease recorded under the Record of Rights Act could not be put higher than an unsuccessful attempt to have a document registered in a case in which registra tion was necessary (Art 92) and that such an attempt was not an attempt to enforce the lease ACHUT PAYAPA v GOPAL SUBBAYA (1915)

I L R 40 Bom 22

——— Sch I Art 95—

See ART 12 I L R 38 Mad 1076

See ART 91 26 C W N 480

——— Sch I Art 95—*Relief not claimed distinctly on the ground of fraud—Executor—Suit without probate—Decree—Limitation from the date of testator s death—Fraud in the performance of contract no ground for rescission—Partnership—Fresh agreement—Novation—Suit for an account on the footing of continuance of original partner ship—Suit not maintainable* Art 95 Sch I of the Limitation Act (IX of 1908) has no applica tion where on the face of the plaint no equit able relief is claimed on the ground of fraud *Abdul Rahim v Kirparam Daji I L R 16 Bom 186* and *Gour Mohun Goulı v Dinonath Karmokar I L R 25 Calc 49* referred to An executor is capable of instituting a suit without obtaining a probate although he might not be able to proceed as far as decree without obtaining a probate Fraud in the performance of a contract apart from its making is no ground for rescission and restoration of the parties to the position in which they were before the contract was entered into A testator appointed his widow as the guardian of his minor children and executrix (by tenor) of his will On his death the widow consented to the retention of the testator s share in a partner ship business by the surviving partners and subse quently to a transfer of the same to another business In an action brought by one of the testator s sons as administrator against the sur viving partners for an account of all the assets of the testator at the time of his death retained and employed by the defendants in their business *Held* dismissing the suit that the testator s widow was perfectly competent as his executrix to enter into the arrangement which was a novatio with the surviving partners so as to bind the estate and the suit against the partners on the footing of a continuance of the original partner ship was not maintainable JAMSETJI NASSAR WANJI v HIRJIBHAI NAOROJI (1912)

I L R 37 Bom 158

——— Sch I Arts 95 120—

See ART 44 I L R 2 Lah 164

——— Sch I Art 96—*Mistake—Dis covery of mistake when first Court s decree was passed—Appeal—Dismissal of appeal—Time begins to run from the date of the first Court s decree* In 1903 plaintiff No 2 obtained a decree for partition against the defendant his father and plaintiff No 1 In execution of that decree a compromise was effected between the parties and certain properties includ ing a mortgage debt due to the family were allotted to plaintiffs Nos 1 and 2 The plaintiffs sued the mortgagors in 1910 to recover the mort gage amount but the suit was dismissed as it was held that the consideration for the mortgage had been paid off The decree of the trial Court was passed in 1912 The plaintiffs appealed but the appeal was dismis ed on the 11th July 1914 On the 28th June 1917 the plaintiffs sued to recover from the defendant their share of the loss The Subordinate Judge found that it was a case of mutual mistake under which all the parties considered that the mortgage was a per fectly good as et and therefore held the defen dant liable to contribute to the lo s On appeal to the High Court it was contended that the suit was barred by limitation *Held* that the suit was barred under Art 96 of the Limitation Act as the discovery of the mistake dated not later than the first Court s decree which was passed in 1912 and time began to run against the plaintiff from that date *Hukumchand v Pirthichand (1918) 21 Bom L R 632* relied on Under Indian law an original decree is not suspended by presentation of an appeal nor is its operation interrupted where the decree on appeal is one of dismissal MARTAND MAHADEV v DHONDO MORESHWAR (1920)

I L R 45 Bom 582

——— Sch I Art 97—

See ART 6 I L R 38 Mad 887

——— *Money due on an existing consideration which afterwards fails—Limitation* Defendant No 1 agreed with the plaintiff in September 1908 for a price to pro cure from defendant No 2 a re conveyance of a house to the plaintiff In November 1908 defen dant No 2 conveyed the house to F In 1910 F sued to recover po session of the house from the plaintiff and obtained a decree in July 1911 The plaintiff sued in January 1912 to recover the consideration money The lower Courts held that the suit was within time under Art. 97 of the first schedule to the Indian Limita tion Act (IX of 1908) On appeal *Held* that the suit was time barred even under Art 97 for after the sale to F defendant No 1 could not have had anything to do with the house and the possession which the plaintiff was allowed to retain must have been on F s sufferance GULABCHAND BALARAM v NARAYAN (1916)

I L R 41 Bom 31

——— *Failure of considera tion suit on—Sale by a member of joint Hindu family—Mitakshara law—Suit by vendee for pos session—Previous sale by manager—Suit dis missed finally by High Court on Second Appeal——Subsequent suit for refund of price and costs of litigation—Suit within three years of decree of High Court whether barred—Failure of considera tion when—Costs of litigation whether recoverable—Costs of review in High Court whether recover able.* Where a purchaser of the share in certain lands of a member of a joint Hindu family governed by the Mitakshara law sued to recover po ses sion of the same from another who had previ

LIMITATION ACT (IX OF 1908)—*contd*

——— Sch I, Art 97—*concld*

ously purchased the entire lands from the managing member of the family succeeded in the Original Court but failed in the lower Appellate Court on appeal and in the High Court on Second Appeal and in the review therein and where he brought another suit within three years of the decree in the High Court for refund of the price paid by him and for the cost of the litigation against his vendor who pleaded the bar of limitation *Held* that *the suit was not barred by limitation under Art* 97 of the Limitation Act as the consideration failed only when it was finally determined by the High Court in Second Appeal that the sale by the plaintiff's vendor could not take effect against the prior sale by the manager and that the costs of litigation were legally recoverable except the costs of review which was a luxury indulged in by the plaintiff *Hanuman Kamut* v *Hanuman Mandur I L R 19 Calc 129* distinguished *Subaroya* v *Rajagopala I L R 38 Mad 887* and *Venkataramayya* v *Lanka Ram Brahmam 35 M L J 104* followed SARVOTHAMA RAO *v* CHINNASAMI PILLAI (1918)

I L R 42 Mad. 507

——— Sch I Arts 97 62—*Failure of consideration—Sale of land—purchaser stepping into possession—Loss of possession at the suit of a third party the real owner—Suit to recover purchase money from vendor—Limitation* In 1903 the defendant sold certain land to the plaintiff under the *bona fide* belief that he was entitled to do so and placed the plaintiff in possession In 1909 the true owner of the land recovered possession thereof from the plaintiff In a suit by the plaintiff to recover the purchase money from the defendant the Court of the first instance held that the suit was barred by limitation under Art 62 of the First Schedule to the Limitation Act (IX of 1908) for the purchase money paid to the defendant was money had and received to the plaintiff s use On appeal it was held that the claim was within time under Art 97 of the Act On appeal to the High Court *Held* that the suit was governed by Art 97 inasmuch as possession given under the purchase to the plaintiff was an existing consideration as long as it lasted *Hanuman Kamat* v *Hanuman Mandur I L R 19 Calc 123* followed. NARSING SHIVBAKAS *v* PACHU PAMBAKAS (1913) I L R 37 Bom 538

——— Arts 97 116—*Breach of contract—Damages suit to recover—Limitation* In 1911 the plaintiffs bought two lands under a registered sale deed and went into possession One of the lands was let to a tenant The tenant claimed the land as his own and established his title to the land in 1913 the decree was confirmed by the High Court in 1916 In 1917 the plaintiffs sued their vendors for cancellation of the sale of 1911 and to recover the consideration money together with the amount spent by them in improving the land and the costs incurred by them in defending the suit brought by the tenant The trial Court held that the consideration for the sale failed in 1913 when the tenant established his claim in a Court of law and that the suit was barred by Art 97 of the Indian Limitation Act On plaintiff s appeal —*Held* that though the cause of action arose in *1913* the contract of sale having been registered the suit was governed by Art 116 of the Indian Limitation Act and was

LIMITATION ACT (IX OF 1908)—*contd*

——— Arts 97 116—*concld*

in time *Subbaroya* v *Rajagopala (1914) 38 Mad 887 Hukumchand* v *Pirthichand (1918) 21 Bom L R 632* and *Martand Mahadev* v *Dhondo Moreshwar (1920) 45 Bom 589* followed *Per* MACLEOD *C J*— It must specially be noted that it is not the case that the seller had no title at all so that it could be said that he was selling nothing and that therefore the transaction was void *ab initio* nor is it a case where the purchaser got no possession Here undoubtedly at the time the sale deed was passed it was considered that the defendants had a good title to convey the free hold and it was only in 1913 when (the tenant) filed his suit that it was discovered that there was a claimant who asked to be allowed to redeem and this claim eventually proved successful *Per* FAWCETT *J*— A distinction should be made between cases where from the inception the vendor had no title to convey and the vendee has not been put in possession of the property and other case such as the present one where the sale is only voidable on the objection of third parties and possession is taken under the sale I think it is only in the first class of cases that the starting point of limitation will be the date of sale MULTANMAL *v* BUDHUMAL (1920) I L R 45 Bom 955

——— Sch I Arts 99 120—

See ART 61 18 C W N 480

——— Sch I Arts 101 102—

See ART 4 I L R 41 Mad 528

——— Sch I Art 102—

See ART 2 I L R 36 All 555

——— Sch. I Art 106—*Suit for partnership accounts—Limitation Act (IX of 1908) Art 106—Specific assets realised within period of limitation* If a suit for general partnership accounts and a share in partnership profits is itself barred the plaintiff in such a suit cannot be allowed to proceed speculatively against any and every partnership asset which may have been realised by the defendant after dissolution and within the period of limitation *Merwanji Hormusji* v *Rustomji Burjorji I L R 6 Bom 628* distinguished AHMED SULEMAN *v* BHAGWANDAS VISRAM AND Co (1909) I L R 34 Bom 515

——— Sch I Arts 106 and 120—

See s 19 22 C W N 104

——— Question as to what amount to a dissolution of a partnership discussed and which article was applicable to the case HARADHAN PODDAR and others *v* SUDARSON PODDAR 25 C W N 847

——— Sch I Art 109—*Usufructuary mortgage—Suit by mortgagee for possession and mesne profits—Limitation* Where a usufructuary mortgagee is wrongfully kept out of possession of the mortgaged property his proper remedy is a suit for possession and for mesne profits As regards the latter remedy the period of limitation applicable is that prescribed by Art 109 of the first schedule to the Indian Limitation Act 1908 RAM SARUP *v* HARPAL (1916)

I L R 39 All 200

——— *Suit on mortgage—Profits received by transferee* pendente lite—*Suit by purchaser at mortgage sale to recover same—Pro*

LIMITATION ACT (IX OF 1908)—*contd.*

——— Sch I, Art 109—*concld*

fits of wrongfully received The words wrongfully received in Art 109 of the Limitation Act include receipts of profits that cannot be legally substantiated It was held in a suit between the purchaser at a mortgage sale and the holder of a usufructuary mortgage granted by the mortgagor after the passing of the mortgage decree that the usufructuary mortgage was void as against the purchaser owing to the application of the doctrine of *lis pendens* The purchaser having sued the usufructuary mortgagee to recover rents realised by the latter from certain tenants of the property before the Plaintiff obtained possession under his purchase *Held* That Art 109 of the Limitation Act applied to the case NAGENDRA NATH LAL v SARAT KAMINI DASI 26 C W N 336

——— Sch I Art 110—

See BENGAL TENANCY ACT 1885 SCH III ART 2 1 Pat L J 506

See CONTRACT ACT ss. 23 AND 27 1 Pat L. J 37

See LIMITATION (38) I L R 44 Calc 759

——— *Madras Rent Recovery Act (VIII of 1865) ss 9 and 10—When rent ascertained and payable* Rent is payable within the meaning of Art 110 of Sch I of the Limitation Act only when it is ascertained When proceedings are taken by the landlord under s 9 of the Madras Rent Recovery Act after the end of the *fasli* to enforce acceptance of a *patta* tendered within the *fasli* the landlord has to await an adjudication under s 10 of the Act and limitation begins to run in respect of a suit for rent only from the date of such adjudication as it was only then that it can be said that the rent for the suit *fasli* was ascertained *Pangayya Appa Rao* v *Bobba Sriramulu I L R 27 Mad 143* followed SINGAPAM PILLAI v SYED GOLAM GOUSE SHA (1913) I L R 36 Mad 438

——— Sch I Arts 110 116—*Registered lease—Suit to recover arrears of rent—Limitation* Art 116 Sch I of the Limitation Act (IX of 1908) applies to suits for debts or sums certain due upon registered instruments LALCHAND NANCHAND v NARAYAN HARI (1913) I L R 37 Bom 656

——— Sch I, Arts 110 115 120—

See JOINT PROPERTY I L R 39 Mad 54

——— Sch I Art 113—

See ART 83 I L R 2 Lah 316

See BENGAL AGRA AND ASSAM CIVIL COURTS ACT 4 Pat L. J 447

See CHAUKIDARI CHAKARAN LAWS I L R 46 Calc 173

——— *Contract between two parties that on payment of a specified sum by one to the other the latter would transfer a decree in his favour to a third party—Suit by such third party for specific performance of the contract—Limitation—Starting point* A agreed with B that on the latter paying him a specified sum of money he would transfer a decree in his favour to C In a suit by C against A for the specific performance of the contract by the execution of a deed of transfer

LIMITATION ACT (IX OF 1908)—*contd*

——— Sch I Art 113—*concld.*

Held that the suit was governed by the second part of Art 113 and time began to run from the date on which C had notice that performance was refused and not from the date of payment to A by B of the sum agreed in the contract Applicability of the doctrine of *certum est quod certum reddi potest* to third parties considered VENKANNA v VENKATAKRISHNAYYA (1917) I L R 41 Mad 18

——— Sch I Arts 113 116 120—

See SPECIFIC RELIEF ACT 1877 s 30 I L R 34 All 43

——— Sch I Arts 113 143—*Deed of exchange—Express covenant—Transfer of Property Act (IV of 1882) s 119—Implied covenant—Breach of covenant—Dispossession of plaintiff—Suit for recovery of possession of plaintiff's lands—Suit filed more than three years after but within twelve years of dispossession whether barred* Where a deed of exchange executed in 1903 between the plaintiff's father and some of the defendants contained a covenant which only limited the option provided by s 119 of the Transfer of Property Act and was otherwise of the same nature as one that would be implied under that section and the plaintiff being dispossessed in 1908 of the lands given by the defendants sued in 1916 to recover the lands given by his father under the exchange and the defendants pleaded the bar of limitation *Held* that Art 143 and not Art 113 of the Limitation Act applied to the case and that the suit was in time SREENIVASA AYYANGAR v JOHNSA POWTHER (1919) I L R 42 Mad 690

——— Sch I Art 114—

See HINDU LAW—(CUSTOM) 5 Pat L J 164

——— Sch I Art 115—

See ART 83 26 C W N 61
I L R 43 Calc 248

See ART 120 1 Pat L J 69

See LAMBARDAR 4 Pat L J 304

See JOINT PROPERTY I L R 39 Mad 54

See PARTNERSHIP 15 C W N 882

See PROCEDURE I L R 48 Calc 832

See LOSS OF GOODS I L R 44 Calc 16

See SPECIFIC MOVEABLE PROPERTY I L R 39 Mad 1

1 ——— *Limitation—Principal and agent—Broker—Suit to recover commission* The relation between a broker and the persons for whom he acts is that of agent and principal Unlike the factor he is not entrusted with the custody and apparent ownership of the goods but he is a mere negotiator to effect business and is paid for his services a commission on the sales resulting from his efforts Where the contract is not in writing its terms are to be inferred from the course of dealings between the parties Hence where a broker between whom and his employer the contract was that he would be paid his commission at certain rates upon the date of the delivery of goods sued to

LIMITATION ACT (IX OF 1908)—contd

——— Sch I, Art 115—concld

recover commission due to him *Held* that the suit was one for compensation under a contract for services rendered which for purposes of limitation was governed by Art 115 of Sch I to the Indian Limitation Act and was not one for wages within the meaning of Art 102 of the said Act *Ganesh Krishna v Madhavrao Ravji I L R 6 Bom 75 Parbutty Nath Roy Choudhry v Mudho Paroe I L R 3 Calc 276 Nobocoomar Mookhopadhaya v Siru Mullick I L R 6 Calc 94* and *Nistarini Debi v Chandi Das Debi 15 C L J 473* referred to SUSHIL CHANDRA DAS v CAUPI SHANKAR (1916)

I L R 39 All 81

2. ——— To a suit against a surety guaranteeing a promissory note payable on demand Art 115 and not Art 65 applies SREENATH ROY v PEARY MOHAN MOOKERJEE (1896) 21 C W N 479

——— Arts 115 and 116—

See CONTRACT I L R 41 Mad 488

——— Arts 115 126—

See PARTNERSHIP 15 C W N 882

——— Arts 115 145—

See ART 66 I L R 37 Mad 175

——— Sch I Art 116—

See s 20 I L R 44 Bom 500

See ART 61 I L R 44 Bom 591

See ART 83 I L R 2 Lah 316

See ART 97 I L R 45 Bom 955

See ART 110 I L R 37 Bom 656

See LIMITATION 23 C W N 336
I L R 38 Mad 101

See LIMITATION ACT ART 113
I L R 34 All 43

See SALE DEED I L R 38 Mad 1171

1 ——— *Bond executed by defendant alone and accepted by plaintiff and subsequently registered suit upon—Limitation* Art 116 of the Limitation Act applies to a suit brought by the plaintiff to enforce a debt due upon a bond executed by the defendant alone and accepted by the plaintiff and subsequently registered CHELLAPHROO CHOWDHARI v BANGA BEHARI SEN (1915) 20 C W N 408

2 ——— *Principal and agent—Agent bound to render accounts at stated periods—Suit for accounts against heir of agent—Limitation* An agent for the management of zamindari property was appointed by a registered mukhtarnama one of the conditions of the appointment being that the agent should render accounts every six months The agent died and the principal sued his heirs to recover a sum of money alleged to be due in respect of a period from 1891 to 1911 *Held* that Art 116 of the first schedule to the Limitation Act 1908 applied and that the plaintiff was not entitled to get accounts for a period longer than six years before suit *Jhapajhannessa Bibi v Bama Sundari Chaudhurani 16 C W N 104* followed MATHURA NATH v CHEDDU (1917) I L R 39 All. 355

LIMITATION ACT (IX OF 1908)—contd

——— Sch I Art 116—concld

3 ——— *Company registered under the Indian Companies Act (VI of 1882)—Suit for dividend by a shareholder governed by Art 116—Registered in Art 116 meaning of* A suit by a shareholder against a company registered under the Indian Companies Act (VI of 1882) to recover dividends duly declared by the company is governed by Art 116 of the Limitation Act as the right to a dividend arises out of the contract between the shareholders contained in the registered memorandum and articles of association Registered in Art 116 means registered not only under the Indian Registration Act (III of 1877) but also under special Acts such as the Indian Companies Act which requires the memorandum and articles of association of a company to be registered A dividend is is a debt on a contract in writing registered within Art 116 of the Limitation Act PIRON PRESS AND SUGAR MILL CO LTD v NAMA VENKATARAMA CHETTI (1918) I L R 42 Mad 33

——— Sch I Arts 116 110

See LIMITATION I L R 44 Calc 950

——— Sch I Arts 116 120—

See ART 113 I L R 34 All 43

——— Sch I Arts 116 132—

See MORTGAGE I L R 46 Calc 448

——— Sch I Arts 116 120 131 132—

——— *Suit to recover arrear of annuity charged on immoveable property—Claim for personal decree only—Limitation Held* that Art 132 of the first Schedule to the Indian Limitation Act is applicable only to suits in which the plaintiff claims to recover money charged upon immoveable property to raise it out of that property and not to a claim in which merely personal decree is asked for *Ramdin v Kalka Prasad I L R 7 All 502* followed *Held* also that the words of Art 131 to establish a periodically recurring right are altogether inapplicable to a suit to recover arrears of payments due under a registered contract *Dost Muhammad Khan v Sohan Singh Punj Rec 1906 p 503* followed A suit of such a nature is governed by either Art 116 or Art 120 of the first Schedule to the Indian Limitation Act LACHMI NARAIN v TURAB UN NISSA (1911) I L R 34 All 246

——— Sch I Arts 116 66 s 19—*Registered bond—Suit to recover money due on the bond—Period of limitation—Acknowledgment contained in promissory notes* On the 17th June 1897 the defendant passed a registered mortgage bond in favour of the plaintiff It was attested by one witness and made the mortgage amount repayable in three instalments the last one becoming due on the 24th June 1900 On the 24th August 1903 the defendant passed a promissory note in favour of the plaintiffs wherein he stated An account is taken to day and the amount due under the mortgage deed is set apart Again on the 11th August 1906 he passed another promissory note which recited Besides this the mortgage debt is distinct The plaintiff sued on the 6th August 1910 to recover the money due under the bond *Held* that the words used in the two promissory notes amounted to acknowledgments within the meaning of s 19 of the Limitation Act *Held* further that the suit was governed by Art

LIMITATION ACT (IX OF 1908)—*contd*

——— Sch I Arts 116 66 s 19—*concld*

116 and not by Art 66 of the Limitation Act for though the suit was in form a suit for money due on a bond it was in substance a suit for compensation for breach of a contract *Ramdin* v *Kalka Pershad L R 12 I A 12* and *Bulakhi Ganu Shet* v *Tukarambhai I L R 14 Bom 377* commented on DINKAR HARI v CHHAGANLAL NARSIDAS (1913) I L R 38 Bom 177

——— Sch I Art 118—

See HINDU LAW (CUSTOM) 5 Pat L J 164

——— *Hindu Law—Adoption—Suit questioning the validity of adoption—Limitation—Adoption of an orphan—Entries in Revenue register* A suit questioning the validity of an adoption would be time barred if not brought within six years under Art 118 Sch I of the Limitation Act (IX of 1908) *Shrinivas* v *Hanmant I L R 24 Bom 260* followed *Thakur Tirbhuwan Bahadur Singh* v *Raja Rameshar Baksh Singh L R 33 I A 156* and *Umar Khan* v *Niaz ud din Khan L R 39 I A 19* explained and distinguished The adoption of an orphan is not valid in law The Collector s Register is purely for the purposes of Government Revenue and its entries are not evidence of title SHRINIVAS SARJERAV v BALWANT VENKATESH (1913) I L R 37 Bom 513

——— *Adoption—Death of adopted son leaving a widow—Adopting mother making a second adoption during widow s life time—Adopted son in possession of the property to the knowledge of the plaintiff—Suit by reversioner of first adopted son to recover property challenging the second adoption brought after six years—Suit barred by limitation* One *D* a holder of Vatan and non Vatan property having died without leaving a son *M* his senior widow adopted a son *A* *A* died a minor in 1895 leaving a widow In 1901 *M* adopted defendant No 1 as son to *D* and from the date of his adoption defendant No 1 remained in possession of the whole estate to the knowledge of the plaintiff In 1904 *A* s widow died In 1912 the plaintiff claiming as the reversionary heir of *A* sued to recover possession of the property challenging the adoption of defendant No 1 Defendant No 1 pleaded limitation and adverse possession *Held* that there had been no adverse possession sufficient to bar the plaintiff s suit but it was barred under Art 118 of the Limitation Act 1908 as it was not brought within six years from plaintiff s knowledge of defendant No 1 s adoption *Held* also that though the adoption of defendant No 1 might be invalid by Hindu Law and *M* s power of adoption might have been already exhausted nevertheless the law of limitation would effectively defeat the plaintiff s claim *Mohesh Narain Moonshi* v *Taruck Nath Moitra L R 20 I A 30* followed *Held* further that defendant No 1 s adoption to *D* who was not the last male holder affected the plaintiff for the property in dispute was an ancestral estate and that *D* as well as *A* were ancestors of the plaintiff CHANBASAPPA v KALIANDAPPA (1917) I L R 41 Bom 728

——— *Limitation—Sale—Covenant to make good loss in case of vendee being compelled to pay money in excess of sale consideration—Breach of covenant—Suit against vendors on covenant of indemnity* Where vendees are suing their vendors on a covenant of indemnity contained in their sale deed having been obliged to redeem a prior mortgage the existence of which the vendors did not disclose limitation runs not from the date of the sale deed but from the date when the plaintiffs suffered actual loss by reason of their being compelled to pay off the prior mortgage charge *Hari Tiwari* v *Jagi unath Tiwari I L R 11 All 27* referred to RAM DULARI v HARDWARI LAL (1918) I L R 40 All 605

LIMITATION ACT (IX OF 1908)—*contd*

——— Sch I Art 118—*concld.*

——— Art 118 and s 10—*Suit for declaration that an adoption is untrue or invalid—Nearest reversioner s consent to adoption for a bribe—No suit by nearest reversioner—Suit by remoter reversioner more than six years after adoption came to knowledge of the nearest reversioner—Plaintiff born after adoption and before suit barred—Bar of limitation* A suit for a declaration that an alleged adoption is untrue or invalid instituted by a remoter reversioner more than six years after the adoption came to the knowledge of the nearest reversioner is barred under art 118 of the Limitation Act Neither the fact that the nearest reversioner did not himself bring such a suit because he had been bribed to give his consent to the adoption nor the fact that the remoter reversioner who sued was born after the alleged adoption and before the suit became barred under art 118 gives the latter any fresh cause of action or stops time running which had begun to run against the whole body of reversioners from the date of adoption VENKATA SIVAYYA v ADEMMA (1921) I L R 44 Mad 218

——— Sch I Art 119—*Suit for declaration that an adoption was valid—Limitation* A decree was passed in 1900 on the basis that there was no adoption In 1901 the adoption of plaintiff was denied by defendant No 1 still the plaintiff did nothing till 1913 when he filed a suit to have it declared that the decree of 1900 was invalid and not binding on him —*Held* that the plaintiff's adoption having been challenged in 1901 the present suit was barred under art 119 of the Indian Limitation Act 1908 *Shrinivas* v *Hanmant I L R 24 Bom 260* followed BHARMA v BALARAM SAKHARAM (1918) I L R 43 Bom 63

——— Art 120—

See s 6 I L R 1 Lah 558

See s 10 I L R 39 Bom 572

See ART 4 I L R 41 Mad 528

See ART 52 I L R 2 Lah 376

See ART 91 I L R 35 All 149

See ART 109 I L R 37 All 640

See ADMINISTRATOR 2 Pat L J 642

See ARREARS OF REVENUE I L R 47 Calc 331

See HINDU LAW—JOINT FAMILY— Pat L J 497

See HINDU LAW—WIDOW I L R 2 Lah 984; I L R 44 Mad 951

See JOINT PROPERTY I L R 39 Mad 54

LIMITATION ACT (IX OF 1908)—*contd*

——— Art 120—*concld*

See LAMBARDAR. 4 Pat L J 304

See LIMITATION

I L R 46 Calc 455

See LIMITATION ACT 1908 ART 113

I L R 34 All 43

See MINERAL RIGHTS. 5 Pat. L. J 273

See NORTH WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT

I L R 35 All. 308

See RECORD OF RIGHTS. 3 Pat L J 36

See TRANSFER OF PROPERTY ACT 1882 SS 8. AND 100

I L R 33 All 708

——— Suit to enforce an award—

See CIVIL PROCEDURE CODE 1908 s 11 SCH II R 20 I L R 45 Bom 329

1 ——— *Suit for declaration of title—Previous unsuccessful application to correct entry in village papers—Cause of action—Limitation* In 1875 the owners of certain zamindari property sold their interest in it with the exception of 26 bighas In 1888 the vendors were recorded as exproprietary tenants of these 26 bighas In 1903 the representatives of the vendors applied to have the village papers corrected, but their application was dismissed and they were told to go to the Civil Court In 1910 the representatives of the purchasers applied to have rent assessed on the 26 bighas and obtained an order in their favour The representatives of the vendors thereupon brought the present suit in the Civil Court for a declaration that they were proprietors *Held* that whatever cause of action the plaintiffs might have had before the proceedings of 1910 the order passed in those proceedings gave them a fresh cause of action and their suit was not barred by limitation *Legge v Rambaran Singh I L R 20 All 35 Akbar Khan v Turaban I L R 31 All 9 Sheopher Singh v Deonarain Singh 10 All L J 413 Purshottam v Parmanand Misc No 279 of 1908* and *Skinner v Shanker Lal S A No 963 of 1907* referred to ALLAH JILAI v UMRAO HUSAIN (1914) I L R 36 All 492

2 ——— *Pre emption right of —Knowledge of sale when essential for the article to apply* In a suit by an ottidar to enforce his right of pre emption the right to sue cannot be said to arise unless the plaintiff has the necessary knowledge of the sale Such a right can only be exercised when the ottidar knows first of all that the property is sold or attempted to be sold to another person and what the terms on which it is proposed to be sold Without such knowledge he is not in a position to elect *Ramasami Pattar v Chinnan Asari I L R 24 Mad 449* and *Kurri Veerareddi v Kurri Bapireddi I L R 29 Mad 336* distinguished *Cheria Krishnan v Vishnu I L R 5 Mad 198 Vasudevan v Keshavan I L R 7 Mad 309* and *Ammotti Haji v Kunhajan Kutti I L R 15 Mad 480* commented on MAMMALI v KUNHIPAKKI HAJI (1912) I L R 38 Mad. 67

3 ——— *Hypothecation of movable property—Suit to recover money lent by sale of the hypothecated property—Limitation* Where a plaintiff who has lent money on the security of movable property seeks to recover the money by sale of the hypothecated property and does not ask for a personal decree against the debtor the limitation applicable is that provided for by Art 120 of the first schedule to the Indian Limitation Act 1908 *Madan Mohan Lal v Kanhai Lal I L R 17 All 284 Nim Chand Baboo v Jagabundhu Ghose I L R 22 Calc 21* and *Mahalinga Nadar v Ganapathi Subbien I L R 27 Mad 528* followed DEOKINANANDAN v GAPLA (1918) I L R 40 All 512

4 ——— A suit to enforce a mortgage of a turn of workship is not governed by Art 132 but by Art 120 of the Limitation Act NARASINGHA BANA GOSWAMI v PROLHADMAN TEOARI (1918) 22 C W N 994

5 ——— *Suit for declaration of title—Cause of action—Limitation* In the settlement records of 1887 a certain plot of land was recorded as the separate property of the defendants In 1914 the defendants applied for partition and claimed that this plot belonged to them in severalty was in their separate possession and should be assigned to their mahal The plaintiffs traversed this statement alleging that the settlement record was wrong and that the plot in question was in fact part of the inhabited site and belonged to all the co sharers jointly The court required the plaintiffs to institute a suit in the Civil Court to have the question of title to the plot in dispute decided *Held* that such suit was not barred by limitation The proceedings taken in the partition court whereby the plaintiffs found themselves if their statements of fact were true for the first time in danger of being actually dispossessed of their joint ownership of the plot gave rise to a fresh cause of action altogether independent of any cause of action which might have been furnished to them by the settlement entry made in the year 1887 *Akbar Khan v Turaban I L R 31 All 9 Rahmat Ullah v Shams ud din 11 A L J 877* and *Allah Jilai v Umrao Husain I L R 36 All 492* referred to KALI PRASAD MISIR v HARBANS MISIR (1919) I L R 41 All 509

6 ——— Though attachment of a mans lands as if it belonged to another gives the owner a cause of action on which he could have brought a suit but did not yet the sale of same at a later date is a fresh and greater invasion of his right and gives him a fresh cause of action on which he could sue within six years from the date of sale ANANTHARAZU v NARAYANARAZU I L R 36 Mad 385

7 ——— *Suit to declare entry in record of rights incorrect—Limitation when it runs from date of signing of certificate of final publication—Prayer for confirmation of possession when no allegation of disturbance of position—Limitation* The period of limitation applicable to a suit to declare an entry in a record of rights to be incorrect is that provided by Art 120 of Sch. I to the Limitation Act and it commences running from the date of the final publication and not from the date of the signing of the certificate of final publication of the record-of rights Where in such a suit the plaintiff added a prayer for confirmation of possession without however alleging that his possession had in any way been dis

LIMITATION ACT (IX OF 1908)—*contd*

turbed or threatened to be disturbed by the de fendant *Held* that the Court of first instance was right in treating the prayer as one for de claration of possession and Art 120 applied to the suit RAJANI NATH PRAMANIK v MONARAM MANDAL (1919) 23 C W N 883

8 —————————— *Held* that in a sale in contravention of s 99 of the Transfer of Property Act and purchase by mortgagee—Suit by mortgagor for recovering property governed by Art 120 UTTAM CHANDRA DAW v RAJ KRISHNA DALAL 24 C W N 229

9 —————————— *Mortgage—Subrogation—One of the mortgagees paying off the mort gage amount—Payment creating a charge in favour of the creditor—Creditor not entitled to sell the property until declaratory decree obtained—Limitation* In 1887 a mortgage of the plaint property was executed in favour of four brothers On the 22nd August 1901 the plaintiff one of the mort gagees advanced a sum of money to enable the mortgagor to pay what was required to make the last payment on account of the mortgage of 1887 on the understanding that a further mortgage would be executed by the mortgagor in favour of the plaintiff The mortgage was executed but it proved ineffectual for want of proper attesta tion The plaintiff therefore brought a suit in 1914 for sale of the mortgaged property on the ground that the payment made by him in 1901 created a charge on the property to the extent of the money advanced *Held* that the payment made in 1901 enabled the plaintiff to establish his right to a charge on the property but mere payment would not give the plaintiff any right against the property either to go into possession or sell it he was bound to ask for a declaratory decree that a charge was created before the Court could have jurisdiction over the property *Held* further that the plaintiff s claim to get a declara tory decree was governed by Art 120 of the Limitation Act and was therefore barred as not having been brought within six years from the date of paym nt in 1901 *Butler* v *Ric* *1910 2 Ch 277* referred to CHHOTALAL KAPSANDAS v VISHNU GANESH (1920) I L R 45 Bom 597

10 —————————— *Limitation—Suit to recover money under an award—money originally recovered by plaintiff under a decree passed on the award—but refunded on the decree being set aside on appeal—date when the right to sue accrues—fresh cause of action* Plaintiff and defendant in 1909 submitted a dispute to arbitration an award was duly made and a decree pas ed in terms of it on the 19th October 1909 In execution of the decree plaintiff reali ed Rs 4 000 on 14th January 1911 The decree was set aside on appeal to the Chief Court on 4th August 1913 and on 4th May 1915 the Rs 4 000 were refunded to the defendant On 20th February 1919 plaintiff brought the present suit claiming the Rs 4 000 and interest as due to him under the award The question was whether the suit was barred by limitation *Held* that on the annulment of the satisfaction a fresh cau e of action arose and that the claim was therefore with in time under article 120 of the Indian Limitation Act *Muthuveerappa Chetty* v *Adaikappa Chetty (I L R 43 Mad 845)* followed *Ranee Surnomoyee* v *Shoshee Mookhee (12 Moo I A 244)* referred to

LIMITATION ACT (IX OF 1908)—*contd*

Soni Ram v *Kanhaiya Lal (I L R 35 All 227 P C)* distinguished KARTAR SINGH v BHAGAT SINGH I L R 2 Lah 320

———Sch I., Arts 120 115 A suit by some of the co sharers in a ferry against others for recovery of their share of profits is governed by Art 120 and not 115 KISHUN DEYAL SINGH v KISHUN DEO JHA 1 Pat L J 69

——— Sch I Arts 120 125—

See HINDU LAW—REVERSIONER

I L R 41 All 49?

——— ——————— *Limitation—suit by reversioners for a declaration in respect of a mortgage made by a Hindu widow who has a daughter living—whether "land" in art 125 includes a house* On 24th January 1908 *Mussammat* A D widow of C R mortgaged a house to one U C On 12th August 1916 the plaintiffs collaterals of G P sued for a declaration that the mortgage should not affect their reversionary rights *Mussammat* A D had a daughter living who admittedly was entitled to possession on her mother s death though with limited interest *Held* that the suit is governed by art 120 (and not by art 125) of the Limitation Act and that the starting point of limitation is the date of the mortgage *Veramma* v *Gopaladasayya (I L R 41 Mad 659 (F B)* and *rulings cited in Rustomji s Limitation Act 2nd Edition page 391* referred to *Abinash Chandra* v *Majumdar (9 Cal W N 25)* and *Govinda Pillai* v *Thayammal (14 Mad L J 209)* distinguished *Semble* that land in art 125 includes a house and its site *Kalya Ram* v *Sher Singh (5 Indian Cases 812)* *Sant Ram* v *Ganga Ram (32 P R 1904)* and *Mussammat Ralli* v *Sunder Singh (108 P R 1912)* referred to *D v Raj* v *Shiv Ram (70 P R 1914)* distinguished SOHAN SINGH v UTTAM CHAND

I L R 1 Lah 69

——————————— *Hindu law—Hindu widow—Suit for declaration that alienation by widow enures only for her life—Reversioners—Right of suit* *Held* that although the existence of nearer reversioners may be a bar to a more remote rever sioner suing for a declaration that an alienation made by a Hindu widow does not enure for a longer period than the life time of the widow yet he is not entitled to wait until limitation has ex pired in re pect of all the nearer reversioners for such a suit is under Art 125 of the first schedule to the Indian Limitation Act 1908 twelve years from the date of the alienation for nearer and more remote reversione s alike KUNWAR BAHADUR v BINDRABAN (1914) I L R 37 All 195

——— Sch I Arts 120 and 131—

See ENHANCEMENT OF RENT

2 Pat L J 124

———Sch I Arts 120 132 141 and 144—
Immoveable property whether proceeds of sale of is — any interest therein —General Clauses Act X of 1897) s 3 (25)— Benefits to arise out of land

LIMITATION ACT (IX OF 1908)—*contd*

——— Sch I Arts 120 132, 141 and 144 —*contd*

—*Land acquisition Act (I of 1894)* A claim for the proceeds of what was once immoveable property but which has been substituted for moveable property is not a claim for immoveable property or any interest therein or any benefit arising out of land Where therefore certain property was compulsorily acquired under the Land Acquisition Act 1894 and the plaintiff sued the vendor for the value of the property so acquired *Held* that the period of limitation for the suit was 6 not 12 years LAL PADIA KUER v LALA NALPATAN LAL 3 Pat L J 522

———Sch I Arts 120 132—

See Art. 62 I L R 33 All 708

Hypothecation decree—moveable property—Moveable property converted into immoveable property—Substituted security—Mortgagee purchasing part of the mortgaged property—Merger A hypothecation decree is moveable property and a mortgage thereof is one of moveable property which is governed by Art 120 Sch I to the Indian Limitation Act But where moveable property has become converted into immoveable property the mortgagee becomes entitled to the substituted security and also to the larger period of limitation prescribed by Art 132 of the first Schedule to the said Act It does not necessarily follow that because a person in the position of a mortgagee purchases a portion of the mortgaged property the mortgage thereby becomes *pro tanto* extinguished Everything depends upon the terms of the sale and unless it is stipulated that the mortgage is to be extinguished or unless there are circumstances from which an intention to extinguish the mortgage in whole or part may be inferred it cannot be held that the mortgage merges in the purchase *Gour Mohan* ... *v Khawas Ali Khan I L R 23 Calc 56 Juan Ali Beg v Sasa Mal I L R 9 All 108* referred to JAMNA DEI v LALA RAM (1916) I L R 39 All 74

———Sch I Arts 120 124 144—

See MUTT I L R 41 Mad 124

——— *Limitation for suit by one of several mujawars of a Khankah for recovery of joint possession of a site belonging to the Khankah wrongfully alienated by one of his co mujawars* *Held* that the limitation for a suit by one of several *mujawars* of a *Khankah* to recover joint possession of a site belonging to the *Khankah* wrongfully mortgaged with possession by one of his co *mujawars* is 12 years under either art 134 or art 144 of the Limitation Act *Semble* that a suit by a worshipper of a religious institution for declaration that an alienation by the trustee thereof is void and that the alienee be ejected is governed by art 120 *Asa Ram v Paras Ram (9 P R 1904)* referred to *Held* that a suit brought by the successor of a trustee of such an institution against the alienee of trust property for value to recover the property for and on behalf of the trust is governed by art 134 and the *terminus a quo* is not the date when the successor succeeds to the office but the date of the alienation *Har Gian Das v Baldeo Das (1907 P R*

1908) (F B) *Sajedur Raja v Gour Mohan Das (I L R 24 Calc 418) Sagun Balkrishnashet v Haji Hussein (I L R 27 Bom 500)* referred to SHADI v ABDUR RAHMAN I L R 1 Lah 66

———Sch I Arts 120 142— *Dispossession and discontinuance of possession meaning of—Suit to determine rights of parties to order under s 146 Criminal Procedure Code period of limitation for—Suit if lies against Magistrate—Magistrate a stake holder—Declaratory suit against rival claimant—continuing wrong* The defendants attempted to interfere with the plaintiff s possession of the disputed property and a breach of the peace becoming imminent proceedings under s 145 Criminal Procedure Code were instituted and resulted in an order of attachment under s 146 Criminal Procedure Code The plaintiff sued for declaration of his title and for recovery of possession *Held* that though deprived of possession the plaintiff was not dispossessed or had discontinued possession within the meaning of Art 142 of the Limitation Act Meaning of dispossession and discontinuance of possession explained That as there was no cause of action against the Magistrate the suit could be brought only against the defendants *Ganesh v Gundlam I L R 20 All 100* dissented from *Raja of Venkatagiri v Isakapali I L R 26 Mad 410* followed on this point *Nagendra Narain v Maargiri I L R 17 Calc 814 819* and *Rama Swamy v Muthu Swamy I L R 30 Mad 12* referred to That plaintiff having proved his title the suit must be treated as a suit for declaration of title under s 42 of the Specific Relief Act That it was a case of continuing wrong independent of contract and consequently under s 23 of the Limitation Act a fresh period of limitation under Art 120 began to run at every moment of the time the wrong continued Continuing wrong defined *Raja of Venkatagiri v Isakapali I L R 26 Mad 410* dissented from *Maharaj bharat v Abdul Hamid I C L J 73 Binda v Kaunsila I L R 13 All 126 Ananda v Veyyanna I L R 15 Mad 492* and *Jugal Kishore v Lakshman Das I L R 23 Bom 659* referred to BROJENDRA KISHORE ROY CHOUDHURY v SAROJINI RAY (1915) 20 C W N 481

——— Sch I Arts 120 142 144—

See UNSETTLED PALAYAM I L R 41 Mad 749

——— Sch I Arts 120 144—*Landlord and tenant—Tenant building on the land adjacent to the landlord s house—Staircase of the tenant s house supported by a pillar on the landlord s land—Injunction to remove the staircase—Trespass—Adverse possession—License* In the year 1893 the defendant while a tenant of the house of which the plaintiff had taken a permanent lease in 1905 built his own house on the adjoining land and put up a staircase supported by a pillar The plaintiff contended that the land on which the pillar rested belonged to him and that the pillar was put up by his predecessor in title nine years before suit In 1912 he asked the defendant to pull down the staircase but the latter having refused filed a suit on July 21 1913 praying for a mandatory injunction directing the defendant to remove the staircase The Subordinate Judge found that the land under the staircase belonged to the plaint

LIMITATION ACT (IX OF 1908)—*contd*

—— Sch I Arts 120 144—*contd*

iff but dismissed the plaintiff s suit on the ground that the pillar existed on the land for nineteen years The Assistant Judge held that as the plot belonged to the plaintiff he was entitled to get the staircase removed. On appeal to the High Court it was contended that the staircase was standing on the land either by the license of the plaintiff s predecessor in title or adversely to them but in any case the plaintiff s suit was barred under Art 120 or 144 of the Limitation Act 1908 *Held* (i) that the plaintiff's suit was barred under Art 120 of the Limitation Act 1908 as it was not brought within six years from 1893 when the license to construct the staircase could have been granted (ii) That the plaintiff s claim was also barred by adverse possession as the lower Courts having found that the staircase was put up nineteen years before suit the presumption was that from that date the defendant s possession was adverse HARIRAM KISNIRAM v SHIVABAKAS RAMCHAND (1918) I L R 42 Bom 333

—— Sch I Arts 121 to 144—

See SALE FOR ARREARS OF REVENUE.
I L R 43 Calc 779
I L R 44 Calc 412

—— Sch I Arts 121 and 142—

—— A suit for recovery of possession brought with 12 years from the date on which the Collector gave symbolical possession to the purchaser is within time coming under Art 142 not 121 MOHIM CHANDRA DEB v PEYARI LAL DAS I L R 44 Calc 412

—— Sch I Arts 121, 142 144—In a suit for Khas possession and mesne profits of land purchased by plaintiffs at a sale for arrears of Government Revenue the Defendant contended that they had been in adverse possession for a long time and that their occupation was in the nature of an incumbrance and plaintiffs were not entitled to avoid same *Held* that the interest which defendants acquired was an incumbrance within Art 121 and the suit was barred PRASANNA KUMAR DUTT v JNANENDRA KUMAR DUTT
I L R 43 Calc 779

—— Sch I, Art 123—

See BURMESE LAW
I L R 44 Calc 279

See RESIDUARY LEGATEE
I L R 41 Calc 971

See WILL CONSTRUCTION OF
I L R 43 Bom 845

—— Sch I Arts 123 144—

—— *Mahomedan law Joint property—Property devolving on sons on father s death—One of the sons selling his share to a third person—Suit for partition—Property held by sons as tenants in-common—Time to run when one co tenant excludes the other from joint property* Two mahomedan brothers *M* and *G* succeeded to their father's property according to Mahomedan law *G* mortgaged his share in the property to the plaintiffs and eventually sold the equity of redemption to them. The plaintiffs sued to recover possession of *G*'s share by partition The trial Court dismissed the suit as time barred under Art 123 of the Indian Limitation Act 1918 *Held* that the proper Article applicable would be Art 144 of the Limitation Act as the plaintiff's suit was in terms a suit to have partitioned property which the two persons were holding as tenants in-common KALLANGOWDA v BIBISHAYA (1920)
I L R 44 Bom. 943

—— *A Mahomedan dying intestate—Estate undivided—Heirs holding as tenants in-common—Suit by a heir to recover his share—Adverse possession* Where members of a mahomedan family continue to live as tenants in common without dividing the estate of a deceased ancestor limitation will not run from the time of his death and a suit for a distributive share of the deceased s estate will not be governed by Art 123 but by Art 144 of the Limitation Act, 1908 *Kallangowda* v *Bibishaya (1920) 44 Bom. 943* followed NURDIN NARBUDIN v BU UMRAO (1920)
I L R 45 Bom 519

—— Art 124—

See LIMITATION c (25)
I L R 42 Calc 244

See RELIGIOUS ENDOWMENT
3 Pat L J 327

—— —— *Stani in Malabar constituted trustee of a temple and its properties—Absolute transfer by the stani of the trusteeship and temple properties to defendant's predecessor—Effect of adverse possession for over statutory period on succeeding Stani—S 2 (d) of Limitation Act definition of plaintiff in* According to the customary law of malabar a *stanom* is descendible from one *stani* to another in a peculiar line of succession A suit by a *stani* to recover a hereditary office of trustee of a temple and its properties attached to the *stanom* is governed by Art 124 of the Limitation Act and adverse possession for over the statutory period of the office of trustee and the properties of the trust as against a prior *stani* is a bar to a suit by the successor to recover the same Though the successor gets his title not by any act of his predecessor but by succession according to the law of the land he drives his right to sue only *from or through* his predecessor within s 2 cl (8) of the Limitation Act *Gnana sambarda Pandara Sannadhi* v *Velu Pandaran, I L R 23 Mad 217 231* applied RAJA OF PALGHAT v RAMAN UNNI (1917)
I L R 41 Mad 4

—— Sch I Arts 124 140—

See LIMITATION (18) L R 41 I A 267

—— *Sch I Arts 124 144*—

See s 28 I L R 38 All 636

—— Sch *I* Art 125—

See s 6 I L R 36 Mad 570

See ART 120 I L R 41 All 492

—— *Held* that although the existence of nearer reversioners may be a bar to a more remote reversioner suing for a declaration regarding an alienation by a Hindu Widow yet he is not entitled to wait until limitation has expired in respect of all the nearer reversioners before bringing his suit KUNWAR BAHADUR v BINDRA BAN I L R 37 All 195

—— *Alienation by a Hindu widow—Failure of existing reversioner to sue to set it aside within twelve years effect of on*

LIMITATION ACT (IX OF 1908)—*contd*

——— Sch I, Art 125—*contd*

future reversioners—Representative character of the suit A suit by a reversioner to set aside an alienation by a Hindu widow is a representative suit on behalf of all her reversioners then existing or thereafter to be born and all of them have but a single cause of action which arises on the date of the alienation. Hence if by failing to sue within twelve years allowed by Art 125 of the Limitation Act (IX of 1908) the existing reversioners become barred by limitation reversioners thereafter born are equally barred. *Venkatanarayana Pillai* v *Subbammal I L R 38 Mad 406 Janaki Ammal* v *Narayanasawmi Aiyer I L R 39 Mad 734* followed *Govinda Pillai* v *Thayammal I L R 28 Mad 57 Veerayya* v *Gangamma I L R 26 Mad 5 0 Narayana* v *Rama I L R 38 Mad 396* and *Venkata Row* v *Tuljaram Row (1917) Mad W N 30* overruled *Semble* A decision one way or other in a suit by one of them binds all of them *Per* SESHAGIRI AYYAR *J Semble* That Art 125 does not apply to persons not born at the date of the alienation but that the right to declaratory relief of this nature is only conferred on persons alive at the date of the alienation VARAMMA v GOPALA DASAYYA (1918) I L R 41 Mad. 659

——— Sch I Art 126

See PARTNERSHIP 15 C W N 882

——— Sch I, Art 126 144, 148—*Sale of equity of redemption by one of two mortgagors—Redemption by vendee—Possession of property by vendee for more than twelve years—Sale by the other co mortgagor to another—Suit by latter to redeem his half share—Suit more than twelve years after first vendee took possession on redemption whether barred* The first defendant and his father *G* mortgaged with possession the suit lands to the second defendant in 1892 in 1897 *G* sold the equity of redemption to the third defendant who redeemed the lands and obtained possession in 1898 The first defendant sold his interest in the lands in 1910 to the plaintiff who instituted a suit in 1912 to redeem his half share in the property on payment of half the mortgage debt The third defendant pleaded that the suit was barred by limitation *Held* that Art 148 of the Limitation Act was not applicable to the case and the suit was barred by limitation as the case fell within Art 126 *Semble* The suit was also barred under Art 144 *Jai Kishen Joshi* v *Budhanand Joshi I L R 38 All 138 Bhagi Shamrao* v *Hajimiya Mahomed 14 Bom L R 314* followed and *Ramaswami Ayyar* v *Vanaramalai Ayyar I L R 23 Bom 137* s c *26 I C 873 Vasudeva Mudaly* v *Srinivasa Pillai I L R 30 Mad 426*, explained MUNIA GOUNDAN v RAMASWAMI CHETTY (1918) I L R 41 Mad 650

——— Sch I Art 127—

See CUTCHI MEMONS I L R 41 Bom 18

See KHOJAS I L R 38 Bom 449

See LIMITATION ACT 1877 SCH II ARTS 129 AND 144 I L R 47 Bom 64 & 84

See MAHOMEDAN LAW I L R 38 Mad 1099

LIMITATION ACT (IX OF 1908)—*contd*

——— Sch I Art 127—*contd*

——— *Applicability of the Article to Mahomedan—Suit to recover share in joint family property* The following question was referred to a Full Bench — Whether Art 127 of the Second Schedule of Act XV of 1877 can apply to the property of a Mahomedan (or any other person not being a Hindu) and not having been proved to have adopted as a custom the Hindu law of the joint family *Held* (SHAH *J* dissenting) that it did not ISAP AHMED v ABHRAMJI AHMADJI (1917) I L R 41 Bom 588

——— Sch I Art 128—*Execution of decree—Limitation—Step in aid of execution—Application for transfer of decree—Civil Procedure Code (1882) s 223* *Held* that an application made to the Court passing a decree to transfer it for execution to another Court is an application to take a step in aid of execution within the meaning of Art 182 of the first schedule to the Indian Limitation Act 1908 *Chandra Nath Goswami* v *Guroo Prosunno Ghose I L R 22 Calc 375* followed TODAR MAL v PHOLA KUNWAR (1913) I L R 35 All 389

——— Sch I Art 130—

See SARANJAM I L R 40 Bom 606

See SARANJAMDAR I L R 45 Bom 694

——— *Land entered in record of rights as liable to assessment —Suit to assess rent—Limitation—Suit if maintainable by a co sharer landlord—Bengal Tenancy Act (VIII of 1885) ss 188 and 103B* Defendant s lands having in 1910 been entered in the record of rights as liable to be assessed with rent the recorded landlord brought the present suit for assessment of rent The District Judge held that the right to have the rent assessed having accrued to the plaintiff more than twelve years before the suit it was barred by limitation under Art 130 of the Limitation Act and dismissed the suit disagreeing with the Munsif s finding that the suit having been brought within twelve years of the publications of the record of rights was within time *Held* that the Munsif was wrong in taking the entry in the record-of rights as the starting point for limitation as such an entry confers no title That the suit was not one for resumption or assessment of rent free land within the meaning of Art 130 but a suit for the assessment of land presumably liable to be assessed That the fact rent has not in fact been paid more than twelve years before suit is not *per se* sufficient to support a decree for dismissal of such a suit for the right to have rent assessed must continue so long as the relationship continues of landlord and tenant of land liable to be assessed That such a relationship and liability were to be presumed from the record of rights and it was for the defendant to rebut this presumption by evidence A suit to assess rent is consistent with and arises out of the general law and the land revenue system of the country and is not one which the landlord is required or authorised to do under the Bengal Tenancy Act within the meaning of s 188 of that Act A co sharer landlord is therefore entitled to institute such a suit. That had s 188 of the Bengal Tenancy Act applied, the fact that the plaintiff had joined his co-sharer as defendants would not have justified the Court in entertaining the suit on [illegible] and equity DHANANJOY MANDAL v UPENDRA NATH DEB (1918) 22 C W N 655

LIMITATION ACT (IX OF 1908)—*contd*

———— Sch I Art 131—

See ART 120 1 Pat L J 124

See ADVERSE POSSESSION I L R 45 Bom 638

See ENHANCEMENT OF RENT 2 Pat L J 124

See INAMDAR I L R 41 Bom 159

See LIMITATION ACT 1903 ART 116 I L R 34 All 246

————*Suit to recover sums due under periodically recurring rights governed by* Art 131 of sch II of the Limitation Act (IX of 1908) applies to suits to recover sums due under a periodically recurring right whether there is a prayer for a declaration of plaintiff s ri ht or not *Held* therefore that a suit to recover arrears of adima allowance for a period of eight years was not barred a to any portion of it ZAMORIN OF CALICUT v ACHUTHA MENON (1914) I L R 38 Mad 916

———— Sch I Arts 131 132—

See ART 116 I L R 34 All 246

———— Arts 131 and 141—

See ADVERSE POSSESSION I L R 45 Bom 638

———— Sch I Art 132—

See ART 89 I L R 43 Calc 248

See ART 116 I L R 46 Calc 448

See ART 120 I L R 39 All 74

See LIMITATION I L R 41 Calc 654
I L R 42 Calc 244
I L R 48 Calc 625

1 ————*Limitation—Malikana—Suit for malikana—Decree asked for against property charged* Where a plaintiff sued for the recovery of *malikana* for 11 years and claimed a decree against the property on which the *Malikana* was charged it was *held* that the suit was within time having regard to Art 132 of the first schedule to the Indian Limitation Act 1908 *Kallar Roy* v *Ganga Pershad Singh I L R 33 Calc 998* distinguished SHAIDA ALI v PHULLO (1913) I L R 35 All 185

2 ————*Limitation—Suit to enforce payment of money charged upon immoveable property—Instalment bond—Meaning of become due* A mortgage deed executed on the 16th July 1890 provided that the mortgagors pay the principal amount secured in ten years by instalments of Rs 625 yearly and that interest should be paid monthly There was this further clause — If we fail to pay the interest aforesaid in any month on the principal by the stipulated period as specified above or no payment is made in a year the mortgagee shall under all those circumstances be at liberty to realise the entire amount with the interest aforesaid in a lump sum through the court by means of a suit from the mortgaged and other moveable and immoveable property and the person of us the executants There was also this further provision — If the mortgagee in order to get interest do s not bring a suit in default of any instalment and we are unable to pay the money the interest should continue up to the stipulated period of ten years and after it up to the date of realization No payment was ever made of either principal or interest and the mortgagees ultimately brought a suit on the mortgage on the 17th June 1912 *Held* by RICHARDS C J and TUDBALL J (BANERJI J dissenting) that the suit was barred under art 132 of sch I to the Indian Limitation Act 1908 the mortgage money having become due when the first default was made *Vasudeva Mudaliar* v *Srinivasa Pillai I L R 30 Mad 426 Reeves* v *Butcher 2 Q B D 509 Sitab Chand Nahar* v *Haidar Malla I L R 24 Calc 281*, and *Perumal Ayyan* v *Alagirisami Bhagavathar I L R 20 Mad 215* referred to *Mellakaruppa Goundan* v *Kumara Sami Goundan I L R 22 Mad 90 Maharaja of Benares* v *Nand Ram I L R 29 All 431 Shankar Prasad* v *Jalpa Prasad I L R 16 All 371 Ajudhia* v *Kunjal I L R 30 All 123* and *Jineswar Das* v *Mahabeer Singh I L R 1 Calc 163* distinguished *Per* BANERJI J Having regard to the second of the provisions above cited the suit was not barred by limitation Where a creditor is authorised to wait for the full period stipulated for repayment the money does not become due within the meaning of art 132 of the first schedule to the Indian Limitation Act 1908 until that period expires GAYA DIN v JHUMMAN LAL (1915) I L R 37 All 400

3 ————*Accounts suit for against agent—Stipulation to render accounts yearly—Limitation* A suit by the principal against his agent for recovery of sums to be found due upon adjustment of accounts by sale of immoveable properties hypothecated by the agent is a suit to enforce a charge on immoveable property within the meaning of Art 132 of the Indian Limitation Act *Hafizuddin Mandal* v *Jadu Nath Saha I L R 35 Calc 298* followed *Jogesh Chandra* v *Benode Lal Roy 14 C W N 199* not followed MADHUSUDAN SEN v PARBAL CHANDRA DAS (1915) I L R 43 Calc 248
19 C W N 1070

4 ————*Suit for the recovery of malikana—Limitation—Distinction between personal claim and claim against property charged* Where a plaintiff sued for the recovery of *malikana* for eleven years and claimed a decree against the property on which the *malikana* was charged it was *held* that the suit was within time having regard to Art 132 of the first schedule to the Indian Limitation Act 1908 *Shida Ali* v *Phullo I L R 35 All 185* followed *Ram Din* v *Kalka Prasad I L R 7 All 502* referred to NATHU v GHANSHAM SINGH (1918) I L R 41 All 259

5 ————*Loan of paddy secured on land—Suit to recover—Limitation* Where a mortgage bond to secure a loan of paddy provided that in default of payment of the paddy and the interest which was also provided to be paid in paddy the mortgagee would be entitled to attach and sell the mortgaged property and realise the dues and if that was insufficient would be entitled to realise them also from other moveable and immovable property of the mortgagor and from his person *Held* that it was clear that upon failure to deliver the paddy the mortgagee was entitled to recover money and not to claim specific paddy and hence the mortgagee s suit to enforce he bond was governed by Art 132

LIMITATION ACT (IX OF 1908)—*contd*

——— Sch I Art 132—*contd*

of Sch. I of the Limitation Act JOGENDRA NATH SINGH v MOHAN LAL KHAN (1919)
23 C W N 951

6 ——— *Loan of paddy charged on land—Suit to recover—Limitation* A mortgagor borrowed a quantity of paddy from the mortgagee (valued in the bond at Rs 192) agreeing to repay the paddy with interest at a certain date failing which the mortgagee was to be entitled to recover the price of the paddy with interest by sale of the mortgaged land *Held* distinguishing *Pash Behari Das* v *Kunja Behari Patra 24 C L J 313* that Art 132 of the Limitation Act applied to a suit by the mortgagee to enforce the bond INDRA NARAIN SHAO v DIJABAR SAMANTA (1919) 23 C W N 949

7 ——— A suit to recover the value of paddy charged upon immoveable property is a suit to enforce payment of money charged upon immoveable property within the meaning of Art 132 of the Act RAMCHAND SUR v ISWARCHANDRA GIRI AND OTHERS (1920)
25 C W N 57

8 ——— *Limitation—Bond payable by instalments—Stipulation empowering creditor to sue for whole amount on default of payment of interest—Terminus a quo* A mortgage bond provided a period for repayment but also provided that if the borrower made default in the payment of any instalment of interest the creditor could sue for the whole amount due *Held* that limitation under article 132 of the first schedule to the Indian Limitation Act 1908 began to run from the date of the first default that being the date when according to the terms of the bond the whole money became due *Mata Tahal* v *Bhagwan Singh 19 A L J 406* not followed NATHI v TURSI I L R 43 All 671

9 ——— *Mortgage—Bond payable by instalments—Total amount due exigible on default of payment of any instalment—Limitation—Terminus a quo* In a mortgage bond dated the 21st of February 1903 it was stipulated that the mortgage debt would be payable at the end of twelve years It was further stipulated that the mortgagors would pay Rs 500 annually in payment mostly of interest and that if default was made in such annual payment the mortgagees were to have power without waiting for the expiry of the stipulated period to set aside all the stipulations embodied in the document and to bring a suit in court to realize the entire principal together with interest and costs from the persons of the mortgagors and from the hypothecated property No annual instalment was ever paid The mortgagees brought a suit on their bond on the 21st of February 1915 that is to say on the last day of a period of twelve years from the time that the mortgage money was expressed to be payable *Held* that article 132 of the first schedule to the Indian Limitation Act 1908 applied and the suit was barred *Gaya Din* v *Jhumman Lal I L R 37 All 400*, followed PANCHAM v ANSAR HUSAIN
I L R 43 All 596

——— Sch I Arts 132, 75—*Mortgage bond—Interest payable annually—Principal payable on a future date—Principal and interest payable immediately on default—Option to mortgagee to enforce payment—Suit after twelve years from default if*

LIMITATION ACT (IX OF 1908)—*contd*

——— Sch I, Arts 132 75—*contd*

barred—Gift by a Hindu widow of a mortgage bond due to her husband—gift if valid and to what extent—Suit by widow competency of transferee to continue—Decree nature of Suits for money due on hypothecation bonds though containing stipulations for payment in instalments are governed by Art 132 and not by Art 75 of the Limitation Act (IX of 1908) and there is no warrant for importing into the former the words of the latter article A hypothecatee is not *bound* to take advantage of a clause in his bond which in case of default in payments of interest enables him (a) to demand the principal before its due date and (b) also claim a higher rate of interest from the date of default Hence a suit restricted to a claim to recover the principal and interest at the original rate brought within twelve years from the date originally fixed for payment of the principal though beyond twelve years from the date of first default in respect of interest is not barred by limitation *Nallakaruppa Goundan* v *Kumarasami Goundan I L R 22 Mad 29 Astely* v *Earl of Essex 18 Eq 290* and *Governors of Magdalen Hospital* v *Knotts 5 Ch D 175* followed *Perumal Ayyan* v *Alagirisami Bhagavathar I L R 20 Mad 245* explained A gift by a Hindu widow of a mortgage bond executed to her in discharge of a debt due to her husband is valid to the extent of the interest that had accrued due at the date of the gift and the transferee is competent after her death to prefer a second appeal in a suit filed by her on the bond and obtain a decree for recovery of interest only due thereon NARNA v AMMANI AMMA (1916)
I L R 39 Mad 981

——— Sch I Arts 132 144—*Limitation Mortgage—Suit for sale on a mortgage impleading defendants alleged to be in adverse possession of the mortgage property* *Held* that a suit for sale on a mortgage can always be brought under art 132 of the first schedule to the Indian Limitation Act 1908 against all persons in possession whose possession is subsequent to the date of the mortgage provided that the suit is brought within twelve years from the time at which the money became due Such a suit does not become a suit for possession governed by art 144 because it may be necessary to implead persons who are in possession and claim a title by possession adverse to the mortgagor *Karan Singh* v *Bakar Ali Khan I L R 5 All 1* distinguished *Nandan Singh* v *Jumman I L R 34 All 640* and *Atmadar Mandal* v *Makhan Lal Dey I L R 33 Calc 1015* referred to RAJ NATH v NARAIN DAS (1914)
I L R 36 All 567

——— Sch I Art 134—

See HINDU LAW—ENDOWMENT
I L R 38 Calc 526
I L R 40 Mad 745

See LIMITATION I L R 43 Calc 34

See MUTT—HEAD OF
I L R 38 Mad 356

See MAHOMEDAN LAW—ENDOWMENT
I L R 47 Calc 866

See MAHOMEDAN LAW—WIDOW
I L R 43 All 127

See RELIGIOUS ENDOWMENTS
3 Pat L J 327

LIMITATION ACT (IX OF 1908)—*contd*

———— Sch I Art 134—*contd*

1 ———————— *Mortgage—Sale by mortgage—Suit for redemption by mortgagor against mortgagee and vendees—Plea of purchase for consideration—Omission of the words in good faith in Art 134* The omission of the words in good faith from the Art 134 of the first schedule to the Limitation Act of 1908 does not entitle a person who purchases with full knowledge that his vendor s title is merely that of mortgagee to the benefit of article DHIGPAL SINGH v KALLU (191) I L R 37 All 660

2 ———————— *Putni lease granted by shebait if transfer for valuable consideration —Non payment of premium for creation of lease if alters nature of transfer—Suit by shebait for recovery of possession—Limitation—S 30 when applies* The grant of a *putni* lease of a property belonging to an idol by the *shebait* is a transfer for valuable consideration within the meaning of Art 134 Sch I of the Limitation Act whether or not and premium was paid for the creation of the lease and a suit brought more than 12 years after the date of the lease by the then *shebait* to recover possession of the property is barred under Art 134 S 30 of the Limitation Act only applies when there is a period of limitation prescribed both by the Act of 1877 and the Act of 1908 RAMESHAR MALIA v RAM CHANDRA ACHARYA GOSWAMI (1915) 19 C W N 1032

3 ———————— *Transfer with possession by mortgagee—Transferee taking possession of some items later than date of transfer effect of—Transferee not taking possession at all of some other items effect of—Limitation from what date date of transfer or date of possession Transfer in Art 134 meaning of—Question referrable to a Full Bench when—High Court Appellate Side Rules r 2* Held by the Full Bench (WALLIS C J and COUTTS TROTTER J contra) that Art 134 of the Limitation Act does not apply to a transfer from a trustee or mortgagee under which possession is not taken by the transferee *Per* WALLIS *C J*, and COUTTS TROTTER *J*—Art 134 of the Limitation Act applies to a transfer from a trustee or mortgagee under which possession is not taken by the transferee Where possession is taken under the transfer not on the date of the transfer but some time later *Held (a) Per* WALLIS *C J* and COUTTS TROTTER *J*—Art 134 of the Limitation Act applies and time begins to run from the date of transfer and not from the date of taking possession (b) *Per* ABDUR RAHIM and SESHAGIRI AYYAR *J J*—Art 134 of the Limitation Act applies but time begins to run not from the date of transfer but from the date of taking possession and (c) *Per* SRINIVASA AYYANGAR *J*—Art 134 of the Limitation Act is not applicable to the case It applies only in cases where the transferee takes possession on the date of transfer and where the mortgagor is entitled even on the date of transfer to sue the transferee for possession *Per* SRINIVASA AYYANGAR *J*—*Obiter* Transfer in Art 134 means transfer of title and not transfer of possession. *Held* by the Full Bench —Under r 2 of the Rules of the High Court Appellate Side only a question of law involved in the determination of the case may be referred to a Full Bench and that the third question referred to them did not so arise in the case SEETI KUTTI v KUNHI PATHUMMA (1917) I L R 40 Mad. 1040

4 ———————— *Mortgagor and mortgagee—Redemption—Purchase by mortgagee at a Court sale—Transfer by mortgagee to third persons —Mortgagee re purchasing from the transferee—Mortgagor entitled to redeem the property re purchased* The properties in suit were mortgaged with possession in 1885 by two persons *S* and *D* In 1888 in execution of a money decree against the mortgagors the properties were sold and the interest of the mortgagor *S* alone was purchased by the mortgagee at a Court sale In 1892 three of these properties Survey Nos 11 54 and 87 were sold by the mortgagee to third persons and in 1898 the mortgagee bought back Survey Nos. 54 and 87 from the vendees The plaintiffs mortgagors sued for redemption of all the properties in 1910 The lower appellate Court held that *D* alone was entitled to redeem all the properties in suit except Survey Nos 11 54 and 87 in respect of which the claim to redeem was barred under Art 134 of the Limitation Act 1908 and that *D* could have no right to claim compensation on account of these lands. On appeal to the High Court by D *Held* that D s claim for redemption and compensation in respect of Survey No 11 was rightly disallowed but that he was entitled to redeem Survey Nos 54 and 87 as these properties having come back into the possession of the defendant he must be treated as mortgagee and not as an innocent transferee without notice KALU DEVBA v PUPCHAND KISONDAS (1920) I L R 44 Bom 848

5 ———————— Suit by *Mutwali* to recover possession of *Wakf* property mortgaged by previous *Mutwali* —*Date from which limitation* to be reckoned was held to be 12 years from the date of the mortgage NARAIN DAS v KAZI ABDUR RAHIM 24 C W N 690

6 ———————— *Mortgage—Transfer by motrgagee—Rights of the transferee—Redemption—Construction of statute—Legislative exposition* The plaintiffs sued in the year 1906 to redeem a mortgage effected prior to the year 1854. The representatives in title of the mortgagee claiming to be absolutely entitled mortgaged the land with possession to *A* in 1894 and he sold his rights to defendant 5 The suit having been brought more than 12 years after the alienation to *A* defendant 5 claimed as against the plaintiffs the interest of a mortgagee by virtue of his adverse possession under Art 134 of the Limitation Act (XV of 1877) *Held* that it was obligatory on the plaintiffs to redeem defendant 5 before they could recover possession of the property *Yesu Ramji Kalnath* v *Balkrishna Lakshman I L R 15 Bom 583 Maluji* v *Fakirchand I L R 22 Bom 225* and *Ramchandra* v *Sheikh Mohidin I L R 23 Bom 614* followed *Abhairam Goswami* v *Shyama Charan Nandi L R 36 I A 148* and *Ishwar Shyam Chand Jiu* v *Ram Kanai Ghose I L R 38 Calc 526* explained The alteration in the language of Art 134 of the Limitation Act (IX of 1908) was a legislative recognition of the soundness of the view that the Article was intended to give protection to all transferees for value including mortgagees. *Swift* v *Jewsbury L R 9 Q B*

LIMITATION ACT (IX OF 1908)—*contd*

———— Sch I, Art 134—*contd*

312 and *Morgan* v *London General Omnibus Company 12 Q B D 201* referred to BAGAS UMAR JI v NATHABHAI UTAMRAM (1911)

I. L. R. 36 Bom 146

———— *Neither under Muhamedan nor Hindu Law is property conveyed to a Shebait or Mutwali on dedication—They are not trustees in the English sense but of specific property is specifically entrusted to such a person for specific purposes he might be regarded as trustee with regard to that property Where the head of a Mutt gave a permanent lease of property which had been granted for the general purposes of the Mutt and no necessity for the alienation was established Held* That Art 134 of the Limitation Act which is controlled by s 10 of the Act did not apply to the case as the property in question was not property specifically conveyed to the Matathipathe in trust Also that the rent reserved in the lease was not valuable consideration within the meaning of the article *Held* further that as according to the well settled law of India a Mohant is incompetent to create any interest in respect of Mutt property to endure beyond his life the possession of the lessee did not become adverse within the meaning of Art 144 of the Limitation Act until he died and the acceptance of rent by his successor being properly referable only to a new tenancy created by himself which it was within his power to continue during his life the possession of the lessees did not become adverse again until his death The legal position of Mohants *shebaits sajjadanashins* and *mutwallis* discussed Ordinarily speaking the *sajjadanashin* has a larger right in the surplus income than a *mutwali* for so long as he does not spent it in wicked living or in objects wholly alien to his office he like the Mohant of a Hindu Mutt has full power of disposition over it *Sir* VIDYA VARUTHI THIRTHA SWAMIGAL v ALKSAMI AYYAR

26 C W N 538

———— Sch I Arts 134, 144—

See ART 120 I L. R 1 Lah 166

See ADVERSE POSSESSION I L R 39 Mad 879

See RELIGIOUS ENDOWMENT I L R 44 Mad 831

———— *Suit for redemption by co mortgagor—Property already redeemed re mortgaged and finally sold to second mortgagee—Limitation—Transfer of Property Act (IV of 1882) s 95* In 1860 the father of a family of four sons mortgaged some of the family property In 1877 after the death of the father one of the sons again mortgaged the property and with the money borrowed on the second mortgage paid off the first mortgage The second mortgagee or his son remained in possession of the property as mortgagee until 1898 when the second mortgagor sold it to the son of the second mortgagee In 1912 a grandson of the original mortgagor sued for redemption of the mortgage of 1860 *Held* that the suit was barred by limitation under Art 144 of the first schedule to the Indian Limitation Act 1908 whatever might have been the position of the members of the family (which was not clear) as regards jointness or separation Art 134 does not apply to a person who being interested in part of a mortgage redeems the whole such person being merely a charge holder and not a mortgagee *Ashfaq Ahmad* v *Wasir Ali I L R 14 All 1* distinguished. JAI KISHAN JOSHI v BUDHANAND JOSHI (1915) I L R 38 All. 138

———— *Hindu Law—Reversioner—Suit by reversioner to recover possession after death of daughter of the last male owner—Lands mortgaged usufructuarily by last male owner in 1866—Sale in 1900 by mortgagee after male owner s death during daughter s lifetime—Death of daughter in 1908—Suit in 1914 by reversioner against vendee for possession of lands—Bar of limitation* A Hindu reversioner instituted a suit in 1914 to recover possession of certain lands which has been usufructuarily mortgaged by the last male owner in 1866 and had been sold for consideration by the mortgagee in 1900 after the death of the last male owner and during the life time of his daughter who had inherited his estates and died in 1906 The vendees who were unpleaded in the suit pleaded *inter alia* the bar of limitation *Held* that article 134 and not article 141 of the Indian Limitation Act (IX of 1908) applied to the case and that the suit was barred by limitation SESHA NAIDU v PERIASAMI ODAYAR (1921) I L R 44 Mad. 951

Sch I Arts 134 144 and 148—*Mortgage—Mortgagee in possession dealing with mortgaged property as full owner—Adverse possession* A mortgagee in possession professing himself to be the full owner and not merely a mortgagee mortgaged the property to a third party whose heirs having brought a suit on their mortgage and obtained a decree put up the property for sale and purchased it themselves Subsequently they sold by private contract the property which they had so purchased The representatives of the original mortgagor then sued for redemption *Held* that neither article 134 nor article 148 of the first schedule to the Indian Limitation Act 1908 applied to the suit but article 144 and the suit was barred The ultimate purchasers the defendants were entitled to add to the period of their possession the period of possession of the auction purchasers their predecessors *Husaini Khanam* v *Husain Khan I L R 29 All 471 Seeti Kutti* v *Kunhi Pathumma I L R 40 Mad 1040 Ammu* v *Rama Krishna Sastri I L R 2 Mad 226 Chinto* v *Janki I L R 18 Bom 51 Ahamed Kutti* v *Paman Nambudri I L R 25 Mad 99 Bhagwan Sahai* v *Bhagwan Din I L R 9 All 97 Sheo Nath Singh* v *Mahipal Singh* _ *A L J 234* referred to *Babu Ram* v *Banke BehariLal 3 A L J 474* followed RAM PIARI v BUDH SEN I L R 43 All 164

———— Sch I Arts 134 and 148—*Mortgage—Transfer from mortgagee—Suit for redemption—Mortgagors right of redemption not defeated by reason of mortgagee s transfer* In 1882 certain lands were mortgaged with possession by the plaintiff's father In 1883 the mortgagee mortgaged the lands to the predecessor in title of the defendants representing himself as absolute owner In 1916 the plaintiff having sued for redemption the defendants contended that the suit was barred under Art 134 of the Limitation Act 1908 *Held* that the suit was not barred as on the facts the proper Article applicable to the case was Art 148 not Art 134 of Sch. I of the Limitation Act 1

LIMITATION ACT (IX OF 1908)—*contd*

———— **Sch I Arts 134 and 148**—*contd*

Per MACLEOD C J — A suit to recover possession is not the same thing as a suit to redeem and a mortgagor's right to redeem the period of limitation for which is 60 years under Art 148 will not be defeated merely because his mortgagee transfers the mortgage to another person TAIRAMIYA v SHIBELISAHEB (1919)

I L R 44 Bom 614

———— **Sch I Art 135**—

See CONTRACT ACT ss 126 AND 140 **I L R 42 All 70**

See MORTGAGE **I L R 38 All 97**

———— **Sch I, Art 137**—

See POSSESSION **4 Pat L J 463**

———— **Sch I Arts 137, 139 142**—*Suit for possession by auction purchaser—Onus on plaintiff to prove judgment debtor's possession at date of sale or that judgment-debtor became entitled to possession within 12 years of suit* The plaintiff an auction purchaser of certain lands sued to recover possession on declaration of title His case was that the judgment-debtor was in possession at the date of the sale and subsequently and when he went to take possession on their vacating the land he was met by the defendant who alleged that they had been in possession from before the execution sale and contended that the suit was barred *Held* that the suit was governed either by Art 137 or Art 138 or Art 142 of the Limitation Act and the onus was entirely on the plaintiff to prove not only that he had a title but a subsisting title which he had not lost by the prescriptive sections of the Limitation Act i e he must show which Article of the Limitation Act saved his suit from the bar of limitation and the lower Court erred in law in throwing the burden of proof on the defendants to show that they had been in adverse possession for over 12 years DOKARI JODDAR v NILMANI KUNDU (1916) **22 C W N 319**

———— **Sch I Art 138**—

See CIVIL PROCEDURE CODE 1908 s 47 **I L R 35 Bom 452**

See POSSESSION **4 Pat L J 463**

———— *Date when sale becomes absolute significance of—Arts 137 138 and 144 which applies when an execution purchaser obtains symbolical possession but is kept out of actual possession—S 16 if applies to a suit for possession by such an execution purchaser* A tenure was purchased at an execution sale which was confirmed in August 1902 Symbolical possession was delivered to the purchaser in January 1904 An application for setting aside the sale was made in June 1905 and was rejected in April 1906 Being kept out of actual possession the purchaser brought a suit for possession in July 1914 and added some Defendants in March 1916 i e more than 12 years from the date on which the sale became absolute as well as from the date when symbolical possession was delivered to the execution purchaser *Held* that the sale became absolute on the confirmation of the sale in August 1902 and not in April 1906 when the application for setting aside the sale was dismissed. The confirmation of a sale cannot be kept in abeyance (when no proceedings are taken to set aside the sale before the confirmation) in order to enable the judgment debtor to take such proceedings afterwards So if Art 138 of the Limitation Act applied the suit would be barred even deducting the time during which the application for setting aside the sale was pending Art 137 did not apply as the judgment debtor was in possession at the date of the sale Art 138 too was not the proper article applicable to the case The purchaser obtained symbolical possession which was as effective as actual possession against the judgment debtor and if the latter continued in possession it was adverse against the purchaser from the very day on which he got symbolical possession The purchaser therefore had a fresh cause of action for instituting the suit for possession against the judgment debtor In such a case Art 138 does not apply but Art 144 applies *Gopal v Krishna Rao I L R 25 Bom 275* referred to Where Art 144 applies no deduction of time under s 16 of the Limitation Act or under the general principles of equity is allowable and the suit was therefore barred BROJENDRA KUMAR ROY CHOWDHURY v ASHUTOSH ROY

26 C W N 364

———— **Sch I Arts 138 144**—

———— *Execution of decree—Successive purchasers of same property—Suit by subsequent purchaser to recover from earlier purchaser—Limitation* Art 138 of the Limitation Act only applies to suits in which the auction purchaser is the plaintiff and the judgment debtor or some one claiming through him is the defendant *Ram Lakhan Rai v Gajadhar Rai I L R 34 All 224* and *Khiroda Kanta Roy v Krishna Das Laha 12 C L J 378* referred to BHAGWANT SINGH v BHOLI SINGH (1913)

I L R 35 All 432

———— *Limitation—Suit for joint possession—Purchase of undivided share—Effect of an order for formal possession against the judgment debtor* On the 20th of March 1900 plaintiff purchased at an auction sale in execution of a decree an undivided one-third share in certain *maufi* land On the 20th of September 1900 plaintiff obtained under s 319 of the Code of Civil Procedure 1882 formal possession of the property purchased On the 18th of September 1912 plaintiff filed a suit for recovery of joint possession of the share *Held* that the suit was within time *Mangal Prasad v Debi Din I L R 19 All 499 Jagan Nath v Milap Chand I L R 28 All 729 Narain Das v Lalta Persad I L R 21 All 269* and *Rahim Bakhsh v Muhammad Hafi 10 Indian Cases 319* referred to RAJENDRA KISHORE SINGH v BHAGWAN SINGH (1917)

I L R 39 All 460

———— **Sch I Arts 139 142**—

See ART 137 **22 C W N 319**

———— **Sch I Art 140**—

See LIMITATION (18) **L R 41 I A 267**

———— **Sch I Arts 140 141**—*Suit by a reversioner—Mortgage—Redemption—Widow disappearance of—Presumption of death—Onus of proof—Indian Evidence Act (I of 1872) s 108* One S died leaving him surviving his widowed daughter in law R In 1860 R passed a mortgage bond in

LIMITATION ACT (IX OF 1908)—*contd*

——— Sch I, Arts 140 141—*contd*

favour of the 1st defendant s father In 1865 *R* disappeared and was not heard of since 1870 In 1911 the plaintiff as the reversioner of *S* sued to recover possession of the property alienated by *R* The defendants pleaded limitation. The first Court decided in plaintiff's favour on the ground that under s 108 of the Indian Evidence Act the Court must presume that *R* died at the time of the suit and therefore the claim was in time The lower Appellate Court reversed the decree and dismissed the suit holding that the presumption of *R* s death at the time of the suit could not be drawn and that the *onus probandi* which lay heavily on the plaintiff to show when *P* died was not discharged The plaintiff having appealed *Held* that it lay on the plaintiff to show affirmatively that he had brought his suit within twelve years from the actual death of *R* *Nepean v Deo d Knight 2 M* and *W 894* followed. Art 141 of the Limitation Act is merely an extension of Art 140 with special reference to persons succeeding to an estate as reversioners upon the cessation of the peculiar estate of a Hindu widow But the plaintiff's case under each Article rests upon the same principle The doctrine of non adverse possession does not obtain in regard to such suits and the plaintiff suing in ejectment must prove whether it be that he sues as remaindr man in the English sense or as a reversioner in the Hindu sense that he sues within twelve years of the estate falling into possession and that onus is in no way removed by any presumption which can be drawn according to the terms of s 108 of the Evidence Act 1872 JAYAWANT JIVANRAO *v* RAMCHANDRA NARAYAN (1915)

I L R 40 Bom 239

——— Sch I, Art 141—

See ART 131 I L R 45 Bom 638

See HINDU LAW—ENDOWMENT I L R 43 Mad 665

See HINDU LAW—JOINT FAMILY PROPERTY I L R 47 Calc 274

See HINDU LAW—SUCCESSION I L R 38 All 117

See HINDU LAW WIDOW I L R 43 Mad. 855

——— *Dispossession in life time of full owner—Adverse possession against limited owner before Limitation Act of 1871 effect of—Thak and survey maps as evidence of title and possession* Art 141 only applies to cases where it is proved that the last full owner was in possession at the time of his death. If he himself was dispossessed and time began to run against him the fact that on his death he was succeeded by his widow daughter or mother would not arrest the operation of the law of limitation. Under the law as it stood before the Limitation Act of 1871 came into operation adverse possession which extinguished the title of the female heir also extinguished the title of the reversioner and once the title was extinguished while the Limitation Act of 1859 or Reg III of 1793 or Reg II of 1805 was in force it could not be revived by the introduction of the Limitation Act of 1871 MOHENDRA NATH BISWAS *v* SHAMSUNNISSA KHATUM (1914) 19 C W N 1280

LIMITATION ACT (IX OF 1908)—*contd*

——— Sch I, Arts 141 142, 144—

See HINDU LAW—JOINT FAMILY I L R 42 Bom 69

——— Sch I Arts 141 144—*Alienation by a widow—Death of the widow—Property taken by surviving co widow—On her death property vesting in the daughter as reversionary heir—Suit by daughter s son to recover possession—Adverse possession* One *D* died leaving two widows *K* and *R* and daughters *S* and *T* In 1897 the senior widow *K* sold the property in suit to defendant No 1 In July 1902 *K* died Thereupon *R* as the surviving co widow took the property for a widow's estate *R* died on January 17 1903 On her death the daughters *S* and *T* inherited the property *S* died in 1907 and *T* in 1911 On January 13 1915 *S*'s son brought a suit to recover possession of the property sold by *K* Both the lower Courts held that the suit was barred by limitation under Art 144 of the Limitation Act 1908 On appeal to the High Court it was contended that the suit was governed by Art 141 of the Limitation Act 1908 and if not in any case it was not barred by adverse possession under Art 144 *Held* that Art 141 of the Limitation Act 1908 did not apply as that Article was restricted to suits by a plaintiff whose right and title to sue for possession occurred upon the death of a female holding the limited woman s estate The suit was however not barred under Art 144 of the Limitation Act 1908 as no adverse possession began to run against the plaintiff until the death of *R* on January 17 1903 MALKARJUN MAHADEO *v* AMRITA TUKARAM (1918) I L R 42 Bom 714

——— Art 142—

See ART 120 20 C W N 481

See ART 121 I L R 44 Calc 412

See BENGAL SURVEY ACT 1895 s 41 6 Pat L J 51

See HINDU LAW—JOINT FAMILY I L R 38 Mad 684

See LIMITATION ACT 1908 ART 121 I L R 43 Calc 779

See POSSESSION 1 Pat L J 146

——— *Suit for possession—De facto possession with defendant—Burden of proof* Where the plaintiff alleges possession of land and it is found that part of the land is *de facto* in possession of the defendant the case falls under Art 142 and not Art 144 of Sch. II to the Indian Limitation Act (IX of 1908) Every suit for possession of immoveable property in which the plaintiff alleges that he has had possession must fall under Art 142 It is only where the plaintiff does not allege that he has ever been in possession that the case will fall under Art 144. In the former class of cases the plaintiff is bound to show that the dispossession or discontinuance of possession which gives rise to the starting point of limitation was within twelve years of the date of the suit SUBAPPA *v* VENKAPPA (1914)

I L R 39 Bom 335

——— In cases under Art 142 of the Limitation Act although the Plaintiff's title is proved the onus is not upon the Defendant to show that the Plaintiff lost his title

LIMITATION ACT (IX OF 1908)—*contd*

——— Sch I Art 152—*contd*

day of limitation *Held* that the Judge had jurisdiction to accept the memorandum of appeal so presented though he was not obliged to do so *Jai Kuar v Heera Lal 7 N W P H C Rep 5* overruled THAKUR DIN RAM *v* HARI DAS (1912) I L R 34 All 482

——— *Presentation of appeal beyond the prescribed period of limitation—Proper order to endorse on such memorandum of appeal—Suits Valuation Act (VII of 1887) s 8—Court Fees Act (VII of 1870) s 7 sub s (4) cl (c)—Bombay Civil Courts Act (Bom Act XIV of 1869) ss 8 and 26—Party following mistaken advice as to proper Court to which to appeal—Sufficient cause for not presenting appeal in proper time—Power of Desai in Belgaum District to alienate hereditary property of the Vatan as against his widow his adopted son and the servants of the Vatan—Bombay Regulation XVII of 1827—Bombay Act II of 1863* Where a memorandum of appeal is presented beyond the prescribed period of limitation the proper order which the Court should endorse on it would be that it was presented for admission on the date when the memorandum of appeal was handed into the office of the Court and that notice of the order and its dates should be given to the respondent *Krishnasami Panikondar v Ramsami Chettiar I L R 41 Mad 412 I L R 45 I A 25* followed. An appeal from a Subordinate Judge which from its nature should rightly have been presented to the District Court and not to the High Court was not presented to either Court until after the period of 30 days prescribed by the Limitation Act 1908 Sch I Art 152 had expired for an appeal to the District Court it was then on 19th July 1910 presented to the High Court well within the 90 days allowed for such an appeal but the High Court directed it to be presented to the District Court which made an order admitting it without prejudice to any objection that may be taken by the respondent as to its being barred by limitation It appeared that the District Judge had when Legal Remembrancer advised that the appeal rightly lay to the High Court when it was presented to that Court on 19th July 1910 After the District Judge had admitted the appeal it was by order of the High Court removed to that Court and after hearing the parties and considering the affidavits which were filed an order was made by the High Court admitting the appeal on the ground that they were satisfied that there had been sufficient cause shown for not having preferred the appeal to the District Court within the prescribed period of limitation *Held* that the appeal was not barred by limitation the fact that the defendants had acted on mistaken advice as to the law in appealing to the High Court in 1910 did not preclude them from showing that it was owing to their reliance on that advice that they had not presented the appeal to the Court of the District Judge within the proper period *Brij Indar Singh v Kanshi Ram I L R 45 Calc 94 I L R 44 I A 218* referred to On the question whether a Desai in the Belgaum District could dispose by will of the hereditary lands of the Vatan as against his widow his son adopted by the widow and the hereditary servants interested in the Vatan property their Lordships of the Judicial Committee agreed with the High Court in holding that such property was not alienable Only the testator's private property was alienable SUNDERABAI *v* THE COLLECTOR OF BELGAUM (1918) I L R 43 Bom 376

——— Sch I Art 154—

See SANCTION FOR PROSECUTION
I L R 40 Calc 239
I L R 39 Mad 750

——— Sch I Art 156—*Applicability of to appeals under Land Acquisition Act (I of 1894)* Art 156 of the Limitation Act (IX of 1908) applies to appeals filed under s 54 of the Land Acquisition Act (I of 1894) *Aga Muhammad Hamadhani v Cohen (1886) I L R 13 Calc 221* referred to RAMASAMI PILLAI *v* DEPUTY COLLECTOR OF MADURA (1920) I L R 43 Mad 51

——— Sch I Art 158—

See ARBITRATION I L R 46 Calc 721

——— *Arbitration—Award—Application to set aside—Form of—Practice* The form which an application to set aside an award under the Second Schedule of the Civil Procedure Code should take is nowhere prescribed or indicated It is sufficient if some notice is given to the proper office that the party objects to the award and the date on which such notice is given is for the purpose of the Indian Limitation Act *the date on which the application is made* GOPALJI KALLIANJI *v* CHHAGANLAL VITTHALJI I L R 45 Bom 1071

——— *Art 161 read with s 17 Provincial Small Cause Courts Act (IX of 1887)—Application for review of judgment made on the last day of limitation without the required deposit of security if barred—Limitation Act (IX of 1908) s 5 if empowers the Court to grant extension of time for the deposit after the application was made in time* An application for review of judgment in a Small Cause Court suit was made on the last day of the period prescribed for limitation, but without deposit of the amount of costs or security for the same as required by s 17 of the Provincial Small Cause Courts Act On the following day the Court allowed the applicant time for making the deposit which was eventually made and the application for review was granted. *Held* that as the application failed to comply with the provisions of s 17 of the Provincial Small Cause Courts Act the application for review was not a proper application in time and it was barred under Art 161 of the Limitation Act It was doubtful whether s 5 of the Limitation Act applied to the case at all as the application for review was made within time ABDUL SHEIKH *v* MAHAMMAD AYUB 24 C W N 380

——— Sch I Art 161—

See LIMITATION (67) 23 C W N 553

——— Sch I Art 164—

See s 6 I L R 35 Mad 678

See EX PARTE DECREE
I L R 39 Calc 506

See PROBATE I L R 41 Calc 819

LIMITATION ACT (IX OF 1908)—*contd*

——— Sch I, Art 164—*contd*

——— *Limitation Act (XV of 1877) s 14 and Sch II Art 164 and (IX of 1908) s 14 and Sch I Art 164 applicability of—Application to set aside ex parte decree passed before Amending Act—Provincial Small Cause Courts Act (IX of 1882) s 17—Deposit of security after application—Power of Court to extend time—Fraud knowledge of onus of proof as to Semble* Where an application to set aside an *ex parte* decree is made after the Limitation Act of 1908 came into operation although the decree was passed before it came into force the provisions of the Act of 1908 and not those of the Act of 1877 would apply An *ex parte* decree was obtained in a Small Cause Court on the 7th August 1908 and on the 14th December 1908 a fraudulent entry was obtained in the records of the Court that the decree had been partially executed by attachment of moveables On the 26th February 1909 the judgment debtor first became aware of the existence of an *ex parte* decree against him On the 15th March he applied before another Court to have the *ex parte* decree set aside Subsequently the application was returned for presentation to the Court which passed the decree On the application being refiled in that Court it was registered as an ordinary application to set aside an *ex parte* money decree On the 7th August 1909 it was discovered that the decree was a Small Cause Court decree and an order was made giving the petitioner time to deposit the amount of the decree under s 17 of the Provincial Small Cause Courts Act The time having subsequently been extended the amount was ultimately deposited on the 28th August 1908 *Held* that in the circumstances whether the Limitation Act of 1877 or that of 1908 applied the application was not liable to be rejected as time barred as under s 14 of the Limitation Act the judgment debtor would be entitled to a deduction of time from the 15th March to the 7th August when he was prosecuting another legal proceeding in good faith also in the circumstance he must be deemed to have first become aware of the decree as a decree of the Small Cause Court on the 7th August 1909 That regarding the application as having been filed on the 7th August 1909 no question as to the deposit being made out of time as prescribed by s 17 of the Provincial Small Cause Courts Act arises The provisions of s 17 of the Provincial Small Cause Courts Act are mandatory where an application under that section is filed without security but where the security is deposited within the time allowed by law for the application the applicant has a right to have his application heard on the merits Where an application is made by a party on the allegation that an entry in a judicial record is fraudulent there is nothing to prevent the application being entertained without a preliminary enquiry into the truth of the allegation *Bhobunessary* v *Judobendra Narain Mullick I L R 9 Calc 869* distinguished and doubted Where a fraud has been committed by a person who has obtained property thereby the party defrauding can resist the application of the injured party on the ground of limitation only if he can show that the injured complainant had clear and definite knowledge of the facts constituting the fraud at a time too remote for the suit to be brought and the mere suggestion of being defrauded is not sufficient for the purpose *Rahimbhoy* v *Turner I L R 17 Bom 341* followed BASIRUDDIN MANDAL v SONAULLA MANDAL (1910)
15 C W N 102

——— *Application to set aside an ex parte decree passed when Act No XV of 1877 was in force—Limitation* The plaintiff obtained an *ex parte* decree on the 29th of November 1904 which was made absolute on the 24th of August 1907 The proclamation of sale was brought to the village on the 19th of December 1912 The defendant on the 9th of January 1913 applied to have the *ex parte* decree set aside The plaintiff contended that the defendant had knowledge of the decree prior to 1910 and therefore her application was barred by Art 164 of the Indian Limitation Act of 1908 The defendant contended that Art 164 of the Limitation Act of 1877 applied to her case *Held* that the defendant s application was barred by Art 164 of Act IX of 1908 *Hope Mills Limited* v *Vithaldas Pranjivandas 12 Bom I L R 730* referred to JIA BIBI v ILAHI BAKHSH (1915)
I L R 37 All 597

——— Arts 164 and 181—*Ex parte decree setting aside of—Defendant dead after decree—Executor not brought on the record—Executor application by to set aside ex parte decree—Application made more than thirty days after decree—Civil Procedure Code (V of 1908) s 146* Where a decree was passed *ex parte* against a defendant who died seven days after the decree and an application to set it aside was made by the executor of the deceased defendant more than thirty days after the passing of the decree *Held* that Art 164 and not Art 181 of the Limitation Act (IX of 1908) applied to the case and that the application was barred On the true construction of Art 164 of the Limitation Act read with s 146 of the Code of Civil Procedure (Act V of 1908) the word defendant in the said Art 164 is wide enough to indicate the executor of the original defendant though the executor may not have been brought on the record when the application was made *Ganoda Prosad Roy* v *Shib Narain Mukerjee I L R 29 Calc 33* referred to VENKATASUBBAYYER v KRISHNAMURTHY (1913)
I L R 38 Mad 442

See also COMPANIES ACT 1882 ss 150 AND 169 **I L R 1 Lah 187**

——— Sch I Arts 165 181—

——— *Civil Procedure Code (1908) s 47—Execution of decree—Limitation—Application by judgment debtor to be restored to possession of immoveable property taken by the decree holder in excess of that decreed* *Held* that the application of a judgment debtor for restoration of immoveable property seized by the decree holder in excess of what has been decreed is one under s 47 of the Code of Civil Procedure and is governed by Art 181 of Sch I to the Indian Limitation Act *Patnam Ayyar* v *Krishna Dass Vital Doss I L R 21 Mad 494* *Har Din Singh* v *Lochman Singh I L R 25 All 343* dissented from ABDUL KARIM v ISLAMUNNISSA BIBI (1916)
I L R 38 All 339

——— *Execution of decree for possession of immoveable property—Delivery to decree holder of lands in excess of the decree—Application by judgment-debtor for restoration of excess*

LIMITATION ACT (IX OF 1908)—*contd*

——— Sch I Arts 165 181—*contd*

lands—Limitation for such applications—Applicability of Arts 165 or 181 of the Limitation Act Art 181 and not Art 165 of Sch I of the Limitation Act (IX of 1908) governs an application made by a judgment debtor for restoration of immoveable property delivered to the decree holder in execution proceedings in excess of what had been decreed *Ratnam Ayyar v Krishna Doss Vital Doss I L R 21 Mad 494* overruled *Abdul Karim v Islamunnissa Bibi I L R 38 All 339* followed VACHALI ROHINI v KOMBI ALIASSAN (1919) I L R 42 Mad. 753

——— Sch I Art 166—

See ART 12 I L R 38 Mad 1076

See CHOTA NAGPUR TENANCY ACT 1908 s 231 1 Pat L J 483

See CIVIL PROCEDURE CODE 1908 s 47 O XXXIV r 14 I L R 45 Bom 174

See HIGH COURT CIVIL CIRCULARS I L R 45 Bom 1132

——— Sch I Arts 166 181—

See BENGAL TENANCY ACT s 65 14 C W N 1096

See CIVIL PROCEDURE CODE 1908 ss 47 144 15 I L R 43 Bom 235

See SALE I L R 46 Calc 975

——— *Exonerated defendants—Sale of properties including share of exonerated defendants—Application to set aside sale—Limitation* In a decree awarding maintenance a charge was created on the shares of some of the defendants in lands belonging jointly to them and the appellants but the shares of the latter were expressly exonerated In execution of the decree however the lands were sold by Court auction including the shares of the appellants therein On an application by them a year and seven months later to set aside the sale of their share *Held* that art 181 and not art 166 of the Limitation Act applied and that the application was not barred SESHAGIRI RAO v SRINIVASA RAO (1920) I L R 43 Mad. 311

——— Sch I, Art 168—

See s 6 I L R 45 Bom 648

——— *Application for readmission of an appeal dismissed in default—Inherent powers of Court—Civil Procedure Code Act V of 1908 s 151* This application for restoration of an appeal dismissed in default was filed on the 17th November 1919 the order dismissing the appeal was made on the 27th January 1919 The applicant urged that he was not to blame for his non appearance and did not discover for several months that the appeal had been dismissed *Held* that the application is barred by limitation under art 168 of the Limitation Act *Held also* that the inherent powers of the Court under s 151 of the Code of Civil Procedure cannot be invoked in breach of the clear provisions of the Limitation Act *Devi Bakhsh Singh v Habib Shah (I L R 35 All 331 P C)* distinguished BISSA MAL v KESAR SINGH I L R 1 Lah 363

LIMITATION ACT (IX OF 1908)—*contd*

——— Sch I Art 171—

See CIVIL PROCEDURE CODE 1908 O I r 10 I L R 35 Bom 393

——— Sch I Art 178—

See ARBITRATION 4 Pat L J 394

See CIVIL PROCEDURE CODE 1908 SCH II CLS 17 AND 20 I L R 38 All 85

——— Sch I Art 179—

See APPEAL TO PRIVY COUNCIL I L R 39 Calc 765

See s 12 I L R 39 Calc 510 I L R 38 All 82

——— *Decree—Execution proceedings—Application for time to obtain copies of decree and judgment—Step in aid of execution* An application for time to enable the applicant to obtain copies of decree and judgment made after presenting a *darkhast* to execute a decree is a step in aid of execution *Kunhi v Sheshagiri I L R 5 Mad 141* followed *Kartick Nath Pandey v Juggernath Ram Marwari I L R 27 Calc 285* dissented from HARIDAS NANABHAI v VITHALDAS KISANDAS (1912) I L R 36 Bom 638

——— Sch I Art 180—*Application by decree holder for possession of properties purchased in Court auction—Application filed more than three years after confirmation of sale—Proceedings to set aside sale effect of—Suspension of cause of action* After a Court sale had been confirmed without opposition on 26th April 1913 an application was made on 3rd January 1914 to set it aside on the ground of fraud and it was set aside on 25th June 1915 as to part of the properties sold. The auction purchaser having applied on 17th February 1917 for delivery of the remaining properties on a reference to a Full Bench *Held (Per* ABDUR RAHIM OFFG *C J* SADASIVA AYYAR *J* SESHAGIRI AYYAR *J* and BURN *J)* that the application was not barred under art 180 of the Limitation Act as time should be computed from the date of the order disallowing the petition to set aside the sale on the ground of fraud and not from the date of the first confirmation *Baijnath Sahai v Ramgut Singh (1896) I L R 23 Calc 775 (P C)* followed *Per* OLDFIELD *J*—As the question referred was not when the cause of action arose on the facts of the case but whether the existing cause of action became suspended the answer is that when once a cause of action has arisen it is not suspended by later events *Per* SADASIVA AYYAR *J*—The cause of action was suspended during the interval MUTHU KORAKKAI CHETTY v MADAR AMMAL (1920) I L R 43 Mad 185

——— Sch. I Arts 180 183—

See LIMITATION I L R 42 Calc 776

——— Sch I Art 181—

See s 19 I L R 42 Mad 52

See ART 164 I L R 38 Mad 442

See ART 165 I L R 38 All 339

See ART 166 14 C W N 1096

See CIVIL PROCEDURE CODE (1908) O XXI R 2 O XXXIV RR 4 5 I L R 39 All. 532

LIMITATION ACT (IX OF 1908)—*contd*

——— Sch I, Art 181—*contd*

See CIVIL PROCEDURE CODE (1908) O XXI r. 89—92 24 C W N 73

O XXXIV r. 5
I L R 39 All 641
I L R 38 All. 21
I L R 40 All 203
25 C W N 376

r. 6 I L R 40 All 551

See COMPANIES ACT 1882 100 AND 169 I L R 1 Lah 167

See EXECUTION OF DECREE.
I L R 35 All 178
3 Pat L J 103

See LIMITATION I L R 42 Calc 294

See MORTGAGE I L R 37 Calc 796

See MORTGAGE DECREE.
4 Pat L J 213 & 523

See RESTITUTION 3 Pat L J 367

——— *Filing affidavit to prove service of notice under O XXI r 22 of the Civil Procedure Code (Act V of 1908) step in aid of execution* Filing an affidavit to prove service on judgment-debtor of notice issued under O XXI r 22 of the Civil Procedure Code was equivalent in this case to applying to the Court to take a step in aid of execution PRANKRISHNA DAS v PRATAP CHANDRA DALOI (1917)
21 C W N 423

——— *Mortgage—Suit for sale —Application for final decree—Limitation* An application for final decree in a suit for sale on a mortgage being an application in the suit and not an application in execution the fact that one such application has been made within the prescribed period of limitation does not operate to extend the period of limitation in favour of a second application the first having been dismissed for default AHMAD KHAN v MUSSAMMAT GAURA (1917) I L R 40 All 235

——— *Execution of decree—Limitation—Execution temporarily suspended by an injunction* Whilst an application for execution of a final decree in a mortgage suit was pending a suit was brought for a declaration that the decree itself had been obtained by fraud and on the 9th of December 1914 an order staying execution was passed On the 26th of April 1915 this suit was dismissed An appeal was filed but it too was dismissed on the 19th of April 1917 The next application for execution of the mortgage decree was made on the 11th of June 1918 *Held* that the application was time barred *Ruddar Singh* v *Dhanpal Singh I L R 26 All 156* followed *Moin-ud-din Khan* v *Chajju Singh 2 A L J 276* and *Qamar-uddin Ahmad* v *Jawahir Lal, I L R 27 All 331* distinguished BALWANT SINGH v BUDH SINGH I L R 42 All 564

——— *Consent decree—Instalments—Application for decree absolute for sale—Limitation—Civil Procedure Code (Act V of 1908) O XXXIV* An application for a decree absolute for sale of a mortgage charge under the terms of a consent decree which provided for satisfaction of the decretal debt by instalments is an application under the Civil Procedure Code (Act V of 1908) O XXXIV and is governed by Art 181 Sch I of the Limitation Act (IX of 1908) Such application must be made within 3 years from the time the right to apply accrues DATTO ATMARAM v SHANKAR DATTATRAYA (1913)
I L R 38 Bom 32

——— *Limitation—Execution of decree payable by instalments with option of getting possession of land in case of default of payment—application for possession more than 3 years after first default* In 1909 the appellant obtained a decree against the respondents for Rs 370 payable by annual instalments of Rs 25 which provided that in default of payment of the whole or part the judgment debtors would put the decree holder in proprietary possession of 5 *bighas* 4 *biswas* of land In April 1918 the decree holder applied to be put in possession of the land and failed to prove that any instalment had been paid under the decree The lower Appellate Court held that the claim for possession was time barred more than three years having elapsed since the date to the first default The decree holder appealed to the High Court *Held* that it was not intended that the option given to the decree holder of obtaining possession of the land on a default being made in payment was to be exercised only on the occurrence of the first default The decree holder was entitled to apply for delivery of possession on the occurrence of any subsequent default and the present application was consequently within time under art 181 of the 1st Schedule of the Limitation Act *Muhammad Islam* v *Muhammad Ajhsan (I L R 16 All 237)* and *Shankar Prasad* v *Jalpa Prasad (I L R 16 All 371)* followed *Mussammat Kirpa Devi* v *Dasaundhi Ram (8 P R 1917)* not followed HAR GOPAL v RAM RACHHPAL I L R 2 Lah 185

——— 182—*Application to execute decree—Limitation—Decree against property of deceased debtor in the hands of his brother not a decree against the estate of the deceased generally —Time does not run until brother gets possession of estate* Pending the trial of a suit for money against J J died whereupon the Plaintiff P had J's brother E substituted on the records in the place of J and got a decree on 27th July 1906 which did not provide that E was to be personally liable but declared that the decretal amount was to be realised by the sale of the property belonging to J and left in E's possession There was no decree against the estate of J in the possession of any one also All J's property was at that time in the possession of the widow of J E brought a suit to recover that property from J which was decreed by the trial Court on 15th August 1908 but the High Court on Appeal (having stayed execution in the meantime) reversed this judgment on 2nd August 1909 This decision of the High Court again having been reversed by the Privy Council decreeing E's suit on appeal on 22nd July 1914 P applied for execution of the decree in December 1914 *Held* that the application was not barred by limitation In order to make the provision of Art 182 of the schedule to the Limitation Act applicable the decree sought to be enforced must have been in such a form as to render it capable in the circumstances of being enforced *Shaik Kamar-ud-din Ahmed* v *Jawahir Lal L R 32 I A 102 (1905)* referred to That the

application for execution could not have been executed until *E* had come into possession of the property of *J* and by Art 181 of the Limitation Act the period of limitation for making the applications was three years from the time when the right to apply accrued MAHARAJA SIR RAMESHVAR SINGH v HOMESVAR SINGH (I C)
25 C W N 337

——————— *Limitation—decree for sale—Appeal* A preliminary decree in a suit on a mortgage declared the liability of each of the properties against which the mortgage was sought to be enforced and also that each would be liable for a proportionate part of the amount found to be due on the mortgage The amounts and property liable therefore were specified in the decree Against his decree some only of the defendant appealed and as against them only the decree was set aside—More than 5 years after the decree of the first Court though within three years of the appellate decision the decree holders applied for a final decree against the defendant who had not appealed *Held* that the application was time barred GYAN SINGH v ATA HUSAIN
I L R 43 All 320

——————— *Appeal against preliminary decree for sale in a mortgage suit—Application for final decree under O XXXIV r 5 Civil Procedure Code—Article applicable and starting point of limitation* An application for a final decree for sale under O XXXIV r 5 Civil Procedure Code is governed by art 181 of the Limitation Act and the starting point in cases where there has been an appeal from the preliminary decree is the date of the appellate decree whether the latter confirmed or varied the preliminary decree *Bhup Indar Bahadur Singh* v *Bijai Bahadur Singh (1901) I L R 23 All 152 (P C)* applied *Juscurn Boid* v *Pirthichand Lal Chowdhury (1919) I L R 46 Calc 670 (P C)* explained *Viswanatha Sastri* v *Sitalakshmi Ammal (1921) 13 L W 37* distinguished VENKAYYA v SATHIRAJU (1921) **I L R 44 Mad 714**

——————— Sch I Arts 181 182—

See INJUNCTION **I L R 46 Calc 103**

——————— *Civil Procedure Code (Act V of 1908) s 48—Decree—Execution—Amendment of the decree—Date of judgment the date of the amended decree—Right to apply to make the decree final under Civil Procedure Code (Act V of 1908) O XXXIV r 6—Limitation—Starting point—Procedure* On the 17th November 1897 a decree on an award was passed The decree did not embody the terms of the award Plaintiff applied for execution of the decree It was opposed by the defendants on the ground that the decree did not specify the relief that was granted and was on that account incapable of execution The Court then directed the plaintiff to obtain an amendment On January 28 1899 the decree was amended so as to bring it into consonance with the directions of the award and was dated 28th January 1899 Several applications for execution were made the last of which was dated 2nd December 1909 The lower Court held the application in time and allowed execution to proceed On appeal it was contended (1) that the application was barred so far as it related to two sums of Rs 575 and Rs 6 000 which under the decree were to be paid forthwith that is 17th November 1897 the date on which the decree was passed and which must be taken as the starting point for limitation (2) that the application as a whole was barred by limitation as the application must be treated as an application for a decree final for sale under O XXXIV r 5 of the Civil Procedure Code 1908 and as such it was barred under Art 181 of the Limitation Act 1908 for the right to apply accrued when default in payment was made and that was found to have been in 1902 *Held* (i) that the recovery of the two sums was barred as the decree was to be referred to 17th November 1897 the date of the judgment and not to 28th January 1899 the date of the amended decree (ii) that the application was not barred as the right to apply under O XXXIV, r 5 never accrued to the plaintiff until the Code of 1908 conferred it upon him the plaintiff was therefore entitled to claim that under Art 181 of the Limitation Act 1908 he would have a period of three years from 1st January 1909 when the new Code of Civil Procedure came into force *Amlook Chand Parrack* v *Sarat Chunder Mukerjee I L R 38 Calc 913* distinguished. NARSINGRAO KONHAR INAMDAR v BANDO KRISHNA (1918) **I L R 42 Bom 309**

——————— *Redemption of mortgage—Decree for redemption—Application for time to pay the mortgage amount into Court and recover possession—Limitation—Dekkhan Agriculturists Relief Act (XVII of 1879) s 15B* On the 17th January 1907 the plaintiff obtained a decree in a redemption suit brought under the provisions of the Dekkhan Agriculturists Relief Act 1879. The decree remained unexecuted In 1915 the rights under the decree were assigned by the plaintiff to the respondent who applied to the Court on the 27th September 1915 to be allowed to pay the mortgage amount into Court and get possession of the property under the decree The lower Courts held the application was in time and ordered warrant for possession to issue On appeal to the High Court HEATON and PRATT JJ having differed in opinion referred the following point of law to a third Judge — Is the application or is it not time barred under Art 181 of the Schedule to the Limitation Act the application being regarded as one to extend time for the payment of the mortgage debt *Held* by SHAH J (agreeing with HEATON J but differing from PRATT J) that treating the application as one to extend time for the payment of mortgage debt it was barred under Art 181 of the Limitation Act *Held* further by SHAH J that even if the application was treated as one not merely for the extension of time for the payment of the mortgage debt but for the recovery of possession of the property as in terms it purported to be it was an application for the execution of the decree and as such it was time barred under Art 182 of the Limitation Act VASUDEV VISHNU v GOPAL PARASHRAM (1919) **I L R 43 Bom 689**

——————— Sch I Arts 181 182—

See MORTGAGE **I L R 38 Calc 913**

See MORTGAGE DECREE
I L R 39 Mad 544

LIMITATION ACT (IX OF 1908)—*contd*

——— Sch I Art 182—

See CIVIL PROCEDURE CODE (ACT V OF 1908) ss. 38 39 41 AND 60 ETC
I L R 37 Mad. 231
I L R 39 Bom 250

See EXECUTION OF DECREE
I L R 36 All 482
I L R 37 All 527
s 48 3 Pat L J 285

See LIMITATION (44)
I L R 45 Calc 630

See LIMITATION ACT (XV OF 1877) SCH II ART 179 I L R 39 Bom 20

See LIMITATION ACT 1908 s 20
4 Pat L J 365

See MORTGAGE DECREE
I L R 39 Mad 544

1 ——— *Suit for account—Court fee paid months after date of judgment—Starting point of limitation—Step in aid of execution* For the purpose of Art 182 of the first schedule of the Limitation Act the date on which the Court passed its judgment is the date of the decree and the fact that the Court fee required to be paid in order to validate the decree (which was passed in a suit for account) was not put in till some months later did not give a different starting point for computing the period of limitation. The payment of the Court fee did not constitute a step in aid of execution within the provisions of the Limitation Act BHAJAN BEHARY SHAHA v GIRISH CHANDRA SHAHA (1913)
17 C W N 959

2 ——— *Execution of decree of Presidency Small Cause Court—S 48 Civil Procedure Code (Act V of 1908) not applicable to such Court—Transfer to City Civil Court for execution of a decree more than 12 years old—Art 182 applicable—S 48 applicable to City Civil Court no bar* Although a decree may be transferred by the Court which passed it to another Court for execution the law of limitation applicable for its execution is that applicable to the decrees of the former Court *i e* of the Court which passed them A different rule will lead to anomalous consequences A decree of the Presidency Small Cause Court (Madras) passed in 1896 was transferred for execution to the City Civil Court S 48 Civil Procedure Code not being applicable to the Court of Small Causes *Held* that an application for the execution presented to the City Civil Court in 1910 was *not barred* the article applicable to the cause being Article 182 of the Limitation Act that the fact that s 48 of the Civil Procedure Code was applicable to the City Civil Court was immaterial *Sambasiva Mudaliar* v *Ponchanadu Pillai 17 Mad L J 441 I L R 31 Mad 24 Tincowrie Dawn* v *Debendra Nath Mookerjee I L R 17 Calc 491* and *Jogemaya Dassi* v *Thackumani Dassi I L R 24 Calc 473* followed *Her Highness Ruckmaboye* v *Lulloobhoy Mottichand 5 Moo I A 234* not applicable *Per* CURIAM A transfer of a decree by the Court which passed it to another Court does not make the decree one passed by the latter Court Even after transfer the control of the execution is still left in several respects in the hands of the Court which passed the decree *e g* recognition

LIMITATION ACT (IX OF 1908)—*contd*

of assignment application for execution against legal representative stay of execution issuing precepts and certificate of non execution or partial execution etc SREE KRISHNA DOSS v ALUMBI AMMAL (1913) I L R 36 Mad 108

——— *Part of a decree containing unascertained amount—Execution of whole decree three years after ascertainment—No bar—Policy of Limitation Act as to period of limitation for execution of decree* For the purposes of limitation regarding execution of a decree the decree must be taken as a whole and ordinarily when a portion of the decree is not executable by reason of the fact that the amount due under that portion is left to be determined at a future time limitation begins to run as regards execution of the whole decree only from the time of ascertainment of the amount left undetermined even though it might have been open to the party to have executed the other portions earlier *Hoji Ishfaq Hussain* v *Lala Gouri Sahai 13 C L J 351 I L R 33 All 264 Patnachalam Ayyar* v *Venkatarama Ayyar I L R 29 Mad 46* and *Krishnan* v *Nilakandan I L R 8 Mad 137* followed *Gopal Chandra Manna* v *Gosain Dass Kalay I L R 25 Calc 594 Krishnama Chariar* v *Mangammal I L R 26 Mad 91 Abdul Rahiman* v *Maidin Saiba I L R 22 Bom 50* and *Gouri Sahai* v *Ashfak Hussain I L R 29 All 623* applied *Subramanya Chettiar* v *Alagappa Chettiar I L R 30 Mad 268* and *Nepal Chandra Sadookhan* v *Amrita Lall Sadookhan I L R 26 Calc 888* referred to C M A No 74 of 1913 (unreported) not followed A decree in a second appeal dated 30th July 1906 was as follows —

Appellant (defendant) do pay respondent (plaintiff) Rs 64 11 4 for his costs in this second appeal Rs 78 3 7 for his costs in the memorandum of objections and also his costs in the lower Appellate Court which will be ascertained and taxed by that Court The costs in the lower Appellate Court were ascertained by that Court on 1st December 1906 The application for the execution of the whole decree was made on 7th August 1909 *i e* more than three years after the decree in second appeal but within three years after ascertainment by the lower Appellate Court *Held* that the execution of the decree was not barred The policy of the Limitation Act in the case of execution of decrees is to lay down a simple rule and to treat the decree as a whole except when the decree itself directs that different portions of the relief granted are to be rendered by the defendant to the decree holder at different times *Per* CURIAM Under Art 182 there is only a single starting point where there has been an appeal review or amendment although it might be open for a decree holder to apply for the execution of a part of the decree before proceedings in appeal review or amendment have terminated VYDIANATHA AIYAR v SUBRAMANIA PATTER (1913)
I L R 36 Mad 104

——— *Restitution of property—Application for execution—Civil Procedure Code (Act V of 1908) s 144* An application for restitution under s 144 of the Civil Procedure Code 1908 is an application for execution of a decree and is governed by Art 182 of the Indian Limitation Act 1908 *Kurgedigouda* v *Nirganagouda (1917) 41 Bom 625* followed *Kriyamurdh-*

LIMITATION ACT (IX OF 1908)—*contd*

Roy v *Mahanta Balbhadra Das (1917) 3 P L J 367*, dissented from HAMIDALLI v AHMEDALLI
I L R 45 Bom 1137

———— Sch I Art 182 (2)—

See CIVIL PROCEDURE CODE 1908 s 145
I L R 44 Bom 34

———— —*Revision to the High Court—Order in not giving any fresh starting point for execution of original decree—Effect of reversal or modification in revision— Appeal meaning of in Limitation Act—Letters patent appeal from revisions no appeal* An order of the High Court passed in the exercise of its revisional powers is not an order on an appeal within the meaning of Art 182 sub cl (2) so as to create a fresh starting point for the calculation of limitation *Per* CURIAM Unlike the word appeal in ss 15 and 39 of the Letters Patent the word appeal in the Limitation Act is used in the narrower sense so as to exclude a revision this is clear from the three classifications in the Limitation Act *viz* suits appeals and applications which last include applications for revision If the High Court interfere on revision either there is a decree passed by the High Court which may be executed under the first clause of Art 182 or the case is sent down with a direction to the lower Court to amend its decree The latter appears to be the regular course and in such event there is no room to employ any sub clause other than sub cl *(1)* or the new sub cl *(4)* Where a revision petition is simply dismissed no fresh starting point of limitation arises When the order appealed against cannot give any fresh starting point (*viz* the order in the revision petition) an order in a Letters Patent appeal therefrom cannot give one as if it were an appeal within the meaning of Art 182 *Chappan* v *Moidin Kutti I L R 22 Mad 68 Secretary of State for India in Council* v *British India Steam Navigation Company 15 C W N 848* and *Harish Chandra Acharja* v *Nawab Bahadur of Murshidabad 15 C W N 879* distinguished Judgment of WALLIS J confirmed SUBRAMANIA PILLAI v SEETHAI AMMAL (1913)
I L R 36 Mad 135

———— *Mortgage suit decreed against some defendants and dismissed against others who were allowed costs against plaintiffs—Appeal by the defendants against whom suit decreed effect of an application by the other defendants for execution of decree for costs against plaintiff* The appellant was the plaintiff in a mortgage suit and obtained a decree except against two of the defendants whose property was exempted from liability and whose costs the plaintiff was directed to pay The defendants against whom the suit was decreed appealed The two other defendants applied for execution of their decree for costs against the appellant The lower Court held that limitation ran from the date of the decision of the appeal preferred by the defendants against whom the suit had been decreed *Held* that in dealing with the question of limitation in these cases the Court should see whether the original decree was really one decree or an incorporation of several decrees and whether the appeal against it imperilled the whole decree or not for the execution of which the application is made That the order dismissing the plaintiff's suit with costs as against two of the defendants and the order decreeing it with costs as against the other defendants were not one and the same decree because they were embodied in one formal order There was no appeal against the decree by which the plaintiff was directed to pay costs to two of the defendants and the fact that there was an appeal against an entirely different decree which was recorded in the same document did not affect the question of limitation when no order that could have been passed in that appeal could possibly have affected the decree sought to be executed LAW v BENARASHI PROSHAD CHOWDHURY (1914) **19 C W N 287**

———— *Suit for ejectment—Decree against some defendants on consent and against others on contest—Appeal by contesting defendants—Dismissal of appeal—Execution of decree application for within three years of dismissal of appeal but more than three years after the first Court's decree if barred as against consenting defendants* A suit for ejectment brought against two sets of defendants A and B was decreed on 17th September 1903 against set A upon consent and against set B upon contest the result being embodied in one decree which did not define the respective shares of the two sets of defendants An appeal preferred by set B alone in which they did not make set A parties was not disposed of until 8th May 1908 On 7th May 1910 application was made for execution of the decree against both sets of defendants *Held* that the application was not time barred as against set A, even though set A did not and could not appeal against the decree of 17th September 1903 inasmuch as the appeal of set B was of necessity against the entire decree—there being a chance or risk of the Appellate Court modifying the decree even as against set A That on appeal by the contesting defendants the whole matter was re opened and the decree holders were entitled to the benefit of Art 182 col 3 cl (2) of Sch I of the Limitation Act *Baijul Nath* v *Munni Dei I L R 36 All 350 s c 18 C W N 740* and *Ashfak Hossein* v *Gouri Sahai L P 38 I A 37 s c 15 C W N 370* and *Law* v *Benarashi Proshad 19 C W N 287* referred to *Quære* Whether time runs against the decree holder from the date of the final decree in the appeal irrespective of the question whether the appeal did or did not imperil the decree whereof execution was ultimately sought LOKENATH SINGH v GUJU SINGH (1915) **20 C W N 178**

———— *Decree modified by High Court in revision if gives new start to limitation* A decree was passed on consent by the High Court directing that the plaintiffs do pay to the defendant the price to be ascertained by the first Court of a certain property within one month from the date of the valuation being made and that upon such payment the defendant do convey the property to the plaintiff The first Court made the valuation and embodied it in a supplementary decree An appeal from this decree was rejected by the High Court but in revision the said Court on 14th June 1909 held that no supplementary decree should have been passed and that the decree of the High Court became capable of execution one month after the making of the valuation *viz* on 12th January 1905 The defendant applied for execution of the decree on 23rd August

LIMITATION ACT (IX OF 1908)—*contd*

——— Sch I, Art 182 (2)—*contd*

1911 *Held* that under cl (2) of Art. 182 of the Limitation Act limitation ran from the order in revision passed by the High Court on 14th June 1909 which modified the decree of the first Court and the application was within time CURUPADA HALDAR v TARIT BHUSAN RAY CHOUDHRY (1915) 22 C W N 158

——— *final decree or order —abatement of appeal—date from which limitation runs—Code of Civil Procedure (Act V of 1908) O XXII rr 4 (3) and 11* Art 182 (2) of the Limitation Act 1908 which provides that limitation shall run from the date of the final decree or order of the appellate court does not apply where the appeal has abated by operation of law and not on account of any final decree or order of the appellate court *e g* where the appeal abates by reason of non substitution of any of the parties but there is no order of the appellate court declaring the appeal to have abated — TIKAIT KRISHNA PRASAD SINGH v RAJA WAJIF NARAIN SINGH 5 Pat L J 731

——— *Appeal filed in wrong Court—Order of Court returning appeal for presentation to proper Court— Appellate Court meaning of—Time for executing decree* Where a Court decides that an appeal has been wrongly presented to it and orders a return of it for presentation to the proper Court such an order is neither a final order of the Appellate Court nor a withdrawal of the appeal within art 182 (2) of the Limitation Act Appellate Court in the article means an Appellate Court having jurisdiction to hear the appeal. *Per* OLDFIELD J (SESHAGIRI AYYAR J *doubting*) —A mortgagor in whose favour a decree for redemption has been passed can execute the decree by sale of the mortgaged properties *Govinda Taragan* v *Veeran (1913) I L R 36 Mad 32* followed ABDUL KADIR v SAMIPANDIA TEVAR (1920) I L R 43 Mad 835

——— *Execution of decree —Limitation—Appeal—Appeal field though no appeal lay—Terminus a quo—Civil Procedure Code 1908 s 48* Where an appeal has been filed the twelve years period of limitation referred to in s 48 of the Code of Civil Prodedure 1908 begins to run from the date of the decree in appeal not withstanding that the decree in appeal may be merely a decree dismissing the appeal on the ground that no apppeal lies *Akshoy Kumar* v *Chunder Mohan I L R 16 Cal 250 and Fazlur Rahman* v *Shah Muhammad Khan I L R 30 All 385* referred to RUP NARAIN v SHEO PRAKASH I L R 43 All 405

——— (Sub cls 2 and 3)—*Application for rehearing of suit dismissal for default dismissal of—Appeal— where there has been appeal — Review* The words where there has been an appeal in cl. (2) of art 182 of Sch I to the Limitation Act 1908 mean where there has been an appeal against a decree in the suit and do not include an appeal against an order made on an application to set aside that decree An order dismissing an application for rehearing a suit which has been dismissed for default is not a review of judgment within the meaning of cl (3) of art 182 KARUPAM ZAMINDAR v RAI BRIJRAJ v NAURATAN LAL 3 Pat L J 119

LIMITATION ACT (IX OF 1908)—*contd*

——— *Application for ascertainment of mesne profits—Application for execution Civil Procedure Code (XIV of 1882) s 211 212 and 244* An application for ascertainment of mesne profits is an application for execution of a decree and is governed by Art 182 of the Limitation Act 1908 *Uttamram* v *Kishordas (1899) 24 Bom 149 and Ramana* v *Babu (1912) 37 Mad 186* approved *Puran Chand* v *Roy Radha Kishen (1891) 19 Cal 132* disapproved GANGADHAR v BALKRISHNA SOIROI v I L R 45 Bom 819

——— Sch I Art 182 cl (5)—

See 19 I L R 38 Bom 47

See CIVIL PROCEDURE CODE (ACT V OF 1908) ss 37 38 39 150 I L R 42 Mad 821

See EXECUTION I L R 40 Mad 1069

See GUJARAT TALUKDARS ACT (BOM ACT VI OF 1888) s 29 E I L R 43 Bom 44

See LIMITATION I L R 46 Calc 22

1 ——— *Execution of decree — Step in aid of execution —Substituted service Held* that an application by a decree holder seeking to execute his decree for substituted service on the judgment debtor is an application to take some step in aid of execution within the meaning of art 182 (5) of the first schedule to the Indian Limitation Act 1908 *Pitam Singh* v *Tata Singh I L R 29 All 301* referred to AMINA BIBI v BANARSI PRASAD (1914) I L R 36 All 439

2 ——— *Execution of decree —Limitation—Step in said of execution—Application by decree holder to be put into possession of property purchased by him in execution of his decree Held* that an application by a decree holder to be put in possession of property which he has purchased in execution of his decree is an application to take a step in aid of execution of the decree within the meaning of Art 182 (5) of the first schedule to the Indian Limitation Act 1908 *Moti Lal* v *Mokund Singh I L R 19 All 477* and *Bhaguati* v *Banwari Lal I L R 31 All 82* referred to BABU RAM v PIARI LAL (1919) I L R 41 All 479

3 ——— *Application by decree holder purchaser for delivery of possession if a step in aid of execution Per* NEWBOULD J (CUMING J *contra*) —An application by a decree holder to be put in possession of property purchased by him at a sale in execution of his decree is an application to the Court to take a step in aid of execution within the meaning of cl. 5 of art 182 of the First Schedule of the Limitation Act *Per* CUMING J All steps in execution of a decree which can save limitation must be taken by the decree holder as decree holder and not as auction purchaser ANNADA PROSONNA SEN v SOMORUDDI MIRDHA (1919) 23 C W N 926

4 ——— *Application for execution of decree by transferee—Injunction against transferee—Subsequent application by persons entitled to execute decree—Limitation—Bar whether saved by previous application* An application for execution of a decree made by a transferee of the decree after he has been restrained by injunc

LIMITATION ACT (IX OF 1908)—*contd*

———————— *Execution of decree—Notice on decree holder issued by executing Court forwarded to another for service—Date from which limitation to commence—Filing of affidavit by identifier if step in aid of execution—Limitation if runs from date of application or date of disposal thereof* Where the notice for the execution of a decree is forwarded by the Court to another Court within the local limits of whose jurisdiction the judgment debtor resides the period of limitation under cl 6 of Art 182 of the Limitation Act begins to run from the date when the notice actually left the Court of execution and the fact that in the Court of service it was made over to the peon on a later date cannot extend the period of limitation *Ratan Chand Oswal* v *Deb Nath Barua 10 C W N 303 (1906)* distinguished The date on which an application for execution of a decree is disposed of is not the date from which the period of limitation runs It commences on the date on which the application was actually made The mere filing by the decree holder s identifier of an affidavit of service unaccompanied by any application oral or written does not give a fresh start to limitation *Pran Krishna Das* v *Pratap Chandra Dalos 21 C W N 423 (1917)* distinguished ANNAPURNA THAKURANI *Shebait* KRISHNA PROSAD MITRA v DHIRENDRA NATH CHAKRAVARTY

24 C W N 55

———————— *Execution of decree—Step in aid of execution—Order to issue notice—Actual issue of notice—Time runs from the actual issue* Cl 6 of Art 182 of the first schedule to the Indian Limitation Act 1908 makes the time run not from the date when the Court passes an order to issue the notice but from the date on which the notice is actually issued NILKANTH LAXMAN v RAGHU *bin* MAHADU (1918)

I L R 42 Bom 553

———————— *Execution of decree— Date of issue of notice —Minority—Supervention of a minority after limitation has commenced to run* *Held* on a construction of art 182 (6) of the first schedule to the Indian Limitation Act 1908 that the expression the date of issue of notice must be taken as the date on which the order of the Court directing that notice be issued to the judgment debtor is passed *Held* also that when the decree holders are all of full age at the time of a passing of the decree execution of which is sought and limitation has already commenced to run the subsequent intervention of a minority does not entitle the decree holders to the benefit of s 7 of the Indian Limitation Act 1908 *Bhagat Bihari Lal* v *Ram Nath I L R 24 All 704* referred to *Zamir Hasan* v *Sundar I L R 22 All 199* distinguished KALKA BAKHSH SINGH v RAM CHARAN (1918) I L R 40 All 630

———————— Sch I Art 182 Sub cl 7—

See s 20 4 Pat L J 365

See CIVIL PROCEDURE CODE (1908) O XXI R 2 I L R 38 All 204

———————— *Execution of decree—Decree payable by instalments—Whole decree executable on failure to pay any one instalment—Limitation* When a decree payable by instalments provides that the decree holder shall have discretion or power on default being made in payment of any one instalment to realize the full amount of the decree with interest without waiting for any future instalment to become due *Held* that this does not mean that the decree holder is bound to execute the decree for the whole amount remaining due when default is made but he may still continue to execute the decree by instalments as they become due *Gaya Din* v *Jhumman Lal I L R 37 All 400* and *Chatar Singh* v *Amir Singh I L R 38 All 701* distinguished *Shankar Prasad* v *Jalpa Prasad I L R 16 All 371* referred to LACHHMI NARAIN v SARJU PRASAD (1916) I L R 39 All 230

———————— Sch I, Art 182 Expl I —*Execution of decree—Limitation—Execution of decree of first Court and of decree of Appellate Court for costs carried out separately* In execution of a decree against *S D* attached a decree held by *S* against himself and others for possession of certain property and costs This decree had been the subject of an appeal by *D* and one other of the judgment debtors which had resulted in a decree for costs against the two appellants only The last application for execution of this decree was made in 1907 As to the lower Court s decree *D* made various applications for execution and succeeded in realizing all that was due under it *S* became insolvent and the receiver sold to one *M* whatever rights *S* may have had under either decree but on application for execution made by the purchaser it was held that there was nothing more to realize under the original decree and that execution of the appellate decree was barred by limitation GHULAM MUHI UD DIN KHAN v DAMBAR SINGH (1918) I L R 40 All 206

———————— Sch I Art 182(5)—Expl II— *Proper Court interpretation of—Execution proceedings before Sangli Courts are proceedings before proper Courts—Intermediate application barred by limitation—Subsequent application if made in time and not objected to are not barred* On the 10th September 1907 a decree was passed by the Sangli Court An application was made to that Court to execute the decree but it proved infructuous On the 11th November 1907 a second Darkhast was made to that Court but it was transferred to the Shahapur Court on the 14th idem It resulted in recovery of Rs 11 412 odd on the 24th March 1915 The third Darkhast was presented to the Sangli Court on the 9th August 1915 but it was disposed of on the 10th November of the same year The next Darkhast was made to the Belgaum Court but it was disposed of on the 16th May 1917 The present Darkhast which was filed in the same Court on the 27th August 1917 was objected to as having been barred by limitation on two grounds (1) the proceedings from November 1907 to November 1915 not being before proper Courts did not save limitation (2) the third Darkhast which was filed more than three years after the date of the second Darkhast having been barred by limitation the subsequent Darkhasts also were similarly barred *Held* (over ruling the objections) that the proceedings before the Sangli Court operated to save limitation because those Courts were "proper Courts" within the meaning of Art 182 cl 5 Expl II of the Indian Limitation Act 1908 *Held further* that assuming that the third Darkhast was barred by limitation yet inasmuch as proceedings were taken thereunder until the disposal of the Darkhast

LIMITATION ACT (IX OF 1908)—*contd*

they provided a new starting point for limitation and the subsequent Darkhasts which were in time and not objected to were not affected by the bar of limitation *Nabibhai Vazirbhai v Dayabhai Amulakh (1916) 40 Bom 504* distinguished *Desaiappa v Dundappa (1919) 44 Bom 227* followed. PARBHULING APPA v GURUNTH BALAJI (1920) I L R 45 Bom 453

——— Sch I Arts 182 183—

See s 6 I L R 41 Bom 625

See REVIVOR I L R 43 Calc 903

——— Sch I Art 183—

See CIVIL PROCEDURE CODE 1908 O 45 R. 15 1 Pat L J 385

See LIMITATION I L R 47 Calc 746
I L R 42 Calc 776

——— *Revivor of decree of Original Side of the High Court—Revival of decree on notice to one only of two judgment-debtors not operating as revival against the other* A revivor of a decree of the Original Side of the High Court made on an application for execution against one only of two judgment debtors in the case does not keep the decree alive so as to enable the decree holder to execute it against the other judgment debtor after twelve years from the date of the decree McLAREN v VEERIAH NAIDU (1915)
I L R 38 Mad 1102

——— *Application to enforce Privy Council order—Revivor meaning of* On 22nd January 1915 an application for execution of an Order of Her late Majesty in Council dated the 28th November 1899 was made to a Subordinate Judge to whom the execution proceedings were transferred *Held* that the application was governed by Art 183 of the 1st Schedule of the Limitation Act 1908 according to which an application to enforce an Order of the Sovereign in Council must be made within 12 years from the date on which a present right to enforce the order accrued to some person capable of releasing the right providing *inter alia* that where the Order has been revived 12 years shall be computed from the date of such revivor Where on an application for execution notice is issued under s 216 of the Code of Civil Procedure 1877 or s 248 of the Code of Civil Procedure 1882 and the Court has decided that the decree is still capable of execution and makes an order for execution there has been a revivor within the meaning of the article Where an Order in Council is transmitted to a subordinate Court for execution without any notice being given to the judgment debtors it would not be a revivor of the Order TRIBIKRAM DEO NARAYAN SINGH v BADRI MISSER (1916)
20 C W N 1051

——— *Decree of Original—Side of High Court against two persons jointly—Revivor of decree on notice to one only under s 248 of Civil Procedure Code (XIV of 1882) whether a revivor against the other also* On the Original Side of the High Court an order of revivor under s 248 Civil Procedure Code (XIV of 1882) of a decree against two persons jointly when made on an application for execution against only one of them does not keep the decree alive as against the other so as to enable the decree holder to execute it against that other judgment-debtor more than twelve years from the date of the decree Art 183 of the Limitation Act (IX of 1908) which is applicable to execution of decree passed on the Original Side of the High Court differs in this respect from Art 182 KRISHNAIYAH v GAJENDRA NAIDU (1917) I L R 40 Mad 1127

LIMITATION AMENDMENT ACT (XI OF 1900)

See MADRAS DISTRICT MUNICIPALITIES ACT (IV OF 1884) s 168
I L R 38 Mad 456

See MUNICIPAL COUNCIL
I L R 38 Mad 6

LIMITED COMPANY

See PATNI LEASE
I L R 42 Calc 1029

——— assignment of lease to—

See LESSOR OR LEASE
I L R 48 Calc 176

LIMITED GROUND

See APPEAL I L R 41 Calc 406

LINGAYET PANCH KALAS MARRIAGE

See VATANDAR JOSHI.
I L R 40 Bom 112

LIQUIDATED DAMAGES

See INTEREST I L R 42 Calc 652

LIQUIDATION

See COMPANIES ACT (VI OF 1882) ss 58 147 I L R 40 Bom 134

See COMPANY
I L R 42 Bom 159 264

LIQUIDATOR

——— appointment of—

See COMPANIES ACT (VII OF 1913) ss 207 (ii) 208 I L R 39 All 412

——— charges created by—

See COMPANY I L R 42 Bom 215

——— in possession—

See MORTGAGE I L R 39 Calc 810

——— Release of—

See COMPANY I L R 47 Calc 620

——— *Registered company—Property of the company vesting of—Official Assignee—Distribution of proceeds in Court when governed by Civil Procedure Code (Act V of 1908)—Release—Companies Act (VII of 1913) ss 2 (3) 3 (3) 171 215 232* The Liquidator of a registered company differs in this respect from the Official Assignee in that the property of the company does not vest in him The distribution of the proceeds which had come into Court before an application was made (to the High Court) to pass an order in favour of the liquidator must be governed by the provisions of the Code of Civil Procedure AMRITA LAL KUNDU v ANUKUL CHANDRA DAS (1915)
I L R 43 Calc 586

LIMITATION ACT (IX OF 1908)—*contd*

——————— *Execution of decree—Notice on decree holder issued by executing Court forwarded to another for service—Date from which limitation to commence—Filing of affidavit by identifier if step in aid of execution—Limitation if runs from date of application or date of disposal thereof* Where the notice for the execution of a decree is forwarded by the Court to another Court within the local limits of whose jurisdiction the judgment debtor resides the period of limitation under cl 6 of Art 182 of the Limitation Act begins to run from the date when the notice actually left the Court of execution and the fact that in the Court of service it was made over to the peon on a later date cannot extend the period of limitation *Ratan Chand Oswal* v *Deb Nath Barua 10 C W N 303 (1906)* distinguished The date on which an application for execution of a decree is disposed of is not the date from which the period of limitation runs It commences on the date on which the application was actually made The mere filing by the decree holder s identifier of an affidavit of service unaccompanied by any application oral or written does not give a fresh start to limitation *Pran Krishna Das* v *Pratap Chandra Dalor 21 C W N 423 (1917)* distinguished ANNAPURNA THAKURANI *Shebait* KRISHNA PROSAD MIOTRA *v* DHIRENDRA NATH CHAKRAVARTY

24 C W N 55

——————— *Execution of decree—Step in aid of execution—Order to issue notice—Actual issue of notice—Time runs from the actual issue* Cl 6 of Art 182 of the first schedule to the Indian Limitation Act 1908 makes the time run not from the date when the Court passes an order to issue the notice but from the date on which the notice is actually issued NILKANTH LAXMAN *v* RAGHU *bin* MAHADU (1918)

I L R 42 Bom 553

——————— *Execution of decree— Date of issue of notice —Minority—Supervention of a minority after limitation has commenced to run* *Held* on a construction of art 182 (6) of the first schedule to the Indian Limitation Act 1908 that the expression the date of issue of notice must be taken as the date on which the order of the Court directing that notice be issued to the judgment debtor is passed *Held* also that when the decree holders are all of full age at the time of a passing of the decree execution of which is sought and limitation has already commenced to run the subsequent intervention of a minority does not entitle the decree holders to the benefit of s 7 of the Indian Limitation Act 1908 *Bhagat Bihari Lal* v *Ram Nath I L R 27 All 704* referred to *Zamir Hasan* v *Sundar I L R 22 All 199* distinguished KALKA BAKHSH SINGH *v* RAM CHARAN (1918) I L R 40 All 630

——————— Sch I Art 182 Sub cl 7—

See s 20 4 Pat L J 365

See CIVIL PROCEDURE CODE (1908) O XXI R 2 I L R 38 All 204

——————— *Execution of decree—Decree payable by instalments—Whole decree executable on failure to pay any one instalment—Limitation* When a decree payable by instalments provides that the decree holder shall have discretion or power on default being made in payment of any one instalment to realize the full amount of the decree with interest without waiting for any future instalment to become due *Held* that this does not mean that the decree holder is bound to execute the decree for the whole amount remaining due when default is made but he may still continue to execute the decree by instalments as they become due *Gaya Din* v *Jhumman Lal I L R 37 All 400* and *Chatar Singh* v *Amir Singh I L R 38 All 201* distinguished *Shankar Prasad* v *Jalpa Prasad I L R 16 All 371* referred to LACHMI NARAIN *v* SARJU PRASAD (1916) I L R 39 All 230

——————— Sch I, Art 182 Expl I —*Execution of decree—Limitation—Execution of decree of first Court and of decree of Appellate Court for costs carried out separately* In execution of a decree against *S D* attached a decree held by *S* against himself and others for possession of certain property and costs This decree had been the subject of an appeal by *D* and one other of the judgment debtors which had resulted in a decree for costs against the two appellants only The last application for execution of this decree was made in 1907 As to the lower Court s decree *D* made various applications for execution and succeeded in realizing all that was due under it *S* became insolvent and the receiver sold to one *M* whatever rights *S* may have had under either decree but on application for execution made by the purchaser it was held that there was nothing more to realize under the original decree and that execution of the appellate decree was barred by limitation GHULAM MUHI UD DIN KHAN *v* DAMBAR SINGH (1918) I L R 40 All 206

——————— Sch I Art 182(5)—Expl II— *Proper Court interpretation of—Execution proceedings before Sangli Courts are proceedings before proper Courts —Intermediate application barred by limitation—Subsequent application if made in time and not objected to are not barred* On the 10th September 1907 a decree was passed by the Sangli Court An application was made to that Court to execute the decree but it proved infructuous On the 11th November 1907 a second Darkhast was made to that Court but it was transferred to the Shahapur Court on the 14th idem It resulted in recovery of R 11 412 odd on the 24th March 191_ The third Darkhast was presented to the Sangli Court on the 9th August 1915 but it was disposed of on the 10th November of the same year The next Darkhast was made to the Belgaum Court but it was disposed of on the 16th May 1917 The present Darkhast which was filed in the same Court on the 27th August 1917 was objected to as having been barred by limitation on two grounds (1) the proceedings from November 1907 to November 1915 not being before proper Courts did not save limitation (2) the third Darkhast which was filed more than three years after the date of the second Darkhast having been barred by limitation the subsequent Darkhasts also were similarly barred *Held* (overruling the objections) that the proceedings before the Sangli Court operated to save limitation, because those Courts were " proper Courts with in the meaning of Art 182 cl 5 Expl II of the Indian Limitation Act 1908 *Held further* that assuming that the third Darkhast was barred by limitation yet inasmuch as proceedings were taken thereunder until the disposal of the Darkhast

LIS PENDENS—*concld*

to set aside a mortgage made by *B* to *C* also as invalid, the plea of *B* and *C* that both the sale and mortgage were good was upheld. Pending the suit *D* bought *B*'s rights in a Court auction In a subsequent suit by *C* to enforce the mortgage *Held* that *D*s purchase was not affected by *lis pendens* as there was no contest between *B* and *C* in the previous suit as to the validity of the mortgage and that *D* was entitled to plead that the mortgage was invalid as having no consideration KRISHNAYYA *v* MALLYA (191)
I L R 41 Mad 458

———— *Suit to set aside gift of immovable property—Amendment of plaint—Change of description of property — Amendment not necessarily relating back to date of suit—Mahomedan law—Gift—Circumstances in which a gift becomes irrevocable* In 1908 a Mahomedian lady executed a deed of gift transferring seven items of house property to her daughter in law *S* In February 1912 the donor instituted a suit for revocation of the gift and summons was served upon the defendant in March 1912 In the plaint it was alleged that the gift had in fact been cancelled as regards items 1 6 and 7 of the property comprised in the deed of gift as the result of a decree in litigation between an heir of the donor s husband and the donee and the plaintiff sued for cancellation of the gift in respect of the remaining items including Nos 2 and 5 On the 16th of May 1912 item No 6 (a house) was sold by the donee to *T* for Rs 1 000 On the 21st of May 1912 the plaintiff asked for and obtained leave to amend her plaint by substituting item 6 for item 5 Subsequently to this the defendant added a plea to her written statement to the effect that item No 6 had been sold by her to *T* on the 16th of May 1912 Nevertheless no steps were taken by the plaintiff to bring *T* on to the record as a defendant In this suit a decree was passed in favour of the plaintiff In 191 *T* the vendee of item No 6 sued for possession of the property sold to her impleading as defendants the original donor and *B* her niece to whom the house had been transferred by a deed of gift in April 1914 *Held* that the plaintiff was entitled to succeed The claim was not barred by the doctrine of *lis pendens* inasmuch as an amendment of a plaint such as that obtained by the donor in her suit for revocation of the gift made by her would not relate back to the date of the filing of the suit Moreover according to the Mahomedan law the gift in favour of *S* became irrevocable on the execution of the sale by the donee in favour of *T* WALI BANDI BIBI *v* TABEYA BIBI (1919)
I L R 41 All 534

———— *Alienee made a party to the litigation—Compromise between original parties behind the back of the alienee whether binding on the alienee* An alienee *pendente lite* who has been added as a party to the litigation is entitled to object to a decree being passed in terms of a compromise arrived at between his alienor and the opposite party VEERARAGHAVA REDDI *v* SUBBA REDDI (1920) I L R 43 Mad 37

LIST OF MEMBERS
See COMPANY I L R 45 Calc 490

LITIGATION
———— protection of—
See GRANT I L R 44 Calc 585

LOAN
See CONTRACT ACT s 74
I L R 36 Bom 164

See LIMITATION ACT (IX OF 1908) ARTS 59 60 I L R 39 Mad 1031

LOCAL BOARDS ACT (V OF 1884)
———— ss 54 144 to 147—
See NEGOTIABLE INSTRUMENTS ACT (V OF 1881) ss 5 AND 6
I L R 43 Mad 816

LOCAL BOOKING FORM
See RAILWAY COMPANY
I L R 47 Calc 6

LOCAL CUSTOMS
See RAILWAY RECEIPT
I L R 38 Mad 664

LOCAL FUND CODE
———— r 549—
See NEGOTIABLE INSTRUMENTS ACT (V OF 1881) ss 5 AND 6
I L R 43 Mad 816

LOCAL GOVERNMENT
———— delegation of power to—
See PENAL CODE (ACT XLV OF 1860) ss 188 AND 269
I L R 38 Mad 602

———— order of authorising complaint—
See JURY RIGHT OF TRIAL BY
I L R 37 Calc 467

———— powers of—
See BYE LAWS I L R 47 Calc 547

See JURY RIGHT OF TRIAL BY
I L R 37 Calc 467

———— ratification by—
See SECRETARY OF STATE
I L R 37 Mad. 55

———— Rules of—
See MUNICIPALITY
I L R 47 Calc 426

See PENAL CODE (ACT XLV OF 1860) ss 188 AND 269
I L R 38 Mad 602

LOCAL INQUIRY
See COMPLAINT I L R 46 Calc 804
See LOCAL INSPECTION

LIS PENDENS

See ASSIGNEE OF A MONEY DECREE
I L R 38 Mad 36

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XXI, R 63
I L R 38 Mad 535

See COMPANY I L R 42 Bom 215

See RES JUDICATA.
I L R 36 Bom 189

See SALE FOR ARREARS OF REVENUE
14 C W N 677

See TRANSFER OF PROPERTY ACT s 52

——— Misdescription of Property—

See SPECIFIC RELIEF ACT s 31
20 C W N 36

——— *Civil Procedure Code (Act XIV of 1882) ss 248 311 313—Non service of notice if an irregularity—Sale of* putni mahals *for arrears of rent—Purchase of* putni mahal *by executor of deceased* dar putnidar s *estate in his personal capacity—Application under s 311 for setting aside sale by executor as such and under s 313 by purchaser in personal capacity* D the zamindar of a *putni mahal* sold his interest in the property and then brought a suit against *C* the *putnidar* for the arrears of the *putni* rent that had accrued prior to the sale and obtained a decree Shortly afterwards *D* died after having assigned all his properties including this decree to certain trustees for the payment of his debts The *putni* was then put to sale under Reg VIII of 1819 for non payment of rent and *F* who was the executor to the estate of his deceased father who was *dar putnidar* under *C* deposited the arrears for saving the *dar putni* interest from the effect of the sale and obtained possession as mortgagee The *putnidars* interest in the *putni* was then sold in execution of a money decree and purchased by *S* The trustees appointed by *D* took out execution and the *putni* was fixed for sale *F* instituted a regular suit for a declaration that the decree under execution was not a rent decree and for a perpetual injunction upon the decree holders not to execute the same against the *putni mahal* The suit was decreed by the first Court but dismissed by the High Court on the 8th April 1908 *F* applied for leave to appeal to the Privy Council which was granted on the 30th June 1908 The trustees applied for the sale of the *putni mahal* and they impleaded *C* alone as judgment debtor The sale took place on the 6th July 1908 and the property was purchased by *F* in his personal capacity For setting aside the sale an application under s 311 Civil Procedure Code was made by *S* as also by *F* as executor to the estate of his deceased father *F* also made an application in his personal capacity under s 313 Civil Procedure Code The District Judge allowed these applications and set aside the sale The judgment of the Privy Council was subsequently delivered on the 4th March 1914 and it was held that the suit instituted by *F* should have been decreed *Held* that the facts were sufficient to attract the application of the doctrine of *lis pendens* and the act of the decree holders in bringing about the sale could not prejudice *F* and make the judgment of the Privy Council nugatory

LIS PENDENS—*cont'd.*

Shiulal v *Shambhu I L R 29 Bom 435* distinguished That although *C* the former *putnidar*, had no subsisting interest in the property the decree holders having chosen to treat him alone as the judgment debtor were bound to serve him with notice of the sale though they were not bound to issue notice on *S* the purchaser of the *putni* interest whose suit failed whom they were not willing to treat as the legal representative of *C* and against whom they did not want to execute the decree That non service of notice under s 248 Civil Procedure Code was not a mere irregularity and vitiated the sale *Raghunath Das* v *Sunder Das 18 C W N 1058* followed That the auction purchase of the *putni* was made by *F* in his personal capacity and he was not debarred from applying under s 313 Civil Procedure Code for setting aside the sale MOHARAJ BAHADUR SINGH *v* SURENDRA NARAIN SINGH 1914) 19 C W N 152

——— *Mortgage suit settlement of land by mortgagor with tenants pending suit and before suit—Tenants if acquire raiyati title—Mortgagor s power to grant leases binding on mortgagee* Where pending a mortgage suit the mortgagor settled a number of persons on different portions of the land and the latter got their names entered in the record of rights as tenants in occupation *Held* in a suit by the plaintiff in the mortgage suit who had purchased the mortgaged property in execution of his own decree to recover possession from the tenants that the plaintiff should recover The principle of *Benad Lal Pakrashi* v *Kalu Pramanick I L R 20 Calc 708* should not be extended so as to affect the application of the doctrine of *lis pendens* But tenants who were settled on the land by the mortgagor before the mortgage suit but after the mortgage could keep their lands against the plaintiff upon proof (the burden whereof would be upon them) that the leases in their favour were granted on the usual terms in the ordinary course of management The mortgagor has not anything like a general authority to deal with or affect the mortgaged property during his possession thereof The true position is that he may make a lease conformable to usage in the ordinary course of management MADAN MOHAN SINGH *v* RAJ KISHORI KUMARI (1912)

21 C W N 88

——— *Transfer of Property Act (IV of 1882) s 52—No contest between defendants—Alienation by one defendant to a stranger pending suit whether affected by* lis pendens The rule of *lis pendens* enunciated in s 52 of the Transfer of Property Act does not differ from the English rule and it protects parties to litigation against alienations by their opponents pending suit and the prohibition contained in the section is like *res judicata* inapplicable between parties to the suit who are ranged on the same side and between whom there is no issue for adjudication Any other party in s 52 means any other party between whom and the party alienating there is an issue for decision which might be prejudiced by the alienation *Bellamy* v *Sabine (1857) De G & J 566* and *Faiyaz Husain Khan* v *Prag Narain I L R 29 All 339 345* applied In a previous suit by *A* to set aside a sale made by him to *B* as void and invalid and consequently

LOCAL SELF-GOVERNMENT ACT (BENG III OF 1885)

——— S 2 (2)—*District Board of Manbhum bye laws framed by—Encroachment hanging verandah if is* A hanging verandah would be an encroachment if it amounted to an unlawful gaining upon the right of user by the public That right extends to all forms of traffic which have been usual or customary and also all that are reasonably similar or incidental thereto The question whether a hanging verandah amounted to an encroachment would depend in each case upon the question whether in the particular circumstances it constituted an invasion of the public right of user as described above The public have a right of user not merely on the roadway but also on the side lands attached to the road HIRAJI BALDEO v MANBHUM DISTRICT BOARD (1913)
18 C W N 1120

LOCUS DELICTI

See EMIGRATION **I L R 37 Calc 27**

LOCUS PŒNITENTIÆ

See SECURITY FOR GOOD BEHAVIOUR.
I L R 43 Calc 1128

LOCUS STANDI

——— to maintain suit—

See UNDER TENURE SALE OF
I L R 37 Calc 823

LOCUSTS

——— *Locusts owner's right to drive away from land—Liability to neighbouring owner on whose land they alight for injury done* Visitations of locust even where unpleasantly frequent are in the nature of extraordinary and incalculable events rather than a normal incident like the rise of a river in a rainy season The principles of law laid down preserving or regulating the settled course of a river on which depend many of the rights and benefits of adjacent owners are not necessarily appropriate to the course of an insect pest which has no settled course and which it is the interest of every one concerned to repel or destroy An owner may therefore protect his land from such a visitation and turn away the pest without being responsible for the consequences to neighbouring owners Even if such visitations be regarded as a normal incident of agricultural industry the owner would be entitled as an agricultural operation to drive away the swarm just as he would be entitled to scare crows without regard to the direction they may take in leaving GREYVENSTEYN v HATTINGH (1911) **15 C W N 569**

LORRY (HAND DRAWN)

See PUBLIC CONVEYANCES ACT (BOM ACT VI OF 1863) s 1
I L R 37 Bom 374

LOSS OF GOODS

See CARRIERS **I L R 39 Calc 311**
I L R 41 Calc 80
I L R 47 Calc 1027

See RAILWAYS ACT (IX OF 1890) s 72
21 C W N 1125

See RAILWAY COMPANY
16 C W N 766
I L R 41 Calc 576
I L R 47 Calc 6

See SHAWL MEANING OF
I L R 39 Calc 1029

——— *Notice— Railway administration —Railways Act (IX of 1890) ss 3(6) 77 140—Scope of s 140—Notice to Government through Collector—Limitation Act (IX of 1908) Sch I Arts 30 31 115—Contract—Breach of contract for non delivery* S 140 of the Railway Act has not the effect of cutting down the connotation of the words railway administration as contained in s 3 (6) It only provides for the convenience of the party aggrieved that if he wants to serve the notice on the Manager of the State Railway or the Agent of the Railway Company he must do so in one of the ways mentioned there If the party chooses to give notice to the Government or the Native States or the Railway Company there is nothing in the Act to prevent his doing so the latter alternative may enhance his trouble but it cannot take away his rights *Secretary of State for India v Dip Chand Poddar, I L R 24 Calc 306 Great Indian Peninsular Railway Co v Chandra Bai I L R 28 All 552 Janaki Das v Bengal Nagpur Railway Co 16 C W N 356 Periannan Chetti v South Indian Railway I L R 22 Mad 137 Nadiar Chand Shaha v Wood I L R 35 Calc 194* referred to *Per* CHATTERJEE J Notice served upon the Government through the Collector with months is sufficient to satisfy the requi of s 77 of the Act Art 30 of the 1st to the Limitation Act does not apply plaintiff's case is not for the loss of and where the defendant does not plead any loss *Per* CHATTERJEE J Art to suits against a carrier for compe non delivery of or delay in delivering the time for suit is one year from th the goods ought to be delivered contemplates a suit by the consignee it casts upon the carrier the onus of p the goods hould have b en deli CHATTERJEE J When there is written contract Art 115 of the Sched the case *Mohan Sing Chauan v H I L R 7 Bom 478 Danmull v B Steam Navigation Co I L R 12 Ca* ferred to RADHA SHYAM BASAK v OF STATE FOR INDIA (1916) **I L R 4**
20 C

——— *Damages—Commissioner's liability to deliver goods—Cal Act (Beng III of 1890) ss 112 113 c Sole risk meaning of* In an action ages, by a consignee against the Port sioners of Calcutta for non delivery landed by them —*Held* that the prov

LOCAL INQUIRY—*contd*

———— order based on—

See DISPUTE CONCERNING LAND

I L R 46 Calc 1056

LOCAL INSPECTION AND INVESTIGATION

See PRACTICE

I L R 35 Bom 317

———— by Judge—

See RIGHT OF SUIT

I L R 39 Mad 501

———— *Power of Magistrate to make such inspection during a trial to understand the evidence and to determine the creditability of witnesses —Importing into judgment facts observed on such inspection—Disqualification of Magistrate—Illegality of conviction—Criminal Procedure Code (Act V of 1898) ss 148 202 293 294 556 Explanation* A Magistrate may inspect the place of the occurrence of an offence in cases where he cannot follow or understand the evidence without seeing the features of th land and he does not merely by doing so disqualify himself from trying the case But every possible precaution should be taken that the inspection is only a view of the local features and an immediate report of what he has seen should be placed on the record and laid open to the scrutiny of the parties The Magistrate can use the testimony of his own senses to test the veracity of the witnesses before him as regards the features of the locality but he cannot import into the case other matters of facts which he has himself observed Where the Magistrate did not merely view the place of occurrence for the purpose of following or understanding the evidence and testing it in respect of the features of the locality but imported into his judgment matters of opinion and inference based or circumstances not on the record and did not place thereon the results of his local inspection —*Held* that he had committed an error of jurisdiction which may have materially prejudiced the accused and that the conviction was therefore bad in law The Explanation to s 556 of the Criminal Procedure Code does not directly authorize a Magistrate to make a local inspection but saves his jurisdiction to try a case notwithstanding his having made such inspection or investigation and does not do away with the restrictions under which they should be made *Girish Chunder Ghose v Queen Empress I L R 20 Calc 857 Hari Kishore Mitra v Abdul Baki Miah I L R 21 Calc 920 Queen Empress v Manikam I L R 19 Mad 263 In re Lalji I L R 19 All 302 Satri Dulali v Empress 3 C W N 607 Nidani Mondal v Haboxa Sircar 9 C W N* cccxii and *Lal Behari Saha v Bejoy Sankar Sirdar 10 C W N 181* referred to BABBON SHEIK v EMPEROR (1910) **I L R 37 Calc 340**

———— *Results of inspection not recorded at the time but embodied in the trying Magistrate s judgment—Effect of omission of contemporaneous record—Facts so found not impugned before the Appellate Court—Legality of the conviction—Prejudice* A Magistrate trying a case may view the place of occurrence in order to follow or understand the evidence but he should be careful not to allow any one on either side to say anything to him which might prejudice his mind one way or the other *In re Lalji I L R 19 All 302* approved of There is nothing in the Criminal Procedure Code to prevent a Magistrate from holding a local investigation for the purpose of elucidating any matter in dispute and in so far as it conforms to the provisions of the law of evidence it cannot be excluded He should place on record the results of the local investigation but it is not a positive rule of law that a note thereof must be made on the spot Where the facts established by the local investigation are impugned and there is no contemporaneous record of them the Appellate Court cannot act on them but if they are not impugned the Court cannot exclude them from consideration because there is no such record when the accused is not prejudiced by the irregularity *Joy Coomar v Bundhoo Lall I L R 9 Calc 363* followed *Babbon Sheikh v Emperor I L R 37 Calc 340 Girish Chunder Ghose v Queen Empress I L R 20 Calc 857* distinguished Where the defence suggested that the alleged place of occurrence a mound of earth was not scalable nor large enough to accommodate the number of assailants said to have been present upon which the trying Magistrate inspected the locality and found the facts against the accused but made no separate note thereof on the record of the time though he embodied them in his judgment and they were not impugned before the Appellate Court but it was sought to exclude them on the ground of the *omission of such note* *Held* that the omission of the Magistrate to record a note of the results of the local inspection at the time had not prejudiced the accused and that the conviction was not bad on that ground. ATIAR RAI v EMPEROR (1912) **I L R 39 Calc 476**

———— *Irregularity whether vitiates trial* Where in the course of a trial the Court sent out a Sub Deputy Magistrate to hold a local investigation and examine him as a witness after he had made the investigation *Held* that the sending out of the Sub Deputy Magistrate was at most an irregularity and unless it prejudiced the accused the trial was not vitiated thereby That under the circumstances of the trial the irregularity did not prejudice the defence RADHA MADHAB PAIKRA v EMPEROR (1910)

15 C W N 414

———— *Proper mode of conducting local investigations—Practice* Great care ought to be taken by a Magistrate who holds a local investigation to see that he is not approached by an outsider and that he does not allow his mind to be affected by outside matters The proper thing for him to do is to be attended by a representative of either side for the purpose of identifying the points which are material in the case on the one side or the other and he ought not to allow himself to enter into general conversation with the people of the neighbourhood about the case CHANDRA KUMAR GHOSE v MAHENDRA KUMAR GHOSE (1916)

I L R 44 Calc 711

LOCAL LIMITS

See SECURITY FOR GOOD BEHAVIOUR

I L R 46 Calc 215

LOCAL SELF GOVERNMENT ACT (BENG III OF 1885)

——— S 2 (2)—*District Board of Manbhum bye laws framed by—Encroachment hanging verandah—if is* A hanging verandah would be an encroachment if it amounted to an unlawful gaining upon the right of user by the public That right extends to all forms of traffic which have been usual or customary and also all that are reasonably similar or incidental thereto The question whether a hanging verandah amounted to an encroachment would depend in each case upon the question whether in the particular circumstances it constituted an invasion of the public right of user as described above The public have a right of user not merely on the roadway but also on the side lands attached to the road HIRAJI BALDEO v MANBHUM DISTRICT BOARD (1913)
18 C W N 1120

LOCUS DELICTI

See EMIGRATION I L R 37 Calc 27

LOCUS PŒNITENTIÆ

See SECURITY FOR GOOD BEHAVIOUR. I L R 43 Calc 1128

LOCUS STANDI

——— to maintain suit—

See UNDER TENURE SALE OF I L R 37 Calc 823

LOCUSTS

——— *Locust owner's right to drive away from land—Liability to neighbouring owner on whose land they alight for injury done* Visitations of locusts even where unpleasantly frequent are in the nature of extraordinary and incalculable events rather than a normal incident like the rise of a river in a rainy season The principles of law laid down preserving or regulating the settled course of a river on which depend many of the rights and benefits of adjacent owners are not necessarily appropriate to the course of an insect pest which has no settled course and which it is the interest of every one concerned to repel or destroy An owner may therefore protect his land from such a visitation and turn away the pest without being responsible for the consequences to neighbouring owners Even if such visitations be regarded as a normal incident of agricultural industry the owner would be entitled as an agricultural operation to drive away the swarm just as he would be entitled to scare crows without regard to the direction they may take in leaving GREYVENSTEYN v HATTINGH (1911) 15 C W N 569

LORRY (HAND DRAWN)

See PUBLIC CONVEYANCES ACT (BOM ACT VI OF 1863) s 1
I L R 37 Bom 374

LOSS OF GOODS

See CARRIERS I L R 39 Calc 311
I L R 41 Calc 80
I L R 47 Calc 1027

See RAILWAYS ACT (IX OF 1890) s 72
21 C W N 1125

See RAILWAY COMPANY
16 C W N 766
I L R 41 Calc 576
I L R 47 Calc 6

See SHAWLS MEANING OF
I L R 39 Calc 1029

——— *Notice— Railway administration —Railways Act (IX of 1890) ss 3(6) 77 140—Scope of s 140—Notice to Government through Collector—Limitation Act (IX of 1908) Sch I Arts 30 31 115—Contract—Breach of contract for non delivery* S 140 of the Railway Act has not the effect of cutting down the connotation of the words railway administration as contained in s 3 (6) It only provides for the convenience of the party aggrieved that if he wants to serve the notice on the Manager of the State Railway or the Agent of the Railway Company he must do so in one of the ways mentioned there If the party chooses to give notice to the Government or the Native States or the Railway Company there is nothing in the Act to prevent his doing so the latter alternative may enhance his trouble but it cannot take away his rights *Secretary of State for India v Dip Chand Poddar I L R 24 Calc 306 Great Indian Peninsular Railway Co v Chandra Bai I L R 28 All 552 Janaki Das v Bengal Nagpur Railway Co 16 C W N 356 Periannan Chetti v South Indian Railway I L R 22 Mad 137 Nadiar Chand Shaha v Wood I L R 35 Calc 194* referred to *Per* CHATTERJEE J Notice served upon the Government through the Collector within six months is sufficient to satisfy the requirements of s 77 of the Act Art 30 of the 1st Schedule to the Limitation Act does not apply where the plaintiff's case is not for the loss of the goods and where the defendant does not plead or prove any loss *Per* CHATTERJEE J Art 31 applies to suits against a carrier for compensation for non delivery of or delay in delivering goods and the time for suit is one year from the time when the goods ought to be delivered. This Article contemplates a suit by the consignee and further it casts upon the carrier the onus of proving when the goods should have been delivered *Per* CHATTERJEE J When there is breach of a written contract Art 115 of the Schedule governs the case *Mohan Sing Chawan v Henry Conder I L R 7 Bom 478 Danmull v British India Steam Navigation Co I L R 12 Calc 477* referred to RADHA SHYAM BASAK v SECRETARY OF STATE FOR INDIA (1916) I L R 44 Calc 16
20 C W N 790

——— *Damages—Port Commissioner's liability to deliver goods—Calcutta Port Act (Beng III of 1890) ss 112 113 and 114—Sole risk meaning of* In an action for damages by a consignee against the Port Commissioners of Calcutta for non delivery of goods landed by them —*Held* that the provisions of

LOSS OF GOODS—*contd*

s 113 of the Calcutta Port Act (Beng III of 1890) protected the Port Commissioner and the Port Commissioners were in the absence of any default on their part after the expiration of three days from the date of landing free from liability in respect of the goods PURNA CHANDRA KUNDU v THE PORT COMMISSIONERS OF CALCUTTA (1918) I L R 46 Calc 56

LOTTERY

See CONTRACT ACT (IX OF 1872) s 30 I L R 42 Bom 676

LOVE POTION

See CAUSING DEATH BY RASH OR NEGLIGENT ACT I L R 39 Calc 855

LOWER APPELLATE COURT

——— power of—

See REMAND I L R 43 Calc 148

LUGGAGE

——— undeclared—

See CARRIERS I L R 41 Calc 80

LUNACY

See HINDU LAW—SUCCESSION I L R 38 All 117

See LUNACY ACT 1912 CH V I L R 42 All 504

——— *Jurisdiction of Court as to inquisition— Reside meaning of—Lunacy Act (IV of 1912) ss 37 38 and 62* D a member of a family having its ancestral abode in the district of Pabna ordinarily lived in Calcutta A his wife took him to Pabna and after some time instituted proceedings for his inquisition in lunacy in the Court of the District Judge of Pabna *Held* that D had two places of residence one in Calcutta and the other in Pabna that as resident in Calcutta he was subject to the jurisdiction of the High Court under s 38 of the Indian Lunacy Act (IV of 1912) and the District Court of Pabna had no jurisdiction to entertain the proceedings instituted by A *Orde v Skinner I L R 3 All 91 Srinivasa v Venkata I L R 34 Mad 257* relied on. ANILABALA CHOWDHURANI v DHIRENDRA NATH SAHA (1920) I L R 48 Calc 577 24 C W N 178

LUNACY ACT (XXXV OF 1858)

See HINDU LAW—ADOPTION I L R 40 Mad 660

——— *Scope of enquiry under—Pardanishin lady document executed by under circumstances rendering it inoperative—Suit relating to lunatic s property how to be brought* The Lunacy Act contemplates only the question of lunacy or sanity at the time of the enquiry there is no provision in it that the enquiry shall extend to the ascertainment of the period at which the alleged lunatic first became of unsound mind and

LUNACY ACT (XXXV OF 1858)—*contd*

the finding of the District Judge in the lunacy proceedings did not carry things back further than the enquiry which commenced in November 1906 and notwithstanding the result of that enquiry the burden still rested on the plaintiffs of showing that N was of unsound mind on the 16th September 1906—the date of the execution of the lease That N being of unsound mind at the time of the execution of the lease it created no title in the defendant which barred the plaintiffs right to possession That even if lunacy at the date of the execution of the lease was not established the transaction could not stand as it did not appear that the lease was explained to N a *pardanishin* lady of weak intellect and was understood by her *Held* (as to the contention that apart from lunacy the transaction would be voidable and not void and could not be avoided by any one but N and in a suit to which her manager was a party) that the Receivers were competent plaintiffs even if the lease was not void but voidable That even if a lunatic s manager can sue still there is no established rule of practice in the Calcutta High Court that requires suits relating to the lunatic s property to be brought by him and not by the lunatic On the contrary the Code of Civil Procedure contemplates suits by persons of unsound mind whether so adjudged or not It is true that a person so incapacitated has to sue by a next friend but a next friend is not a party and the absence of a next friend in the present suit was immaterial That in any case as the objection did not affect the merits of the decision of the lower Court under s 99 Civil Procedure Code it was not a ground for reversal of that decision CASSIM MAMOOJI v K B DUTT (1914) 19 C W N 45

——— *Lunacy proceedings under Act XXXIV of 1858 orders reports and statement in if admissible in evidence—Indian Evidence Act (I of 1872) ss 11 13 40 41 42 and 145* Where the question was whether proceedings in lunacy held under Act XXXIV of 1858 are admissible in evidence in a subsequent suit to show that the Defendant was a lunatic at a particular time it was held that the orders and report made under the Act by the Judge before whom the lunacy proceedings were had were admissible in evidence *Hill v Clifford L R (1907) 2 Ch 236* and *Harvey v King L R (1901) A C 601* referred to SRIMATI PADMABATI DASSI v BONOMALI SEAL 24 C W N 378

——— s 14—

——— *Guardian of lunatic powers of—Lease unauthorised for more than five years if void or voidable—Avoiding a lease suit if must be brought for* A lease for more than five years granted by the guardian of a lunatic without the authority of the Court as required by s. 14 of the Lunacy Act is voidable and not void It is not necessary that a suit should be brought to avoid the lease and when the plaintiff on becoming *sui juris* brought a suit for damages in respect of occupation of the land leased electing to treat the lease as a nullity *Held* that there was sufficient avoidance of the lease TARINI KANTA BHATTACHARJEE v BHABANI NATH DEY SARKAR (1912) 16 C W N 762

LUNACY ACT (XXXV OF 1858)—*contd*

——— s 14—*contd.*

——— *Sale by Manager without obtaining order of Court—void—Pre emption—compromise in suit for land—whether a sale—Transfer of Property Act II of 1882 s 54* One J D was judicially decreed in ane and his wife *Mus ammat* K N was appointed his Manager On 19th January 1883 she sold part of her husband s estate to N R father of present defendant respondent M P without obtaining an order of the Court The property sold was already in possession of N I as mortgagee and the mortgage money was part of the consideration for the sale On 10th May 1883 *Mu sammat* I was removed from the Managership and M D the brother of the lunatic was appointed in her place and N I was informed that the sale was invalid but nothing further was apparently done In July 189. there was a dispute in mutation proceedings in connection with the sale but mutation was granted mainly on account of the vendee s possession On 3rd March 1909 the lunatic J D died and on 29th February 1912 his sons who had attained majority instituted a suit against the representatives of N P for the possession of the land sold by their mother on the ground that the sale was void and also for redemption on payment of P 200 The defendants pleaded that the plaintiffs were governed by Muhammadan Law and that the mother was herself a sharer that the suit was barred by limitation and acquiescence that plaintiffs were estopped that they had gained a title by adverse possession and that plaintiffs had benefited by the purchase money But before any evidence was recorded the suit was compromised the plaintiffs giving up all their claims on payment of Rs 500 and the suit was accordingly dismissed In August 1913 a cousin of J D instituted the present suit for pre emption on the basis that the compromise was a sale of the land *Held* that under the provisions of s 14 of Act XXXV of 1858 the sale by *Mu sammat* P N was void and as such could not be ratified. *Held also* that by the compromise the sons of J D did not sell the land they merely abandoned in consideration of Rs 500 their rights to obtain a decision of the Court in a case which was genuinely contested and therefore no claim for pre-emption was competent *Janki v Girja Dat (I L R 7 All 482 F B) Gul Muhammad Khan v Khan Ahmad Shah (29 P R 1893) Tikara Ram v Dharam Chand (45 P R 1895) Krishna Tanhaji v Aba Shetti Patil (I L R 34 Bom 139) Rani Mewa & Kuwar v Rani Hulas Kuwar (L R I I A 157 166 P C) Abdul Wahid Khan v Shalakhi Bibi (I L R 21 Calc 496 P C) Raj Bahadur v Jagrup Pande (42 Indian Cases 37) Mirza Muhammad Abas Ali v A Q ne os (9 O C 86) Khurshaid Ali v Rashid Hus ain (9 O C 331) Laiq Singh v Harnam (20 Indian Cases 351) Miles v New Zealand Alfred Estate Co (32 Ch D 266 291)* referred to also *Pollock* and *Mulla s Indian Contract Act 3rd Edition p 152* MASIHUDDIN v MATU RAM

I L R 1 Lah 109

LUNACY ACT (IV OF 1912)

——— *Procedure—Inquisition as to person alleged to be a lunatic—Court not competent to delegate its judicial functions to an arbitrator or commis ioner—Expert evidence* It is not competent to a Judge who has to conduct an inquisition under the Indian Lunacy Act 1912 into the state of mind of an alleged lunatic to abrogate his own judicial functions and appoint some person by way of an arbitrator or commissioner to make a report on the state of mind of the alleged lunatic If a Judge in these or similar circumstances finds it necessary to have expert opinions to assist him it is his duty to call such persons as may be able to give the evidence needed and examine them upon oath MURLIDHAR PANDE v LACHMI PANDE I L R 43 All 459

——— ss 37 38 and 62—

See LUNACY

I L R 48 Calc 577

——— Before a District Court can institute inquisition under s 62 as to a person possessed of property it must be e tablished not merely that such person is residing with its jurisdiction but also that he is not subject to the jurisdiction of the High Court mentioned in s 37 as the juri diction of the two Courts is not concurrent SRIMATI ANILABALA CHOUDHURANI v DHIRENDRA NATH CHOWDHURY

I L R 48 Calc 577

25 C W N 178

——— s 56—*Guardian of lunatic obtaining District Judge s permission to take out compensation money in deposit with Land Acquisition Judge—Latter if may refu e to pay* Where the natural guardian of a lunatic in whose name a sum of money representing his share of compensation money paid by the Land Acquisition Collector was in depo it in the Court of the Land Acquisition Judge obtained an order from the District Judge under s 56 of Act IV of 1912 for payment to him of a portion thereof for the maintenance of the lunatic the Land Acquisition Judge had no juri diction to refuse the guardian s application for withdrawing the money SATYENDRA NATH DEY v THE SECRETARY OF STATE FOR INDIA (1916) 20 C W N 975

——— ss 62 63— *Relative in s 63 meaning of—Wife s brother if a relative —Inquisition proceedings if may be started on verified petition only without medical certificates* The brother of the wife is a relative within the meaning of cl 11 of s 63 of the Lunacy Act competent to apply to the Court for the initiation of proceedings for inqui ition A District Judge is competent to take action for inquisition on a verified petition unaccompanied by medical certificates which under the rules of the High Court must be filed in such proceedings in the Original Side of that Court MANI LAL SIL v NEPAL CHANDRA PAL (1917) 22 C W N 547

——— s 72—*Lunatic—Appointment of guardian to person of lunatic—Wife of lunatic not necessarily excluded by s 72* S 72 of the Lunacy Act is a kind of warning that particular care should be exercised by the court where a per on is entitled to inherit part of the property of a lunatic and is therefore benefited by his death to see that the appointment of such person as guardian of the person of the lunatic is a beneficial one The section however does not absolutely pre

LUNACY ACT (IV OF 1912)—*contd*

——— s 72—*contd.*

clude such an appointment and in some cases the appointment of for instance the wife of the lunatic may be the most suitable notwithstanding that she is one of the heirs *Fazal Rab v Khatun Bibi I L R 15 All 29* distinguished AMIR KAZIM v MUSI IMRAN (1916)

I L R 39 All 158

——— Chap V—

——— *Lunacy—Requisition as to mental condition of alleged lunatic—Procedure* An inquisition under Chap V of the Indian Lunacy Act once started must be prosecuted to the end Before such an inquisition is ordered there ought to be a careful and thorough preliminary inquiry and the Judge ought to satisfy himself that there is a real ground for an inquisition An application for an inquisition should ordinarily be supported by affidavit or by examination on oath of the applicant and by a medical certificate of some doctor as to the condition of the alleged lunatic It would also be desirable in many cases that the Judge should seek some personal interview with the alleged lunatic with a view to satisfy himself that there is a real ground for supposing the existence of an abnormal mental condition which might bring the person within the Lunacy Act MUHAMMAD YAQUB v NAZIR AHMAD

I L R 42 All 504

LUNATIC

See COSTS I L R 34 Bom 374

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 471 I L R 43 Bom 134

See DECREE I L R 44 Calc 627

See GUARDIAN AD LITEM 14 C W N 258

See LUNACY ACT

——— adoption by—

See LUNACY ACT (XXXV OF 1858) I L R 40 Mad 660

——— *Lunatic suit against—Ex parte decree against unrepresented lunatic—Ignorance of Court as to fact of lunacy—Jurisdiction of Court—Fraudulent purchase by* de facto *manager of lunatic—Rights of purchasers from such fraudulent purchaser* One N was a lunatic not adjudged as such During his lunacy a suit for rent was brought by the landlord for two plots of land belonging to the lunatic and two rent decrees were obtained *ex parte* against the lunatic who was not at all represented in the suit The fact of the lunacy was not brought to the notice of the Court At the auction sales in execution of the decrees the properties were purchased by a person who was the lunatic's *de facto* manager who again sold them to other persons who purchased with full knowledge of the lunacy *Held* that as the lunatic or his estate was not represented in the rent suit the sales under the decrees of the Court therein obtained were nullities and the purchaser acquired no title by his purchase The purchaser being besides a fradulent purchaser who had acted deliberately in breach of his trust as *de facto* manager of the lunatic could not in any case be allowed to take advantage of the Court sales even if they

LUNATIC—*contd*

had been made with jurisdiction As he had no title whatever the purchasers from him also acquired no title *Pasik Lal Datta v Bidhumukhi Dassi, I L R 33 Calc 1094* relied on *Khairaj Mal v Daim I L R 32 Calc 296 315* doubted HAKIMULLA v NABIN CHANDRA BARUA (1914)

18 C W N 1329

LURKING HOUSE TRESPASS

See PENAL CODE (ACT XLV OF 1860) s 456 I L R 37 All 395
I L R 38 All 517

See PENAL CODE ss 443 and 444

——— *Theft—Penal Code (Act XLV of 1860) ss 456 457 380—Trial for house trespass and theft under ss 457 380 Penal Code—Disbelief of story of theft—Finding of intention to make immoral proposals—Conviction under s 456 legality of—Prejudice—Criminal Procedure Code (Act V of 1898) s 238—Necessity of charging intention in cases under s 456—Intention how determined—Rule of construction of decided cases* On a trial for offences under ss 457 and 380 of the Penal Code although the alleged intention to commit theft has failed the Court can under s 238 of the Criminal Procedure Code convict the accused of a minor offence under s 456 of the Penal Code if he has not been prejudiced thereby Where on an allegation that the accused entered the room of a widow at night and committed theft he was tried summarily for offences under ss 457 and 380 and set up the defence of previous intrigue and entry with such intent at her invitation but the Court disbelieved the stories of theft and intrigue and found the entry to have been without her consent and in order to make immoral proposals to her annoyance *Held* that that the conviction under s 456 of the Penal Code was legal and that the accused had not been prejudiced in the circumstances *Jharu Sheikh v King Emperor 16 C W N 696* distinguished *Koilash Chandra Chakrabarty v Queen Empress I L R 16 Calc 657 Balmakand Ram v Ghansamram I L R 22 Calc 391 Premanundo Shaha v Brindabun Chung I L R 22 Calc 994 Emperor v Ishri I L R 29 All 46 Sher Singh v Empress (1883) Punj Rec 14 Lalji Ram v Queen Empress (1898) Punj Rec 12 Ramrang v King Emperor (1902) Punj Rec 18 Queen Empress v Balu (1886) Ratan unrep Cr C 293* approved In determining the question of prejudice the nature of the case made at the trial the evidence given and the line of defence of the accused are matters to be taken into consideration *Reg v Govindas Haridas 6 Bom H C 96* referred to To sustain a conviction under s 456 of the Penal Code it is not necessary to specify the criminal intention in the charge It is sufficient if a guilty intention contemplated by s 441 is proved The intention may be determined from direct evidence or from the conduct of the accused and the attendant circumstances of the case *Balmakand Ram v Ghansamram I L R 22 Calc 391 Rex v Dixon 3 M & S 11* referred to Every judgment must be read as applicable to the particular facts proved or assumed to be proved *Quinn v Leathem (1901) A C 495* followed KARALI PRASAD GURU v EMPEROR (1916) I L R 44 Calc 358

M

MACHINERY

———— hire of—

See HIRE PURCHASE AGREEMENT

I L R 44 Calc [illegible]

———— *Over head* [illegible]

Calcutta Corporation of machinery"—Machinery attached to land if can be taken into account in assessing value of land—Bengal Municipal Act (Beng III of 1884) ss 6 (5) 101 (proviso) Per BEACHCROFT J It cannot be properly said that everything which is contained in a system comes within the description of Machinery Merely because mechanical contrivances are employed in the working of some parts of that system The test to be applied with reference to any particular parts of the system is whether it is essential to or assists in the working of the mechanical contrivance The over head tank of the Calcutta Corporation is nothing more than a building for the storage of water the water so stored being used when the need arises to supplement the amount of water pumped into the mains from the underground reservoir It forms part of the system for supplying Calcutta with water and is filled from the same pumps which pump the supply of water into the mains *Held* by the majority (FLETCHER J dissenting) on the above finding that the tank was not machinery within the third proviso to s 101 of the Bengal Municipal Act 1884 *Chamberlayne* v *Collins 70 L T N S 217 Re Mulley and Finn (1891) W N 64 Kirby* v *Hunslet Union Assessment Committee [1906] A C 43* and *Mersey Docks and Harbour Board* v *Assessment Committee of the Birkenhead Union [1901] A C 175* referred to COSSIPORE CHITPORE MUNICIPALITY *v* THE CORPORATION OF CALCUTTA (1919)

I L R 46 Calc 910

MADRAS ABKARI ACT (MAD ACT I OF 1886)

———— ss 56 64—*Offence under section 56 not by license but by his d pôt writer—Conviction legality of* Ss 56 and 64 of the Abkari Act (Madras Act I of 1886) should be read together and not only the licensee but also the actual offender is liable to prosecution for offences under s 56 of the Act *Re Sudalaimuthu 1 Weir s Cr R 617* followed *Re* MUTHAYA (1915)

I L R 39 Mad 895

MADRAS ACTS

———— 1859 —XXIV

See MADRAS DISTRICT POLICE ACT

———— 1863—X

See MADRAS RELIGIOUS ENDOWMENTS ACT

———— 1864—II

See MADRAS REVENUE RECOVERY ACT

———— 1865—VII

See MADRAS IRRIGATION CESS ACT

See MADRAS WATER CESS ACT

———— 187[illegible]

[illegible]

———— 18[illegible]

[illegible]

———— [illegible] XXI

See MADRAS [illegible]

———— 1884—IV

See MADRAS DISTRICT [illegible] ACT

———— [illegible]—V

See MADRAS LOCAL [illegible] ACT

———— 1886—I

See MADRAS ABKARI ACT

———— 18[illegible]—I.

See MALABAR COMPENSATION FOR TENANTS IMPROVEMENTS ACT

———— 1888—III

See MADRAS CITY POLICE ACT

———— 1889—I.

See MADRAS VILLAGE COURTS ACT

———— 1889—III

See MADRAS TOWNS NUISANCE ACT

———— 1891—I

See MADRAS GENERAL CLAUSES ACT

———— 1894—II

See MADRAS PROPRIETARY ESTATES VILLAGE SERVICE ACT

———— 1895—III.

See (MADRAS) HEREDITARY VILLAGE OFFICES ACT

———— 1896—IV

See MALABAR MARRIAGE ACT

———— 1897—IV

See MADRAS SURVEY AND BOUNDARIES ACT

———— 1900—I

See MALABAR COMPENSATION FOR TENANTS IMPROVEMENTS ACT (MADRAS)

See MALABAR TENANTS IMPROVEMENTS ACT

———— 1900—V

See IRRIGATION CESS AMENDMENT ACT

———— 1902—1

See MADRAS COURT OF WARDS ACT

———— 1903—I

See MADRAS PLANTERS LABOUR

MADRAS ACTS—*concl'd*

———— 1904—III

See MADRAS CITY MUNICIPALITY ACT

———— 1905—II

See MADRAS PORT TRUST ACT

———— 1905—III

See MADRAS LAND ENCROACHMENT ACT

———— 1907—I

See MADRAS MOTOR VEHICLES ACT

———— 1908—I

See MADRAS ESTATES LAND ACT

———— 1914—I

See HINDU TRANSFERS AND BEQUESTS ACT MADRAS

MADRAS CITY MUNICIPAL ACT (MAD III OF 1904)

———— s 120— *Exercising a trade what amounts to* Where a person has a servant at *A* who purchases piece goods there and forwards them to B where they are sold and the profits are earned such person exercises his trade within the meaning of s 120 of the Madras City Municipal Act at B and not at A There may be kinds of business in which the buying of goods is the most important part of the business and in such cases it cannot be said that the profits are earned elsewhere HAJEE SHAIK MEERA ROWTHER *v* THE PRESIDENT OF THE CORPORATION OF MADRAS (1909) I L R 33 Mad. 82

———— ss 121 125 172 and 177—*Right of appeal—Scope of section assessment finality of order of when no objection made within 15 days* Petitioner's name appeared in the classification made under s 121 Madras City Municipal Act of 1904 and he was served with a notice to pay profession tax under s 125 of the Act He did not pay the tax nor did he apply for revision within fifteen days of the notice *Held* that under s 177 the assessment was final and that no appeal lay Profession tax is a matter within the scope of s 172 The first clause of s 172 of the Act of 1904 is wider than the corresponding clause of s 190 of Act I of 1884 S 172 of the Act of 1904 must be construed to mean that all complaints against any tax or toll leviable under Part IV and all applications for revision in respect of any such tax or toll are cognisable by the President and two Commissioners It should not be read so as to limit the complaints and the applications for revision as to the question of classification *Muthusawmy Ayyar J in Davies v President of the Madras Municipal Commission I L R 14 Mad 140 141* not followed *Municipal Council of Cocanada v The Standard Life Assurance Company I L R 24 Mad 205* distinguished VEERARAGHAVELU *v* THE PRESIDENT OF THE CORPORATION OF MADRAS (1910)

I L R 34 Mad. 130

———— s 150— *Kept meaning of—Vehicle under repair is one kept and taxable* Even a vehicle that is under repair and therefore unfit for immediate use is a vehicle kept within the meaning of s 150 (*1*) of the Madras City Municipal Act (*III of 1904*) and so becomes liable to be taxed under that section The word kept is not qualified by the words for hire It is not necessary that the owner should have possession

MADRAS CITY MUNICIPAL ACT (MAD III OF 1904) —*contd*

———— s 150—*contd*

of the vehicle in order to make it taxable KRISHNA ROW *v* MADRAS MUNICIPAL CORPORATION (1916) I L R 40 Mad. 545

———— s 172 177—

See S 121 I L R 34 Mad 130

———— ss 262 and 420—*Re-construction of pandal whether within the section* The re-construction of an old pandal with inflammable materials without the written permission of the President of the Corporation is prohibited by s 262 and is an offence punishable under s 420 of the Madras City Municipal Act (III of 1904) S 262 of the Madras City Municipal Act (III of 1904) was intended to reproduce s 264 of the Madras City Municipal Act (I of 1884) CORPORATION OF MADRAS *v* VARADACHARIAR (1918) I L R 42 Mad. 7

———— s 287— *Final meaning of in s 287 (3)—Standing Committee whether special tribunal or independent body—New additions to building—Whether mandamus or injunction appropriate—remedy to remove them* The plaintiff as the owner of house and premises No 36 in Sirgama Chetty Street in the City of Madras obtained permission from the Municipality of Madras City to execute certain repairs therein The President being of opinion that under cover of the permission granted she had made considerable additions and alterations made a provisional order under s 287 cl (*1*) of the Madras City Municipal Act (III of 1904) directing their removal and subsequently confirmed that order under cl (*2*) of s 287 Any appeal by the plaintiff to the Standing Committee having proved ineffectual she filed a suit in the City Civil Court for the issue of a perpetual injunction restraining the Corporation from demolishing the alleged addition *Held* that when a right and an infringement thereof are alleged a cause of action is disclosed and unless there is a bar to the entertainment of a suit the ordinary Civil Court are bound to entertain the claim and that a suit for injunction will therefore lie *Held* further that the Standing Committee cannot be held to be an independent body or a special tribunal authorised to settle finally disputes as between the tax payers or house owners and the Corporation of which they are the members Instance of Special tribunal pointed out *Bhai Shankar v The Municipal Corporation of Bombay I L R 31 Bom 604* referred to *Held* also that the word "final in s 287 refers to proceedings before the Corporation and is intended to bar an appeal from the Standing Committee to the general body of Commissioners but not to shut out the jurisdiction of the courts The suit was properly brought against the President as he was acting on behalf of the Corporation *Bhdaram Chowdhury v Corporation of Calcutta I L R 36 Calc 671* distinguished. VALLI AMMAL *v* THE CORPORATION OF MADRAS (1912) I L R 38 Mad 41

———— s 366—*Order by Health Officer to remove a patient to isolation hospital—Removal to isolated house—Disobedience of order—Charge under s 269 Indian Penal Code whether sustainable—Duty of prosecution—Essentials of offence— Illegally and unlawfully distinction between* A person who was directed by the Health Officer acting under s 366 of the Madras City Municipal

MADRAS CITY MUNICIPAL ACT (MAD III OF 1904)—*contd*

——— s. 366—*contd*

Act to remove his son to an isolation hospital removed him to an isolated house *Held* that he was not guilty of an offence under s 269 Indian Penal Code Although under s 366 cl (3) of the Madras City Municipal Act a person disobeying an order under the section is to be deemed to have committed an offence under s 269 Indian Penal Code the prosecution must prove not only that there has been disobedience to the order but also that he had unlawfully or negligently done an act which he knew or had reason to believe would spread infectious disease *Colleen v Mathews (1897) I L R 24 Calc. 491* referred to KANDASWAMY MUDALIAR v KING EMPEROR (1920)

I L R 43 Mad 344

——— s 403 (Bye Laws under)—

——— bye law 169—*Exposing for sale unwholesome drink (aerated waters)—Food in bye law not covering drink* The word food in bye law 169 framed under the Madras City Municipal Act (III of 1904) which prohibits the exposing or keeping for sale any article intended for human food which is unwholesome or unfit for human consumption does not include drinks such as aerated waters THE CROWN PROSECUTOR v GANAPATHI IYER (1914) I L R 39 Mad. 362

——— s 413 (Rules under)—*Presidency Magistrate holding an inquiry under rules framed under, not a Court under Charter Act (24 & 25 Vict c 104) s 15—Jurisdiction—The Indian High Courts Act (24 & 25 Vict c 104) s 15* The High Court has no jurisdiction to revise an order passed by a Presidency Magistrate in an inquiry held by virtue of the rules framed by Government under the Madras City Municipal Act (III of 1904) whereby a Magistrate may decide as to the competency or otherwise of a candidate for a Municipal election The Magistrate is not a Court subject to the appellate jurisdiction of the High Court within the meaning of that word in s 15 of the Charter Act (24 & 25 Vict c 104) He is in the position of a referee between the President of the Municipal Corporation and the candidate VIJIARAGHAVALU PILLAI v THEAGORAYA CHETTI (1914)

I L R 38 Mad 581

——— s 420—

See S 202 I L R 42 Mad 7

MADRAS CITY POLICE ACT (III OF 1888)

——— s 75—

I ——— *Place of public resort meaning of—Madras harbour if a place of public resort—Disorderly behaviour in harbour premises if an offence under s 75—Public place meaning of—Right of public to go if necessary—Madras Port Trust Act (II of 1905) bye law 22 meaning of* The Madras harbour is a place of public resort within the terms of s 75 of the Madras City Police Act Though the bye laws passed under the Port Trust Act provide for the prosecution as trespassers of persons who enter the harbour premises without having business there or with the ships lying in the harbour yet the bye laws were not intended to exclude respectable members of the public who have been freely allowed to enter the harbour premises A legal right of access by the public is not necessary to constitute a public place A public place is one where the public go no matter

MADRAS CITY POLICE ACT (III OF 1888)—*contd*

——— s 75—*contd*

whether they have a right to go or not *The Queen v Wellard 14 Q B D 63* followed *Kiston v Ashe [1899] 1 Q B 245* referred to THE CROWN PROSECUTOR v GOVINDARAJULU (1915)

I L R 39 Mad 886

——— *Arrack shop is a place of public resort within the section* The public have a right under the terms of the license granted to arrack shop keepers to resort to such shops and such shops are places of public resort within the meaning of s 75 of the Madras City Police Act III of 1888 THE CROWN PROSECUTOR v MOONOOSAMY (1909) I L R 33 Mad 83

——— s 76—*Breach of condition of licence by servants of licence holder—Conviction not only of licence holder but of servants also propriety of* Under s 76 of the Madras City Police Act only a licensee under the Act is liable to punishment for a breach of the conditions of the licence whether committed by himself or his servants but the section does not contemplate proceedings against the servant or agent of the licensee VEERASAMI MUDALI v KING EMPEROR (1920)

I L R 43 Mad 438

MADRAS CIVIL COURTS ACT (III OF 1873)

——— ss 12, 13—*Court Fees Act (VII of 1870) s 7 (ix)—Suits Valuation Act (VII of 1887)—Suits to redeem—Suit in a Subordinate Court—Valuation for purposes of jurisdiction and court fees same—Court fee rightly payable only on principal debt secured below Rs 5000—Erroneous order of Subordinate Court to pay court fee on total amount payable on redemption above Rs 5000—Appeal—No jurisdiction to the High Court but to the District Court* In a suit for redemption of a mortgage instituted in the Subordinate Judge s Court the amount of the principal of the debt was Rs 3,850 and odd the plaintiffs paid court fees on that amount but the Subordinate Judge erroneously ordered the plaintiffs to pay court fees on the total amount payable on redemption viz Rs 7,218 and odd and the plaintiffs paid the deficient court fees The Subordinate Judge passed a decree in the suit in favour of the plaintiffs The defendants preferred an appeal to the High Court The respondents objected that the appeal did not lie to the High Court but to the District Court *Held* that the amount of the principal debt must be taken as determining the jurisdiction under the Civil Courts Act and consequently that the suit lay in the Subordinate Judge s Court and that the appeal lay to the District Court and not to the High Court The authority of the Full Bench decision in *Zamorin of Calicut v Narayana I L R 5 Mad 284* is unaffected by the Suits Valuation Act (VII of 1887) The order of the Subordinate Judge erroneously levying court fees on the total amount payable on redemption cannot deprive the District Court of jurisdiction to hear the appeal and confer it on the High Court *Vasudeva v Madhava I L R 16 Mad 326* followed *Ijjatulla Bhuyan v Chandra Mohan Banerjee I L R 34 Calc 954* distinguished JAMALUDDIN MARAKAYAR v VIJAYASWAMI (1915)

I L R 39 Mad 447

——— s 13—

See APPEAL I L R 40 Mad. 4

MADRAS CIVL COURTS ACT (III OF 1873) —*contd*

——— s 14—

See COURT FEES ACT 1870 s 7
I L R 39 Mad 873

See JURISDICTION I L R 38 Mad 795

——— *Court Fees Act (VII of 1887) s 7, (v) and (vi)—Suit for pre emption—Valuation of suit for purposes of jurisdiction—Suit originally filed in District Munsif s Court—Return of plaint as beyond its jurisdiction—Presentation of plaint in a Subordinate Judge s Court—Plaint again returned by latter Court—Appeal to District Court against order of District Munsif whether competent—Election of remedies—Civil Procedure Code O XLVIII r 1* The plaintiff instituted the suit in a District Munsif s Court to enforce his right of pre emption in respect of the suit lands which had been mortgaged to him on otti for Rs 3 190 and were sold to some of the defendants for Rs 4 500 The District Munsif returned the plaint for presentation to the proper Court holding that the suit was beyond his pecuniary jurisdiction On the plaint being presented in a Subordinate Judge s Cour it was returned again by that Court which held that the former Court had jurisdiction The plaintiff thereupon preferred an appeal to the District Court against the order of the District Munsif The defendants raised a preliminary objection that the appeal was incompetent and also contended that the District Munsif had no jurisdiction to entertain the suit *Held* that the appeal to the District Court was maintainable although the plaintiff had filed the plaint in the Subordinate Judge s Court in pursuance of the order of the District Munsif *Held* also that the proper valuation of a suit for pre emption is for purposes of jurisdiction in accordance with s 14 of the Madras Civil Courts Act that fixed in the *manner* provided by the Court Fees Act s 7 (5) and that so valued the present suit was within the jurisdiction of the District Munsif s Court NARAYANAN NAIR v CHERIA KATHIRI KUTTY (1918)
I L R 41 Mad 721

——— s 16—

See LIMITATION ACT 1877 SCH II ART 35 I L R 34 Mad 398

See MAPPILLAS OF NORTH MALABAR
I L R 38 Mad 1052

———Marriage—*Hindu Law—Validity of marriage of Hindu with Christian women converted to Hindu religion—Such marriage valid if recognised by the usage of the particular caste though opposed to orthodox Hindu tenets—Suit abatement of—Suit by reversioner for declaration on behalf of all reversioners does not abate on death of plaintiff* A marriage contracted according to Hindu rites by a Hindu with a Christian woman who before marriage is converted to Hinduism is valid when such marriages are common among and recognised as valid by the custom of the caste to which the man belongs although such marriage may not be in strict accordance with the orthodox Hindu religion Under the Hindu system of Law clear proof of usage will outweigh the written text of the Law Under s 16 of Madras Act III of 1873 any proved custom concerning marriage must be upheld Apart from custom such a marriage between parties who do not belong to the twice born classes is valid under Hindu Law It is only

MADRAS CIVIL COURTS ACT (III OF 1873) —*contd*

——— s 16—*contd*

persons who belong to the twice born classes that are enjoined to marry in their own class All other persons must be treated as Sudras and marriages between members of different classes of Sudras are valid Where a caste accepts a marriage as valid and treats the parties thereto as members of the caste the Court will not declare such a marriage null and void. A declaratory suit by a reversioner brought not only on his own behalf but on behalf of the body of reversioners does not abate on the death of the plaintiff MUTHUSAMI MUDALIAR v MASILAMANI (1909) I L R 33 Mad 342

——— s 17—*Original suit tried partly by a District Munsif—Subsequent appointment as Subordinate Judge—Decree passed by successor in the Munsif s Court—Appeal from the decree—Competency of the Subordinate Judge to hear the appeal—Disqualification under the common law and statutory law nature of—Objection when to be taken—Waiver—Mere bias or prejudice ground of disqualification, when—Appropriate remedy* Where a District Munsif tried an original suit in part and was promoted to be a Subordinate Judge and his successor in office as a District Munsif completed the trial of the suit and passed a decree therein and an appeal preferred against the decree was heard and disposed of without objection by the Subordinate Judge who had tried the original suit in part *Held* that the disposal of the appeal by the Subordinate Judge was not legally invalid and ought not to be set aside by the Appellate Court S 17 of the Madras Civil Courts Act introduces a statutory disqualification as regards District and Subordinate Judges but is confined to the case where the appeal to be heard in the Appellate Court is against the decree or order passed by the District or Subordinate Judge himself in another capacity S 17 of the Madras Civil Courts Act does not make any distinction between the Judge being a nominal party or a really interested party The interest which disqualifies a Judge must be pecuniary interest or one which involves some individual right or privilege or it must be an interest arising out of the near relationship of the Judge to a party to the cause Mere bias or prejudice on the part of a Judge does not disqualify him in the absence of a statutory provision Even as regards relationship to a party to the cause a Judge was not under the common law disqualified by such relationship and it is only by statute law that such a disqualification could be imposed on a Judge Under the common law there is no disqualification imposed on a Judge to sit in his own Court in review of his own decision (it is so under the statute law also) or even to review it on appeal in the Appellate Court if he become an Appellate Judge having appellate jurisdiction over the tribunal in which he decided the cause as Original Judge Where there is no statutory or common law disqualification in the Judge of the Court below an Appellate Court should not set aside the judgment of the Lower Court on the mere ground that it might have been swayed by bias or prejudice Even in such a case unless objection was taken before the Judge of the Lower Court itself at or during the trial of the cause to his hearing the suit or appeal the Appellate Court should not interfere except in a strong or clear case of failure of justice in the Lower Court through bias or

MADRAS CIVIL COURTS ACT (III OF 1873)—concld

———— s 17—*contd*

prejudice The appropriate remedy in such cases was for the party to have applied to the proper superior Court to have the case transferred to another Court VENKATAPATHI NAYANIVARU v MAHOMED SAHIB (1913) I L R 38 Mad 571

MADRAS COURT OF WARDS ACT (MAD I OF 1902)

———— s 35—

See HINDU LAW—REVERSIONERS
I L R 40 Mad 871

———— ss 41 37—*Non notification of pecuniary claims as required by s 37 effect of—Cessation of interest whether final—postponement of payment of unnotified claims to notified claim until after continued after cessation of Court of Wards management* The direction contained in s 41 of the Madras Court of Wards Act (II of 1902) to postpone payment of pecuniary claims against a ward of the Court which are not notified to claims notified to the Collector as required by s 37 of the Act applies only to the Court of Wards and not to others authorised to execute decrees under the Civil Procedure Code and that to others in respect of unsecured claims and the direction is not operative after the ward s estate ceases to be under the Court of Wards Hence a mortgage decree against a person which the decree holder failed to notify to the Collector while the person was under the Court of Wards is executable in Civil Courts without any liability to postponement to notified claims after the Court of Wards management ceases But non notification of existence of the claim as required by s 37 entails a final cessation of interest from six months after the notification prescribed in s 37 of the Act except in the event specified in s 35 (*1*) *Depuru Kalappa Reddy* v *Umada Rajah 1 Mad W N 75* considered PUNGA ROW v RAJAH OF KARVETNAGAR (1917)
I L R 41 Mad 503

———— s 49—(*1*)—*Notice of suit—Suit for money is a suit relating to property of a ward* A suit for money is a suit relating to the property of a ward within the meaning of sub s (*1*) of s 49 of Madras Act I of 1902 (Madras Court of Wards Act) and requires a notice of suit under that section A mere *demand for payment* is not a notice of suit VENKATACHELAPATHY v SRI RAJAH B S V SIVA RAO NAIDU BAHADUR (1912)
I L R 37 Mad 283

MADRAS DISTRICT MUNICIPALITIES ACT (IV OF 1884)

See MUNICIPAL COUNCIL
I L R 38 Mad 6

———— s 10—

See RIGHT OF SUIT
I L R 36 Mad 120

———— s 53—*Shipping Company—Ships calling at ports to load and unload goods—Calling at Cocanada for loading goods—Agent at Madras—Sub Agent at Cocanada—Contracts with shippers entered into only by agent at Madras—Company whether trading or carrying on business at Cocanada—Company whether liable to be taxed in Cocanada* Where a shipping company which earned profits by carriage of goods by sea and in the course of its business called at several ports in various parts of the world was in the habit of loading and unloading goods at Cocanada and it appeared that the Company had its principal Agent at Madras who employed a Sub Agent at Cocanada but that all contracts with shippers could be and were entered into only by the Agent at Madras and the Company was assessed by the Municipality of Cocanada to pay tax under s 53 of the District Municipalities Act (IV of 1884) for exercising its trade and carrying on business in Cocanada *Held* that the Company was not exercising any trade or carrying on business in Cocanada so as to be liable to be taxed under s 53 of the Madras District Municipalities Act because the freight earning contracts with the shippers were not entered into at the port of Cocanada *Grainger* v *Gough* [*1896*] *A C 325* and *Lovell and Christmas Limited* v *Commissioner of Taxes* [*1908*] *A C 46* followed MUNICIPAL COUNCIL OF COCANADA v THE CLAN LINE STEAMER LIMITED (1918)
I L R 42 Mad 455

———— ss 53 and 60—*Holds office meaning of M* a District and Sessions Judge whose usual place of business was within the Municipality of *C* resided for sixty days within the Municipality of *K* during the annual recess and during that period did some administrative but no judicial work *Held (a) that M held his office* during that period within the Municipality of *K* within the meaning of s 53 of the District Municipalities Act (IV of 1884) and (*b*) that a payment by him of profession tax for the half year covering the sixty days to the Municipality of K was a lawful payment which would exempt him under s 60 of the Act from liability to pay the tax again for the same half year to the Municipality of *C* *Chairman Ongole Municipality* v *Mounsey I L R 17 Mad 453* distinguished MOBERLY v THE MUNICIPAL COUNCIL OF CUDDALORE (1914)
I L R 38 Mad 879

———— ss 72 and 73—*Theatre unfit for use and unused owing to removal of part of roofing—Exemption from tax* A building cannot be held to be completely demolished or destroyed within section 3 (-) of the Madras District Municipalities Act (IV of 1884) so as to completely exempt it from liability to tax simply because part of its roof is removed for the purpose of effecting repairs and the building is thus rendered unfit for use As a building actually unused it is liable for half the usual tax under section 72 of the Act MUNICIPAL COUNCIL OF TANJORE v KRISHNA PILLAI (1921) I L R 44 Mad 354

———— s 103—

See MORTGAGE I L R 38 Mad 18

———— s 168—

See MUNICIPAL COUNCIL
I L R 38 Mad 6

———— *Adverse possession against Municipality— Lawful encroachment meaning of—Right of Municipality to remove encroachments etc after title barred—Limitation Act (XV of 1877)—Limitation Amendment Act (XI of 1900)* Adverse possession by a person for twelve years before the Limitation Amendment Act of 1900 came into force of some portion of a street vested in a Municipality is sufficient to give the person a clear title as against the Municipality

MADRAS DISTRICT MUNICIPALITIES ACT (IV OF 1884)—*contd*

———— s 168—*contd*

Under s 168 of the District Municipalities Act the Municipal Council is not entitled to remove the projections and encroachments made by a person who has acquired full title to them and to the site on which the encroachments stand by adverse possession for the statutory period *Basavesuara Swami* v *Bellary Municipal Council I L R 38 Mad 6* s c *23 Mad L J 478* distinguished CHAIRMAN MUNICIPAL COUNCIL SRIRANGAM, v SUBBA PANDITIAR (1913) I L R 38 Mad 456

———— ss 172 and 173—

See TORTS I L R 41 Mad 538

———— ss 188 cl (5) and 189—*Application for license to boil paddy—Refusal of license more than thirty days after application—Boiling paddy subsequent to refusal—Charge under s 189 of the Act—Conviction if legal* Where a petitioner applied to the Chairman of a municipality for the continuance of a license for boiling paddy at a certain place during the next financial year but the license was refused more than thirty days after the receipt of the application by the Chairman and the applicant used the place for boiling paddy notwithstanding the refusal *Held* that the petitioner was not guilty of an offence under s 189 of the District Municipalities Act as the place in question should be held to be duly licensed for the financial year for which the license was sought under s 188 cl (5) of the Act *Re* VENKATASUBBAYYA (1916) I L R 40 Mad 589

———— s 191—*No right to farm slaughtering fees—Contract of farming such fees void and unenforceable—Contract Act ss 11 and 23—Powers of Corporations to contract* Farming out by a municipality of its right to collect fees on the slaughter of animals which the municipality is entitled to levy under s 191 of Madras District Municipalities Act (IV of 1884) is unauthorized and *ultra vires* A contract of lease which has the effect of farming out such a right is void and unenforceable under ss 11 and 23 of the Contract Act (IX of 1872) as being beyond the competency of the Municipal Corporation to enter into and therefore prohibited *Held* that any amount due to the municipality under such a contract cannot be recovered Decision of WALLIS J in *Corporation of Madras* v *Musthan Sait* [*C S No 244 of 1907*] *21 Mad L J 788* and *Marudamuthu Pillai* v *Rangasami Moopan I L R 24 Mad 401* applied Halsbury's Laws of England Vol VIII article 805 Corporation's Title referred to *Abdulla* v *Mammod I L R 26 Mad 156* distinguished *Per* CURIAM The right of farming out is not necessary to the exercise of the right of levying as such fees may be naturally and easily collected by Municipal subordinates The fact that the c is an express power to farm out tolls negatives an implied power to farm out other kinds of fees The fact that the Municipal Account Code contains provisions for the farming out of slaughtering fees and other taxes besides tolls is no guide to the interpretation of the Act in this respect *Quære* Whether s 11 of the Contract Act is not exhaustive and does not deal with competency of a corporation to contract? MUNICIPAL COUNCIL KUMBAKONAM v ABBAIS SAHIB (1913) I L R 36 Mad. 113

MADRAS DISTRICT MUNICIPALITIES ACT (IV OF 1884)—*contd*

———— ss 207 and 246 A—*Non-compliance with notice to provide latrines in houses—Duty of Municipality to call upon owners to provide movable receptacles or itself construct latrines before prosecution whether any* It is not obligatory on a Municipality under the Madras District Municipalities Act (IV of 1884) either to call upon a house owner to provide movable receptacles under s 217 of the Act or to construct a latrine itself before prosecuting the house owner under s 264 A for non-compliance with a notice to construct a latrine. An owner cannot be convicted of not providing a latrine in the backyard of his house when there is no backyard to his house THE PUBLIC PROSECUTOR v NARAYANA REDDI AND OTHERS (1918) I L R 42 Mad 57

———— ss 207 264 (a) 278—*Erection of a latrine by a house owner—Nuisance to neighbours—Nuisance avoidable—Injunction—Damages whether sole remedy* The fact that a municipality governed by the Madras District Municipalities Act which is empowered to see that house owners provide latrines in their houses ordered the erection of a latrine in a certain house does not enable the house owner to erect a latrine at a place where it would be a nuisance to his neighbour If he could erect it at any other place where it would not be a nuisance he can be restrained by an injunction to abate the nuisance Award of damages as provided for by s 278 of the Act is not the only remedy RAMA ROW v MARTHA SEQUEIRA (1919) I L R 42 Mad 796

———— ss 216 to 221—*Duty of Municipality to carry night soil from houses to Municipal depots—No rights in the municipality to levy fees from house owners* A Municipality constituted under the Madras District Municipalities Act (V of 1884) has no power to levy fees from owners or occupiers of houses and buildings within the Municipality for carrying night soil and other offensive matter accumulating on their premises from inside those premises to the municipal depots wherever situated such duty being cast on the Municipality by the Act SOUTH INDIAN RAILWAY v MUNICIPAL COUNCIL TRICHINOPOLY (1920) I L R 43 Mad 905

———— s 279—

See RIGHT OF SUIT I L R 35 Mad 373

———— s 287—*Held* that the word final in s 287 refers to proceedings before the Corporation and is intended to bar an appeal from the Standing Committee to the Commissioners but not to shut out the Jurisdiction of the Courts VALLI AMMAL v THE CORPORATION OF MADRAS I L R 38 Mad 41

MADRAS DISTRICT POLICE ACT (MAD XXIV OF 1859)

See UNSETTLED PALAYAM I L R 41 Mad 749

———— s 46— *Threat in asking of—Demand by a police constable of mamul or customary payment whether an offence under the section* A demand by a police constable of a mamul (customary payment made to obtain his favour) is a *threat* within s 46 of the Police Act (XXIV of 1859) and obtaining money by such a threat is an offence under the section THE KING EMPEROR v LAL BAGE (1917) I L R 41 Mad. 465

MADRAS ESTATES LAND ACT (I OF 1908)

See LAND TENURE IN MADRAS

——— *Tender of patta not necessary to recover rent though accrued due prior to the Act—Limitation when begins to run in respect of claim for rent* In a suit for recovery of rent time runs from the time the rent became due according to the terms of the tenancy *Arachalam Chettiar* v *Kadir Pavthan I L R 29 Mad 556* applied *Chinnipalam Rajagopalachari* v *Lakshmi Doss I L R 27 Mad 211* and *Pasupulya Appa Rao* v *Bobba Sriramulu I L R 9 Mad 113* referred to Tender of patta is not a condition precedent to the maintainability of a suit under the Estates Land Act for the recovery of arrears of rent though such rent may have accrued due before the Act came into force *Veerabhadra Raju* v *Atmari Naidu 22 Mad L J 451* followed Even under the Rent Recovery Act (VIII of 1865) the tender of patta was not necessary to complete the landholder's right to rent but was only a condition to be fulfilled if legal proceedings had to be instituted for the enforcement of the landholder's rights *Appa Rao* v *Ratnam I L R 13 Mad 249* followed. *Venkata Narasimha Naidu* v *Seetayya 9 Mad L T 251* and *Javanmal Jitmal* v *Muktabai I L R 14 Bom 516* distinguished *Gopalasawmy Mudali* v *Mukkee Gopalier 7 Mad H C 312* referred to KANTHIMATHINATHA v MUTHUSAMI (1912) **I L R 37 Mad 540**

——— *Lessee whose term has expired whether a landholder under the Act—No power to distrain holding after expiry of lease* The provisions of the Madras Estates Land Act (I of 1908) do not empower a person who was a lessee of an estate to take proceedings after the expiry of his lease to sell the tenant's holding for arrears of rent due for a fasli covered by the period of his lease *Forbes* v *Maharaj Bahadur Singh I L R 41 Calc 926* referred to *Per* SPENCER J — His only remedy is to sue the tenant on his contract for rent *Per* SESHAGIRI AYYAR J —(i) A person to whom arrears are due is a landholder notwithstanding the fact that his estate has terminated (ii) The law does not give him a first charge on the holding or the crops thereon (iii) He can distrain the moveable property or the trees in the holding of the defaulter (iv) He is not entitled to attach the holding SUNDARAM AYYAR v KULATHU AYYAR (1915) **I L R 39 Mad 1018**

——— *Arrears of rent—Transfer of interest in the estate —Suit for recovery of arrears—Revenue or Civil Court—Jurisdiction* The Revenue Court alone has jurisdiction to try a suit for arrears of rent which accrued due to a landholder under the Madras Estates Land Act even though before the date of the filing of the suit plaintiff's interest in the estate had been transferred *Forbes* v *Maharaja Bahadur Singh (1914) I L R 41 Calc 926 (P C)* distinguished *Per* SADASIVA AYYAR J —Even a bare assignee of the arrears of rent from the owner of an estate or a part thereof is a landholder within the meaning of the Act for the purpose of pursuing the remedies of a land holder under the Act VENKATA LAKSHMAMMA GARU v ACHI REDDI (1921) **I L R 44 Mad F B 433**

——— Appellant obtained from Respondents a lease of certain Lanka Lands for 3 years at an annual rent—The lease shewed that the parties anticipated cultivation of the land and there was no clause forbidding sub letting It was further stipulated that at the conclusion of the term the lands were to be dealt with according to the pleasure of the Estate authorities without obtaining any release from the lessees After obtaining the lease the Appellants did not cultivate the lands themselves but sub leased them to cultivating tenants On the termination of the lease the Appellants were served with a notice to quit The Appellants contending that inasmuch as they were cultivating the lands as *raiyats* when the Madras Estates Act of 1908 came into operation the contract of tenancy was entirely superseded by that statute instituted a suit against the Respondents for determination of a fair and equitable rent for the holding leased to them and for a decree directing the Respondents to grant to them a patta in proper terms *Held* that the object of the Madras Estates Act 1908 was to improve the condition and confer new rights and privileges especially upon the occupying cultivators of *raiyati* lands and it would be quite opposed to its policy to confer on middlemen who sub let to occupying and cultivating tenants rights and privileges at all resembling those conferred on occupying cultivators and indeed would result in depriving the latter class of the benefits intended to be conferred upon them The words *izadar* and farmer of rent in sub s 1 s 6 are not synonymous They denote two classes of persons If *izadars* and farmers of rent are *raiyats* at all they are as appears from s 46 non occupying *raiyats* and cannot be converted into *raiyats* with a permanent right of occupancy SURISETTI BUTCHAYYA v SRI RAJAH PARTHA SARATHY APPA ROW **26 C W N 785**

——— s 3 cl (2) (c) (d) & 5—*Landholder—Grantee of a portion of melvaram in an estate a landholder—Cultivating tenant under the grantee a ryot* An alienee of a part of the melvaram due from the lands which form a part of an estate's ryoti lands is a landholder within the meaning of s 3 cl 5 of the Madras Estates Land Act (I of 1908) though what he thus owns may not be an estate under the Act and the tenant holding ryoti land under him for purposes of agriculture is a ryot under the Act hence a suit to eject such a tenant can be brought only in a Revenue Court and Civil Courts have no jurisdiction *Brundavanachandra Harischandra Raja* v *Ramayya 26 Mad L J 600* followed VENKANNA v SRI RAJA RAMA ROW (1914) **I L R 38 Mad 1155**

——— s 3 cl (2) (d) s 8 excep —*Grant of village as inam—Village composed of cultivated lands and waste lands—Grant of melvaram—Tenant of waste lands without occupancy right—Village an estate—Surrender by tenant—No acquisition of kudivaram by inamdar—Suit in ejectment—Jurisdiction of Civil Courts* A village granted as an inam in A D 1748 was comprised at the time of the grant partly of lands under cultivation and partly of waste lands The waste lands were subsequently given by the inamdar for cultivation from time to time to different sets of tenants without occupancy right The inamdar brought the present suit in the Civil Court to eject the tenant whose period of tenancy had expired prior to the suit The defendant contended that the Civil Court had no jurisdiction to entertain the suit

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Held that the village as a whole must be considered to be an estate within the definition of s 3 cl (2) (d) of the Estates Land Act Surrender by a tenant is not one of the modes in which the kudivaram right can be acquired by an inamdar within the terms of the exception to s 8 of the Estates Land Act An inamdar cannot acquire the kudivaram right by surrender from a tenant who had himself no occupancy right in the holding *Held* consequently that the Civil Court had no jurisdiction to entertain the suit VENKATA SASTRULU v SITARAMUDU (1914)

I L R 38 Mad 891

———— The provisions of the Madras Estates Land Act 1908 do not empower a person who was a lessee of an estate to take proceedings after the expiry of his lease to sell the tenant's holding for arrears of rent due for a fasl covered by the period of his lease SUNDARAM AYYAR v KULATHU AYYAR

I L R 39 Mad 1018

———— s 3 (2) (c) and 8—*Meaning of unsettled jagir as distinguished from ordinary inams —Jurisdiction of Civil Courts* A personal grant for subsistence in no way differing from an ordinary *inam* is not an *unsettled jagir* within the meaning of s 3 (2) (c) of the Estates Land Act but an *inam* When the inamdar subsequently to the grant acquires the *kudivaram* interest the case comes under the exception in s 8 of the Act and the Civil Courts have jurisdiction in ejectment SAM v RAMALINGA MUDALIAR (1916)

I L R 40 Mad. 664

———— s 3 (2) (d) —

———— *Tanjore Palace Estate whether an estate —Inam—Resumability not a test* After the annexation of the Tanjore Raj the British Government made an irresumable grant in inam in 1862 to the widows of the last Raja of Tanjore of the revenue due on certain villages commonly called the Tanjore Palace Estate the *kudivaram* in which was vested in other persons namely the actual cultivating tenants of the village *Held* by the Full Bench that the Tanjore Palace Estate was an estate within s 3 (2) (d) of the Madras Estates Land Act (I of 1908) *Semble* A grant to be an inam need not be resumable *Sundaram Ayyar* v *Deva Sankara Bhat* Second Appeal No 2061 of 1913 overruled SUNDARAM AYYAR v RAMACHANDRA AYYAR (1917) I L R 40 Mad 389

———— *Grant in inam of an agraharam by an ancient king—Presumption as to rights conveyed—Agraharam granted whether an estate —Right of agraharamdar to sue in ejectment in Civil Court* There is no presumption in law that the grant of an inam by a Native ruler prior to British rule conveyed only the melvaram (revenue due to the State) *Held* accordingly that a grant of an agraharam in inam made by a Reddi king of Nellore more than 400 years ago and validated under s 15 of Madras Regulation XXXI of 1802 conveyed both the melvaram and kudivaram rights *Held* further that the agraharam was not an estate within s 3 (2) (d) of the Madras Estates Land Act and the agraharamdar was entitled to sue the tenants in ejectment in a Civil Court. SURYANARAYANA v LATANNA 1918)

I L R 41 Mad 1012

MADRAS ESTATES LAND ACT (I OF 1908) —*contd*

———— ss 3 (2) (d) and 8—*One of several inamdars acquiring the entire kudivaram right in an inam village—Lease of lands by such inamdar—Suit for rent in Civil Court—Jurisdiction of Civil or Revenue Court—Exception to s 8 applicability of to cl 1 or 2 of s 8—Strict construction necessity for* Where one of several *inamdars* in an *inam* village having acquired by gift the *kudivaram* right in the whole village and leased fifty cents of land out of the whole village sued to recover rent in a Civil Court on the basis of the lease *held* that the Civil Court had no Jurisdiction to entertain the suit and that the plaint should be returned for presentation to a Revenue Court having jurisdiction The expression the *inamdar* in the exception to s 8 of the Estates Land Act should be read in its strict sense as equivalent only to the owner of the entire interest in the *inam* and the exception should be treated as governing only sub s (*1*) and not sub s (2) of s 8 of the Act RAJACHARI v TIRUMUROOR DEVASTANAM (1918)

I L R 41 Mad 724

———— s 3 cl (*d*) and s 6—*Whole inam village—Minor inams therein—Sarva inam of the temple whole village described as —Landholder meaning of in s 6 of the Act* S 3 sub s (2) cl (*d*) of the Estates Land Act excludes from the definition of estate minor inams i e particular extents of lands in a particular village as contrasted with the grant of the whole village by its boundaries A whole inam village though containing such minor inams is an estate within the meaning of cl (*d*) of the above section Where a village is described as sarva or rent free agraharam of a deity it means that the whole village has been granted to the deity as inam The term landholder in s 6 of the Act need not be a beneficial owner of the estate and includes a receiver appointed to manage the estate NARAYANASWAMI NAYUDU v SUBRAMANYAM (1915)

I L R 39 Mad 683

———— ss 3 (2) (d) and 153—*Inam village if estate —Grant whether carries* melavaram *only or* kudivaram *also—Kudivaram meaning of* The word *kudivaram* literally signifying a cultivator's share in the produce of land as distinguished from the landlord's share which is sometimes designated *melavaram* is a species of tenant right or right of permanent occupancy In a suit by an *Inamdar* of a village holding under a grant made to his ancestor in 1748 to eject tenants who had entered in 1907 under a tenancy agreement which had expired in 1908 the District Judge held that the *inam* village was an estate within the definition in s 3 of the Madras Estates Land Act so that the Civil Court had no jurisdiction to entertain the suit The decision having been affirmed by the High Court *Held* by the Judicial Committee that there is no presumption of law that an *inam* grant of a village particularly if made to a Brahmin is *primâ facie* a grant of *melavaram* right only and does not include the *kudivaram* *Adusumilli Suryanarayana* v *Achuta Pothanna L R 45 I A 209 s c 23 C W N 273 (1918)* followed *Held* on the evidence, that the *inam* grant in this case carried not the land revenue alone but the whole proprietary interest in the property S 153 of the Madras Estates Land Act I of 1908 as amended by s. 8 of Act IV of 1909 had no application to the case UPADRASHTA VENKATA SASTRULU v DIVI SEETHARAMUDU

24 C W N 128

MADRAS ESTATES LAND ACT (I OF 1908) —*contd*

———— s. 3 (2) (d) and 189—*Grant of inam village—Leases by inamdars to tenants—Claim by tenants to rights of occupancy—Presumption as to grant of kudivaram—Suits in Civil Court for ejectment—Estate under Estates Land Act—No evidence of any permanent occupancy rights—Jurisdiction* The appellant was the inamdar of a village consisting of both cultivated and waste lands and he held it under a grant made to his ancestor in 1749 and since confirmed and recognized by the British Government To suits in the Civil Court for ejectment against tenants of waste lands, the defence was that the respondents had permanent rights of occupancy and that as the inam village was an estate under s 3 sub s. (2) cl (d) of the Madras Estates Land Act 1908 the Civil Court had no jurisdiction to entertain the suits. *Held* that since the decision of the Board in *Suryanarayana v Patanna (1918) I L R 41 Mad 1012* (P C) which was decided subsequently to the judgment now appealed from there was no presumption of law that an inam grant of a village did not include the kudivaram Each case must be considered on its own facts and in order to ascertain the effect of the grant resort must be had to the terms of the grant and to the whole circumstances so far as they could now be ascertained *Held* having regard to the facts the terms of the grant the history of the estate and the conclusions to be drawn from the other documentary evidence in the case they were all inconsistent with the existence of any permanent occupancy rights and lead to the conclusion that the inam grant carried not the land revenue alone but the whole proprietary interest in the property The lands in suit therefore were not an estate within the meaning of the Act and s 189 did not apply The Civil Court consequently had jurisdiction to entertain the suits VENKATA SASTRULU *v* SEETHARAMUDU (1920)
I. L. R 43 Mad 166

———— ss 3 (2) (d) (e) and 5 and s 189—*Inamdar and ryot—Suit for rent in a Revenue Court—Revenue Court jurisdiction of—Landholder under s 3 cl (5)—Estate—S 3 cl (2) (d) and (e)—S 189 and sch A No 8—Landholders wider than owner of an estate* An inamdar of a portion of a village where the inam consists only of some of the lands in a village granted by a Zamindar after the permanent settlement is a landholder under s 3 cl (5) of the Madras Estates Land Act though the inam may not be an estate under s 3 cl (2) (d) and (e) of the said Act A suit brought by such an inamdar for arrears of rent against a ryot is cognisable by a Revenue Court under the said Act. The test which is decisive on the question of jurisdiction is whether the plaintiffs are landholders under the Act The term landholder is wider than the expression the owner of an estate and includes every person entitled to collect the rents of any portion of an estate by virtue of any transfer APPALANARASIMHULU *v* SANYASI (1919) I L R 38 Mad. 33

————————*Minor inamdar—Lands granted by zamindar after settlement in permanently settled estate—Whether inamdar a landholder — Whether tenants under him have occupancy rights* Where a zamindar made post settlement inam grant of a portion of a village with both the warams on a permanent kattubadi *Held* (KUMARASWAMI SASTRI J dissenting) such minor inamdar is a "landholder within the meaning of s 3 cl (5) of the Estates Land Act and the tenants have permanent rights of occupancy GADADHARA DAS BAVAJI *v* SURYANARAYANA PATNAIK (1921)
I L R 44 Mad 677

———— ss 3 (5) 192 205—

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XXII r 5
I L R 42 Mad 76

———— ss 3 (7) and 6 — *Final decree' in s 3 cl (7) meaning of Held* by the Full Bench as follows—where an appeal from a decree in ejectment passed under the old law is heard after the commencement of Madras Act I of 1908 (Estates Land Act) the defendant being a ryot in possession of ryot land on such date he is entitled to claim a right of occupancy under s 6 cl (1) of the Act notwithstanding the original decree The words final decree in the last sub clause of s 3 cl (7) mean a decree which is not under appeal or liable to be set aside or modified on appeal *Obiter* CHIEF JUSTICE—It is clear that where a landlord obtains a decree in ejectment before the commencement of the Act and executes it before the commencement of the Act the ryot could not claim the benefit of the first part of s 6 *Obiter* KRISHNASWAMI AYYAR J The final decree of a competent civil Court referred to in the definition of old waste in s. 3 cl (7) is a decree obtained in a proceeding independent of that in which the question of occupancy right is dealt with under s 6 cl (1) or the presumption under s 23 is made The presumption under s 23 applies to all suits or appeals whether pending at the date of the commencement of the Act or instituted thereafter KANAKAYYA *v* JANARDHANA PADHI (1913)
I L R 36 Mad 439

————ss 3 (7) (1) and 6 (1)—*Definition of old waste—At the time of letting meaning of* In a suit in 1910 by a landholder against a tenant who was holding over for ejectment and damages under s 153 of the Estates Land Act it appeared that the land in question was not cultivated before 1901 that it was then leased to a stranger for cultivation for five years ending with June 1906 and that it was thereafter leased by the plaintiff to the defendants for three years ending with June 1909 The defendants contended that they had acquired occupancy rights under s 6 (1) of the Estates Land Act *Held* (i) that the land was ryoti land other than old waste within s 6 (1) and (ii) that the defendants had acquired occupancy rights under s 6 (1) of the Estates Land Act and were not liable to be ejected *Held* further that the words at the time of letting in the definition of old waste in s 3 (7) (1) refer to the creation of the tenure which is in dispute VENKATARATANAM *v* SRI RAJAH APPA RAO BAHADUR (1916) I L R 40 Mad. 529

———————————— *Suit for resumption by a landholder against ryots—First Court s decree before the Act in favour of the landholder—Act coming into force during appeal effect of—Whether Estates Land Act s 6 retrospective—Final decree in s 3 (7) meaning of—Amaram tenure rumalle—Right of resumption when exercisable—Notice to quit—Prescription—No estoppel by receipt of rent—Improvements when tenant entitled to value of—Transfer of

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p operty Act (IV of 1882) ss 51 and 108 (h) Appeal No 174 of 1905 If a tenant knowing that he has not a permanent occupancy right in the land in his possession makes improvements without any hope or expectation in hims lf created or encouraged by the landlord he cannot claim compensation for the value of such improvements Even if the landlord knew that the tenant was making the improvements under a mistaken belief that he had occupancy rights in the land and merely kept quiet without interfering there will be no estoppel against the landlord *I amsden v Dyson I I I H L 129* and *Beni I am v Kundan Lal I L I 26 All 195* followed *Mahaluchmi Ammal v Palani Chetti 6 Mad H C 245* doubted S 51 of the Transfer of Property Act will not apply to the case of a tenant as it cannot be said that he is a person believing in good faith to be absolutely entitled to the land Neither s 108 cl (h) of Transfer of Property Act nor the Hindu Muhammadan law nor Common Law of India is applicable to a case where the tenant without removing the fixtures in the one case or the building erected by him in the other case wants to recover compensation for the improvements effected by him [Where there has been a periodical raisin of the rent due by the tenants and periodical resumptions of the tenants lands by the landlords both of which were submitted to by the tenants without any contest it may be concluded that the tenants have no occupancy rights Lands held under *Amaram* tenure have generally been held to be resumable So far as this Presidency is concerned it would seem to be w ll settled that a person who has lawfully come into possession as a tenant from year to year or a term of years cannot by setting up however notoriously during the continuance of such relation any title advers to that of the landlord inconsistent with the legal relation between them acquire by limitation title as owner of any other title inconsistent with that under which he was let into possession *Seshamma Shettati v Chikaya Hegad I L R 25 Mad 507* followed This doctrine i of doubtful applicability in a case where the landlord has shown by an unequivo al a t that he intends to exercise his option and determine the tenancy even though he may not have succeeded in doing so *Srinivasa Ayyar v Muthusami Pillai I L R 24 Mad 246* referred to It is also well established in this Presidency hat if after the determination of the tenancy the tenant remains in po s ss on as a tr spasser for the statutory period he will by prescription acquire a right as owner of such limited estate as he mi ht pres ribe for A receipt of rent subsequent to a notice to determine the tenancy is consistent with the ca e of either party on the question as to the existence of occupancy right as in any event there would be a liability to pay rent and it is ther fore doubtful if uch a receipt could be relied on as a waiv r of the plaintiff s right to resume *Held* on the facts of the present ca e that there was a determination of the tenancy by a reasonable notice and that there was no assertion of an adverse title for twelve years before the suit so as to entitle the defendants to claim a pres riptive ri ht] (The views enclosed in rectangular brackets were al o stated but are no longer law as a Full Bench compos d of the C J KRISHNASWAMI AYYAR and AYLING JJ decided the contrary in *Kanakayya v Janardhana Padhi I L R 36 Mad 439* on 14th November 1910 This case is now reported for the other points decided in the case which are noted below) [Where during the pendency of an appeal filed by the defendant in a suit brought by a zamindar to eject his tenants the Madras Estates Land Act of 1908 came into force the tenants who were ordered by the decree of the First Court to be ejected cannot take advantage of s 6 of the Act even if that section be assumed to be retrospective as the ryoti lands in respect of which they claimed permanent occupancy rights would be old waste as defined by s 3 cl ( ) of that Act in respect of which before the passing of the Act the zamindar had obtained a final decree of a competent Civil Court negativing the occupancy right] The words final Decree occurring in s 3 cl (7) mean final with reference to the Court which passes the decree a decree is none the less final for the purposes of the section because an appeal was pending when the Act came into operation *Quære* Whether an appeal is a rehearing of the suit within the meaning of the Civil Procedure Code as under the Rules under the English Judicature Act so as to give retrospective effect to a statute passed after the decree of the First Court and during the pendency of the appeal *Quære* Whether s 6 of the Madras Estates Land Act 1908 is in terms retrospective NARASAYYA v RAJA OF VENKATAGIRI (1910)

I L R 37 Mad 1

———— ss 3 (7) 6 23 153 and 157— *Old waste ejectment from—Onus of proving old waste on landlord* A landholder claiming to eject a tenant under s 153 and 157 of Madras Estates Land Act (I of 1908) on the ground that he is a non occupancy ryot of old waste is by s 23 of the Act bound to prove that the land is old waste within the meaning of s 3 cl (7) of the Act If neither sub-cl (1) nor the latter part of sub cl (2) of the definition of old waste would apply to the facts of the ca e the first part of sub-cl (2) cannot be used to prove that the land is old waste as that refers to a state of facts subsequent to the passing of the Act and as s 6 of the Act vested in the tenant in posses ion occupancy right from the date of the passing of the Act in all ryoti lands not being old waste SARAVARAYUDU v VENKATARAJU (1913) I L R 38 Mad 459

———— ss 3 (7) 153 and 157—*Proviso to s 153 effect of— Old waste t rant of—Ejectment from grounds of* The combined effect of s 153 of the Madras Estates Land Act (I of 1908) even as added to by s 8 of Madras Act IV of 1909 and of s 157 of the Estates Land Act is that a ryot of old waste cannot be ejected on the ground of expiry of a term of lease contained in a contract entered into before the Act came into force ATCHAPARAJU v RAJAH VELUGOTI GOVINDA KRISHNAYACHENDRULAVARU (1913) I L R 38 Mad 163

————ss 3 (10) 8 185—*Private land conversion of ryoti into—Proof—Proviso to s 185 nature of* Per WALLIS C J —S 8 of the Estates Land Act does not impose respectively an absolute prohibition of the conversion of ryoti into private land not to be found in the definition or in the section specially dealing with evidence as to what is private land Such a conversion should be proved by every clear and satisfactory evidence The acquisition of kudivaram right in certain

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lands by the landlord and his letting them out as kambattam lands on terms negativing occupancy right with a view to prevent the assertion of such right is not sufficient to convert them into private lands within the meaning of the definition. *Per* SESHAGIRI AYYAR J—Land originally *ryoti* cannot become the private land of the landholder except in the one instance mentioned in the proviso to s 185 of the Act. The proviso is not in the nature of an exception but enacts a rule of substantive law *Mullins* v *Treasurer of Survey* 5 *Q B D* 173 and *Maha Prasad Singh* v *Rama* v *Mohan Singh* *Mad L J* 437 followed ZAMINDAR OF CHELLAPALLI v SOMAYA (1914)

I L R 39 Mad. 341

——— ss 3 (10 and 15) and 6—*Sub* (*1*) *and explanation added by amending Act* (*Madras Act IV of 1909*) *s 3 and s 185 proviso—Conversion of ryoti into private land—Held over in unauthorised possession* The respondents held certain lands under a muchilika dated 28th July 190 given by them to the appellant by which they agreed to hold the lands described as kamatam or private lands until 30th April 1908 for the purpose of cultivation the document expressly providing that it should itself operate as a surrender of the lands at the end of that term The respondents however held over after the expiration of the lease not only without the consent of the appellant but contrary to his wishes and intention and contrary also to the terms of the muchilika and were so holding the lands on and after 1st July 1908 when the Madras Estates Land Act (Mad Act I of 1908) came into force In a suit by the appellant to eject the respondents and recover possession of the lands which he claimed as his private land within the meaning of Madras Act I of 1908 the defence was that they were ryoti lands in which the respondents had occupancy rights under s 6 sub s (1) of the Act and explanation thereto added by the amending Act (Mad Act IV of 1909) There were concurrent findings of fact by the Courts below that the lands were ryoti and that the appellant had not proved that they were his private lands within the proviso of s 185 of the Act of 1908 *Held* that assuming that the respondents had not any permanent rights of occupancy in the lands in suit before the coming into force of Madras Act I of 1908 they obtained such permanent rights of occupancy by the operation of s 6 sub s (*1*) as amended by s 3 of Madras Act IV of 1919 and the suit was rightly dismissed by the Courts in India *Govinda Parama Guruvu* v *Bothasi Dandasi Padhi* 20 *M L J* 598 approved *Kanakayya* v *Janardhana Padhi* *I L R* 36 *Mad* 439 referred to YERLAGADDA MALLIKARJUNA PRASAD NAYUDU v SOMAYYA (1918)

I L R 42 Mad. 400

——— s 3 (10) 19 189—

See RENT I L R 36 Mad. 7

——— s 3 (11)—

See LANDLORD AND TENANT

I L R 42 Mad 702

——— ss 3 (11) 53 189 and Sch A Art 8 —*Suit for cist local cess village cess by an ijaradar —Maintainability only in Revenue Court—Exchange of patta and muchilika not necessary for recovery of rent by suit under Estates Land Act— Ijaradars and Rent definitions of—Article 13 of schedule of the Provincial Small Cause Courts Act* (*IX of 1887*) A suit by an ijaradar of a share of a village governed by the Estates Land Act (Mad Act I of 1908) for recovery of cist local cess and village cess due by a ryot is cognisable by virtue of s 189 and sch A art 8 of the Act only by a Revenue Court and not by a Small Cause Court as all the above items sought to be recovered are by s 3 of the Act included in the term rent and as an ijaradar is according to s 3 (5) of the Act a landholder being entitled to collect rent by virtue of a transfer from the owner No exchange of patta and muchilika is necessary under the Estates Land Act for recovery of rent by suit the same being necessary according to s 53 only in case where the landholder wishes to distrain or sell the ryot s moveables or his holding It is wrong to hold that art 13 of the schedule to the Provincial Small Cause Courts Act (IX of 1887) applies to a suit for land cess or village cess under the above circumstances Second Appeal No 680 of 1910 (unreported) followed TIRUPARAJU GARU v SUBBARAYUDU (1913) I L R 36 Mad 126

——— s 3 (15 & 16)— *Ryoti land — Ryot Rent—Pasture land not ryoti land—Rent for pasturing not rent under the Act—Ss 189 and 77 of the Act—Suit for ejectment and recovery of pasture rent cognisable only by Civil Courts* Land usually fit only for pasturing cattle and not for cultivation i e ploughing and raising agricultural crops is not ryoti land though it may have been old waste and a tenant of such land is not a ryot and any amount agreed to be paid for pasturing cattle is not rent within the definitions of s 3 of the Madras Estates Land Act (I of 1908) hence a suit to eject such a tenant from the land or to recover the amount due for pasturage is cognisable only by a Civil Court and not by a Revenue Court as the jurisdiction of Civil Courts exists in all cases where it has not been expressly taken away RAJA OF VENKATAGIRI v AYYAPAREDDI (1913)

I L R 38 Mad 738

——— ss 4 27 73 143—*Levy of fee (kangavam) for supervision of harvest legality of—Right of landlord to enter land and make experimental harvest —Liability of tenant to pay compensation for loss of crops by theft or cattle—Liability to pay rent for fallow lands in the absence of custom—Right of tenant to obstruct flow of rain water into the landlord's irrigation channel—Liability to pay wet rate when water insufficient—Remission of rent legal right to* Where the landlord is entitled to a share of the produce the levy of a fee (called *kangavam*) by the landlord on the tenant for supervising the harvest in order to protect his interests is not illegal and it is not opposed to s 73 or 143 of the Estates Land Act *Devarasi* v *Raghunatha Row* (*1913*) *Mad W N* 886 *and Karri Peddi Reddy* v *Receiver of Nidadavole and Medur Estate* 18 *Mad L T* 171 followed A landholder entitled to a specific share of the produce is not entitled to enter upon the land and make an experimental harvest of small portion of the land with a view to th the tenant the burden of proving that t the other portions was not qual to experimental harvest A l ndlord is to levy a fee (called *Panchamoti*) as for the loss caused to the crop by et as the not a n

MADRAS ESTATES LAND ACT (I OF 1908 —*contd*

Right of landholder to reliefs under s 151—Bengal Tenancy Act (VIII of 1885) s 23 S 151 of the Madras Estates Land Act gives the landholder a right to sue for any of the reliefs mentioned in cls 1 and 2 thereof only when the holding *as a whole* was rendered substantially unfit for agricultural purposes by the acts of the ryot committed on the whole or any part of the holding *Hari Mohun Misser v Surendra Narayan Singh I L R 31 Calc 718* followed RAMA v ARUNACHALAM (1915) I L R 39 Mad 673

——— s 13 cl (3)—*Improvements at tenants' sole expense—Payment of higher rent therefor for sixty years—Presumption of a binding contract to pay at a higher rate under the Rent Recovery Act—Madras Estates Land Act (I of 1908) s 28—Sadalwar and Mathiri kasuru not illegal cesses within s 143 of the Act Held* by NAPIER and KUMARASWAMI SASTRIYAR JJ (SADASIVA AYYAR J dissenting) that—(i) s 13 cl (3) (Madras Estates Land Act) does not enable a tenant to claim exemption from liability to pay a higher rate of rent for crops raised with the help of improvements made at the tenant's sole expense where the improvements had been effected before the Act came into force and where there had been a binding *contract* entered into between the landlord and the tenant before the passing of the Act for the payment of such *enhanced rent* (ii) the section applies only to contracts and improvements made after the Madras Estates Land Act came into force (iii) the right to levy increased assessments in consequence of improvements effected before the Act being a vested right in the landholder the section cannot be construed so as to operate retrospectively and to defeat the same especially when there is no indication in the section that it is to operate retrospectively and (iv) the rule embodied in s 28 of the Act applies to the increased assessment and makes it binding between the parties *Per* SADASIVA AYYAR and NAPIER *JJ*—Where the higher rate was regularly paid for sixty years even in respect of the improvements effected at the tenants sole expense the Courts could presume a lawful origin for a *contract* to pay like that under the Rent Recovery Act (Madras Act VIII of 1865) *Per* SADASIVA AYYAR *J*—*Sadalwar* (charge for stationery) and *Mathiri kasuru* (straw rent) which were being customarily paid along with the rent for a long number of years form part of the rent and are not additional illegal cesses within s 143 of the Madras Estates Land Act VENKATA PERUMAL RAJA *v* RAMUDU (1914) I L R 39 Mad 84

——— s 19—

See RENT I L R 38 Mad 7

——— s 23—

See S 3 I L R 38 Mad 459

——— s 26—*Suit in a Revenue Court—Contract between previous landholder and tenant as to rate of rent—Rate lower than the lawful rate whether binding on successor—Validity of contract—Jurisdiction of Revenue Court to decide* A Revenue Court exercising jurisdiction under the Madras Estates Land Act is competent to decide all incidental questions the determination of which is necessary for the disposal of the main question arising in the case and in a suit filed to contest the right to sell a holding for arrears of rent under the Act the Revenue Court can decide on the validity of a contract between the landholder's predecessor in title and the tenant as to the rate of rent although the object on to its validity is based on grounds other than those specified in s 26 of the Act *Raja of Pittapore v Sreerama Charyulu* (1911) *Mad W N 30* explained SETHURAMA AYYANGAR *v* SUBBIAH PILLAI (1917) I L R 41 Mad. 121

——— s 27—

See S 4 I L R 40 Mad 640

——— s 28—

See MADRAS ESTATES LAND ACT (I OF 1908) s 13 CL. (3) I L R 39 Mad 84

——— s 40 cl (3)—*Years its meaning of—Swami bhogam whether rent or cess within s 3 cl (11)—Agreement between landlord and tenant for a consolidated grain rent enforceability of* In s 40 cl (3) (*a*) of the Madras Estates Land Act preceding ten years means the ten years preceding the year in which the Collector determines the amount of the commuted rent and not the ten years preceding the year in which the suit is instituted and year' means the year of the lease that is the year for which the landlord is entitled either by custom or contract to claim rent and not the *fasli* or the calendar year *Swami bhogam* is *rent within s 3 cl (11) and is not a cess* Where a fixed grain *pattam* (rent) has been agreed to the arrangement is binding on both the parties and it is not open to the tenant to reopen the same on the ground that certain illegal cesses were included therein When the Revenue Court refuses commutation an appeal lies under Sch A cl 4 of the Act only to the District Collector and not to the District Court and hence no second appeal lies to the High Court from such order of refusal *Jeeatoollah Paramanick v Jugodindro Narain Roy 22 W R 12* followed SIVANU PANDIA THEVAR *v* ZAMINDAR OF URKAD (1917) I L R 41 Mad 109

——— s 42 cl (1) (a) and (b) cl (2)—*Enhancement or alteration of rent—Lease deed—Provision as to payment of rent on excess of area of lands found on measurement—No enhancement or alteration of rent—Previous order of Collector not required—Bengal Tenancy Act (VIII of 1885) ss 52 and 188* The proviso found in cl 2 of s 42 of the Madras Estates Land Act (I of 1908) which requires the order of a Collector before enhancement of rent can be allowed does not apply to the claim of a land holder who sues to recover arrears of excess *tirva* due under a lease deed which contained a provision for payment of *tirva* at a specified rate on the excess lands found on measurement over the areas specified in the lease deed It is only where the landlord wants to enhance the rent basing his claim on the right granted and declared by s 42 cls 1 (*a*) and (*b*) that he should obtain under cl 2 the order of the Collector for such alteration of rent before he could claim the altered rent *Dinatarini Dasi v L P D Broughton 3 C W N 295* and *Rama Chunder Chuckrabutty v Girdhur Dutt I L R 19 Calc 755* followed MANAGER TO THE LESSEES OF THE SIVAGANGA ZAMINDARY *v* CHIDAMBARAM CHETTI (1913) I L R 38 Mad 524

MADRAS ESTATES LAND ACT (I OF 1908) —contd

———— s 46—

See S 1 — 26 C W N 785

———— *Application to Receiver of an estate for conferring occupancy right validity of* An application by a non occupancy ryot under s 46 of the Madras Estates Land Act for the acquisition of occupancy right in an estate can be made only to or against the *owner* of the estate and not to a Receiver in charge of the estate SWAMINATHA ODAYAR v SUNDARAM AIYAR I L R 44 Mad 274

———— s. 52(3)—

See PROCEDURE — I L R 44 Mad 293

———— s 53—

See S 3 — I L R 36 Mad. 126

———— *Distraint for a higher rent than legally due good for the amount legally due* S 3 (?) of the (Madras) Estates Land Act (I of 1908) enables a Collector in a suit to set aside a distraint to the extent of the amount legally due to the landlord by the tenant under the patta tendered by the landlord The application of the clause is not confined to the enforcibility of the proper amount of rent in suits for rent only RAGHUNATHA ROW SAHIB v VELLAMOONJI GOUNDAN (1914) I L R 38 Mad 1140

———— ss 54 and 78, cl (2)—*Tender of patta by a landlord to his tenant at his house—Tenant refusal by—Subsequent affixture of patta to the tenant's house not to his land—Tender validity of—Methods of tender under the Act—Delivery of patta meaning of—Essentials of a valid tender under the Act* Where a patta was offered by a landlord to his tenant at his house but the tenant refused to receive it and thereupon the patta was affixed to the tenant's house but not to the land in his holding *Held* that there was no valid tender of patta to the tenant as required by ss 54 and 78 cl. (2) of the Madras Estates Land Act (I of 1908) An offer of a patta to the ryot is not delivery to him When once an offer of patta is made and refused the tender by delivery cannot be effected and it then becomes necessary to affix the patta to the land in the ryot's holding If this is not done there is no valid tender of patta Meaning of tender and deliver considered CHINNATHAMBIAR v MICHAEL (1913) I. L R 38 Mad 629

———— ss 55 and 146—*Purchaser of occupancy right—Suit for patta in a Revenue Court—Duty of Revenue Court to decide as to title of plaintiff—Rival claimant of such right previously recognised by landlord as transferee—Power and duty of Court to decide in the suit—Proceedings under s 146 effect of—Non joinder of parties—Dismissal of suit—Civil Procedure Code (1 of 1908) O I r 10 cl (2)* The power and duty of a Revenue Court in a suit under section 55 of the Madras Estates Land Act to deal with the rights of the parties before it are not affected by the provisions of s 146 of the Act Where a suit is instituted in a Revenue Court under section 55 of the Act by the purchaser of land from a ryot against the landlord to obtain patta the Court is bound to decide whether the plaintiff is entitled to patta or not if his title is disputed although the landlord might have previously recognized a rival claimant as transferee and issued patta to him on the joint application of the transferor and the transferee In such a suit the rival claimant is only a desirable and not a necessary party even if he were a necessary party the Court should not dismiss the suit for non joinder of such claimant but add him as a party if it thought fit to do so under Order I rule 10 clause (2) Civil Procedure Code which is made applicable to Revenue Courts by s 192 of the Act RAMANATHAN CHETTY v ARUNACHELAM CHETTIAR (1921) I L R 44 Mad 43

———— s 73—

See S 4 — I L R 40 Mad 640

———— s 77—

See S 5 — I L R 42 Mad 114

See S 189 — I L R 39 Mad 239

———— *Madras Local Boards Act (V of 1884) ss 73 and 74—Right of land holder to distrain property of intermediate tenure holder for cess paid* Neither s 77 of the Madras Estates Land Act nor ss 73 and 74 of the Madras Local Boards Act authorizes a land holder to levy distraint against an intermediate tenure holder for recovering any portion of cess collected from the land holder LAKSHMINARASIMHAM PANTULU v RAMACHANDRA MARDARAJA DEO (1912) I L R 37 Mad 319

———— ss 77 and 189—

See CIVIL PROCEDURE CODE 1908 s 102— I L R 44 Mad 697

See MADRAS ESTATES LAND ACT (I OF 1908) s 3 I L R 38 Mad 738

———— s 78—

See S 54 — I L R 38 Mad 629

———— s 91—

See S 189 — I L R 39 Mad 229

———— ss 111 and 118—*Civil Procedure Code O XXI rr 90 and 92—Sale of ryot's holding for arrear of rent—Irregularity in conduct of sale—Application to Revenue Court by landholder to set aside sale—Jurisdiction of Revenue Court—Order setting aside sale—Suit by purchaser in Civil Court for declaration that order is ultra vires and void whether maintainable* When summary proceedings under ss 111 and 118 of the Madras Estates Land Act have been instituted by a landholder for recovery of rent by the sale of a ryot's holding and property has been sold the Revenue Court has no jurisdiction on an application by the landholder to set aside the sale on the ground of irregularity in the publication or conduct of the sale and if such an order is passed the purchaser can institute a suit in a Civil Court for a declaration that the order is ultra vires and void O XXI, r 90 and 92 Civil Procedure Code do not [illegible] sales held under ss 111 and 118 of t[illegible] Estates Land Act JAGANNADHA C[illegible] SATYANARAYANA VARAPRASADA RAO [illegible] I L R [illegible]

———— s 111 et seq—*Sale of* [illegible] *—Suit for declaration of* [illegible] *in a Civil Court* A sui[illegible]

MADRAS ESTATES LAND ACT (I OF 1908) —*contd*

sale of a holding under s 111 *et seq* of the Madras Estates Land Act was void in consequence of the landholder s failure to supply for sale within forty five days as prescribed by s 115 of the Act is maintainable in a Civil Court *Gouse Mohideen Sahib* v *Muthialu Chettiar (1914) Mad W N 55* followed *Doraswamy Pillai* v *Muthusamy Moopan I L R 27 Mad 91* and *Zemindar of Ettayapuram* v *Sankarappa Reddiar I L R 27 Mad 483* referred to S 189 of the Act commented on. CHIDAMBARAM PILLAI v MUTHAMMAL (1914)
I L R 38 Mad 1042

——— s 125—
See S 5 I L R 42 Mad 114

——— ss 131 192, 205—*Civil Procedure Code (Act V of 1908) s 115—Application to Deputy Collector to set aside rent sale on the thirtieth day—Deputy Collector absent on leave—Deposit made two days later—Sale set aside by Deputy Collector without notice to purchaser—Revision petitions to District Collector and Board of Revenue dismissed—Revision petition to High Court competency of—Discretion in exercise of revisional powers—Absence of notice before setting aside sale effect of—General Clauses Act (X of 1897) s 10* An application to set aside a sale held for arrears of rent was made to the Deputy Collector under s 131 of the Madras Estates Land Act and the deposit therein required tendered on the last day allowed by that section the Deputy Collector being absent on leave the petitioner was asked by the clerk to come two days later on which day the Deputy Collector received the deposit and set aside the sale without giving notice to the purchaser The latter presented petitions to the District Collector and the Board of Revenue respectively to revise the order under s 205 of the Act the petitions being dismissed the purchaser filed a revision petition to the High Court The respondent objected that no revision lay to the High Court and that as the sale was properly set aside the High Court should not interfere in revision *Held* that the revision petition to the High Court was competent because s 192 of the Madras Estates Land Act renders s 115 of the Civil Procedure Code applicable to all suits appeals and other proceedings under the Act even though s 205 thereof gave a power of revision to the Board of Revenue and the District Collector but where the petitioner had previously applied to the revenue authorities and failed the High Court would decline to exercise its discretionary power in revision unless it was imperatively called upon to do so to prevent miscarriage of justice that as the deposit was not made within time owing to the absence of the Deputy Collector and not the default of the petitioner it was competent to the former to receive the deposit on the next open day under general principles of law embodied in s 10 of the General Clauses Act and set aside the sale *Shooshee Bhushan Rudro* v *Gobind Chunder Roy I L R 18 Calc 231* followed that assuming that the failure to give notice to the purchaser vitiated the whole proceedings the High Court will not exercise its revisional powers on that ground alone and that the order setting aside the sale was proper as no valid objection was or could be raised by the petitioner even when opportunity was given to him RAMASAMI GOUNDAN v KALI GOUNDAN 1918)
I L R 42 Mad 310

MADRAS ESTATES LAND ACT (I OF 1908) —*contd*

——— s 132—
See S. 5 I L R 42 Mad. 114
I L R 43 Mad. 786

——— s 133—
See S 5 I L R 42 Mad 114

——— s 134—
See S 189 I L R 39 Mad. 239

——— s 143—
See S 4 I L R 40 Mad 640
See LANDLORD AND TENANT
I L R 42 Mad. 197

——— s 146—
See S 55 I L R 44 Mad 43

——— *Second crop of paddy raised by ryot with landlord's water—Landlord s right to extra rent—Usage or contract disentitling landlord to extra rent—Proof of—Burden of proof on tenant—Heir of registered pattadar—Right to be recognized as ryot—Defaulter under the Act meaning of—Mere receipt of rent from a person whether landlord bound to accept as ryot* The landlord is *primâ facie* entitled to claim extra rent for second crop of paddy raised with the landlord s water by the tenant on his wet holding in the absence of proof of an established usage or an express or implied contract disentitling the landlord to the same the burden of proving such usage or contract being on the tenant The landlord is bound to recognize the heir of the registered pattadar as the ryot under the Madras Estates Land Act in the place of the deceased pattadar and if a suit under the Act is instituted by a person claiming as heir to be recognized as the ryot the question whether he is the heir or not must be determined by the Court and if the heirship is established or admitted the suit must be held to be competent Mere receipt by the landlord of the rent due upon the holding from any person cannot bind him to recognize the latter as the ryot *Defaulter* in the Estates Land Act denotes only the man who is the registered pattadar or his heir or the person whom the landholder has become bound to recognize as the ryot under s 146 of the Act MIDNAPORE ZEMINDARY CO LTD v MUTHAPPUDAYAN (1921)
I L R 44 Mad 534

——— s 151—
See S 9 I L R 37 Mad 432
See S 11 I L R 39 Mad 673

——— s 153—
See S 3 I L R 38 Mad 163 453
24 C W N 129
See S 8 I L R 38 Mad 843

——— ss 153 and 157—*Suit in Revenue Court to eject non occupancy ryot of old waste on expiry of registered lease for more than five years granted before the Estates Land Act—Jurisdiction—Mesne profits jurisdiction of Revenue Court to grant* A suit is maintainable in a Revenue Court under ss 153 and 157 of Madras Estates Land Act to eject a non occupancy ryot of old waste on the expiry of the term of a registered lease or more than five years though granted before the commencement of the Estates Land Act *Atchutaraju*

MADRAS ESTATES LAND ACT (I OF 1908)
—*contd*

v *Rajah V G Krishnayachandralu Varu I L R 38 Mad. 193* not followed. A Revenue Court can award mesne profits against persons in unlawful possession of lands holding over beyond the period of their lease. JAMPANA SOMADU v ZAMINDAR OF MIRZAPURAM (1918) I L R 42 Mad. 315

——— ss 155 and 192 (e)—*Set-off of money allowances against claim for rent* Except in the case provided for by s. 155 a tenant has no right under the Madras Estates Land Act to set off amounts due to him from the landholder against a demand for rent RAJA OF RAMNAD v VENKATA RAMA AIYAR (1920) I L R 43 Mad 69

——— s 157—

See S 3 I L R 38 Mad 163 459

See S 8 I L R 38 Mad 843

See S 9 I L R 37 Mad 432

——— s 163—

See S 8 I L R 38 Mad. 843

——— ss 164 to 167—*Officer preparing record of rights under—Criminal Procedure Code (Act V of 1898) s 476 not a Court within the meaning of* A revenue Officer preparing a record of rights under ss 164 167 of the Madras Estates Land Act is only discharging an executive function of Government and is not a Court within the meaning of s 476 of the Code of Criminal Procedure *Re* HANUMANTHA RAO (1915) I L R 39 Mad. 414

——— s 185—

See s 3

See EVIDENCE I L R 36 Mad. 168

——— s 189—

See S 3 I L R 36 Mad. 7 126
I L R 38 Mad. 33 738
I L R 43 Mad. 166

——— *Civil Procedure Code (V of 1908) s 11—Res Judicata—Suit to enforce acceptance of patta—Decision by Revenue Court—Decision as to occupancy right or title to land claimed as part of the holding—Subsequent suit in a Civil Court for ejectment of tenant as trespasser—Decision of Revenue Court whether binding as res judicata in the suit in Civil Court* S 189 (3) of the Madras Estates Land Act does not constitute the decisions of the Revenue Courts on an issue as to title to land or occupancy rights therein arising incidentally in suits to enforce the acceptance of pattas which are cognizable exclusively by such Courts res judicata in a subsequent suit in a Civil Court instituted by the landlord for ejectment of the tenant from such land APPA RAO v GURRAJU (1920) I L R 43 Mad. 859

——— s 189 and cl (12) of Part A of Schedule—*Suit to recover lands under the Act for non payment of rent non maintainability of in Civil Courts* S 189 and cl (12) of Part A of schedule to the Madras Estates Land Act (I of 1908) preclude a Civil Court from taking cognizance of a suit by a ryot to recover possession of a holding sold under the Madras Estates Land Act for non payment of rent on the ground that the landholder had no right to sell the holding Cl. (12) is not confined to a suit to question an intended sale of the holding *Gouse Moideen Saib* v *Muthialy Chettiar 26 Mad L J 36* distinguished. RAMANATHAN v RAMASWAMI (1914)
I L R 39 Mad. 60

——— ss 189 213, 134 91 and 77—*Ryotwari landowner—Illegal distraint—Suit for damages—Jurisdiction—Revenue Court—Madras Rent Recovery Act (VIII of 1865) ss 49 and 78* A suit by the tenant of a ryotwari landowner or of any sub tenant of such for damages for illegal distraint of moveable property growing crops of the produce of land or trees in the defaulter's holding is solely cognizable by the Revenue Court *Per* WALLIS C J —Sub ss (2) and (3) of s 213 of the Madras Estates Land Act are in the nature of provisos and it would not be legitimate to cut down the operative portion of s 189 to which these provisos do not in terms apply merely because otherwise the provisos would be meaningless and even senseless. *West Derby Union* v *Metropolitan Life Assurance Society [1897] A C 647* referred to Sub ss. (2) and (3) which were drafted in place of ss 49 and 78 of the Rent Recovery Act were probably retained by inadvertance after the jurisdiction of the Civil Court had been taken away by s 189 in its present form *Obiter* Suits under s. 91 of the Madras Estates Land Act are exclusively within the jurisdiction of the Civil Court *Per* SADASIVA AYYAR and SRINIVASA AYYANGER JJ —Cl (2) of s 213 saves the Civil Court's jurisdiction only where the suit is not brought for the relief of pecuniary damages for proceedings taken under colour of the Act that is where it is brought for other remedies such as injunction declaration possession etc *Per* SADASIVA AYYAR J —The proviso forming cl (3) of s. 213 takes away the jurisdiction of the Civil Court even in respect of cases claiming other redress than pecuniary damages if the redress of damages had been already claimed by the plaintiff in a suit filed before the Collector under cl. (1) of s. 213 *Quære* Whether the remedy by a suit in the Collector's Court to set aside a distress under s 95 can be availed of by a Government ryot's tenant whose moveables have been distrained under s 77 and whether assuming that he could do so the jurisdiction is an exclusive one in the Revenue Court NARAYANASWAMY v VENKATARAMANA (1915)
I L R 39 Mad 239

——— s 192—

See S 131 I L R 42 Mad 310

See S 155 I L R 43 Mad 69

See CIVIL PROCEDURE CODE (ACT V OF 1908)—

O XXII R. 5 I L R 42 Mad 76

O XLIII r 1 AND s 115
I L R 41 Mad 554

——— *Presentation of plaint to Head Clerk not authorized to receive—Limitation Act (IX of 1908) s 4—Court not closed if the officer on tour only and not on leave—R 11 of Civil Rules of Practice* Plaints under the Madras Estates Land Act (I of 1908) cannot be said to be validly presented if presented to the Head Clerk of the Collector unless the Collector has appointed him to receive them. A Court cannot be said to be closed within the meaning of s

MADRAS IRRIGATION CESS ACT (VII OF 1865)—*contd*

By the Madras Irrigation Cess Act (VII of 186) as amended by Madras Act V of 1900 s 1 whenever water is supplied or used for purposes of irrigation from any river stream channel tank or work belonging to or constructed by Government a separate cess for such water may be levied on the land so irrigated provided (*inter alia*) that where a zamindar or inamdar is by virtue of engagements with the Government entitled to irrigation free of separate charge no cess under this Act shall be imposed for water supplied to the extent of this right and no more At the permanent settlement the Government settled in four zamindars lands contiguous to a river together with four artificial irrigation channels and sluices connecting them with the river The sanads did not refer to the channels or sluices The appellants were the present holders of one of the four zamindaris the sluices of one only of the channels being upon their lands The other three zamindaris had been purchased by the Government The appellants used for irrigation water derived from the river through all four channels The Government claimed to be entitled to levy cess under the above Act upon the appellants lands for the irrigation so far as it included crops not customary at the time of the permanent settlement *Held* assuming but not deciding that the river belonged to the Government (i) that the settlement was an engagement with the Government within the meaning of the proviso (ii) that under the sanads the zamindar in whose estate the sluices of each of the channels were situated acquired the right to take from the river for irrigation an amount of water limited by the then size of the channels and nature of the sluices but not limited by the irrigation then customary (iii) that after the water had passed into the channels the Government had no rights in resepct of it save as owners of the three zamindaris (iv) that the rights of the owners *inter se* in the water flowing in the channels were analogous to those of the riparian owners in a natural stream (*b*) that there being no evidence that more water was being taken from the river than was justified by the sanads the appellants were not liable to pay cess The law of the Madras Presidency as to rivers and streams differs in some respects from English law and it is quite possible that the former law recognises some proprietary right of the Government in water flowing in them KANDUKURI BALASURYA ROW *v* SECRETARY OF STATE FOR INDIA (1917)
I L R 40 Mad 886
L R 44 I A 166

———— *Artificial Channel—Easement—Forfeiture of Servient Estate— Engagement with the Government —Madras Acts VII of 1865 and V of 1900* In 1814 a zamindar who before the permanent settlement had constructed an artificial channel through the estate now enjoyed by the respondent admitted the right of the then holder to take water therefrom for the irrigation of a village and from that date until 1907 the respondent s predecessors and the respondent exercised that right without any claim to payment In 1833 the estate of the zamindar who had constructed the channel was forfeited to the Crown In 1907 the Government imposed upon the respondent in respect of the village an irrigation cess under the Madras Irrigation Cess Act (VII of 186) as amended by Madras Act V of 1900 *Held* that there was to be inferred from the circumstances an engagement to the Government within the meaning of the proviso of Madras Act VII of 186 as amended and that the respondent consequently was not liable to pay the cess SECRETARY OF STATE FOR INDIA *v* MAHARAJA OF BOBBILI (1910) L R 46 I A 302

See GRANT CONSTRUCTION OF
I L R 38 Mad 424

———— s 1—

See *arte* I L R 40 Mad 886
L R 46 I A 302

See IRRIGATION CESS ACT
I L R 40 Mad 58 200

———— *Held* that it was not obligatory under s 1 (*b*) for the Collector to certify that the irrigation is beneficial and that the words irrigation by percolation mean not only irrigation by means of water flowing on the surface but cover cases where sub soil is taken by roots of trees SECRETARY OF STATE *v* MAHADEVA SASTRIYAL I L R 40 Mad (F B) 58

———— *Engagements construction of—Undertaking by Government to supply water for wet lands free of charge —Engagements at the time of the Permanent Settlement—Subsequent engagements express or implied if included under the section—Unauthorised acts of subordinate officers how far binding on Government—Ratification essentials of—Communication of to the other party if necessary—When complete—Government Orders how far ratifications—Indian Contract Act (IX of 1872) ss 196 to 200 and 3 to 6* In all cases of permanently settled estates where the incomes derivable from wet lands have been taken into consideration in settling the peshkash payable to Government there is an implied undertaking of the nature of an enforceable contract on the part of the Government to allow the use of Government water to such wet lands without charge and this implied undertaking amounts to an engagement within the meaning of the Act There is a similar implied engagement as regards inams The word engagements in s 1 of Act VII of 1865 is not qualified in any way and is not limited to the cases of engagements deducible from the circumstances under which the peshkash (or quitrent in the case of an inam) was determined at the time of the Permanent Settlement but includes all engagements between the Government and the landholder that might have been made or be deducible from the circumstances at any time after the Permanent Settlement *Per* AYLING J —*Held* (on a construction of the Government Orders and other proceedings) that no implied engagement of the latter kind or a ratification thereof by the Government was established An express ratification by one party within the meaning of s 197 of the Indian Contract Act cannot become complete until it is communicated to the other party Till then it is liable to revocation This is in accordance with the principles embodied in the provisions of ss 3 to 6 of the Act which deal with proposals acceptances and revocations An order of Government which stated that an unauthorised act of a subordinate officer should not be repudiated must be treated as an incomplete ratification before communication to

MADRAS IRRIGATION CESS ACT (VII OF 1865)—*contd*

the landholders concerned and the same, having been revoked by a later Government Order is not binding upon the Government It is not advisable to interpret the plain words of an Act in the light of expressions of the views of Government before its enactment *Administrator General of Bengal* v *Premlal Mullick I L R 21 Calc 732 Kadir Bukhsh* v *Bhawani Prasad I L R 14 All 148 Queen Empress* v *Bal Gangadhar Tilak I L R 22 Bom 112* and *Hiller* v *Dexter* [1903] *A C 474* referred to Per SADASIVA AYYAR J—A deliberate and considered ratification by Government reduced into a formal Government Order is conclusive just as a person s declaration in a registered document would stand even if not directly communicated to third persons Ratification by a long course of conduct is not less effective than a ratification by a formal declaration Construction of orders of Government and acts of public officers and ratifications of such acts as well as the mode of their communications considered *Chidambara Row* v *The Secretary of State for India I L R 26 Mad 66 Lutchmee Doss* v *Secretary of State for India I L R 32 Mad 456 Kandukuri Mahalakshmamma Garu* v *The Secretary of State for India I L R 34 Mad 295 Sri Raja Venkata Rangayya* v *The Secretary of State for India (1915) Mad W N 417 Kearns Venkatasubbiah* v *The Secretary of State for India 14 Mad L T 131 Secretary of State for India* v *Ambalavana Pandarasannadhi I L R 34 Mad 566 Maria Susai Mudaliar* v *The Secretary of State for India 14 Mad L J 359 The Secretary of State for India* v *Peruma Pillai I L R 24 Mad 279* and *Venkata Rangayya Appa Row* v *Secretary of State for India 21 Mad L J 682* referred to RAJAGOPALACHARYULU v SECRETARY OF STATE (1913) I L R 38 Mad 997

——— ss 1 and 4—*as amended by Madras Act V of 1900—Right to take water for irrigation through artificial channel recognition of—Forfeiture of estate to Government—Easement—Engagement with Government—Non liability for cess after period of 80 or 90 year* An artificial channel from a non tidal river through which water for irrigation ran through an estate belonging to the respondent was constructed upwards of a century ago by the zamindar of Palkonda a neighbouring landholder and the evidence showed that in 1814 the zamindar recognized the right of the respondent s predecessor in title to irrigate his lands with water from the channel In 1833 on forfeiture of the Palkonda zamindari for rebellion it came into possession of the Government but no attempt was made by the then Government to change the form ing on which the irrigation rights were enjoyed by the predecessors in title of the respondent and of the respondent himself or to lessen or interfere with the continued enjoyment of the easement as of right and without any exaction or charge No claim in respect of the lands in suit was made until 1907 when a sum was levied on the respondent under the Madras Irrigation Cess Act (Madras Act VII of 1865 as amended by Madras Act V of 1900) which he paid under protest and brought a suit for a refund of the amount and for a declaration that he was not liable to pay any cess under that Act The Act as amended enacts in a proviso that where a zamindar or any other description of landholder not holding under ryot

MADRAS IRRIGATION CESS ACT (VII OF 1865)—*contd*

——— ss 1 and 4—*contd*

wari settlements is by virtue of an engagement with the Government entitled to irrigation free of separate charge no cess shall under this Act be imposed for water supplied to the extent of this right and no more *Held* that an engagement with the Government had been created within the meaning of the proviso to the Act by the transaction of the zamindari having passed to the Government and had been accepted by them as binding the parties for a period of between 80 and 90 years during which (including 40 years since the Act was passed) the respondent s zamindari had been enjoyed without any question or doubt that the respondent held under a tenure which gave him the benefit of the proviso in Act VII of 1865 THE SECRETARY OF STATE FOR INDIA IN COUNCIL v MAHARAJAH OF BOBBILI (1920) I L R 43 Mad (P C) 529

——— s 2—

1 ——————— *Ownership of bed of channel—Owner of channel bed not on that account alone entitled to water free of cess—Engagement to supply water free of charge not proved—Nature of engagement to be inferred from permanent settlement—Act III of 1905 s 2—Stream what is—Voluntary payment—Money paid on a decree and under Act II of 1864 not voluntary* Where in a grant by Government of land no reservation is made of channel beds and nothing is proved to show that the Government must have intended to reserve them and it is shown that the grantee exercised full control over the channel it must be presumed that the bed of the channel was included in the grant The ownership of the bed will not however carry with it the right to use the water of the channel free of charge under Act VII of 1865 If water from a Government channel or river is distributed through channels provided by a private person such irrigation is not free of cess S 2 of Act III of 1905 is declaratory and effect must be given to the clear declaration without confining its operation to the matter of encroachments on land The channel or river is the flowing body of water Under s 2 of Act III of 1905 where it is not shown to belong to a private person it belongs to Government although private persons may be proprietors of the bed The riparian proprietors have easement rights but they are not on that account owners of the channel and they cannot use water which belongs to Government free of cess in the absence of an engagement with Government to that effect The abstention of Government from charging water cess for a number of years and the fact that the Government and the zamindar apportioned the cost of the upkeep of the channel according to the extent of zamindari and ryotwari land under it do not raise a presumption of any such engagement The only engagement which can be inferred from the Permanent Settlement is that the peshkush being fixed with reference to the area of land then under irrigation no further charge for the use of water should be made in respect of that area. The burden of proving that any of crop is exempt from water cess lies zamindar *Maria Susai Mudaliyar* v *The Secretary of State for India in Council 14 Mad* Where capacity to grow a second crop is t account in fixing the peshkush no separa

MADRAS IRRIGATION CESS ACT (VII OF 1865)—*contd.*

——— s 2—*contd*

can be made for the second crop Money paid on a demand by Government and enforceable by attachment under Act II of 1864 is not a voluntary payment KANDUKURI MAHALAKSHMAMMA GARU v SECRETARY OF STATE FOR INDIA (1910)
I L R 34 Mad 295

2 ——— *Conditions necessary to entitle Government to levy water cess—Government irrigation source what is—Engagement nature of to be implied from title deed—Extent of water right how ascertained—Cultivation of larger area without increase of water not liable to cess—Injunction granting of* The essential conditions for the levy of water cess under Madras Act VII of 1865 are—(i) The irrigation must be effected by means of the water of a river stream tank or channel or work belonging to or constructed by Government (ii) If the water from such a source is received by indirect flow or used after storage in an intermediate reservoir the irrigation must in the opinion of the Collector (subject to the control of the Board of Revenue and Government) be beneficial to and sufficient for the requirement of the crops (iii) The charge must not be contrary to any engagement between the landholder and Government whereby the latter is entitled to irrigation free of charge Where water from two hills—one belonging to Government and the other to a private party—combine and flow in a channel between Government and private lands and through Government and private lands alternatively and is afterwards drawn for irrigation through channels owned by private parties such irrigation is effected by means of water drawn from a Government source within the meaning of s 2 of Act VII of 1865 *Kandukuri Proprietrix v The Secretary of State for India I L R 34 Mad 295* followed Where Government waters mingle with those of another stream the combined water must be treated as Government water and the fact that it is drawn for use through private channels is immaterial The question whether the irrigation is beneficial and sufficient must be decided by the Collector and his decision when not impeached by the Board of Revenue or Government cannot be questioned by the Civil Courts The only undertaking which may be implied from a grant of land by Government is an undertaking to supply water free of charge to the extent of the accustomed flow at the time of the grant Where the quantity of the customary flow cannot be ascertained the area irrigated will be presumed to be the measure of the quantity of water used at the time of the grant Where a larger area is irrigated subsequent to the grant it will be open to the landholder to show that the increase is not due to the use of a larger quantity of water but to a more economical use of it in which case no cess can be levied for the increased extent *Maria Susai Mudaliar v The Secretary of State for India 14 Mad L J 354* referred to An injunction ought not to be granted when there are no sufficient data for determining whether an infringement of it has taken place SECRETARY OF STATE FOR INDIA v AMBALAVANA PANDARA SANNADHI (1910)
I L R 34 Mad 366

3 ——— *River belonging to Government meaning of—Madras land Encroachment Act (III of 1905) effect of* A river which after rising in certain Government hills flows through ryotwari tracts and then through a zamindari and lastly through a Government village is not a river belonging to Government within s 2 of Madras Act VII of 1865 at the place where it passes through the zamindari wherein both the banks and the bed of the river belong to the zamindar and a ryot of the zamindar taking water from the river within the limits of the zamindari for irrigation is not liable to pay water cess to Government under the Act Madras Act III of 1905 has not taken away pre existing natural and easement rights of private proprietors in flowing waters of natural streams CHINNAPPAN CHETTY v THE SECRETARY OF STATE FOR INDIA (1918)
I L R 42 Mad 239

——— s 4—

See s 1 I L R 43 Mad 529

——— *Levy of cess what is—Effect of levy not retrospective— Arrears in s 2 of the Act means payments which become due and remain unpaid after levy* Under Madras Act VII of 1865 Government have the right to levy at pleasure a separate cess for water *The liability to pay water cess is not incurred in each fasli by the mere fact of taking Government water but only* when Government indicates its intention to charge the cess The cess must be imposed during the fasli Arrears in s 2 of the Act means payments which have become due and remain unpaid after the levy was made An arrear *under the* Act presupposes an engagement to pay and the mere use of water implies no such engagement The Government cannot by the mere act of levying water cess in a subsequent fasli indicate an intention to claim rent for previous fasli PARAMACHANDRA APPA ROW v SECRETARY OF STATE FOR INDIA (1911)
I L R 35 Mad 197

——— *Water cess—Zamindari lands—Excess area whether liable to pay water cess—Madras Land Encroachment Act (III of 1905) effect of* Where a right to take water is proved even though no express agreement on behalf of Government not to levy any charge is proved an engagement under Act VII of 1865 will be implied and no cess can be levied *Per* SANKARAN NAIR J Act III of 1905 did not take away any rights that existed at the time the Act was passed and the Government are not by reason of that Act coupled with Act VII of 1865 entitled to impose any cess upon those landholders who were before the Act not liable to pay cess for their using the water *Kandukuri Mahalakshmamma Garu v The Secretary of State for India I L R 34 Mad 295* and *Venkataratnammah v Secretary of State I L R 37 Mad 366* followed SRI RAJAH SIMHADRI PAZU v SECRETARY OF STATE FOR INDIA (1914)
I L R 39 Mad 67

——— *Inam lands irrigated by water coming from Government source—Water cess liable to be levied on where inamdar has no option to refuse use—Phrase used for the purpose of irrigation meaning of* Certain dry inam lands were submerged by water flowing from a Government source and by reason thereof the inamdar was compelled to raise wet crops with the help of the water which he enclosed in his adjoining land out of the flood water *Held* that under Madras Act VII of 1865 he was liable to pay water cess Madras Act VII of 1865 is not based upon any

MADRAS IRRIGATION CESS ACT (VII OF 1865)—*contd*

——— s 4—*contd*

theory of the ownership of the bed of a tank or water cour e being the foundation of a right to u e the water free of charge The fact that before irrigating the inamdar s lands the water had flowed through two fifths of a sheet of water included in the inam does not make it any the less water from a Government source *Held* further the fact that rain water had got mixed with the flood water is no ground for getting rid of the liability *Secretary of State for India in Council* v *Perumal Pillai I L R 24 Mad 2 9* distinguished *Maria Susai Mudali* v *The Secretary of State for India 14 Mad L J 3o0* di tinguished SECRETARY OF STATE FOR INDIA v SWAMI NARATHEESWARAN (1910)
I L P 34 Mad 21

——— *Madras Act II 1864—*
Defaulter who is—Person liable to pay cess under Act VII of 1865—The amindar and not the tenant in occupation liable Where water cess is leviable on zamindari land under the provisions of Madras Act VII of 186› the person bound to pay such cess is the zamindar and not the tenant in occu pation of such land *Aynappan Servai* v *Secretary of State Mad W N 372* dissented from *Subramanya Chetty* v *Mahalingasami Sivan I L R 33 Mad 41* followed. The zamindar is the proprietor and landholder within the meaning of Act II of 1864 He is the defaulter whose right and interest passes by the sale under s 39 of the Act The security for the public revenue and for the cess which is recoverable as such revenue is the full propri tary right and not the right of the tenant KOTTILINGA SETTU POYER ZAMINDAR OF URKAD v SAHASRANAMA IYER (1911)
I L R 34 Mad 520

——— *River belonging to Government meaning of—Zamindars and Rajas rights of to waters of rivers passing through their lands—Water proprietary rights in discussed—Madras Land Encroachment Act (III of 1905) effect of upon such rights* Per MILLER J —In a suit for the recovery from Government water cess illegally levied the cause of action arises on each occasion on which the cess is demanded and Art 131 of Schedule II of the Limitation Act does not apply The High Court having held in *Kandukuri Mahalakshmamma Garu Proprietrix of Urlam* v *Secretary of State for India I L R 34 Mad 295* on facts similar to those relied upon in the present case that the Vamsadhara river is a river belonging to Government such finding was a matter of law which should be followed until overruled by a Full Bench or a higher Court Followed accordingly *Per* SANKARAN NAIR J Under the customary law of the country water belonged to the owner of the estate through which it pas es so long as the water remained on the land subject to the claims of the proprietors below The members of the village community and the zamindars or poligars were entitled to the water which flowed through their lands If Government are the proprietors of the land they are the owners of the water th reon and those rivers and streams of which they own the bed and the banks belong to Government It was the policy of the East India Company in granting the permanent sanads to recogni e private proprietary rights and to divest themselves of such rights which may have been vested in them It is against the policy and the spirit of the permanent settlement regulation to hold that the Government reserved to themselves any power to increase the revenue on the zamindari or to levy any assessment for the u e of water The permanent sanads granted to Rajas and chieftains did not interfere with their use of the waters of natural streams for the cultivation of all lands within the *ayacut* (i e the area of land that can be irrigated according to the customary methods) subject to the claims of the ryots The new zamindaris created by the East India Company were placed on the same footing as the old Speaking generally whenever the Government contend that these zamindars are not entitled to exercise any of the rights which are capable of private ownership and that such rights are vested in the Crown it lies on the Government to prove that such zamindars were deprived of them either expressly or by neces ary implication under the sanads granted under that Regulation (Regulation XXV of 1802) the new zamindaris were placed on the same footing The sanads referred to are those which were granted by Lord Clive a copy of which will be found in the earlier editions of the Standing Orders of the Board of Revenue Under the Regulation of 1802 the Government did not enter into any engagements with the landholders to supply water The circumstances under which the permanent sanads were granted preclude any such engagement In the case of new zamindaris created there may be cases in which the Government re erved to them selves the control of water courses Act VII of 1865 was intended by the Legislature to refer to all rivers and streams in those ryotwari districts where no mirasi or any corresponding right pre vailed and the words rivers belonging to Government do not apply to rivers running through or by zamindaris The Act was not intended to effect any change in the substantive law but to enable Government to levy a ce s on account of the large expenditure incurred by Government in the construction and improvement of irrigation works The ryotwari lands were as umed to be Government property and all rivers running through ryotwari lands were accordingly treated as belonging to Government But it does not enable the Government to levy a water ce s where the landowners use the waters of rivers in accordance with the rights they had before The exemption clause in s 1 of the Act— Where a zamindar or inamdar by virtue of engagements with the Government is entitled to irrigation free of separate charge no cess under this Act shall be imposed for water supplied to the extent of such right and no more —does not apply to those zamindaris and proprietors who themselves take and are entitled to take the water for irrigation from the rivers and streams in their zamindaris without its being *supplied* to them by Government Even if the section with the exemption clause applied the engagement to be implied is one to allow the proprietors to irrigate all their lands within the *ayacut* which could be irrigated without any fee and without any charge As Act III of 1905 does not interf re with vested right it cannot be u ed to interpret Act VII of 1865 to take away such rights Therefore under Act VI of 1865 (standing unaffected by subsequent legi lation) it was not competent to the Government to levy any cess for any water taken from the Vamsadhara river with

MADRAS IRRIGATION CESS ACT (VII OF 1865)—*concld*

——— s 4—*concld*

out the aid of Government works [See the end of the judgment for a summary of the conclusions] SECRETARY OF STATE *v* JANAKIRAMAYYA (1912) I L R 37 Mad. 322

MADRAS LAND ENCROACHMENT ACT (MAD III OF 1905)

——— ss 1 and 2—

See MADRAS IRRIGATION CESS ACT (VII OF 1865)

——— ss 3 5 and 14—*Penal assessment levy of—Suit for declaration of title and recovery of penal assessment—Suit brought after six months from date of notice and levy of penal assessment—Suit barred—Limitation* Where the plaintiff brought a suit against the Secretary of State for a declaration of his title to certain immovable property and for recovery of penal assessment levied from him by Government under s 5 of the Madras Act III of 1905 more than six months after the issue of notice and levy of the assessment from him *Held* that the suit for declaration of title as well as for recovery of penal assessment was barred under s 14 of the Madras Act III of 1905 BHASKARADU *v* SUBBARAYUDU (1913) *I L R 38 Mad 674*

——— ss 5 6 7 and 14—*Notice under s 7—Levy of penal assessment—Suit for declaration—Cause of action—Limitation* A notice under s 7 of the Madras Land Encroachment Act (III of 1905) was issued to the plaintiff and penal assessment was thereafter levied from him More than six months after such levy the plaintiff brought this suit for a declaration of his title to the land injunction and for the refund of the assessment levied *Held* that the notice under s 7 of the Madras Land Encroachment Act calling on the person in occupation to show cause why he should not be proceeded against under s 5 or 6 of the Act does not give rise to a cause of action but that the suit was barred having been filed more than six months after the levy of assessment *Narayana Pillai* v *Secretary of State 22 Mad L J 169* approved *Bhaskaradu* v *Subbarayudu I L R 38 Mad 674* considered THE SECRETARY OF STATE FOR INDIA *v* ASSAN (1915) I L R 39 Mad 727

——— ss 6 7 14— *Levied in s 14 meaning of—Levy of penal assessment—Suit for refund of penal assessment declaration of title to property and injunction—Limitation* In a suit under s 14 of Madras Land Encroachment Act (III of 1905) for (a) refund of penal assessment levied from the plaintiff (b) declaration of the plaintiff s title to the property in respect of which penal assessment was levied and (c) an injunction restraining Government from interfering with the plaintiff s possession the cause of action for the refund arises not from the date of *imposition* of the penal assessment but from the date on which it was actually *collected* and the cause of action for the declaration and injunction arises not from the date when the Collector issues his order for the eviction but from the date on which some steps are taken under s 6 of the Act to evict the plaintiff Levied in s 14 means collected and not merely imposed *The Secretary of State for India* v *Assan I L R 39 Mad 727* explained and distinguished KESAVA CHETTY *v* THE SECRETARY OF STATE FOR INDIA (1918) I L R 42 Mad 451

MADRAS LAND ENCROACHMENT ACT (MAD III OF 1905)—*concld*

——— ss 6 7 14—*concld*

MADRAS LAND REVENUE ASSESSMENT ACT (MAD I OF 1876)

——— *Party driven to sue for separate registration not entitled to damages for refusal to register—Action for money had and received—Request when implied* The alienee of a portion of an estate who is driven to a civil suit to enforce separate registry under Act I of 1876 all the parties to the alienation not consenting to the transfer is entitled to recover only the costs of such suit and not any further damages. In an action to recover money paid by plaintiff for the defendant at his request a request will generally be implied where the defendant has notice of the payment being made for him and does not dissent Where the circumstances show that the owner of property which is saved by another party knew that the other party was laying out his money in the expectation of being repaid the inference of an understanding between the parties amounting in law to an implied contract will unhesitatingly be drawn *Falcke* v *Scottish Imperial Insurance Company 34 Ch D 219* referred to Where a portion of an estate is alienated and the vendor and vendee agree that the vendee should pay the vendor a certain amount as the vendee s share of *peshkash* on the portion alienated which amount is in excess of the amount ascertained on separate registry to be due on such portion the vendor is *interested* in paying the *peshkash* as he makes a profit in doing so and he can recover the amount so paid NARAYANASWAMI NAIDU *v* YELLANKI SREENIVASA JAGANNADHA RAO (1909) I L R 33 Mad 189

——— *s 2— Owner under meaning of—Permanent lessee not an owner—Non liability to separate registration and assessment—Proprietor or owner under Regulation (XXV of 1802)—Madras Hereditary Village Offices (Act III of 1895)* Grantees holding under perpetual grants subject to payment to the zamindar (the grantor) of a small rent under the name of jodi kattubadi or poruppu are not liable to have their lands separately registered and to have separate assessment imposed upon them under the provisions of the Madras Act I of 1876 A permanent lessee is not included in the term owner as used in s 2 of the Madras Assessment of Land Revenue Act (I of 1876) A permanent lessee is not a proprietor or owner under Regulation XXV of 1802 or the Madras Hereditary Village Offices Act (III of 1895) *Venkateswara Yettiappah Naicker* v *Alagoo Mootoo Servagaren 8 Moo I A 327 Hari Narayan Singh* v *Sriram Chakravarti L R 37 I A 136 Durga Prasad Singh* v *Brojo Nath Bose L R 39 I A 133* and *Kshetrabaro Bissoyi* v *Sobhanapuram Hari Krishna Navudu I L R 33 Mad 341* followed *Robert Fischer* v *The Secretary of State for India I L R 22 Mad 270* distinguished *Komalammal* v *Raju Naicker I L R 19 Mad 309* distinguished MAHARAJA OF VIZIANAGRAM *v* THE COLLECTOR OF VIZAGAPATAM (1914) I L R 38 Mad 1128

MADRAS LOCAL BOARDS ACT (MAD V OF 1884)

——— ss 33 98 (1) and (2)—*Delegation of duty to give notice of removal of obstruction to a*

MADRAS LOCAL BOARDS ACT (MAD V OF 1884)—*contd*

——— ss 33, 98 (1) and (2)—*contd*

public road by the president of a Taluk Board to a chairman of a union validity of— Other person duly authorised by him as aforesaid in s 98 (2) meaning of S 33 of the Madras Local Boards Act (V of 1884) does not restrict the specific delegations of duty allowed to the president of a Taluk Board by other sections of the Act The words other person duly authorized by him as aforesaid in s. 98 cl (2) mean any person duly authorized by him in that behalf i.e. the one mentioned in s 98 cl. (1) and do not mean only the vice president of the Taluk Board Hence a notice to remove an obstruction to a public road given by the chairman of a union to whom the president of the Taluk Board within which the union was situated delegated the power to give such notice is a legally valid notice and disobedience to the notice is an offence under the Act PUBLIC PROSECUTOR v SANKARALINGA MOOPAN (1919) I L R 42 Mad 787

——— s 51—

See CHARITABLE TRUST
I. L R 34 Mad. 375

——— *Taluk Board taking over management of charity not bound to keep account accessible to all persons when they take the place of trustees who are under an obligation to do so—Power of Taluk Board to transfer management—Madras Regulation VII of 1817 ss 2 3 5 7 8 13—Under s 51 of Act V of 1884 the Taluk Board is vested with powers of supervision and management and not with the power of appointing trustees conferred on the Board of Revenue* Where a Taluk Board under s 51 of Madras Act V of 1884 takes the place of trustees appointed by a will, which directs the trustees to keep accounts accessible to all persons such Board will not in the absence of a charge of mismanagement be under an obligation to keep such accounts The management being transferred by a special law to a statutory body we must look to that law and not to the will to determine the duties incidental to such management The Board is not bound to give inspection of accounts when no charge of mismanagement is made The Taluk Board which has taken over the management under s 51 of the Act cannot appoint an independent trustee so as to divest itself of the duty of management The power and duties of the Board of Revenue which devolve on the Taluk Board under s 51 of the Act do not include the power to appoint trustee vested in the Board under s 13 of Reg VII of 1817 NELAYATHAKSHI AMMAL v THE TALUK BOARD MAYAVARAM (1910) I L R 34 Mad 333

——— ss 54 144 to 147—

See NEGOTIABLE INSTRUMENTS ACT 1881 ss 5 AND 6 I L. R 43 Mad 816

——— ss 63 66 and 73—

See MUTT HEAD OF
I L R 38 Mad 356

——— *s 73—Mortgagee with possession whether intermediate holder—His right to recover rent* A mortgagee with possession is an intermediate tenure holder within the meaning of s 73 of the Local Boards Act (V of 1884) and is entitled to recover rent by summary process The tenant a liability to pay him is not abrogated by a contract

MADRAS LOCAL BOARDS ACT (MAD V OF 1884)—*contd*

——— s 73—*contd*

to which he was not a party JAGANNAIKULU v MANAGER OF NANDIGAM ESTATE (1914)
I L R 39 Mad 269

——— ss 73 74—

See MADRAS ESTATES LAND ACT (I OF 1908) s 77 I L R 37 Mad 319

——— s 95—*Taluk Board—Planting of trees along a road—Statutory duty—Branches of trees overhanging plaintiff s land—Omission to remove if actionable—Non feasance—Absence of negligence—Cause of action—English and Indian Law* Where a Taluk Board acting under s 95 of the Local Boards Act (V of 1884) planted on the sides of a road certain trees whose branches spread over the land of the plaintiff who thereupon sued for an injunction directing the Board to lop off the branches *Held* that the suit was not sustainable as (i) the Taluk Board in the discharge of its statutory duties had not acted carelessly or negligently and (ii) the omission to remove the branches even if it ought to have been done is only a *non feasance* for which no action at the instance of a private individual would lie English and Indian Cases on the subject reviewed KRISHNAMOORTHI AIYAR v THE TALUK BOARD OF MAYAVARAM (1918) I L R 42 Mad 331

——— s 100—*Order of a Taluk Board to an owner to fill up a tank without regard to attendant circumstances validity of* A Taluk Board passed an order under s 100 of the Madras Local Boards Act (V of 1884) asking the owner of certain tanks to fill them up on the ground that they were in an insanitary condition without taking into consideration (1) that such condition was brought about not by any act of the owner but by the Taluk Board allowing drainage water to escape into the tanks and (2) that filling up the tank was far more expensive than raising a bund all round the tanks which would have equally served the purpose. *Held* that the power conferred by s 100 of the Local Boards Act though a very wide power must not be exercised for ulterior purpose or in a capricious wanton and arbitrary manner and if so used can be controlled by the Civil Courts and that the order passed by the Board in this case was one that should be set aside TALUK BOARD BANDER v ZEMINDAR OF CHELLAPALLI (1921)
I L R 44 Mad 166

MADRAS MOTOR VEHICLES ACT (MAD I OF 1907)

See TORTS I L R 41 Mad. 538

MADRAS PERMANENT SETTLEMENTS

See MADRAS IRRIGATION CESS ACT 1865
I L R 40 Mad 886

See MADRAS REGULATION XXV OF 1802

MADRAS PLANTERS LABOUR ACT (I OF 1903)

See PLANTERS LABOUR ACT (MAD)
I L. R 36 Mad 497

——— ss 24 and 35—*Breach of contract by maistry or labourer—Prosecution of maistry—Successive prosecutions and convictions if permissible under the Act—Directions by the Magistrate to com-*

MADRAS PLANTERS' LABOUR ACT (I OF 1903)—*contd*

——— ss 21 and 3—*contd*

plete performance—Successive directions if permitted by the Act Under s 3 of the Madras Planters Labour Act (I of 1903) the Magistrate has power to issue successive directions to a maistry labourer to complete the performance of his contract *Re Panga Maistry I L R 36 Mad 497* dissented from Successive prosecutions can be instituted and convictions obtained against a maistry in respect of successive defaults made by him under s 24 cls (a) (b) and (c) of the Act *Unwin v Clarke L R 1 Q B 417* and *Cutler v Turner 9 Q B 502* followed WHITTON v MAMMAD MAISTRY (1915) I L R 39 Mad 889

MADRAS PORT TRUST ACT (II OF 1905)

——— bye law 22—

See MADRAS CITY POLICE ACT (III OF 1888) *s* 75 I L R 39 Mad 886

MADRAS PROPRIETARY ESTATES VILLAGE SERVICE ACT (II OF 1894)

See CIVIL PROCEDURE CODE 1908 s 47 I L R 41 Mad 418

——— ss 5 and 10 cl (2)—*Service inam—Emoluments partition of whether prohibited—Alienation validity of—Subsequent suit for ejectment—Transfer of Property Act (IV of 1882) s 43—Ancestral property—Property inherited by maternal grandsons—Interests nature of* The enfranchisement of a service inam under s 10 cl (2) of the Madras Proprietary Estates Village Service Act (II of 1894) does not destroy the rights of any member of a joint family who has a hereditary interest in it The alienation of a service inam is void and though it is subsequently enfranchised the alienee cannot invoke the aid of s 43 of the Transfer of Property Act in his favour *Ramasuami Naick v Ramaswami Chetty I L R 30 Mad 255 Narahari Sahu v Siva Narithan Naidu (1913) Mad W N 415* and *B chu Ramayya v Pharasaichi (1913) Mad W N 999* referred to Property which descends on daughter s sons from their maternal grandfather is ancestral property in which the grandsons take an interest by birth according to the Mitakshara law Cases reviewed RAMAYYA v JAGANNADHAN (1915) I L R 39 Mad 930

MADRAS REGULATION (XXV OF 1802)

See IMPARTIBLE ESTATE I L R 36 Mad 325

See MADRAS IRRIGATION CESS ACT 1865 I L R 40 Mad 886

See MADRAS LAND REVENUE ASSESSMENT ACT (I OF 1876) *s* 2 I L R 38 Mad 1128

See MADRAS PERMANENT SETTLEMENT

See UNSETTLED PALAYAM I L R 41 Mad 749

See REGULATION 17 C W N 1221

——— ss 3 and 4—*Zamindar—Permanent Settlement—Sanad—Construction of Sanad—Right of Government to resume inam lands* A sanad issued by the Government on August 24th 1802 to a zamindar in the Presidency of Madras (Arcot) stated that in consideration of the relief which the zamindar s finances would derive from the relinquishment of his military services and of the Government charging itself with the duty of protecting his territories the British Government has fixed your annual contribution including equivalent for military service and the established peshkush for every year at the sum of star pagodas 1 11 058 which said amount shall never be liable to changes under any circumstances Cl (5) reserved to the Government the revenue derived from salt and saltpetre and certain other subjects without making any mention of lakhiraj or inam lands It appeared from other documents that the assessment had been fixed on the whole zamindari irrespective of the assets derived from each particular unit of property within it Madras Regulation XXV of 1802 which was passed on July 13th 1802 provided by s 3 that in all cases of disputed assessment reference was to be had to the sanads and kabuliyats executed and by s 4 that the Government having reserved to itself certain articles of revenue including lakhiraj lands (or lands exempt from the payment of Government revenue) and of all other lands paying only favourable quit rents the permanent assessment of the land tax shall be made exclusively of the said articles now recited At the time of issue of the sanad there were in the zamindari certain religious and charitable inams and lakhiraj lands granted by the zamindar or his predecessors *Held* that having regard to the terms of the sanad and the circumstances in which it was issued the Government was not entitled to resume them or assess them to the public revenue *Judgment of the High Court affirmed* SECRETARY OF STATE FOR INDIA v RAJA OF VENKATAGIRI (1921) I L R 44 Mad (P C) 864

——— s 4—*Pre settlement inams—Lands held on service tenure in addition to payment of quit rent—Service to Zemindar—Service quasi public before settlements—Its discontinuance thereafter—Resumption by Government right of—Presumption—Onus of proof as to exclusion prior to Settlement—Evidence Act (I of 1872) ss 106 and 114 ill (g)* Where land in a Zamindari were pre settlement inams granted on condition of rendering personal service to the zemindar and paying a favourable quit rent and the Government resumed such inams on the ground of discontinuance of such services *Held* that as the grant was for services purely personal to the zemindar *prima facie* the inams formed part of the assets of the zemindari and the zemindar and *not* the Government was entitled to resume *Held* also that where such service is rendered in addition to quit rent the proviso to s 4, Regulation XXV of 1802 has no application The onus of proving that such lands were excluded from the assets of the zemindari and that the Government had the right to resume lay on them. *Per* TYABJI *J* —The Government having special means of knowledge as to exclusion or otherwise of these lands at the settlement from the Zamindari the burden was upon them according to s 106 of the Evidence Act and the necessary presumption against the non production of the records in their possession should be drawn against them SRI RAJA PARTHASARATHY APPA RAO BAHADUR v SECRETARY OF STATE (1913) I L R 38 Mad 620

MADRAS REGULATION (XXXI OF 1802)

See MADRAS ESTATES LAND ACT s 3
I L R 41 Mad 1012

MADRAS REGULATION (XI OF 1816)

——— s 10—

——— *Village Magistrate —Power to sentence confinement—Village choultry—Confinement to be only in village choultry and nowhere else—Sentence of confinement before a temple legality of* Under s 10 of Madras Regulation XI of 1816 the village magistrate has power to pass sentence of confinement only in the village choultry and not in front of a temple although a public place Criminal Revision Petition 190 of 1898 1 Weir 924 referred to PONNUSAMI PILLAI In re (1921)
I L R 44 Mad 113

MADRAS REGULATION (VII OF 1817)

See CHARITABLE TRUST
I L R 34 Mad 375

See MADRAS LOCAL BOARDS ACT 1884
I L R 34 Mad 333

MADRAS REGULATION (VI OF 1831)

See PENSIONS ACT 1871 s 4
I L R 36 Mad 559

See SERVICE INAM
I L R 35 Mad 705

MADRAS REGULATION (X OF 1831)

See MADRAS REVENUE RECOVERY ACT
I L R 41 Mad 733

MADRAS RELIGIOUS ENDOWMENTS ACT (X OF 1863)

See CHARITABLE TRUST
I L R 34 Mad 375

MADRAS RENT RECOVERY ACT (VIII OF 1865)

See MADRAS ESTATES LAND ACT (I OF 1918) s 13 CL. (3)
I L R 39 Mad 84

——— *Tenant whose—Transfer puts an end to holding without notice to landlord—Tenant at the beginning of fasli is tenant for the fasli notwithstanding subsequent transfer* A transfer of the holding by the tenant puts an end to the tenancy without notice to the landlord unless the tenant under certain circumstances is estopped from denying its continuance There is nothing in the Rent Recovery Act to warrant a contrary view A tenant who is a tenant at the beginning of the fasli continues to be the tenant for the fasli notwithstanding a subsequent transfer of the holding and is liable to be proceeded against under the Rent Recovery Act RAMASWAMI AYYANGAR v SHUNMUGAN PILLAI (1910)
I L R 34 Mad 179

——— *Implied contract by ryot to pay enhanced rent—Consideration—Zemindar refraining from raising a hopeless dispute if valid consideration—Contract Act (IX of 1872) s 2—Payment of increased rent for several years if estops ryot from challenging it—New plea not entertained by Privy Council* Where the contract of tenancy between zemindar and ryot was that the ryot was to hold the lands at the uniform punja rate of 4 fanams a guli and was to remain in occupancy so long as circumstances affecting the holding remained unchanged otherwise than by the labour and outlay of the ryot himself and the landlord pleaded that the tenant having subsequently (by making a well or tank at his own expense) resorted to garden cultivation thenceforward agreed to pay rent at 8 as per guli and that this contract to pay enhanced rent was to be implied from the fact of the zemindar having demanded and realised such rent for several years thereafter *Held* that the term implied contract as used in the Madras Rent Recovery Act (VIII of 1865) which governed the case was an English term of art and must be so construed That there was no consideration for the promise to pay increased rent and the implied contract was not therefore enforcible That the fact if proved of the zemindar having consented not to raise a hopeless and groundless dispute as to the right of the tenants to hold the lands at the 4 fanams rate would not be a valid consideration for the tenant s promise to pay enhanced rent That in the absence of evidence showing an implied representation by the ryot of some existing fact on the faith of which the zemindar had changed his position there was no estoppel in pais which would bind the ryot to pay the enhanced rent The Judicial Committee refused to entertain new pleas for the first time raised before it and held the Appellant to the position taken up in the lower Courts JAGAVEERA RAMA VENKATESWARA ETTAPPA v ALAWARASA ASARI (1918)
23 C W N 225

——— ss 3 11—*Varam rate—Rate of rent ascertaining of—Right of landlord to varam rate on wet crop raised on dry lands when no contract for the rent chargeable* By agreement between the landlord and tenant a permanent money rent was fixed for dry cultivation and the agreement provided for extra charge for wet and garden crops without however stating the amount of such charge The land was subsequently cultivated with wet crop without any assistance from the landlord and the tenants took objection to the *varam* rate claimed by the landlord —*Held* that the landlord had the right to claim the *varam* rate as there was no contract in regard to the rent payable for wet cultivation The contract having left the rate for wet cultivation undetermined was not a contract within the meaning of s 11 of the Act Where under the circumstances the landlord become entitled to *varam* rate under s 11 of the Rent Recovery Act his claim to such rate cannot be objected to on the ground that the rent is thereby increased and it is not necessary to obtain the sanction of the Collector In the absence of contract or survey rates the landlord is entitled to *varam* rate under cl 3 of the section An enquiry to determine the rate according to local usage is not necessary to enable the landlord to claim *varam* rates SRI RAJA BOMMADEVARA VENKATA NARASIMHA NAYUDU v KASARANENI CHINA BAPAYYA (1908)
I. L. R 33 Mad. 12

——— *Right of landlord to enhance rent on dry land cultivated with garden crop by wells dug at tenant's cost—No such right in the absence of a contract supported by consideration* Dry lands liable to pay a fixed rent were cultivated with garden crop by the tenant by means of wells excavated at his cost with the consent of the landlord The landlord claimed and the tenant for some years paid an enhanced rate of rent for the

MADRAS RENT RECOVERY ACT (VIII OF 1865)—*contd*

—— ss 3, 11—*contd*

crop so raised In a suit by the tenant to compel the landlord to grant pattas at the usual dry rate it was contended for the landlord that a contract to pay the enhanced rate must be implied from the payment for a number of years of such rate and that such contract was supported by consideration as the landlord had consented to the *digging of* wells and as he had forborne from claiming the *varam* rate which he had a right to do under s 11 cl 3 of the Rent Recovery Act There was no evidence that rent was chargeable according to the nature of the crop raised *Held* (i) that the word contract in s 11 cannot be construed as a mere agreement but as an enforceable contract supported *by consideration (ii) that the consent of the land lord not being necessary to entitle the tenant to* sink the well such consent was no legal consideration for an agreement to pay the enhanced rate (iii) that payment of a fixed rate of rent prior to the sinking of the wells was evidence of an implied contract to pay rent at that rate and in the absence of evidence to show that the rate was fixed not on the holding but on the nature of the crop and was liable to be altered with a variation in the crop raised that the existence of such a contract debarred the landlord s claim to *varam* rates under s 11 cl 3 of the Rent Recovery Act The promise not to press such an un enforceable claim was no legal consideration ARUMUGAM CHETTY *v* RAJA JAGAVEERA RAMA VENKATESWARA ETTAPPA MAHARAJA AIYAR (1910)

I L R 35 Mad 134

—— ss 4 5 16—

See EXECUTION OF DECREE

I L R 40 Calc 623

—— s 7—*Distraint for larger amount than is legally due not good even for the amount due* Where after tender by landlord and refusal by the tenant of a patta providing for a larger rent than is really due the landlord distrains property of the tenant for such larger amount such distraint will not hold good even for the amount properly claim able VENKATA NARASIMHA NAIDU BAHADUR *v* SAGODA S MAYYA (1911) I L R 35 Mad 139

—— s 9—*Tender of Pattas on produce sharing system—Allegation by tenants that money system prevailed—Prevalence of money rent for series of years—Alleged express contract to make prevailing rate permanent—Implied contract presumption of —Evidence in considering usage prevailing—Remand of cases for determination of proper rate when no contract exists* The appellant a zamindar brought suits against the respondents the tenants in a village on his estate under s 9 of the Madras Rent Recovery Act (Madras Act VIII of 1865) to enforce pattas tendered by him and the execution of corresponding muchilkas The pattas tendered were under the Asara or pro duce sharing system which the respondents denied was in force in their village money rate as they alleged being the proper form of rent It appeared that in 1 99 (1885) different rates of rent prevailed in the village some being higher than R5 and others lower that in that year a uniform rate of R5 per acre was introduced by mutual agreement between the appellant and respondents and lea es were exchanged on that basis for a term of 5 years The respondents alleged that the appellant at that

MADRAS RENT RECOVERY ACT (VIII OF 1865)—*contd*

—— s 9—*contd*

time expressly agreed that the rate of R5 should be permanent The High Court did not uphold the express agreement but found there was an implied contract to be inferred from the fact that rents at the same rate were paid and received for four years after the expiration of the term fixed by the leases of 1299 the presumption being that such rate of rent should continue the same in perpetuity —*Held by the Judicial Committee* that there was along side of the express contract em bodied in the leases exchanged between the parties no proof of any such collateral implied agreement relating to fixity of rent Any understanding of the kind was denied by the appellant and no credible explanation was given by the respondents why if it existed such an important arrangement *was not reduced to writing While agreeing with the High Court that it was not open to Courts to* imply from the mere circumstance that the rent had been paid in money for a series of years an agreement to pay money rent their Lordships saw no reason why the fact that money rent had pre vailed in a particular locality for a considerable number of years might not form an element *in the* consideration *of usage The real question between the parties not having been decided* namely whether the pattas tendered by the appellant were such as he was entitled to impose on the respon dents a question which it having been found that there was no express or implied contract must be decided in accordance with *the rules contained in cl (iii) of s 11 of Act VIII of 1865 which dealt with the mode* of determining the rate when no contract exists their Lordships remanded the cases to the proper Court in India to determine under the e provisions the *rates* the appellant was entitled to receive PARTHASARATHI APPA ROW *v* CHE VANDRA VENKATA NARASAYYA (1910)

I L R 33 Mad 177

—— ss 9 and 10—

See LIMITATION ACT 1908 SCH II ART 110 I L R 36 Mad 438

—— s 11—

See s 3 I L R 43 Mad 1074

See PATTA

I L R 36 Mad 4

—— *Payment of enhanced rent—Implied contract—Absence of consideration* The Madras Rent Recovery Act 1865 *s 11 among rules* to be observed in the decision of suits regard ing rates of rent provides all contracts for rent express or implied shall be enforced A tenant of dry lands sank a well at his own cost and there after cultivated the land with garden crops *Prior to the sinking of the well the tenant had always* paid a uniform rent on a dry basis sub equently the landlord claimed and the tenant for some years paid an enhanced rent namely at the garden crop rate In a suit by the tenant to obtain pattas at the usual dry rate *Held* that there *was an implied contract to pay rent at the dry rate* and that there was no consideration to support an implied contract to pay at the enhanced rate further that to construe the original contract as a contract to pay at the dry rate only *so long as the* land *remained dry* having the subsequent rent to

MADRAS RENT RECOVERY ACT (VIII OF 1865)—*contd*

—— s 11—*contd*

depend upon the produce would be repugnant to the Act JAGAVEERA RAMA ETTAPPA v ARUMUGAM CHETTI (1918) L. R 45 I A 195

—— ss 33 35 39 and 40—

See LIMITATION ACT (IX OF 1908) s 2?
I L R 38 Mad 83?

—— s 49 ?8—

See MADRAS ESTATES LAND ACT (I OF 1908) 13 CL (3)
I L R 39 Mad 239

—— s 69—

See SPECIAL OR SECOND APPEAL
I L R 37 Mad 443

MADRAS REVENUE RECOVERY ACT (MAD II OF 1864)

—— ss 1 42—*Sale for arrears of water-cess due under Madras Act VII of 1865—Discharge of encumbrances* Under s 42 of Madras Act II of 1864 (Revenue Recovery Act) a sale for arrears of water cess due under Madras Act VII of 1865 conveys a title to the purchaser free of encumbrances water cess being included in the term public revenue as per s 1 of Madras Act II of 1864 Cases relating to sales for arrears of income tax and abkari revenue have no bearing on this question VELLAPPAYAL AMBALAM v KARUPPIAH PILLAI (1911) I L P 37 Mad 49

—— ss 2 5 42—*Provisions of s 42 not confined to land on which the arrears become due—Land mortgaged by defaulter does not cease to be his property* Land belonging to the defaulter does not because mortgaged by him cease to be his property within the meaning of s 5 of Act II of 1864 There is nothing in s 2 or 5 to restrict the land that may be sold thereunder to the land in which the arrears of revenue have accrued When therefore land belonging to the defaulter is sold for arrears accruing due on their lands belonging to him the sale under s 42 of the Act is free of all encumbrances SECRETARY OF STATE FOR INDIA v PISIPATI SUNKARAYYA (1910) I L R 34 Mad 493

—— ss 3 to 5 26—*Defaulter who is—Registered proprietor is defaulter in respect of arrears accrued before registry* The Madras Revenue Recovery Act lays the obligation to pay the revenue including all the arrears on every land holder irrespective of the time when he becomes the holder and if he does not do so he becomes a defaulter A person on being registered as the holder becomes a defaulter in respect of arrears accrued before the registry as if he were the registered owner when the arrears fell due KOTA SUBBAYA KUPTA GARU v THE SECRETARY OF STATE FOR INDIA (1912) I L R 35 Mad. 555

—— ss 3 35— *Defaulter who is—Defaulter means registered pattadar—Contract Act s 69* Where one person is the real owner of a share in land and another is the registered proprietor of the whole the latter and not the former is the defaulter within the meaning of the Revenue Recovery Act and where the latter as mortgagee of a share of the land not owned by the former has paid the arrears of revenue due on the whole land and the former has paid the revenue of his share he cannot being himself the defaulter, recover the amount from the former under s 35 of the Revenue Recovery Act The latter cannot recover under s 69 of the Contract Act as the former is not bound by law to pay the money which the latter has paid SUBRAMANIA CHETTY v MAHALINGASAMI SIVAN (1909)
I L R 33 Mad 41

—— ss 32 and 42—

See MUTT HEAD OF
I L R 38 Mad 356

—— ss 37(A) 38 and 59—*Sale for arrears of revenue—Application under s 37(A) and 38—Dismissal by Deputy Collector and Collector—Confirmation of sale whether final—Application to Board of Revenue—Powers of general supervision of Board of Revenue—Power to direct Collector to cancel sale—Cancellation by Collector—Validity of—Title of purchaser whether affected—Suit by purchaser for possession—Limitation—Material irregularity—Proof of substantial loss—Madras Regulations II of 1803 and III of 1828* The plaintiff purchased the suit lands in a revenue auction sale held under the Madras Revenue Recovery Act (II of 1864) A petition to set aside the sale under s 37 (A) of the Act was filed by the defaulter before the Deputy Collector and was dismissed another petition under s 38 (1) of the Act was also dismissed by the Deputy Collector who confirmed the sale the District Collector also confirmed the sale the first defendant then filed a petition before the Board of Revenue to set aside the sale The Board of Revenue in the exercise of their powers of general supervision directed the Collector to cancel the sale which was accordingly cancelled by him The plaintiff thereupon instituted this suit to recover possession of the suit lands more than six months after the order cancelling the sale The first defendant pleaded that the sale was validly cancelled by the Collector that the suit was barred by limitation under s 59 of Act II of 1864 and that the sale should have been set aside on account of material irregularity *Held* that when a Collector is empowered by a statute to pass a certain order it is not open to the Board of Revenue having only general powers of supervision over him to direct him to pass a special order contrary to that he had already passed that the order cancelling the sale though purporting to be passed by the Collector was really the order of the Board of Revenue who had no power under Act II of 1864 to pass such an order that after an order under s 38 (3) was passed by the Deputy Collector and confirmed by the Collector it became final under that section and neither of them had power under the Act to pass any further order that the suit was not barred by limitation as s 59 of Act II of 1864 was not applicable for the reason that the order complained of was passed wholly without jurisdiction and not under any power conferred by the Act and that on the merits the sale should not have been set aside as no substantial loss was proved to be due to the irregularity SUNDARAM AYYANGAR v RAMASWAMI AYYANGAR (1918)
I L R 41 Mad 95

—— s 59—

See LIMITATION I L R 33 Ma

MADRAS REVENUE RECOVERY ACT (MAD II OF 1864)—*contd*

——— s 59—*contd*

See MUTT HEAD OF
I L R 38 Mad 356

——— *Sale of a minor's ryotwari land holder's lands for arrears of revenue validity of—Madras Regulation (V of 1831) s 2—Wrong entry of minor's mother as pattadar instead of minor effect of—Suit to set aside revenue sale more than six months after sale whether barred by limitation* On the death of a ryotwari landholder the Revenue authorities erroneously registered his widow as the pattadar instead of the plaintiff his minor adopted son Default in payment of revenue having occurred the lands were sold for arrears of revenue during plaintiff's minority and he then sued to set aside the revenue sale and recover the lands within twelve years of the sale but more then six months after attaining majority *Held* by the Full Bench (*a*) that s 2 of Madras Regulation V of 1831 which prohibits the sale for arrears of revenue of minor's properties applies to all lands of minors whether permanently settled or only ryotwari whether the lands be considerable or so small as not to be taken charge of by the Court of Wards (*b*) that the sale being *ultra vires* the special period of limitation of six months prescribed by s 59 of the Madras Revenue Recovery Act (II of 1864) did not apply to the suit and (*c*) that the fact that the Revenue authorities mistakenly registered the plaintiff's adoptive mother as pattadar did not in any way affect him *Krishna* v *Melam Peruma I L R 10 Mad 44* considered *Subramania Chetty* v *Mahalingasami Sivan I L R 33 Mad 41* distinguished *Secretary of State* v *Ashtamurthi I L R 13 Mad 89* followed SWAMINATHA AYYAR v GOVINDASAWAMI PADAYACHI (1918)
I L R 41 Mad. 733

MADRAS SURVEY AND BOUNDARIES ACT (MAD IV OF 1897)

——— s 11—*Decision of Survey Officer on dispute as to boundary not set aside on appeal or by suit within one year effect of—Continued possession of unsuccessful party effect of* A decision of a Survey Officer passed under s 11 of the Madras Survey and Boundaries Act (IV of 1897) on a dispute arising between two parties as to the boundary of a certain property is final and conclusive as to the rights of the parties if not set aside either on appeal or by a suit brought within one year and it is none the less so because the unsuccessful party who was in possession on the date of the order was not subsequently ousted from possession *Krishnamma* v *Achayya I L R 2 Mad 306* distinguished MUTHIPULANDI POOSARI v SETHURAM AIYAR (1918)
I L R 42 Mad 425

——— s 12—*Land with shifting boundaries—Damages—Lease—Lessee rights of* Where the boundaries of land to be leased are of a shifting character the prospective lessee is entitled to rely upon the area stated in the lease and to be put into possession of an area which approximates to that which is mentioned in the lease *Raja Durga Prosad Singh* v *Rajendra Narain Bagchi 10 C L J 570* applied Where the lessor is unable to put the lessee into possession of the area stipulated in the lease he is liable to compensate the lessee by way of damages Where the alteration to the land takes place after the lessee has been

MADRAS SURVEY AND BOUNDARIES ACT (MAD IV OF 1897)—*contd*

——— s 12—*contd*

put into possession the rule would be different LEMMARAZU VENKIAH v THE SECRETARY OF STATE FOR INDIA (1910)
I L R 34 Mad 108

——— ss 12 and 13—*Decision of a Survey officer—Finality of decision—Decision whether final for all or for what purposes—Effect of word final in s 12 sub s (3)* The effect of s 12 sub s (3) of the Survey and Boundaries Act is to make the orders of a Survey officer in cases falling under that section final for the purposes of the survey but it does not go so far as to preclude the land owners altogether from afterwards disputing its correctness in a Court of Law unless there was a dispute before the Survey officer and the order is one to which s 13 of the Act applies *Muthirulandi Poosari* v *Sethuram Aiyar (1919) I L R 42 Mad 425* (F B) explained CHINNA VENKATRAYUDU v RAMAMURTI (1921)
I L R 44 Mad 34

MADRAS TOWNS NUISANCES ACT (MAD III OF 1889)

——— *Held* that a Public Place was one where the Public go whether they have a right to do so or not It is sufficient to constitute a place a public one even if only a section of the general public goes there In this case the compound of a Hindu Temple KING EMPEROR v MUSA
I L R 40 Mad 557

——— s 3 (10)— *Gaming and public place meaning of* The accused in this case held for stakes a game called Ring in an open space in the compound of a Hindu temple In convicting the accused under s 3 (*10*) of the Madras Towns Nuisance Act (III of 1889) on the grounds that the place was a public place and the game was a game within the meaning of the above section as it was played for stakes *Held* (*a*) Gaming generally and in s 3 (*10*) means playing for stakes (*b*) a public place is one where the public go whether they have a right to or not it is sufficient to constitute a place a public one even if only a section of the general public such as Hindus have a right to go to it and (*c*) the character of the game as one of skill or chance is not material under the section *Hari Singh* v *Jadu Nandan Singh I L R 31 Calc 542* followed KING EMPEROR v MUSA (1916) F B
I L R 40 Mad 556

——— ss 6 and 7—

See CRIMINAL PROCEDURE CODE s 517
I L R 41 Mad 644

MADRAS UNIVERSITY

——— Regulation 64—

See SPECIFIC RELIEF ACT (I OF 1877) s 45
I L R 40 Mad 125

MADRAS VILLAGE COURTS ACT (I OF 1889)

——— s 24—*Order of Deputy Collector debarring one from appearing as vakil for parties in village Courts* ultra vires—*Specific Relief Act (I of 1877) s 42—Suits for declaration of invalidity of order maintainability of* Under s 24 of the Madras Village Courts Act (I of 1889) *any person* holding a vakalatnama from a party may appear and plead in a village court and there is no provi

MADRAS VILLAGE COURTS ACT (I OF 1889) —*contd*

——— s 24—*contd*

sion in the Act for debarring any one from this privilege The power of removing su pending and dismissing village munsifs conferred on Divisional officers does not include the power of debarring a person from acting as a vakil for a party in village courts. A suit for a declaration that an order debarring one from acting as vakil for another in village courts is void is maintainable though it may not be covered by s 42 of the Specific Relief Act (I of 1877) RAMACHANDRA RAO *v* SECRETARY OF STATE FOR INDIA (1915)
I L R 39 Mad 808

MADRAS WATER CESS ACT (VII OF 1865)

——— Where a right to take water is proved even though no express agreement on behalf of Government not to levy a charge is proved an engagement under Act VII of 1865 will be implied and no cess can be levied SRI RAJAH SIMHADRI RAJU *v* SECRETARY OF STATE
I L R 39 Mad 67

MAFI

——— not rent—

See BENGAL TENANCY ACT 1885 s 153
1 Pat L J 504

MAGISTRATE

See CRIMINAL PROCEDURE CODE—
S 520 I L R 35 Bom 253

See JURISDICTION OF CRIMINAL COURT

See JURISDICTION OF MAGISTRATES

——— acting in two capacities—

See JURISDICTION OF MAGISTRATE
I L R 37 Calc 221

——— an executive officer—

See PRESS ACT (I OF 1910) s 3 (*1*) PROVISO I L R 39 Mad 1164

——— compelling attendance of witness—

See DISPUTE CONCERNING LAND
I L R 38 Calc 24

——— deciding question whether he has jurisdiction—

See PRACTICE
I L R 37 Bom 144

——— duty of—

See ATTACHMENT I L R 40 Calc 105
See COMMITMENT I L R 42 Calc 608
See COMPROMISE I L R 45 Calc 816
See SURETY I L R 43 Calc 1024

——— inquiry by—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 209 I L R 35 Bom 163

——— in insolvency—

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909) ss 17 103 AND 104
I L R 35 Bom 63

——— Jurisdiction of—

See COSTS I L R 47 Calc 974
See CRIMINAL PROCEDURE CODE s 188
I L R 41 Bom 667

See DISPUTE CONCERNING LAND
I L R 40 Calc 982

MAGISTRATE—*contd*

——— Jurisdiction of—*contd*

See HABEAS CORPUS
I L R 39 Calc 164

See RAILWAYS ACT (IX OF 1890) ss 126 (*a*) 130 I L R 43 Bom 888

——— power and duties of—

See CRIMINAL PROCEDURE CODE—
s 206 I L R 37 All 355
s 145 I L R 37 All 654

See MAGISTRATE (POWER OF)

See SEARCH WARRANT
I L R 47 Calc 164 597

——— offering bribe to—

See ABETMENT OF AN ABETMENT
I L R 46 Calc 607

——— on tour—

See SECURITY FOR GOOD BEHAVIOUR
I L R 41 Calc 806

——— order of forfeiture passed by—

See RIGHT OF SUIT
I L R 40 Bom 200

——— Power of—

See SEARCH WARRANT
I L R 47 Calc 597

I CHANGE IN BENCH OF DURING TRIAL.

——— *Magistrate convicting was has not heard at the evidence—Criminal Procedure Code (Act V of 1898) s 530* Where the trial of the accused was commenced before a Bench of four Magistrates who heard part of the evidence and continued before the same four Magistrates and another who had joined as the fifth and all the five Magistrates deliver judgment convicting the accused *Held* that the conviction was vitiated and that there must be a re trial *Re* SUBRAMANIA AYYAR (1913)
I L R 38 Mad 304

II JURISDICTION OF

1 ——— *Criminal Procedure Code (Act V of 1898) ss 100 552—Jurisdiction of first class Magistrate upon an application under s 552 of the Code to issue a search warrant under s 100 on a fresh complaint of facts alleging wrongful confinement—Warrant under s 100 drawn up on a printed form used under s 98 with the necessary alterations—Presumption that such alterations were made—Destruction of original warrant by the accused—Resistance to execution of such warrant and assault on the police—Penal Code (Act XLV of 1860) ss 147 and 332* Where on an application made under s 552 of the Criminal Procedure Code to a Magistrate of the first class he examined the applicant on oath recorded a statement of facts alleging wrongful detention of his wife and directed the issue of a search warrant under s 100 *Held* that he had jurisdiction to do so A search warrant under s 100 of the Code drawn up in the absence of a printed form of warrant there under on a printed form used under s 98 with the necessary alterations is not illegal *Bisu Halder* v *Probhat Chunder Chuckerbutty 6 C L J 127* distinguished Where the original warrant was in such a case not

MAGISTRATE—*contd*

produced at the trial owing to its destruction by the accused at the time of its execution *Held* that it must be taken that it contained the substance of s 100 and that the necessary alterations were made GORA MIAN v ABDUL MAJID (1911)
I L R 39 Calc 403

2 ———————— *Deputy Magistrate in charge of the office of the District Magistrate at head quarters—Subordination of the Sub divisional Magistrate to such Deputy Magistrate—Power of latter after taking cognizance and examining the complainant on oath to direct a local investigation by the former—Irregularity effect of—Power of the same to dismiss the complaint and order the prosecution of the complainant on evidence taken at the investigation and on the report of the Sub divisional Officer—Criminal Procedure Code (Act V of 1898) ss 12 202 203 476 and 529 (f)* A Sub divisional Magistrate is not under s 202 of the Criminal Procedure Code subordinate to a Deputy Magistrate appointed to act in the district without definition of the local limits of his jurisdiction who was in charge of the office of the District Magistrate at head quarters during the latter s absence on tour and such Deputy Magistrate cannot therefore after taking cognizance of an offence committed in the sub division and examining the complainant on oath direct a local investigation by the Sub divisional Magistrate nor can he thereafter dismiss the complaint and order the prosecution of the complainant under s 476 of the Code on such report and the evidence taken at the investigation Section 529 (*f*) does not in the circumstances confer jurisdiction on the Deputy Magistrate to make such orders of dismissal and prosecution but vests the Sub divisional Magistrate with seisin of the case and the latter alone can inquire into it and pass final orders BHIKU HOSSEIN v EMPEROR (1912)
I L R 39 Calc 1041

3 ———————— Where a complaint was filed by a Sub Inspector of Police before the Sub divisional Magistrate of an offence under s 399 of the Penal Code and the facts disclosed also an offence under s 4 (*b*) of the Explosive Substances Act (VI of 1908) of which the Magistrate could not then take cognizance for want of the consent of Government under s 7 and a complaint was subsequently filed by the Superintendent of Police with such consent before the Additional District Magistrate *Held* that the latter had jurisdiction to take cognizance of the offence and that the initiation and continuation of the proceedings by him were legal notwithstanding that he had not withdrawn the original case to his own file *Held* also that in any case having regard to ss 529 to 531 of the Criminal Procedure Code unless it appeared that the proceedings wrongly held had in fact occasioned a failure of justice they could not be set aside and that s 309 requires opinions of assessors to be given orally LALIT CHANDRA CHOWDHURY v EMPEROR
I L R 39 Calc 119

III POWERS OF

———————— *District Magistrate power of to cancel bond for keeping the peace or for good behaviour—Order directing prosecution for using forged receipt in a proceeding before a subordinate Magistrate for keeping the peace, and for abetment thereof— Judicial proceeding — Criminal Procedure Code (Act V of 1898) ss 4 (m) 125 476* Section 125 of the Criminal Procedure Code gives the District Magistrate the power to cancel a bond for keeping the peace for reasons which appear to him sufficient but not the right to hear an appeal from an order in a proceeding under s 107 passed by a subordinate Magistrate A District Magistrate has no jurisdiction under s 476 of the Code to direct a prosecution for dishonestly using a forged document and for abetment in respect of rent receipts filed before a subordinate Magistrate in a case under s 107 of the Code which has been disposed of by him under s 125 the proceeding under which is not a judicial proceeding DAYANATH THAKUR v EMPEROR (1909)
I L R 37 Calc. 72

———————— A Magistrate may on taking congizance of a complaint issue either a summons under s 94 or a search warrant under s 96 of the Criminal Procedure Code but is not competent to pass an order directing the police to take possession of account books forming the subject of the charge If the Magistrate after first having examined the complainant under s 200 is not satisfied that process should issue he can under s 202 either hold an inquiry and take evidence himself or direct a local investigation by a subordinate officer After ordering a police investigation he may if dissatisfied with the materials personally make a further inquiry and take evidence or direct a further local investigation but not an inquiry and report by another Magistrate If he thinks it proper to send the case to a Magistrate for inquiry *other than a local investigation he should transfer it under* s 192 to the latter for disposal and not for a report Where the complainant made no specific allegations of facts in the complaint but stated in his examination on investigation under s 202 that when the jabda books were first opened the title pages contained the name of his son as a partner and that he later discovered that a substitution of pages had been made showing the name of his father in law as a partner and the statements in the complaint and such examination were not consistent as to the names originally entered and he was contradicted by his only witness in several particulars and his story was not supported by the original deed of partnership or the payment of the contributions it was held that the proceedings must be quashed as the materials before the Magistrate disclosed no offence Criminal Revision No 835 of 1910 against the order of D Swinhoe Officiating Chief Presidency Magistrate of Calcutta dated June 7 1910 *Jagat Chandra Mozumdar v Queen Empress* (1) *Chota Lal Dass v Anant Pershad Misser* (2) *and Chandi Pershad v Abdur Rahman* (3) referred to *Semble* A title page in an account book containing the names of the partners and the amount of the capital contributed by each is if signed by them a valuable security within s 30 of the Penal Code HARI CHARAN GORAIT v GIRISH CHANDRA SADHUKHAN
I L R 38 Calc 68

IV TRANSFER OF

———————— *Inquiry —Continuance of inquiry by another Magistrate without the examination of the witnesses de novo—Criminal Procedure Code Act (V of 1898) ss 145 350* S 350 of the Criminal Procedure Code applies to an inquiry

MAGISTRATE—*contd*

under s 145 Where a Magistrate who has commenced such an inquiry is transferred and the District Magistrate has made over the case to another Magistrate the latter has power under s 350 of the Code, to proceed with it without examining the witnesses *de novo* ANL SHEIKH v EMPEROR (1910) I L R 37 Calc 812

MAHA BRAHMINS

See CIVIL PROCEDURE CODE (1908) s 60
I L R 41 All 606

See TRANSFER OF PROPERTY ACT (IV OF 1882) ss 6 58 I L R 39 All 196

——— *Agreement as to distribution of offerings—Construction of agreement* The members of a family of Maha Brahmans entered into an agreement amongst themselves whereby certain members of the family were to take the offerings made on certain days of the month and the other members of the family the offerings made on the other days *Held* by BANERJI and LYLE *JJ* (RICHARDS *C J* dissenting) that the effect of such an agreement was that if an offering was made to a member of the family on a day which belonged to the other branch he was bound to account for it to the branch to which the day belonged *Per* RICHARDS *C J* — Such an agreement as above described would not prevent a person who wished to do so from making a special individual gift to a member of the family even on a day which was appropriated by the agreement to the other branch *Doorga Prasad v Budree 6 N W P H C 189 191* and *Oochi v Ulfat I L R 20 All 231* referred to SONA DEI v FAKIR CHAND (1913) I L R 35 All 412

——— *Right of to receive alms apart from the possession of specific property—Suit for declaration and injunction—Cause of action—Act No I of 1877 (Specific Relief Act) ss 42 and 54* Certain Maha Brahmans alleging that the collection of alms by them at a particular spot on the banks of the Ganges had been interfered with by the defendants who were Gangaputras sued the Gangaputras claiming first a declaration of their right to receive offerings at the particular place named and secondly an injunction restraining the defendants from interfering with their so doing *Held* that as the giving of such offerings was a purely voluntary act and the receipt thereof was not claimed in virtue of the possession by the plaintiffs of any temple or other holy place to which people were in the habit of resorting the plaintiffs had no cause of action which would support their suit BANSI v KANHAIYA I L R 43 All 159

MAHAD

See HINDU LAW—MITAKSHARA
I L R 40 Bom 621

MAHAL

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901) s 3 (d)
I L R 36 All 231

MAHANT

See AGRA TENANCY ACT (II OF 1901) s 11 etc I L R 35 All 474

MAHANT—*contd*

See HINDU LAW—ENDOWMENT
I L R 37 All 298
I L R 43 Calc 707

——— *Held* that a Mahant is entitled to grant a lease of Math Land in the ordinary course of management MAHANTH JAI KRISHNA PURI v BHUKHAL GOPE
6 Pat L J 638

MAHAR WATAN LAND

See BOMBAY REVENUE JURISDICTION ACT (X OF 1876) s 4 (a)
I L R 43 Bom 277

See HEREDITARY OFFICES ACT (BOM ACT III OF 1874) s 10 AND 13
I L R 35 Bom 146

MAHOMEDAN

See LIMITATION ACT (IX OF 1908) SCH I ART 127 I L R 41 Bom 588

——— *Ahmadis and Khadianis—Dissenters right of to worship in a mosque used by orthodox Muhammadans—whether dissenters are entitled to choose their own Imam* The sect known as Ahmadis or Khadianis are Muhammadans notwithstanding their pronounced dissent on several important matters from the orthodox Muhammadan faith The Khadianis are entitled to enter a mosque if they please and to offer up prayers with the regular congregation behind the recognized *Imam* but they are not entitled to pray in a separate congregation behind an *Imam* of their own in a mosque which has always been used by orthodox Muhammadans HAKIM KHALIL AHMAD v MALIK ISRAFI 2 Pat L J 108

MAHOMEDAN FAMILY

See DECREE I L R 43 Bom 412

See LIMITATION ACT (IX OF 1908) ss 6 7 AND ART 141
I L R 43 Bom 487

See MORTGAGE I L R 40 Calc 378

——— Breach of promise of marriage—
See CONTRACT I L R 42 Bom 499

MAHOMEDAN LAW

See ADMINISTRATION SUIT
I L R 45 Bom 75

——— Death—presumption as to—
See EVIDENCE ACT 1872 s 108
I L R 43 All 672

MAHOMEDAN LAW—contd

MAHOMEDAN LAW—ACKNOWLEDGMENT OF SONSHIP

See MAHOMEDAN LAW—LEGITIMACY

——— *Acknowledgment of legitimate sonship—Inference of acknowledgment* A Mahomedan cannot legally acknowledge as his son, a person who is shown to be the son of another man The acknowledgment must be not merely of sonship but of legitimate sonship but the fact that the acknowledgment was of legitimacy as well as of sonship may be inferred from circumstances justifying that inference USMANMIYA v VALLI MAHOMED (1915) I L R 40 Bom 28

——— *Acknowledgment as son what is necessary to its validity—Valid acknowledgment operates as declaration of legitimacy and not as legitimation—Presumption of fact rebuttable by proof of impossibility of marriage or no marriage—Concurrent findings of fact* In Mohammedan law the acknowledgment by one person of another as his legitimate son is of no avail in the face of a finding that there was no marriage In Mohammedan law such an acknowledgment is a declaration of legitimacy and not a legitimation—a declaration which though it cannot be withdrawn may be contradicted SYED HABIBUR RAHMAN CHOWDHURY v SYED ALTAF ALI CHOWDHURY

26 C W N 81

——— Acknowledgment by a father of a son by a female slave legitimises the boy in the absence of direct proof that no marriage had taken place The law requires to declare a man a bastard except on the clearest evidence IBRAHIM ALI KHAN v MST MUBARAK BEGAM I L R 1 Lah 229

MAHOMEDAN LAW—ADOPTION

See CUSTOM I L R 39 Calc 418

——— *Adoption by a convert from Hinduism—Custom of adoption—Burden of proof* The Mahomedan Law does not recognize adoption Hence where a Hindu is converted to Mahomedanism the presumption is that as a necessary consequence of conversion the law of adoption recognized by Hindu Law has been abandoned by him He who alleges that the usage and law in question had been retained must prove it BAI MACHHBAI v BAI HIRBAI (1911)

I L R 35 Bom 264

MAHOMEDAN LAW—ALIENATION

See MAHOMEDAN LAW—GUARDIAN
See MAHOMEDAN LAW—MINOR.
See MAHOMEDAN LAW—MARRIAGE.
I L R 45 Calc 878

——— *Minor—Right to sell minor's property—Necessity—Bonâ fide purchaser without notice* By a deed of conveyance dated 19th January 1904 one N purported to convey on behalf of herself and her minor son the plaintiff certain immoveable property to the defendant for the consideration of R7 000 On the same day N passed an indemnity bond in favour of the defendant indemnifying him against the claim of the plaintiff The plaintiff sued to have the said deed of conveyance declared void and for a declaration that the plaintiff was entitled to the whole of the property purported to be conveyed *Held* that the plaintiff was entitled to succeed on the grounds (i) there was absolutely no evidence that the sale was in any way necessary for the maintenance of the minor (ii) the purchaser was not a *bonâ fide* purchaser without notice of the plaintiff's rights The purchaser of an estate who takes with notice of a breach of trust is in the same position as the vendor who committed the breach of trust FAKIRUDDIN v ABDUL HUSSEIN (1910)

I L R 35 Bom 217

——— *Guardian—Construction of will—Alienation of property of minor by his brothers acting as executors of will and guardians of minor—Sale not binding on minor—Right of suit to redeem mortgage—Limitation Act (XV of 1877) Schedule II Articles 44 and 144* A Mahomedan testator by his will left all his property to his four grandsons (brothers) but did not expressly appoint any executors of his will or guardians of such of his grand children as might be minors at his death nor was there in the will any intention to entrust the administration of the property to any particular individuals The testator died in 1887 and on the 15th of June 1889 the three elder grandson on their own behalf and purporting to act also as the guardians of the fourth grandson the respondent (plaintiff) then a minor sold some of the property to the appellant (defendant) The appellant was a mortgagee of two villages on the estate under two mortgages executed by the testator on the 2nd of December 1885 and the 7th of August 1886 for ten years and seven years respectively and the effect of the sale had been to pay off the later mortgage on the smaller village *and other debts by selling the larger* village to the mortgagee The respondent attained his majority in 1892 or 1893 and treating the sale of the 15th of June 1889 as a nulity and the mortgage as still subsisting he tendered to the appellant the amount of mortgage money necessary to redeem the larger village and on the appellant refusing to accept it brought a suit for redemption on the 14th of September 1905 *Held* that the elder brothers were not authorized either by the will or by the Mahomedan Law to act as guardians of the minor and that he was entitled on

MAHOMEDAN LAW—ALIENATION—*contd*

attaining his majority to treat the transaction of the 1 th of June 1893 as being void as against him. *Held* also that the possession of the appellant did not become adverse to the respondent until the expiry of the term of the mortgage of 1880 namely the 2nd of December 1890 and therefore the suit was not barred by the 12 years period provided by Article 144 of Schedule II of the Limitation Act (XV of 1877). Article 44 Schedule II of the same Act was not applicable as the sale was made not by a guardian but by an unauthorized person. MATA DIN *v* AHMAD ALI (1912) **I L R 34 All 213**

———— *Private sale by one of several heirs of a deceased Mahomedan in possession of the estate for discharging a debt binding on the estate not binding on co heirs or other creditors of the deceased* When one of the co heirs of a deceased Mahomedan in possession of the whole or part of the estate of the deceased sells property in his possession forming part of the estate for discharging the debts of the deceased such sale is not binding on the other co heirs or creditors of the deceased *Pathummabi v Vittil Ummachabi I L R 26 Mad 734* overruled *Hasan Ali v Mehdi Husain I L R 1 All 533* dissented from *Quære* Whether a decree against one of the heirs of a deceased Mahomedan binds the others ABDUL MAJEETH *v* KRISHNAMACHARIAR (1916) **I L R 40 Mad 243**

———— *Unlawful alienation of endowed property by mutualli of mosque—Allh masjid a daily worshipper may sue for declaration that alienation void without special damage—Representative suit of his under Civil Procedure Code (Act V of 1908) O I r 8—S 92 of the Code or s 14 of Act XX of 1863 if bars suit* A suit brought by two worshippers of a mosque for themselves and as representing other worshippers in the locality for a declaration that a permanent lease granted by the *mutualli* is void and inoperative is maintainable the requirements of O 1 r 8 having been complied with by the plaintiffs No special damage need be alleged or proved for the maintainability of such a suit since worshippers living in the vicinity of a mosque have rights as daily worshippers to it over and above those possessed by the Mahomedan public and have a more direct interest in its maintenance and in the proper administration of the properties endowed for its benefit S 14 of Act XX of 1863 contemplates a suit instituted primarily against the Trustee Manager or Superintendent of a mosque temple or religious establishment or the members of any committee appointed under that Act and the only relief that can be asked for in such a suit is a decree directing the specific performance of any act by such Trustee Manager etc a decree for damages and costs against them and a decree directing their removal A suit under s 92 of the Civil Procedure Code is primarily a suit against a Trustee and can only be instituted either on the ground that there has been a breach of trust or that direction of the Court is necessary for the administration of the trust In the present case the mere fact that the Trustee was a defendant in the suit did not attract the application of s 92 of the Civil Procedure Code since no relief was claimed against him nor was the Court asked to give any direction for the administration of the trust ASHRAF ALI *v* MAHOMMAD NURUZZAMA (1918) **23 C W N 115**

MAHOMEDAN LAW—BIGAMY

———— *Effect of apostacy of husband after marriage and reconversion to Islam during the period of iddut—Second marriage of the wife with another man during such period—Illet ment—Penal Code (Act XLV of 1860) ss 494 and 4 1* Under the Mahomedan Law the marriage of a man who subsequently embraces Christianity becomes *ipso facto* void notwithstanding his reconversion to Islam during the period of *iddut* and the wife in contracting a second marriage during such period does not commit bigamy under s 494 of the Penal Code *Per* HOLMWOOD J—A second marriage contracted by the wife during the period of her *iddut* is not void by reason of its taking place during the life of the first husband but by reason of a special doctrine of the Mahomedan Law with which the Penal Code has nothing to do Where the parties have acted in good faith on what they believe to be a sound interpretation of a very difficult point of Mahomedan Law even though they are mistaken the consequences cannot be visited upon them in a Criminal Court in a trial for bigamy ABDUL GHANI *v* AZIZUL HUQ (1911) **I L R 39 Calc 409**

MAHOMEDAN LAW—CONVERSION

See JURISDICTION **I L R 35 Bom 264**

See MAHOMEDAN LAW—BIGAMY **I L R 39 Calc 409**

———— *Marriage—Conversion of wife to Christianity—Dissolution of marriage—Suit for restitution of conjugal rights* Under the Mahomedan Law a wife s conversion from Islam to Christianity effects a complete dissolution of marriage with her Mahomedan husband The fact of such a conversion is therefore a bar to a suit by the husband for restitution of conjugal rights *Zuburdust Khan v His wife* ~ *N W P H C R p 3 0* and *Imamdin v Hasan Bibi Punj Rec (1906) 309* followed AMIN BEG *v* SAMAN (1910) **I L R 33 All 90**

MAHOMEDAN LAW—CUSTOM

See CUSTOM

See CUTCHI MEMONS **I L R 41 Bom 181**

———— Exclusion of daughters—

See CUSTOM **I L R 45 Calc 450**

———— of Pre emption—

See MAHOMEDAN LAW—PRE EMPTION

———— *Lubbais of Coimbatore district—Right of succession—Exclusion of females—Custom—Retention of rule of Hindu Law—Proof of Custom standard of—Family Custom proof of—Abandonment of Custom* Among the Lubbais of the Coimbatore district who are Hindu converts to Mahomedanism a custom prevails under which they retain the rule of Hindu Law which excludes females from the right of succession *Mirabivi v Vellayanna I L R 8 Mad 464* and *Kunhambi v Kalanthar* ~ *Mad H C R 156* referred to It is open to them to abandon the custom and follow the ordinary rule of Mahomedan Law *Rajkishen Singh v Ramjoy Surma Mozoomdar I L R 1 Calc 186* referred to *Per* SRINIVASA AYYANGAR J—Custom in its legal sense means a rule excep

MAHOMEDAN LAW—CUSTOM—*contd*

tional to the general rule of law In India in many cases it is impossible to say that any particular usage which is pleaded is in derogation of a general law consequently the inquiry in many cases is as to what is the law and not what is the usage at variance with law Nature of custom and standard of proof thereof required in England and in India compared *Hirbai* v *Gorbai* *12 Bom H C R 294* *Rawthan* v *Perachi* *I L R 15 Mad 281* *Kunhi Raman* v *Kunhi Parvathi* *(1910) Mad W N 642* and *Fanindra Deb* v *Rajeswar Dass L R 12 I A 72* referred to SHAIKH v MUHAMMAD (1915)

I L R 39 Mad 664

——— *Proof of custom in derogation of if permissible—Standard of proof—Onus—Lubbai Mahomedans of Coimbatore—Custom excluding females from succession* The parties to the litigation were Lubbai Mahomedans of the Sunni sect residing in the District of Coimbatore in the Madras Presidency, the question was whether succession to the estate of a deceased member of the sect was governed by Mahomedan Law or by a rule of descent excluding females *Held* that in view of s 16 of the Madras Civil Courts Act III of 1873 *primâ facie* all questions of succession amongst the parties who were Mahomedans were to be decided according to Mahomedan Law but it is now well established that in India a custom at variance even with the rules of Mahomedan Law governing the succession in a particular community of Mahomedans may be proved The onus of proof is on the party alleging the custom The custom should be ancient and invariable and established to be so by clear and unambiguous evidence *Ramalakshmi Ammal* v *Sivanananthа Perumal Sethurayar* (4) and *Abdul Hussein Khan* v *Bibi Sona Dero* (3) referred to *Held* that the evidence fell short of the standard proof requisite to establish a custom (3) *L R 45 I A 10* s c *I L R 45 Calc 450* *22 C W N 353 (1917)* (4) *14 M I A 570 (1872)* MOHAMED IBRAHIM ROWTHER v SHAIKH IBRAHIM

26 C W N 793

MAHOMEDAN LAW—DIVORCE

——— *Hanafi Law—Divorce—Talak need not be addressed directly to the wife to constitute a valid divorce* According to the Hanafi Law it is not necessary that the Talak or words of repudiation should be addressed directly to the wife to constitute a valid divorce The expressions mentioned in the Hedaya as constituting express divorce are not exhaustive but merely illustrative of the different forms in which the Talak may be pronounced The incidents of marriage and divorce under the Muhammadan Law fully discussed *Furzund Hossein* v *Janu Bibee I L R 4 Calc 588* doubted ASHA BIBI v KADIR IBRAHIM ROWTHER (1909)

I L R 33 Mad 22

——— *Sunni sect—Divorce—Evidence—Burden of proof* No special form of formula is prescribed for a divorce under the Hanafia law All that the law requires is to see that the words of divorce pronounced by a husband should show a clear intention on his part to dissolve the contract of marriage Where witnesses depose that a divorce was effected in their presence it is for the party alleging the contrary to prove by cross-examination that the words used by the husband when pronouncing the divorce were insufficient and incomplete to support a valid divorce WAHID KHAN v ZAINAB BIBI (1914)

I L R 36 All 458

——— *Kabinnamah—Condition that husband should live with wife in wife's father's house as khanadamad and for divorce upon breach if valid* A condition in a *kabinnamah* that the husband shall live with the wife in her father's house and that if he broke this condition she would be entitled to divorce him is invalid under the Mahomedan Law and her claim for deferred dower following upon such a divorce must fail IMAM ALI PATWARI v ARFATUNNESSA (1913)

18 C W N 693

——— *Divorce—Revocation—Validity of the bedai form of divorce* *Held* that it is not every kind of divorce which is revocable according to the Mahomedan Law but only those made in certain forms The *bedai* form of divorce is a perfectly legal form and is irrevocable *In re Abdul Ali Ismailji I L R 7 Bom 180* followed AMIR UD DIN v KHATUN BIBI (1917) I L R 39 All 371

——— *Post nuptial agreement by husband not to take another wife and delegation to wife of power of divorce on breach—Validity—Breach of agreement followed by husband's suit for restitution of conjugal rights—Divorce given after suit by wife if valid* A post nuptial delegation of the power of divorce is valid under Mahomedan Law Where by a *kabinnamah* executed after the marriage the husband undertook not to take a second wife without the wife's permission and delegated to her the power of giving three *talaqs* in cases of violation of the said amongst other conditions whenever she chose and afterwards having taken a second wife without the first wife's permission used the latter for restitution of conjugal rights whereupon she gave herself the three divorces according to Mahomedan Law *Held* that the authority to divorce was validly given and exercised and the suit must fail SAINUDDIN v LATIFENNESSA BIBI (1918) I L R 46 Calc 141

22 C W N 924

——— Talaknama—*Registration of the deed—Neither Kazi nor wife present at the time of the execution of the deed—Deed not immediately communicated to wife—Wife's knowledge of the deed within a reasonable time—Validity of* Talaknama A Mahomedan executed a *talaknama* (deed of divorce) in the presence of witnesses and got it duly registered under the Indian Registration Act 1908 Neither the Kazi nor the wife was present at the time the deed was executed The deed was not immediately communicated to the wife but it came to her knowledge within a reasonable time—*Held* that the *talaknama* was valid according to Mahomedan law RAJASAHEB RASULSAHEB *In re* (1919) I L R 44 Bom 44

——— *Marriage—Suit for dissolution—False charge of adultery made by the husband a ground for dissolution of marriage* A Mahomedan wife is entitled to bring a suit for divorce and obtain a decree for dissolution of marriage on the ground that her husband has falsely charged her with adultery *Jaun* v *Beparee 3 W R 98* doubted ZAFAR HUSAIN v UMMAT UR RAHMAN (1919) I L R 41 All 278

MAHOMEDAN LAW—DIVORCE—*contd*

———— *Divorce by writing—Pregnancy followed by miscarriage—Divorce in khula form—Date on which period of iddat commences—Circumstances by which iddat may be terminated earlier* A Mahomedan husband executed and registered a deed of divorce in favour of the wife and a few days later saw her pronounced the legal formulas made over the document to her and went away Subsequently she went through ceremonies of marriage with two persons one after the other the marriage with the Plaintiff taking place last In a suit for restitution of conjugal rights by the Plaintiff on the allegation that the first marriage after the divorce took place within the period of *iddat* and as such was void the defence set up was that the period of *iddat* commenced on the date of the execution of the document and expired before the first marriage after the divorce took place that the lady was pregnant at the time of the divorce and miscarried and this had the effect of terminating the period of *iddat* and that the divorce was in *khula* form *Held* that the divorce took effect from the date of the writing and not from the date of its receipt by the wife unless there were words in the instrument showing a different intention MOHAN MOLLA *v* BARU BIBI

26 C W N 261

———— *Divorce for consideration—Khulanama—Whether invalidated by non payment of consideration* The plaintiff sued he husband the defendant for a declaration that she had been divorced by him and was no longer his wife It was found that the defendant made a written deed of divorce (*khulanama*) in consideration of Rs 150 which amount had however not been paid to him and the document had not been delivered to the wife The first Court found that the non payment of the Rs 150 did not invalidate the divorce On appeal the District Judge held that the transaction was a mere promise to divorce if his wife paid him Rs 150 *Held* that it must be presumed that prior to the writing of the deed the wife offered and the husband accepted Rs 150 as compensation for the release of his marital rights the deed (*khulanama*) was then written securing to the husband the stipulated consideration but it did not constitute a divorce it assumed it and was founded upon it Consequently there was a complete and irrevocable divorce which was not invalidated by the non payment of the consideration *Moonshee Buzul ul Raheem v Luteefutoonissa (8 Moo I A 379 396 P C)* followed Mulla s Muhammadan Law 5th Edition page 179 Wilson s Digest of Anglo Muhammadan Law 3rd Edition page 144 Articles 69 and 70 and page 143 Article 143 and Tyabji s Principles of Muhammadan Law page 144 paragraph 143 referred to MUSSAMMAT SADDAN *v* FAIZ BAKHSH

I L R 1 Lah 402

MAHOMEDAN LAW—DOWER

See HEBA BIL-EWAZ 24 C W N 926

See MAHOMEDAN LAW—GIFT

I L R 42 Calc 361

See MAHOMEDAN LAW—MARRIAGE.

I L R 32 All 477

See MAHOMEDAN LAW—RESTITUTION OF CONJUGAL RIGHTS

I L R 1 Lah 597

MAHOMEDAN LAW—DOWER—*contd*

See MAHOMEDAN LAW—WIDOW

See SUCCESSION CERTIFICATE ACT (VII OF 1889)—

ss 2 AND 4 I L R 33 All 327
s 4 I L R 43 All 341 493
ss 4 AND 7 I L R 32 All 335

1 ———— Dirham value of—*Dower* The money value of ten *dirhams* in India is something between three and four rupees *Sughra Bibi v Husna Bibi I L R 2 All 573* referred to ASMA BIBI *v* ABDUL SAMAD KHAN (1909)

I L R 32 All 167

2 ———— Jurisdiction—*Marriage—Dower—Act No XVIII of 1876 (Oudh Laws Act)* *Held* that the mere fact that a marriage was celebrated in Lucknow the parties being afterwards domiciled in the province of Agra was not sufficient to authorize a Court in the province of Agra to apply to a suit brought by the wife against the heirs of her deceased husband for recovery of her dower the provisions of the Oudh Laws Act 1676 *Zakeri Begum v Sakina Begum I L R 19 Calc 689* followed RUKIA BEGAM *v* MUHAMMAD NAZIM (1910) I L R 32 All 477

3 ———— Prompt dower—*Payment of—Restitution of conjugal right—Consummation of marriage—Suit for prompt dower not premature before consummation* Under Mahomedan Law the Court may hold that the whole of the dower is exigible in cases where no specific amounts of the dower has been declared exigible and there has been no evidence of what is customary *Fatma v Sadrudin 2 Bom H C P 291* followed Prompt dower (*i e muajjal*) is payable immediately on the marriage taking place and it must be paid on demand It is only by payment of the prompt dower that the husband is entitled to consummate the marriage or enforce his conjugal rights Therefore the right to restitution so far from being a condition precedent to the prompt dower arise only after the dower has been paid *Ranee Khejoorunnissa v Ranee Ryeesunissa 13 W R 371* followed. HUSSEINKHAN SARDARKHAN *v* GULAB KHATUN (1911) I L R 35 Bom 386

4 ———— Liability of widow in possession to account for profits—*Dower—Interest* *Held* by the Full Bench that a Mahomedan widow who has been put in possession by her husband of his estate in lieu of her dower debt is entitled when called upon by her husband s heirs other than herself to account for rents and profits received by her during the time of her possession to claim interest at a reasonable rate upon her dower debt The liability of the heirs of the husband not being personal the heir who sues the widow for possession of his share is only liable to pay the proportionate part of the dower debt *Abdul Karim v Maqbulan I L R 30 All 315 Soorma Khatoon v Altaff-oonissa Khatoon 2 Hay 210 Woomatool Fatima Begum v Meerunnissa Khanum 9 W R 318 Bakridun v Ammatul Fatima 3 C L R 541 Ma Jan v Bibijan 5 B L R 500* and *Chaudhri Wali Ahmad v Musammat Maina Bibi F A No 65 of 1904* decided 3rd July 1906 referred to HAMIRA BIBI *v* ZUBAIDA BIBI (1910) I L R 33 All 182

5 ———— Presumption—*Sunnis— Dower—No determination at marriage whether dower is to be prompt or deferred—Civil Procedure Code 1908 O II r 2—Estoppel* In the case

MAHOMEDAN LAW—DOWER—*contd*

of Mahomedans of the Sunni persuasion where it is not settled at the time of the marriage whether the wife s dower is to be prompt or deferred part will be prompt and part deferred the proportion referable to each category being regulated by custom or in the absence of custom by the status of the parties and the amount of the dower settled *Fidan* v *Mazhar Husain I L R 1 All 483* and *Taufik un nissa* v *Ghulam Kambar I L R 1 All 506* followed A suit therefore brought by the wife during the lifetime of her husband for the recovery of the prompt portion of her dower will be no bar to a subsequent suit for the recovery of the deferred portion UMAD BEGAM v MUHAMMADI BEGAM (1910)

I L R 33 All 291

6 ———— Agreement between husband and wife as to satisfaction of wife s dower—*Construction of document—Mortgage—Mahabat* A Mahomedan made over to his wife to whom a dower of Rs 1 25 000 was due certain property In the deed of transfer it was stipulated (i) that the wife was to take possession of the property in lieu of her dower and enjoy the usufruct (ii) that the property was to revert to the husband if the wife predeceased him the dower debt being deemed to have been discharged (iii) that if the husband predeceased the wife the property was to become hers absolutely *Held* that the transaction was neither a mortgage by conditional sale nor a *mahabat* but the wife obtained a right to enjoy the usufruct during her husband s lifetime with the possibility of the interest developing into full ownership if the husband predeceased her MUBARAK UN NISSA v MANSAB HASAN KHAN (1911) I L R 33 All 421

7 ———— Compromise —*Suit for dower —Family arrangement—Transfer of expectancy—Transfer of Property Act (IV of 1882) s 6 (a)* A Mahomedan wife brought a suit for dower against her husband which resulted in a compromise the terms being that the wife was given possession of some property in lieu of her dower and the husband retained possession of some other property for life which life interest in case of urgent necessary he was authorized to sell or hypothecate and it was agreed that on the death of the wife the persons who should be the heirs of both would be the owners of the properties The wife predeceased her husband who then transferred certain properties in his own right and as heir of his wife *held* that the compromise was in the nature of a family settlement under which the husband was not competent to dispose of more than the life interest in certain property therein named The relinquishment by the husband of his right to succeed as heir to his wife was not obnoxious to the prohibition contained in s 6 (a) of the Transfer of Property Act 1882 *Musammat Hurmat ul nissa Begam* v *Allahdia Khan 17 W R 108 Shums ud din Ghulam Hussein* v *Abdul Husain Kalim ud din I L R 31 Bom 165 Kunhi Mamod* v *Kunhi Moidin I L R 19 Mad 176* and *Pam Nirunjun Singh* v *Prayag Singh I L R 8 Calc 138* referred to NASIR UL-HAQ v FAIYAZ UL RAHMAN (1911) I L R 33 All 457

8 ———— Right of widow to retain husband s property until dower debt is paid off—*Possession* Under the Mahomedan Law when a widow is in possession of the undistributed property of her deceased husband such

MAHOMEDAN LAW—DOWER—*contd*

possession having been obtained lawfully and without force or fraud and her dower or any part of it is due and unpaid she is entitled as against the other heirs of her husband to retain such possession until her dower debt is paid The possession need not necessarily be possession obtained by an agreement with her husband or his heirs *Bibi Jasliman* v *Bibi Kasiman 1° C L J 581* and *Amanat un nissa* v *Bashir un nissa I L R 17 All 77* dissented from SAHEB JAN BEWA v ANSARUDDIN (1911)

I L R 38 Calc 475

9 ———————— *Dower—Right of widow to remain in possession of her husband s property in lieu of dower* The right of a Mahomedan widow to whom dower is due and who has got into possession of property of her husband in lieu thereof to remain in possession until her dower is paid may perhaps be descendible to her heirs but no right to possession is descendible in a case where the widow herself never got possession at all *Ali Bakhsh* v *Allahdad Khan I L R 32 All 551* and *Bebee Bachun* v *Sheikh Hamid Hossein 14 Moo I A 377* referred to TAHIRUN NISSA BIBI v NAWAB HASAN (1912)

I L R 36 All 558

10 ———————— *Marriage—Dower widow s claim for charge on estate left by husband—Widow in possession of estate if can obtain a decree for dower without placing Court in possession of assets—Proper procedure administration suit* Under the Mahomedan Law when a widow is in possession of the undistributed property of her deceased husband and her dower or any part of it is due and unpaid she is entitled as against the other heirs of her husband to retain such possession until her dower debt is paid provided that her possession was obtained lawfully and without force or fraud The widow in such a case may be required to account for the profits received by her but she would be entitled to have set off against the sum received by her the income she might have made from her dower money if it had been paid to her immediately on the death of her husband The claim for dower is a debt due from the entire estate of the deceased and ranks equally and rateably with the claims of other creditors Consequently the share taken by the widow by right of inheritance is liable proportionately for the satisfaction of her dower debt in the same way as the shares taken by the other heirs and the liability of each heir is limited to the extent of the assets in his or her hands Where the widow has obtained and retained possession of the entire estate she has no cause of action for a money decree against the other heirs In such a case if the widow desires to have the question of her dower settled the proper course for her to follow is to institute an administration suit in which the property can be placed in the hands of the Court the amount of her claim if disputed investigated and appropriate directions given for the satisfaction of her claim by sale of the assets or otherwise In a case in which the widow is in possession of no portion of the estate she may sue the persons in possession to enforce her claim obtain a decree for the entire amount and realise the sum due out of the assets in their hands In a case where the widow is in possession of a portion of the estate and the other heirs have possession of the remainder she can seek to recover her dower by way of

MAHOMEDAN LAW—DOWER—*contd*

an administration suit or by a suit against the other heirs provided she offers to surrender possession of the property in her hands If she adopts the latter alternative the litigation really assumes the character of an administration suit SHARAFAT BAHADUR v SULTAN BEGUM (1914)

19 C W N 562

11 ——————— *Right to retain property in lieu of dower—Heritable right* The right which a Mahomedan widow having a claim to dower acquires on obtaining possession of her husband's property is a heritable right It is a substantial right and if she is wrongfully dispossessed she can maintain a suit to recover possession MAJIDMIAN BANUMIAN v BIBISAHEB JAN (1915) I L R 40 Bom 34

12 ——————— *Interest on unpaid dower—Claim for by widow allowed to take possession of her husband's estate to satisfy her dower debt—Liability of widow in possession to account for profits of estate—Recognition by Mahomedan Law of equitable principles in such a case* Where a Mahomedan widow was allowed to take possession of her husband's estate in order to satisfy her dower debt with the income of it and there was no agreement express or implied that she should not be entitled to claim any sum in excess of her actual dower *Held* that on equitable considerations she was entitled to some reasonable compensation not only for the labour and responsibility imposed on her for the proper preservation and management of the estate but also for forbearing to insist on her strict legal rights to exact payment of her dower on the death of her husband and such compensation for forbearance to enforce a money payment was best calculated on the basis of an equitable rate of interest That appeared to be consistent with Mahomedan Law [see the Chapter on the Duties (*Adab*) of the Kazi] in the principal works on that law which clearly showed that the rules of equity and equitable considerations commonly recognised in the courts of Chancery in England are not foreign to the Musalman system but are in fact often referred to and invoked in the adjudication of cases The decision in *Hoomatool Fatima Begam* v *Meerunmunnissa Khanum 9 W R 318* that it would be inequitable to make the widow account for the profits except on the terms of allowing her reasonable interest of the dower debt was approved In suits brought by the other heirs against the widow for the taking of accounts for a decree to the plaintiffs of their respective shares in case the dower debt was shown to have been discharged and for a decree for any sum received by the defendant in excess of her dower the defendant set up a claim for interest on the unpaid dower debt and it being found that a portion of it remained unpaid interest at six per cent per annum was allowed on that amount HAMIRA BIBI v ZUBAIDA BIBI (1916)

I L R 38 All 581

13 ——————— *Widow in possession of husband's property in lieu of her dower—Suit by heirs of husband dismissed on non payment by the plaintiff of the dower then found to be due —Alienation of property by widow and subsequent suit for its recovery by the heirs—Res judicata—Nature of widow's possession* A Mahomedan widow being in possession of her husband's property in lieu of her dower debt some of the husband's heirs sued for possession of a portion of the property and obtained a decree conditional *on their paying the defendant a certain sum* which was then found to be due to her in respect of her dower debt The sum then adjudged to be due was not paid and the suit was in consequence dismissed After this suit had been decided the widow alienated the property in question by means of two separate deeds of gift but she did not transfer her right to payment of her dower debt Some years subsequently to the making of these gifts certain of the heirs of the husband who had been parties to the former suit instituted a fresh suit for the recovery of the same property or part of it against the widow and her donees professing their readiness to pay if it were held to be necessary whatever portion of the widow's dower debt might then remain outstanding *Held* (i) that the second suit was not barred by the principle of *res judicata* and (ii) that inasmuch as the widow had relinquished possession of her husband's property and had thereby given up her lien the plaintiffs although they might ultimately be liable for payment of a proportionate share of the dower debt were not bound to discharge that liability as a condition precedent to their getting possession of the property which the widow was not legally entitled to alienate The legal position of a Mahomedan widow in lawful possession of her husband's property in lieu of her dower debt discussed MAINA BIBI v WASI AHMAD (1919) I L R 41 All 538

14 ——————— *Dower—Widow in lawful possession of her husband's property—Right of widow to retain possession against husband's heirs till dower is satisfied—Necessity for consent of or agreement with her husband or his heirs—Sale by widow for payment of dower—Validity of sale—Right of vendee to retain possession until dower is satisfied* A Muhammadan widow whose dower remains unpaid is entitled to remain in possession of the properties of her husband which she obtained lawfully without force or fraud but without the consent of or any agreement with the husband or his heirs as to the payment of her dower nor can such properties be divided among the heirs until the dower debt has been satisfied *Hamira Bibi* v *Zubaida Bibi (1916) I L R 38 All 581 (P C)* discussed Though the sale by such widow to satisfy the dower debt is not binding on the other heirs of her husband the vendee is entitled to retain possession of the property sold to him against the other heirs until the dower debt is satisfied *Beeju Bee* v *Syed Moorthiya Saheb* (1920) I L R 43 Mad (F B) 214

15 ——————— **Relinquishment by a Mahomedan woman of 15**—*whether valid—Indian Majority Act (IX of 1875) — act in the matter of dower meaning of—Indian Contract Act s 11* A relinquishment of her right to dower by a Mahomedan woman who is a minor under the Indian Majority Act is invalid under the Indian Contract Act (IX of 1872) To relinquish dower is not to act in the matter of dower within s 2 of the Indian Majority Act ALI DHUNNIMA BIBI v MUHAMMAD FATHI UDDIN (1917)

I L R 41 Mad 1026

16 ——————— **Sunnis—No determination at marriage whether dower is to be prompt**—*Or deferred—Presumption* Amongst Sunni Muhammadans where there is no express agreement as to

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how much of the wife s dower is to be prompt it is to be pre umed that a reasonable proportion thereof will be prompt A proportion of 7½ per cent is certainly reasonable *Umda Begam* v *Muhammadi Begum I L R 38 All 291* followed. *Mirza Bedar Bukht Muhammad Ali Bahadur* v *Mirza Khurrum Bukht Yahya Ali Khan Bahadur 19 W R 315* distinguished MUHAMMAD SUBHAN ULLAH v SAGHIR UN NISSA (1919)

I L R 41 All 562

17 ———————— *Sunnis—Prompt dower payment of—Marriage of a pregnant woman but pregnancy not known to husband—Consummation of marriage—Husband turning away wife on her pregnancy coming to his knowledge—Divorce not given—Wife s right to claim dower* At the time of her marriage the plaintiff a Sunni Mahomedan woman, was pregnant but her pregnancy was not known to her husband (defendant) The marriage was duly consummated Within five months of the marriage the plaintiff gave birth to a fully developed child whereupon the defendant turned her out of his house but did not divorce her The plaintiff having sued to recover her prompt dower from the defendant —*Held* that the defendant was liable on the suit by the plaintiff for her prompt dower since the concealment of pregnancy by the plaintiff at the time of her marriage did not render the marriage invalid *Per* MACLEOD C J Where concealment of pregnancy is not by itself a ground for cancelling the marriage the husband has remedy by divorce KULSUMBI v ABDUL KADIR (1920)

I L R 45 Bom 151

18 ———— Relinquishment of dower during the funeral ceremony—*Of the husband validity of* Where a Mahomadan lady when overwhelmed with grief at the death of her husband orally relinquished her right to dower on the suggestion of her mother and sister —*Held* that under the circumstances of the case there was no exercise of free and deliberate judgment and the relinquishment made was invalid *Nurannes a Khanum* v *Khaje Mahomed Sakroo (1919) I L R 47 Calc* I L R 47 Calc 537

19 ———— Interest when may be decreed on dower—appellant s Burden —In every appeal it is encumbent upon the appellant to show some reason why the Judgment appealed from should be disturbed In decreeing a widow s su t for dower against the heirs of the deceased husband the committee allowed 6 per cent not strictly as interest but as a means of preventing her position being adversely prejudiced by the unsucce ful controversy rai ed by the heirs as to her rights MUSSAMMAT FAKHRUNISSA v MOULVI IZARUS SADIK 25 C W N 867

MAHOMEDAN LAW—ENDOWMENT

See MAHOMEDAN LAW—MUTTWALI
See MAHOMEDAN LAW—WAKF

1 ———— Mortgage—*Wakf— Mortgage of wakf property by Mutwalli for necessity of urgent character whether valid—Effect of obtaining permission of Cadi after the mortgag —Loan by a trustee at a h gh rate of interest* Under the Mahomedan Law mortgage of wakf property by the mut walli in case where necessity is e tablished is valid even if the permission of the Cadi is obtained subsequ nt to the mortgage Where therefore a Court found that a mortgage by a *mutualli* of

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wakf properties was for urgent nece ity and that the mortgage was proper the mortgage is valid in law inasmuch as it might be taken to have been retrospectively approved by the Court A loan by a trustee of endowed property at the rate of intere t at 12 per cent per annum with quarterly rests could not be considered beneficial to the endowment although the principal sum itself might have been urgently raised for the protection of the endowment and in such a case the Court is ju tifed in allowing interest at a reduced rate NIMAI CHAND ADDYA v GOLAM HOSSEIN (1909)

I L R 37 Calc 179

2 ———— Mutwalli suit for office of—*Wakf—Direction of founder Court s power to dis regard—Surrender of the office of Mutwalli and appointment of a succe or by a person who is not a general trustee effect of—Limitation Act (XV of 1877) Sch II Art 120* In appo nting a *mutualli* a Court will not disregard the directions of the founder except for the manifest benefit of the endowment *In re Tempest I R 1 Ch App 485 14 L T 685* referred to A created a *waqf* on the 22nd April 1864 by the *waqfnamah* he appointed himself the first *mutwalli* and al o gave directions as to the appointment of his successors The deed further provided that after the death of the founder his widow would remain in possession of the endowed propertie and the *mutualli* would act under her order During the lifetime of the founder the person who was nominated as the succes or in the office of *mutualli* died subsequently on the founder s death in 1868 his widow obtained certificate and undertook the performance of the duties of *mut walli* and continued to do so till the 29th of January 1877 when she executed a *towliatnamah* by virtue of which she surrendered the office of *mutualli* and appointed a third party as her succes or in that office who accordingly took possession of the endowed properties Upon a suit by the plaintiff as one of the representatives of the founder for declaration of his right as *mutwalli* and for recovery of po ses ion of the endowed properties *Held* that inasmuch as the widow of the founder was in no en e a general trustee and that she had no authority express or implied to modify in any way the terms of the trust deed nor she had the authority to renounce the office and appoint a succes or her acts were illegal under the Maho medan Law and that Art 120 of Sch II of the Limitation Act applied to the case and the plaintiff s uit was barred by limitation KHAJEH SALIMULLAH v ABDUL KHAIR M MUSTAFA (1909)

I L R 37 Calc 263

3 ———— Declaration of wakf suit for —*Right of Muhammadans entitled to u e such property to sue for a declaration that property is wakf* The plaintiffs Mahomedans resident in the city of Kanauj sued for a declaration that a certain *idgah* and the land adjoinin it situated in a village in pargana Kanauj was waqf property *Held* that as Muhammadans who had a right to u e the *idgah* they were entitled to sue and that no special permis ion was required to enable them to do o *Zafrayab Ali* v *Bakhtawar Singh I L R 5 All 497* and *Jawahra* v *Akbar Hu ain I L R 7 All 178* fol owed *Wand Ali Shah* v *Deanut ullah Beg I L R 8 All 31* di tinguished MUHAMMAD ALAM v AKBAR HU AIN (1910)

I L R 32 All 631

MAHOMEDAN LAW—ENDOWMENT—*contd*

4 ——— Subject of wakf—*Wakf—Right to recover money under a decree cannot be made the subject of Wakf* Right to recover money under a decree cannot be made the subject of wakf in the absence of a custom authorising such appropriation *Fulsom Bibee* v *Golam Hossein Cassim Ariff* 10 *C W N* 449 494 referred to and followed. *Kitlecola Sahib* v *Nuseerudeen Sahib I L R* 18 *Mad* 201 209 referred to KADIR IBRAHIM POWTHER v MAHOMED RAHUMADULLA POWTHER (1909) I L R 33 Mad 118

5 ——— Sale of wakf property—*Sanction to sell Jurisdiction—Practice—Trustees Act* (*XXVII of 1866*) *s* 3—*Trustees and Mortgagees Powers Act* (*XXVIII of 1866*) *s* 45— *Cases to which English law is applicable* On an application made by the *mutwallis* to a *wakf* for sanction to sell *wakf* property —*Held* that there being no statute authorising such an application such sanction could only be obtained by means of a suit *In the matter of Woozatunnessa Bibee I L R* 36 *Calc* 21 not followed Although a Judge of the High Court exercises the functions of a *kazi* when administering Mahomedan law the procedure to be adopted is to be regulated by the Code of Civil Procedure and the Rules and Orders of the High Court *Shama Churn Roy* v *Abdul Kabeer* 3 *C W N* 158 and *Nemai Chand Addya* v *Golam Hossein I L R* 37 *Calc* 179 referred to Such an application does not come within the purview of Acts XXVII and XXVIII of 1866 these Acts govern only such trusts as are in the form of an English trust and are constituted by persons of purely English domicile or persons governed by the Indian Succession Act *In re Kalandas Narrandas I L R* 5 *Bom* 154 and *In re Nilmoney Dey Sarkar I L R* 32 *Calc* 143 not followed *In re* HALIMA KHATUN (1910)

I L R 37 Calc 870

6 ——— Agreement by Hindu to dedicate property for maintenance of mosque—*Mahomedan Law—Moral duty—Agreement interfering with work of Receiver* An agreement by a Hindu to dedicate property for maintenance of a mosque is not enforcible according to Mahomedan Law FUZLUR RAHAMAN v ANATH BANDHU PAL (1911)

16 C W N 114

7 ——— Khanga attached to Darga—*Religious institution—Right of management—Exclusion of females—Prevailing usage—Usage as indication of the direction of the founder* The right of management of a religious institution such as Khangas attached to Dargas is to be decided according to the prevailing usage that usage being taken as indication of the direction of the founder Even in cases where appointments have been regularly made by the last holders an inquiry into the usage governing such appointments has been considered relevant *Shah Golam Rahimtulla Sahib* v *Mahommed Akbar Sahib* 8 *Mad H C* 63 *Sajad Abdula Edrus* v *Sajad Zain Sajad Haasi Edrus I L R* 13 *Bom* 555 *Sajad Mohammad* v *Fatte Muhammad I L R* 9 *I A* referred to ISMAILMIYA v WAHADANI BEGAM (1911) I L R 36 Bom 308

8 ——— *Endowment—Creation of endowment—Wakf by dedication or user—Graveyard land used as—Presumption of ancient origin of shrine and burial place—Punjab Land Revenue Act* (*XVII of 1887*) *s* 44—*Entry of ownership in record of rights at settlement* In this case the Judicial Committee (affirming the decision of the Chief Court of the Punjab) *held* on the evidence that the land in suit (known as the Mai Pak Daman graveyard) which had been used from time immemorial by the Mahomedan community of Multan for the purpose of burying their dead formed part of a graveyard set apart for the Mahomedan community and that by user if not by dedication the land was *wakf* In the record of rights of the last settlement an area of land which comprised the land in suit was entered as in the possession of Mahomedan and was described as *kabristan or ghair mumkin kabristan* (graveyard or unculturable land forming portion of a graveyard) and in the ownership column the name of the defendant (now represented by the Court of Wards) was entered as owner Their Lordships said It would seem that he was properly entered as owner being trustee and custodian of the shrine of the saint Mai Pak Daman and being or claiming to be the recognised head of the Mahomedan community in Multan and *held* that under s 44 of the Punjab Land Revenue Act (XVII of 1887) the entry not having been disproved must be presumed to be correct COURT OF WARDS v ILAHI BAKHSH (1912)

I L R 40 Calc 297

9 ——— Public Mosque—Right of management—*Civil Procedure Code 1882 s 539—Suit for appointment of Trustees and for settlement of a scheme of management—Community composed of Sunni Mahomedans from various districts and places—Trust deed giving management exclusively to Rhanderias—Discretion of Kazi under Mahomedan Law—Discretion of Court—Obligation to adhere to intentions of founder and objects of Trust—Right to vary details of management in accordance with changing conditions and circumstances* This appeal which arose out of a suit brought under s 539 of the Civil Procedure Code 1882 for the appointment of Trustees and the settlement of a scheme of management related to the Sunni Jumma Musjid at Rangoon which was admittedly a public mosque dedicated to the performance of religious worship by all Sunni Mahomedans without restriction as to place of origin The land on which the mosque was built had been granted by the Government on trust for that purpose in 1869 and it was together with other land adjoining purchased in 1871 from the Government by five members of the Sunni Mahomedan community who by a deed of trust in March 1872 dedicated it and the mosque erected thereon for the purpose of divine worship by all Sunni Mahomedans and vested the control and management of the mosque solely in Rhanderia (Surti) Mahomedan from Rhander near Surat *Held* that the transactions which took place in 1871 and 1872 in no way affected the original and then existing trust and that the trust deed did not create a new dedication but the mosque remained as before a public mosque dedicated to the performance of worship by all Sunni Mahomedans as originally founded With respect to the public religious trust as distinguished from a private trust the discretion under the Mahomedan Law of the Kazi (a discretion now exercised by the Civil Court) was very wide for though he could not depart from the intentions of or the rules made by the founder as to the objects of the benefaction yet as regards its management which must be governed by circumstance be



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had complete discretion his primary duty being to consider the interests of the general body of the public for whose benefit the trust is created In his judicial discretion he might vary any rule of management which he finds either not practicable or not in the best interests of the institution *Held* therefore that in settling a scheme of management the question was not one involving the determination of conflicting rights but the consideration of the best method for fully and effectively carrying out the purposes of the trust S 539 vested a very wide discretion in the Court and in giving effect to its provisions and appointing new trustees and settling a scheme the Court was entitled to take into consideration not merely the wishes of the founder so far as they can be ascertained but also the past history of the institution and the way in which the management has been carried on heretofore in conjunction with other existing conditions that might have grown up since its foundation The Court also had the power of giving any directions and laying down any rules which might facilitate the work of management and if necessary the appointment of trustees in the future *Held* also that on the facts and in the circumstances of this case the Bhanderia section of the worshippers all other conditions being equal were preferably entitled to the management of the mosque *Ibrahim Esmael* v *Abdool Karrim Peermamode* [1908] *A C* *526* *L R 35 I A 151* distinguished The case was accordingly remitted to the Chief Court to form a scheme by which the appointment of future trustees should be entrusted to a committee of the worshippers the composition of which should be in the discretion of the Court with due regard to local needs and conditions subject to the provision that so long as circumstances do not vary a majority of such Committee should be Bhanderias and that in settling the scheme *the Court should lay down rules* for the guidance of the committee in the discharge of any supervisitorial functions that it may be necessary to confide to them and for filling up vacancies on their body subject to its control MAHOMED ISMAIL ARIFF v AHMAD MOOLLA DAWOOD (1916) **I L R 43 Calc 1085**

10 ———— **Wakfnama executed by purdanashin lady**—*Charge of fraud undue influence and inability to understand document—Onus—Concurrent findings on issues of fact—Substantial dedication to charity* *Held*—That the *wakfnama* in question should be upheld as there was a substantial dedication of property to charitable and religious purposes and no legal objection to the dedication had been established On the question whether the *wakfnama* was obtained by fraud and undue influence and the executant a *purdanashin* lady understood the document *Held*—That the onus of proof having been properly placed there were concurrent findings on issues of fact which it was impossible for the Appellants to displace SYED AMATUL FATEMA BIBI v DEWAN ABDUL ALIM SAHEB **24 C W N 494**

11 ———— **Mortgage—Transfer—Possession—Limitation—Trust**—*Trustee alienations by of endowed property—Suit by mutualli to recover possession of wakf property mortgaged by former mutualli—Limitation Act (IX of 1908) Art 134—Time from which limitation runs—date of transfer or date of possession—Transfer in Art 134 meaning of—Bona fide purchaser for value without notice—Transfer of trust property—Title of purchasers for value and with notice—Registration if tantamount to notice—Mutualli position of—Legal owner of property dedicated to public charitable purposes—Discretion of District Judge as to to appoint mutualli from among strangers—Wakf principle of—Test whether deed is valid as wakf or is illusory—Gift substantially to charity—Property settled partly for benefit of members of the family—Transfer of Property Act (IV of 1882) s 41* *Held* (HUDA J *dubitante*) that the date of transfer contemplated in Article 134 of the Limitation Act 1908 is the date on which property or title was transferred and not the date on which transfer is followed by possession *Nilmony Singh* v *Jagabandhu Roy I L R 23 Calc 536* *Ram Kanai Ghosh* v *Hari Narayan Singh Deo 2 C L J 540* *Behari Lal* v *Muhammad Muttaki I L R 20 All 482* *Manavikraman Ettan Thambaran* v *Ammu I L R 24 Mad 471* and *Mulla Veetil Seeti Kutti* v *Kunhi Pathumma I L R 40 Mad 1040* per Wallis C J and Coutts Trotter J followed *Ramchandra Vithal Rajadhiksha* v *Mohidin I L R 23 Bom 614* dissented from *Dattagiri* v *Dattatraya Krishna Sinde I L R 27 Bom 363* *Maliji* v *Falirchand I L R 22 Bom 225* and *Husaini Khanam* v *Husain Khan I L R 29 All 471* distinguished *Bakhtawar Begam* v *Husaini Khanum I L R 36 All 195* *L R 41 I A 84* referred to Where the position of the trustee is that of a mere manager under a duty constituted trust it is immaterial under the present law whether the transferee takes with notice or without notice of the trust Under the older Acts of Limitation the transferee with notice was not protected by the twelve years rule *Radhanath Das* v *Elliott 6 B L R 530* *14 Moo I A 14* and *Luteefan* v *Bego Jan 9 Moo I A 505* referred to Where the transferee is a mere manager he is not the ostensible owner nor has the transferee anything corresponding to the English legal estate to set over against the prior equity of the beneficial owner *Varden Seth Sam* v *Luckpathy Royjee Lallah 5 W R 120* and *Gokul Das* v *Eastern Mortgage and Agency Co I L R 33 Calc 410* referred to A *mutualli of a wakf* estate is not the ostensible owner of the estate He is a mere manager and in the case of public charitable endowment the legal ownership of the property dedicated is in the Divine Being or in the charity created in his name Registration in a public registry office affords protection to intending purchasers and minimizes the hardship of transferees without notice The appointment of a *mutualli* of a public trust where the intention of the founder of the trust is not capable of execution is entirely within the discretion of the District Judge at Kazi *Mahomed Ismail Ariff* v *Ahmed Moolla Dawood I L R 43 Calc 1085* *L R 43 I A 127* followed Where property is dedicated in substance to charitable uses a valid *wakf* is created and the mere fact that the founder reserved to himself during his own lifetime an absolute discretion over the disposal of the income but depriving himself of the power to dispose of the corpus—without leaving such discretion to his successors—does not make the endowment invalid *Mujibunnissa* v *Abdur Rahim I L R 23 All 233* *L R 28 I A 15* *Ramanandan Chettiar* v *Vava Levvai Marakayar I L R 40 Mad 116* *L R 44 I A 21* *Mahomed Ihsanull Chowdhry* v *Amarchand Kundu I L R*

MAHOMEDAN LAW—ENDOWMENT—*concld*

17 C L C 498 L P 17 I A 28 and *Mu hurool Huq v Puhraj Ditarey Mohapattur* 13 W R 235 followed *Per* SHAMS UL HUDA J The onus to prove that a suit by a *mutualli* to recover possession of *wakf* property is within time is on the plaintiff it is for him to show that mortgage was not followed by possession NARAIN DAS ARORA v HAJI ABDUR RAHIM (1920)
I L R 47 Calc 866

MAHOMEDAN LAW—GIFT

See CIVIL PROCEDURE CODE 1882 ss 13 and 44 I L R 35 Bom 297

See LIS PENDENS I L R 41 All 531

See MAHOMEDAN LAW—WAQF

See TRANSFER OF PROPERTY ACT (IV OF 1882) ss 123 129
I L R 38 All 212

1 ———— Offerings at a shrine—*Gift of a fixed share of offering made at a shrine—Possession of subject of gift* *Held* that a gift of the right to receive a certain share of the offerings which might be made at a particular shrine was a valid gift and not repugnant to the doctrines of the Mahomedan Law *Amtul Nissa Begum* v *Mir Nurudin Husain Khan I L R 22 Bom 489* distinguished AHMAD UDDIN v ILAHI BAKHSH (1912)
I L R 34 All 465

2 ———— Hanafi Law—*Gift—Construction of document—Condition in derogation of the grant invalid* A deed of gift of certain property provided as follows — My son Naki Khan will remain owner (*malik*) of the remaining two thirds and of the said two thirds Naki Khan will remain full and absolute owner of one third (*malik kamil kalai*) and he shall have the powers of an owner with respect to it and Naki Khan will be owner (*malik*) of the other third also and his name will be entered in the khewat but the income of it is given for the maintenance of my minor grandson Muhammad Shafi Khan son of Muhammad Taqi Khan deceased According to law Naki Khan is guardian of Shafi Khan he must give the income of that one third for the maintenance of the minor and Naki Khan will not have the power of transfer over that one third during the life of the minor *Held* on a construction of the deed that the condition against alienation was invalid but the condition as to the payment of one third of the income to Muhammad Shafi Khan was valid and attached to the property in the hands of a transferee who was found to have notice thereof *Nawab Umjad Ally Khan* v *Musammat Mohumdee Begum 11 Moo I A 517* followed LALI JAN v MUHAMMAD SHAFI KHAN (1912)[1]
I L R 34 All 478

3 ———— Possession—*Gift validity of—Transfer of possession when unnecessary—Possession of donor necessary to validate gift* To make a valid gift under Mahomedan Law the donee should be put in possession But where the donee is a minor at the time of the gift and the donor remains in possession of the property as guardian of the donee on his behalf the gift would be valid under Mahomedan Law unless the subject matter of a gift is in the possession of a trustee or agent of the donor whose custody is regarded in law as the custody of the donor The owner of a property if not in possession cannot make a valid gift of it or rather a gift made by him will not pass the ownership of the property to the donee until the donee takes possession by the donor s consent FAKIR MAHAMAD MUHAMMED ROWTHER v KANDASAWAMY KULATHU VANDAN (1911)
I L R 35 Mad 120

4 ———— Mushaa—*Gift—Share in zemindari property—Gift by some co sharers to the others—Possession delivery of if necessary—Gift to adult and minor jointly—Gift by mother to minor son—Delivery of possession if necessary* Hiba bil mushaa (gift of undivided joint property) is not void but only invalid and possession remedies the defect When persons own a property jointly any sharer may make a gift of his share in that property to any other sharer without the formality of a delivery of possession There is no inherent illegality in a joint gift to an adult and a minor When the interest of the two are sufficiently specified so that there can be no apprehension of any confusion or dispute the gift is unobjectionable Where some of the co sharers of a zemindari property simultaneously made over their undivided share to the remaining co sharer the doctrine of *mushaa* did not apply In the case of a gift by a parent who is the *de facto* guardian of a minor to such minor a formal delivery of possession is not necessary JABEDANESSA BIBI v NAZIBAL ISLAM MOLLA (1910) 15 C W N 328

5 ———— *Gift—Mushaa* Where the defendant made a gift of a four anna share in a kaimi raiyati holding to the plaintiff his nephew by marriage and admitted him to joint possession with himself and recognised the plaintiff as being in such possession for 14 years *Held* that he could not be allowed to say that there had been no valid gift The doctrine of *mushaa* is not applicable to such a case *Ibrahim Goolam Ariff* v *Saiboo I L R 35 Calc 1* *Ameenabai* v *Hajirabai I L R 13 Bom 352* *Jiwan Bakhsh* v *Imtiaz Begam I L R 2 All 93* *Muhammad Mumtaz Ahmad* v *Zubaida Jan I L R 11 All 460* referred to ABDUL AZIZ v FATEH MAHOMED HAZI (1911) I L R 38 Calc 518

6 ———— Gift to a Mopla—*Governed by Mahomedan Law on his marriage not void on his wife s death or divorce—No reverter to donor* Under the Mahomedan Law a girl when married passes over to her husband s family and there is no obligation on the members of her natural family to maintain her after her marriage even if she is divorced So in the absence of any usage among Moplas governed by Mahomedan Law a gift made to the husband of a Mopla girl does not become void and does not revert to the members of her natural family when the girl dies or is divorced The rule is otherwise among people governed by Marumakkatayam Law *Mariyam* v *Abdulla* [Second Appeal No 1746 of 1895 (unreported)] referred to PAKRICHI v KUNHA CHA (1913) I L R 36 Mad 385

7 ———— Shias—Gift—Marz ul maut—*Disease of more than one year s duration* Under the Shia law a gift made in marz ul maut holds good to the extent of only one third of the donor s estate in spite of delivery of possession prior to his death Under the Shia law if a person dies of a disease of more than one year s duration such disease is not considered a death illness But there is this condition attached to it that if the illness increases to such an extent as to

MAHOMEDAN LAW—ENDOWMENT—*contd*

had complete discretion his primary duty being to consider the interests of the general body of the public for whose benefit the trust is created In his judicial discretion he might vary any rule of management which he finds either not practicable or not in the best interest of the institution *Held* therefore that in settling a scheme of management the question was not one involving the determination of conflicting rights but the consideration of the best method for fully and effectively carrying out the purposes of the trust S 539 vested a very wide discretion in the Court and in giving effect to its provisions and appointing new trustees and settling a scheme the Court was entitled to take into consideration not merely the wishes of the founder so far as they can be ascertained but also the past history of the institution and the way in which the management has been carried on heretofore in conjunction with other existing conditions that might have grown up since its foundation The Court also had the power of giving any directions and laying down any rules which might facilitate the work of management and if necessary the appointment of trustees in the future *Held* also that on the fact and in the circumstances of this case the Phunleria section of the worshippers all other conditions being equal were preferably entitled to the management of the mosque *Ibrahim Esmael* v *Abdool Karrim Peerman od* [1908] 4 C 526 L R 35 I A 151 distinguished The case was accordingly remitted to the Chief Court to form a scheme by which the appointment of future trustees should be entrusted to a committee of the worshippers the composition of which should be in the discretion of the Court with due regard to local needs and conditions subject to the provision that so long as circumstances do not vary a majority of such Committee should be Rhand nas and that in settling the scheme the Court should lay down rules for the guidance of the committee in the discharge of any supervisorial functions that it may be necessary to confide to them and for filling up vacancies on their body subject to its control MAHOMED ISMAIL ARIFF v AHMAD MOOLLA DAWOOD (1916) I L R 43 Calc 1085

10 ———— Wakfnama executed by purdanashin lady—*Charge of fraud undue influence and inability to understand document—Onus—Concurrent findings on issues of fact—Substantial dedication to charity* *Held*—That the *wakfnama* in question should be upheld as there was a substantial dedication of property to charitable and religious purposes and no legal objection to the dedication had been established On the question whether the *wakfnama* was obtained by fraud and undue influence and the executant a *purdanashin* lady understood the document *Held*—That the onus of proof having been properly placed there were concurrent findings on issues of fact which it was impossible for the Appellants to displace SYED AMATUL FATIMA BIBI v DEWAN ABDUL ALIM SAHEB 24 C W N 494

11 ———— Mortgage—Transfer—Possession—Limitation—Trust—*Trustee alienations by of [illegible] property—Suit by mutualli to recover possession of [illegible] property mortgaged by former mutualli—Limitation Act (IX of 1908) Art 134—[illegible] limitation runs date of transfer or of p[illegible]—[illegible] in Art 134 [illegible] of—P[illegible] [illegible] transfer of trust property—Title of purchasers for value and with notice—Registration if tantamount to notice—Mutualli position of—Legal owner of property dedicated to public charitable purposes—Discretion of District Judge as Kazi to appoint mutualli from among strangers—Wakf principle of—Test whether deed is valid as wakf or is illusory—Gift substantially to charity—Property settled partly for benefit of members of the family—Transfer of Property Act (IV of 1882) s 11* *Held* (HUDA J *dubitante*) that the date of transfer contemplated in Article 134 of the Limitation Act 1908 is the date on which property or title was transferred and not the date on which transfer is followed by possession *Atmony Singh* v *Jagabandhu Roy* I L R 23 Calc 536 *Ram Kanai Ghosh* v *Hari Narayan Singh Deo* 2 C L J 540 *Behari Lal* v *Muhammad Muttaki* I L R 20 All 48 *Manavikraman Ettan Thamburam* v *Ammu* I L R 24 Mad 471 and *Mulla Veetil Seeti Kutti* v *Kunhi Pathumma* I L R 40 Mad 1040 per Wallis C J and Coutts Trotter J followed *Ramchandra Vithal Pajadhiksha* v *Mohidin* I L R 23 Bom 614 dissented from *Dattagiri* v *Dattatraya Krishna Sinde* I L R 27 Bom 363 *Vali ji* v *Fakirchand* I L R 22 Bom 225 and *Husani Khanam* v *Husain Khan* I L R 29 All 471 distinguished *Bakhtawar Begam* v *Husaini Khanum* I L R 36 All 195 L R 41 I A 84 referred to Where the possession of the trustee is that of a mere manager under a duly constituted trust it is immaterial under the present law whether the transferee takes with notice or without notice of the trust Under the older Acts of Limitation the transferee with notice was not protected by the twelve years rule *Radhanath Das* v *Elliott* 6 B L R 530 14 Moo I A 14 and *Luteefan* v *Bego Jan* 9 Moo I A 303 referred to Where the transferee is a mere manager he is not the ostensible owner nor has the transferee anything corresponding to the English legal estate to set over against the prior equity of the beneficial owner *Jarden Seth Sam* v *Luchpathy Royjee Lallah* 5 W R 120 and *Gokul Das* v *Eastern Mortgage and Agency Co* I L R 33 Calc 410 referred to A *mutualli* of a *wakf* estate is not the ostensible owner of the estate He is a mere manager and in the case of public charitable endowment the legal ownership of the property dedicated is in the Divine Being or in the charity created in his name Registration in a public registry office affords protection to intending purchasers and minimizes the hardship of transferees without notice The appointment of a *mutualli* of a public trust where the intention of the founder of the trust is not capable of execution is entirely within the discretion of the District Judge at Kazi *Mahomed Ismail Ariff* v *Ahmed Moolla Dawood* I L R 43 Calc 1085 L R 43 I A 127 followed Where property is dedicated in substance to charitable uses a valid *wakf* is created and the mere fact that the founder reserved to himself during his own lifetime an absolute discretion over the disposal of the income but depriving himself of the power to dispose of the corpus—without leaving such discretion to his successors—does not make the endowment invalid *Mujibunnissa* v *Abdur Rahim* I L R 23 All 233 L R 28 I A 15 *Ramanandan Chettiar* v *Vava Levvai Marakayar* I L R 40 Mad 116 L R 44 I A 21 *Mahomed Ahsanulla Chowdhry* v *Amarchand Kundu* I L R

MAHOMEDAN LAW—ENDOWMENT—concld

1" Cac 495 I L R 1, 1 1 28 and Mu lureci Huq v Puhraj Ditaren Mckapattur 13 W R °35 followed Per SHAMS UL HUDA J The onus to prove that a suit by a mutwalli to recover possession of waif property is within time is on the plaintiff it is for him to show that mortgage was not followed by possession NARAIN DAS ARORA v HAJI ABDUR RAHIM (19 0)
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MAHOMEDAN LAW—GIFT

See CIVIL PROCEDURE CODE 1882 ss 13 and 44 I L R 35 Bom 29"

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S MAHOMEDAN LAW—WAQF

See TRANSFER OF PROPERTY ACT (IV OF 1882) ss 123 129
I L R 38 All 212

1 ———— Offerings at a shrine—Gift of a fixed share of offerings made at a shrine—Possession of subject of gift Held that a gift of the right to receive a certain share of the offerings which might be made at a particular shrine was a valid gift and not repugnant to the doctrines of the Mahomedan Law Amtul Nissa Begum v Mir Nurudin Husain Khan I L R 9 Bom 489 distinguished AHMAD UDDIN v ILAHI BAKHSH (1912)
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2 ———— Hanafi law—Gift—Construction of document—Condition in derogation of the grant invalid A deed of gift of certain property provided as follows — My son Naki Khan will remain owner (malik) of the remaining two thirds and of the said two thirds Naki Khan will remain full and absolute owner of one third (malik kamil kalai) and he shall have the powers of an owner with respect to it and Naki Khan will be owner (malik) of the other third also and his name will be entered in the khewat but the income of it is given for the maintenance of my minor grandson Muhammad Shafi Khan son of Muhammad Taqi Khan deceased According to law Naki Khan is guardian of Shafi Khan he must give the income of that one third for the maintenance of the minor and Naki Khan will not have the power of transfer over that one third during the life of the minor Held on a construction of the deed that the condition against alienation was invalid but the condition as to the payment of one third of the income to Muhammad Shafi Khan was valid and attached to the property in the hands of a transferee who was found to have notice thereof Nawal Uzjad Ally Khan v Musammat Mohumdee Begum 11 Moo I A 517 followed LALI JAN v MUHAMMAD SHAFI KHAN (1912)
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3 ———— Possession—Gift validity of—Transfer of possession when unnecessary—Possession of donor necessary to validate gift To make a valid gift under Mahomedan Law the donee should be put in possession But where the donee is a minor at the time of the gift and the donor remains in possession of the property as guardian of the donee on his behalf the gift would be valid under Mahomedan Law unless the subject matter of a gift is in the possession of a trustee or agent of the donor whose custody is regarded in law as the custody of the donor The owner of a property if not in possession cannot make a valid gift of it or rather a gift made by him will not pass the ownership of the property to the donee until the donee takes possession by the donor's consent FATIR NASAR MUHAMED ROWTHER v KANDASAWMY KUTATHU VANDAN (1911)
I L R 35 Mad 120

4 ———— Mushaa—Gift—Share in zemindari property—Gift by some co sharers to the others—Possession delivery of if necessary—Gift to adult and minor jointly—Gift by mother to minor son—Delivery of possession if necessary Hiba bil mushaa (gift of undivided joint property) is not void but only invalid and possession remedies the defect When persons own a property jointly any sharer may make a gift of his share in that property to any other sharer without the formality of a delivery of possession There is no inherent illegality in a joint gift to an adult and a minor When the interest of the two are sufficiently specified so that there can be no apprehension of any confusion or dispute the gift is unobjectionable Where some of the co sharers of a zemindari property simultaneously made over their undivided share to the remaining co sharers the doctrine of mushaa did not apply In the case of a gift by a parent who is the de facto guardian of a minor to such minor a formal delivery of possession is not necessary JAIFDANESSA BIBI v NAZIBAL ISLAM MOLLA (1910) 15 C W N 328

5 ———————— Gift—Mushaa Where the defendant made a gift of a four anna share in a kaimi raiyati holding to the plaintiff his nephew by marriage and admitted him to joint possession with himself and recognised the plaintiff as being in such possession for 14 years Held that he could not be allowed to say that there had been no valid gift The doctrine of mushaa is not applicable to such a case Ibrahim Goolam Ariff v Saiboo I L R 35 Calc 1 Emnabai v Hajirabai I L R 13 Bom 352 Jiwan Bakhsh v Imtia Begam I L R 2 All 93 Muhammad Mumtaz Ahmad v Zubaida Jan I L R 11 All 460 referred to ABDUL AZIZ v FATEH MAHOMED HAJI (1911)
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6 ———— Gift to a Mopla—Govern d by Mahomedan Law on his marriage not void on his wife s death or divorce—No reverter to donor Under the Mahomedan Law a girl when married passes over to her husband s family and there is no obligation on the members of her natural family to maintain her after her marriage even if she is divorced So in the absence of any usage among Moplas governed by Mahomedan Law a gift made to the husband of a Mopla girl does not become void and does not revert to the members of her natural family when the girl dies or is divorced The rule is otherwise among people governed by Marumakkatayam Law Mariyam v Abdulla [Second Appeal No 1 46 of 1895 (unreported)] referred to PAKRICHI v KUNHACHA (1913)
I L R 36 Mad. 385

7 ———— Shias—Gift—Marz ul maut—Disease of more than one year s duration Under the Shia law a gift made in marz ul maut holds good to the extent of only one third of the donor s estate in spite of delivery of p[illegible] prior to his death Under the Shia law it[illegible] of a disease of more than one y[illegible] such disease is not considered [illegible] But there is this condition atta[illegible] that if the illness increases to such [illegible] to

MAHOMEDAN LAW—GIFT—*contd*

cause or another supervenes which cause an apprehension of death in the mind of the donor the increase or the new disease is a death illness The nature of the gift does not change even if the donor had intended prior to death illness to transfer the property to the donee KHURSHED HUSAIN *v* FAIYAZ HUSAIN (1914) I L R 36 All 289

8 ———— Revocation - *Substantial alteration of subject matter—Partition* *Held* that a Revenue Court partition of villages the subject of a deed of gift does not amount to such a substantial alteration of the subject matter in the hands of the donee as would under the Mahomedan law render the gift irrevocable by the donor MAQBUL HUSAIN *v* GHAFUR UN NISSA (1914) I L R 36 All 323

9 ———— In lieu of dower—*Nature of such gift* The provision of the Mahomedan Law applicable to gifts made by persons labouring under a fatal disease do not apply to a so called gift made in lieu of a dower debt which is really of the nature of a sale *Ghulam Mustafa* v *Hurmat I L R 2 All 854* followed *Abbas Ali* v *Karim Bakhsh 13 C W N 160* and *Bibi Janbi* v *Hazrath Saib 21 Mad L J 928* referred to ISHAQ CHOWDHRY *v* ABEDUNESSA BIBI (1914) I L R 42 Calc 361

10 ———— Registration—*Of gift by Mahomedan if dispenses with delivery of possession* Under s 129 of the Transfer of Property Act the registration of a deed of gift in accordance with s 123 cannot make up for the want of delivery of possession required by the rules of Mahomedan Law ROHIM BUKH MANDAL *v* SHAJAD AHMAD CHAUDHURY (1914) 19 C W N 1311

11 ———— By deed of trust—*Oudh Laws Act (XVIII of 1876) s 3—Meaning of gifts —Delivery and acceptance of subject of gift not proved Transfer of Property Act (IV of 1882)— Trusts Act—(II of 1882) Oudh Land Revenue Act (XVII of 1876) s 61 et seq—Legitimacy proof of —Acknowledgment—Endorsement by Judge of documents admitted in evidence—Civil Procedure Code 1877 and 1882 s 141 1908 O XIII r 4—Undue prolongation of litigation—Cross examination of witnesses* In s 3 of the Oudh Laws Act (XVIII of 1876) which indicates the cases in which among Mahomedans the Mahomedan Law is to be applied the word gifts includes a gift made to a beneficiary through a trustee A Mahomedan made a settlement the parties to which were himself to the first part his wife of the second part and his wife and her father of the third part (the trustees) which after reciting that R 8 000 was due by the settlor to his wife for the balance of her dower and that it had been agreed between the parties that the settlement should be in full satisfaction of the dower debt witnessed that for the consideration stated the settlor granted certain properties to the trustees upon trust to pay the net incomes of the properties to his wife for her life and after her death upon trust for all the children of the settlor and his wife living at the time of his decease The deed was never executed by the wife and there was no evidence independent of the deed to show that any agreement was ever entered into between the settlor and his wife that she would accept the provision made for her in the settlement in satisfaction and discharge of the unpaid balance of her dower and she never elected in her life time to take the benefits conferred on her by the deed in lieu of it *Held* that the conveyance to the trustee was a purely voluntary gift and was void by Mahomedan Law unless accompanied by a delivery of possession such as the subject of the gift was susceptible of Subsequent election could not be held to be a substitute for the original consideration *Chaudhri Mehdi Hasan* v *Muhammad Hasan I L R 28 All 439 449 L R 33 I A 68 76* and *Khajooroonnissa* v *Roushan Jehan I L R 2 Calc 184 L R 3 I A 291* followed The rule of law laid down by those authorities was not altered or qualified by the combined provisions of the Transfer of Property Act (IV of 1882) and the Indian Trusts Act (II of 1882) so as to make registration a substitute for delivery of possession Both of those Acts were passed long before the first of those authorities was decided In a suit to enforce a mortgage executed by the widow of the settlor of property dealt with by the settlement *Held* that during the life of the donor the evidence did not show that anything was done by him which amounted to delivery of possession of the properties nor was anything done by the trustees or the wife alone amounting to proof of the acceptance of the gift or of an election to take under the deed All her conduct and actions were entirely inconsistent with any such intention on her part The trustees never entered under and by virtue of the trust deed into the receipt of the rent or income of the property comprised in the mortgage and consequently there was no satisfactory proof that the possession of that portion of the property the subject of the gift was ever delivered by the settlor to the trustees That being so the gift according to the Mahomedan Law was void and the mortgage sued upon was therefore a valid and binding instrument and a good security The statements made in documents signed by the wife she must be taken to have known the purport and effect of it being a part of the administrative duties of a quasi judicial character imposed by the Oudh Land Revenue Act (XVII of 1876) upon the public officials before whom the documents came to see that she as a *pardanashin* lady had that knowledge and the maxim *Omnia præsumuntur recta esse acta* was applicable On a question as to the legitimacy of one of the settlor s sons *Held* on the evidence that he was the legitimate son of the settlor and was acknowledged by him to be so as the son of *muta* marriage The Mahomedan Law as to acknowledgment laid down in *Muhammad Allahadad Khan* v *Muhammad Ismail Khan I L R 10 All 289* and *Mahammad Azmat Ali Khan* v *Lalli Begum I L R 8 Calc 422 L R 9 I A 8* and that as to evidence of repute from statement made in document by a member of the family in *Anjuman Ara Begam* v *Sadik Ali Khan 4 Oudh Cases 115* and *Baqar Ali Khan* v *Anjuman Ara Begam I L R 25 All 2 L R 30 I A 95* followed Their Lordships commented upon the long duration of this litigation remarking that such delays were discreditable to any judicial system and there was no reason to think that they were not to a large extent avoidable Also upon the undue prolongation of the cross examination of witnesses by breaking it up into detached portions than which no better system could be devised to expose witnesses to the risk of being tampered with and to promote the fabrication of false evidence A presiding Judge should

MAHOMEDAN LAW—GIFT—*contd*

endorse with his own hand a statement that a document proved or admitted in evidence was proved against or admitted by the person against whom it was used as laid down in s 141 of the Civil Procedure Codes of 1877 and 1882 and practically re enacted in O XIII r 4 of the rules and orders passed under the Civil Procedure Code 1908 With a view of insisting on the observance of the wholesome provisions of the se Statutes their Lordships will in order to prevent injustice be obliged in future on the hearing of Indian appeal to refuse to read or permit to be used any document not endorsed in the manner required SADIK HUSAIN KHAN v HASHIM ALI KHAN (1916)

I L R 38 All 627

12 ——— Deed of gift with a condition attached—*Obligation in the nature of trust—Construction of document* A Mahomedan woman made a deed of gift in favour of three persons Mirza Vazir Beg Imatiyaj Begum and Chaggan Bibi in the following terms The lands have been given to you three as gift All my rights of ownership are transferred to you The vahiwat or management of the lands should be made by one of you three namely Vazir Beg and after paying Government dues Rs 40 should be paid out of the residue of the income annually to the Imatiyaj Begum and the remainder should be divided equally between Mirza Vazir Beg and Chaggan Bibi Mirza Vazir Beg should have vahiwat and give income according to their share to the two They have no right of claiming division of the lands from Mirza Beg but only a right of claiming income every year A suit was brought by Imatiyaj Begum to enforce her right under the deed of gift The second defendant transferee of Mirza Beg s interest in the property contended that the deed of gift in so far as it conferred benefit on the two women mentioned therein was void and that he was absolutely entitled *Held* that the gift was good and complete under the Mahomedan Law and the deed could be supported in favour of the plaintiff TAVAKALBHAI v IMATIYAJ BEGU (1916)

I L R 41 Bom 372

13 ——— Gift made during his last illness by a son to his mother—*Marz ul maut—Application of doctrine* On a question of the application of the doctrine of *marz ul maut* to a disposition of property made by a Mahomedan during his last illness if the transaction is a sale the doctrine would not apply at all if the transaction is a waqf it would be valid to the extent of one third while if it is a gift it would not be valid at all In the case before the Court the particular transaction was held on the facts to be really a gift to one of the heirs (the mother of the donor) and therefore invalid although in form it purported to be a sale FAZL AHMAD v RAHIM BIBI (1917)

I L R 40 All 238

14 ——— Heba bil iwaz—*Transfer of Property Act (IV of 1882) s 11* The ordinary rule applicable to gifts apply to the Mahomedan Law like any other system of law and a gift under a *Heba bil ewaz* is not invalidated by an invalid condition being attached to it NIAMATUNNESSA BIBI v HOSSENUDDIN NAZIR (1918)

22 C W N 612

15 ——— Heba bil-ewaz if valid without passing of consideration—A Mahomedan executed a *Heba-bil-ewaz* in favour of a minor daughter of his predeceased son In a suit for enforcing the gift no evidence was adduced about the passing of any consideration *Held* that if the document failed as a *Heba bil ewaz* it could take effect as a simple gift (Heba) if it satisfied the conditions of a deed of gift SIRRAJUDDIN HALDER v ISAB HALDAR

25 C W N 835

16 ——— Non tangible Property—*Held* that non tangible property can be given by any appropriate method of transfer other than actual delivery of possession SAMSUL NEHAR BIBI v MOULVI MAHIUDDIN AHMAD

25 C W N 310

17 ——— *Gift by mortgagor of property in the possession of mortgagee if void* Where A a Mahomedan mortgaged some lands to a third person putting the mortgagee in possession and while the mortgagee was in possession A made an oral gift to Defendant No 1 and immediately after got Defendant No 1 s name recorded in the Settlement Record and put him also in physical possession of one of the properties namely the homestead *Held* that the gift was valid in law In order to properly appreciate the judicial idea of gift as conceived by Mahomedan jurists it is to be borne in mind that gift is considered a class of contracts but as it is a voluntary contract without consideration it is not enforceable unless accompanied by possession in which case the devolution or transfer of right to the property becomes complete By possession in connection with the law of gift is meant such possession as the nature of the subject of the gift is capable of *Chaudri Mehdi Hasan v Muhamad Hasan L R 33 I A 68 s c 10 C W N 706* (1906) relied on As possession through a tenant may be constructive possession capable of being delivered so as to validate a gift of such property so property in the possession of the mortgagee should likewise be *considered to be in the constructive possession of* the mortgagor as in both cases some kind of right to property is left in the owner The right of equity of redemption and such similar rights as are termed incorporeal rights may in view of the exigencies and necessities of modern conditions and conceptions of legal rights of property be subject of a valid gift the mode of delivery of possession varying according to the nature of the right conveyed TARA PROSANNA SEN v SHANDI BIBI

25 C W N 761

18 ——— *Gift—Donor in possession of half of gifted land—Delivery of possession to donee—Other half mortgaged and possession not actually delivered to donee—Gift of the latter valid under Mahomedan law* A Mahomedan female who owned five lands made a gift of them to the plaintiff s father At the date of the gift she had possession of only two lands and a moiety of the third land [illegible] she immediately put in possession of the donee The remaining lands had been mortgaged by her to defendants who retained their possession under the mortgage In a suit by the plaintiff the defendants contended that the gift of the mortgaged land was invalid not having been perfected by delivery of possession *Held* overruling the contention that the deed of gift must be looked at as a whole and that so viewed the gift of the equity of redemption coupled with the completed gift of the remaining lands

MAHOMEDAN LAW—GIFT—*contd*

was a valid gift in law CHANDSAHEB KASHIM SAHEB *v* GANGABAI **I L R 45 Bom 1296**

MAHOMEDAN LAW—GUARDIAN

See CIVIL PROCEDURE CODE 1908 O XXXIV RR 4 5 AND 10
I L R 41 All 473

See GUARDIANS AND WARDS ACT (VIII OF 1890) ss 2 12 and 21
I L R 39 Mad 608

See MAHOMEDAN LAW—MARRIAGE
I L R 45 Calc 878

See MAHOMEDAN LAW—MINOR

See MORTGAGE

1 ———— *Guardian powers of—Agreement not to divide spes successionis validity of—Agreement for management effect of on outstanding kanom interest* A a Mahomedan father with children some of whom were minors executed a settlement whereby he gave *B* one of his adult children the right of managing all his properties during his *B*'s lifetime The deed also provided that there was to be no division of *A*'s properties during the lifetime of *B* The deed was signed by all the adult children and by *A* on his own behalf and as guardian of his minor children One of the properties mentioned in the deed was outstanding on kanom at the date of the deed After *A*'s death *C* one of his adult children who had signed the deed redeemed the kanom *B* sued to recover possession of the property on the ground that under the deed he was entitled to the exclusive management thereof for his life *Held* that *C* was entitled to redeem the kanom and that *B* had only a right to sue for partition of the property Although agreements between co owners not to divide for a reasonable time are valid such agreements are not valid when they relate to mere *spes successionis* The property outstanding on kanom at the date of the deed was then a mere *spes successionis* and the agreement was invalid in respect of such property The agreement was not binding on the minor sons of *A* Under the Mahomedan Law the acts of a guardian will bind the ward only when urgent necessity or clear benefit to the ward are shown THOTTOLI KOTILAN ALIYUMMA *v* KUNHAMJAD (1910)
I L R 34 Mad 527

2 ———— *Guardians and Wards Act (VIII of 1890) ss 9 and 39—Application for appointment as guardian of minor girl—Qualifications for applicant* Held that the husband of a minor girl's sister is not under the Mahomedan Law entitled to be appointed a guardian of the person or property of the minor *Held* also that the Guardians and Wards Act 1890 contemplates that an applicant for guardianship should reside within the jurisdiction of the Court to which he makes the application ASGHAR ALI *v* AMINA BEGAM (1914) **I L R 36 All 289**

3 ———— *Shia sect—Guardian and minor—Right to guardianship of female minor* According to the Mahomedan Law applicable to the Shia sect the right to the guardianship of a female minor rests primarily with the mother on her death with the father and only on the death of the father does the right pass to the maternal grandfather and other ascendants BALI [illegible] SAADAT HUSAIN (1914)
I L R 36 All 466

MAHOMEDAN LAW—GUARDIAN—*contd*

4 ———— *Guardianship—Mahomedan infant—Mahomedan Law—Maternal uncle if a proper guardian—Sister's husband if qualified—Prohibited degrees of relationship—Adverse interest—Guardians and Wards Act (VIII of 1890)* Under the Mahomedan Law no male has a right to the custody of a female child unless he is a Mahram that is one who stands to her within the prohibited degrees of relationship and cannot under any circumstances marry her A maternal uncle may be appointed as a guardian to a Mahomedan minor girl When the girl was married to a person below her station in life the Court ordered a governess to be appointed to stay with her until puberty the husband not to have access to her meanwhile so that the girl might have liberty to repudiate the marriage if she liked just on the attainment of puberty HURUNNESSA BIBEE *In the matter of* (1913) **18 C W N 853**

5 ———— Under Mahomedan Law the general rule is that the dealings of a *de facto* guardian with the minor's property do not *ipso facto* bind the minor AYDERMAN KUTTI *v* SYED ALI **I L R 37 Mad 514**

6 ———— *Power of mother a de facto guardian of minor to enter into agreement to refer dispute as to immoveable property to the discretion of arbitrators so as to bind the minor* The mother as the *de facto* guardian of minors is not competent under the Mahomedan Law to enter on their behalf into an agreement to refer to arbitration any dispute even where there is no *de jure* guardian of the minors such agreement being one which will necessarily if acted upon involve dealings with the immovable properties of the minor *Imambandi* v *Mutsaddi I L R 45 Calc 878 L R 45 I A 73* referred to MOHIUDDIN AHMED *v* K AHMED (1920)
I L R 47 Calc 713

7 ———— A mother has no authority as *de facto* guardian to alienate property of her infant children and they can contest it within 12 years of attaining majority LALOO KAPIKAR & OTHERS *v* JAGAT CHANDRA SAHU & OTHERS **25 C W N 258**

MAHOMEDAN LAW—HUSBAND AND WIFE

See CONTRACT ACT (IX OF 1872) s 25
I L R 37 Bom 280

———— *Shias—Dispute between husband and wife as to wife's dower—Arbitration—Award transferring property of husband to wife—Further conveyance unnecessary* A Mahomedan husband and wife of the Shia persuasion referred a dispute relating to the wife's dower to arbitrator who under a registered award transferred the absolute ownership of the husband's property *in præsenti* to the wife reserved possession of it to the husband for life with control over the income and provided that in the event of the wife predeceasing her husband he should continue in possession for life while in the event of the husband dying before the wife she should be owner and the heirs of the husband could not interfere Mutation of names followed in favour of the wife who executed a *mukhtarnama* in favour of her husband for the management of the property conveyed to her under the award *Held* that the award was sufficient to transfer the ownership of the property covered by it *in præsenti* to the wife and no

MAHOMEDAN LAW—HUSBAND AND WIFE—*contd*

conveyance need have been executed *Ram Bakhsh v Moghlani Khanam I L R 6 All 266* followed *Quare* Whether an award is governed by Mahomedan Law MUHAMMAD TALIB HUSAIN v INAYATI JAN (1911) I L R 33 All 683

MAHOMEDAN LAW—INHERITANCE

——— *Family custom at variance with the law if may be proved—Bengal N W P and Assam Civil Courts Act (XII of 1887) s 37* Where in a suit by a Mahomedan lady against her brothers for recovery of her share in their father s property the defendants having set up the plea that according to family custom female descendant could not inherit in the presence of male descendants the Courts in India refused to admit evidence in support of the alleged custom on the ground that evidence of custom at variance with the ordinary rules of Mahomedan Law was inadmissible in regard to matters mentioned in s 37 of the Bengal N W P and Assam Civil Courts Act *Held* reversing the Courts below that evidence with respect to the issue as to family custom should be admitted ISMAIL KHAN v SHEOMUKH RAI (1912) 17 C W N 97

——— *Contingent right to inherit transfer or renunciation of whether prohibited* A transfer or renunciation of a contingent right of inheritance is prohibited under Mahomedan Law *Mussammat Khanum Jan v Mussummat Jan Bee bee (1827) 4 S D A 210* followed *Kunhi Mamod v Kunhi Moidin I L R 19 Mad 176* considered *Mussamut Hurmutt Ool Nissa Begam v Allahdia Khan Hajee Hidayat 17 W R (P C) 108* explained ASA BEEVI v KARUPPAN CHETTY (1917) I L R 41 Mad 365

MAHOMEDAN LAW—JOINT PROPERTY

See LIMITATION ACT 1908 ART 1 3 AND 144 I L R 44 Bom 943

——— *Joint business by two brothers —Death of one of them—Subsequent business by survivor and son of the deceased—Properties purchased out of profits of joint business —Moneys collected by survivor—Suit by heirs of the deceased for their share—Nature of suit—Limitation Act (IX of 1908) Arts 106 1 and 1—Joint family property if exists in Mahomedan Law—Exclusion proof of if necessary* Two Mahomedan brothers carried on a joint business and one of them died nineteen years before suit leaving three sons and three daughters Some properties were purchased out of the profits of the joint business in the name of the surviving brothers the latter subsequently carried on several other businesses along with two of the sons of the deceased brother and with a stranger who died more than three years before suit The heirs of the deceased brother brought the present suit against the surviving brother and others to recover their share of the properties acquired out of the profits derived from the several businesses and their share of the moneys collected in the same *Held* that the suit was one for an account and a share of the profit of a dissolved partnership and was barred under Art 106 of the Limitation Act (IX of 1908) Under the Mahomedan Law there is no such thing as joint family property If the members of a Mahomedan family succeed to property on the death of a relation each of them takes a share of each

MAHOMEDAN LAW—JOINT PROPERTY—*contd*

item of the property and a suit by such a member for a share is governed by Art 1 and not Art 127 of the Limitation Act *Abdul Kader v Ahamma I L R 16 Mad 61* distinguished MOHIDEEN BEE v SYED MEER SAHEB (1915) I L R 38 Mad 1099

MAHOMEDAN LAW—LEGITIMACY

See MAHOMEDAN LAW—ACKNOWLEDGMENT I L R 40 Bom 28

See MAHOMEDAN LAW—GIFT I L R 38 All 627

——— Acknowledgment of child as son—*—Illegitimate son—Zina—Son by adulterous intercourse cannot be legitimised* Under Mahomedan Law a person can acknowledge a child as a son when there is no proof of the latter s legitimate or illegitimate birth and his paternity is unknown in the sense that no specific person is shown to have been his father It is not permissible to acknowledge a child born of *zina* (*i e* fornication adultery or incest) *Muhammad Allahdad Khan v Muhammad Ismail Khan I L R 10 All 289* followed MARDANSAHEB v RAJAKSAHEB (1909) I L R 34 Bom 111

——— *Acknowledgment —Status of son born of a concubine—Admission in document—Conduct—Intention to legitimise—Presumption of marriage* Where a child is proved to be illegitimate by reason of the marriage of his parents being disproved such a child cannot be rendered legitimate by any acknowledgment or recognition of legitimacy Where an acknowledgment is alleged it may be shown that there was no acknowledgment either in fact or law that is that there was never an acknowledgment at all But an acknowledgment once made and proved cannot be rebutted It cannot even be repudiated by the man who made it There is no valid acknowledgment where it has been proved that there was a legal bar to the marriage of the acknowledger and the woman whose son the claimant the legitimacy is said to be Where there is no valid acknowledgment in the sense of an intention to confer legitimacy then the *onus* lies on the plaintiff who claims legitimacy to prove the marriage On the other hand if acknowledgment is valid then the *onus* lies on the defendants denying the legitimacy to disprove not only marriage but also semblance of marriage If the marriage is proved there is no need to have recourse to the acknowledgment if a marriage or semblance of marriage is disproved so as to establish that the plaintiff is issue of *zina* then the alleged acknowledgment is not valid If on the evidence the marriage and legitimacy are left in doubt then a valid acknowledgment is conclusive *Ashrufood dowlah v Hyder Hossein 11 Moo I A 94 Muhammad Allahdad Khan v Muhammad Ismail Khan I L R 10 All 289 Muhammad Azmat Ali Khan v Lalli Begum I L R 8 Calc 422 Dhan Bibi v Lalon Bibi I L R Calc 801 Mirza Sadik Hussain Khan v Hashim Ali Khan I L R 38 All 627 I C W N 1 0 Arunnissa v Karimunnissa I L R 2 Calc 130 Liaqat Ali v Karimunnissa I L R 15 All 396 Sadakat Hossein v Mahomed Yusuf I L R 10 Calc 663* referred to HABIBAR RAHMAN CHOWDHURY v ALTAF ALI CHOWDHURY (1918) I L R 46 Calc 259



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MAHOMEDAN LAW—LEGITIMACY—*contd*

———————— *Acknowledgment s —Presumption—Proof of illegitimacy—Concurrent findings* Under Mahomedan law no statement made by a man that another is proved to be illegitimate is his son can make that other legitimate If an acknowledgment is of legitimate sonship and that relationship is possible in fact and law it gives rise to a rebuttable presumption that there was a marriage between the parents Where a trial Judge bases his judgment upon a finding of fact and two of three Judges constituting the Appellate Court agree with the finding and conclusion the third Judge arriving at the same result upon a different finding of fact there are concurrent findings to which the rule of practice of the Board applies HABIBUR RAHMAN CHOWDHURY v ALTAF ALI CHOWDHURY (1921)

I L R 48 Calc 856

———————— *Acknowledgment by father of a son by a female slave—legitimacy of son in absence of proof that no marriage had taken place between the parents* The only question before this Court was whether or not the defendant respondent S K was the legitimate son of one M H K by Muhammadan Law The facts found were that the mother of S K was a *laundi* or female slave purchased by the father of M H K the marriage between her and M H K was therefore improbable and not proved by the evidence M H K had however in March 1904 made an acknowledgment before the District Judge of Karnal to the effect that he had a son not by his real wife but by a female slave with whom he had gone through a ceremony of marriage and he asserted that on failure of issue from his real wife the issue of the aforesaid female slave would be entitled to succeed him It had been admitted by the plaintiff that S K was the child of M H K by the female slave *Held* that the acknowledgment so made invested the son with a legitimate status with all the consequences which that imports and this could be disproved only by positive proof that no marriage took place between the parents and as there was no such proof S K was entitled to succeed to his father M H K *Sadik Hussain Khan v Hashim Ali Khan (I L R 38 All 627, 661) (P C)* followed. *Muhammad Allahdad Khan v Muhammad Ismail Khan (I L R 10 All 289)* and Wilson's Digest of Muhammadan Law para 170 referred to IBRAHIM ALI KHAN v MUSAMMAT MUBARAK BEGAM

I L R 1 Lah 229

MAHOMEDAN LAW—MAINTENANCE

See MAHOMEDAN LAW—GIFT

I L R 36 Mad 385

———————— *Cutchi Memons—Minor son right of to sue father for maintenance—Extent of maintenance property granted where the custody of the minor child is withheld from the father —Maintenance not to be charged on property devolving on the father from his father—Cutchi Memons son can claim no distinct interest in his father's property* The plaintiff a minor under the age of seven years sued his father for maintenance and prayed that such maintenance should be a charge on the defendant's share in certain property left by the defendant's father The plaintiff was the defendant's son by a wife divorced at the date of the suit The parties were Cutchi Memons *Held* that the rights of the plaintiff must be determined by Mahomedan Law and that under Mahomedan Law a minor son was entitled to sue his father for maintenance even though the father was not entitled to claim the custody of the child and such custody was withheld from him *Held* however that such maintenance should amount only to bare subsistence for the son and not to maintenance according to the condition in life of the father Such maintenance could not be made a charge on the property left by the defendant's father as the parties being Cutchi Memons were governed by Mahomedan Law except with regard to inheritance and succession MAHOMED JUSAB v HAJI ADAM (1911) **I L R 37 Bom 71**

———————— *Shafi School—Maintenance arrears of—Whether recoverable in the absence of a decree or agreement to pay* According to the Shafi School of Mahomedan Law maintenance is a debt and the wife is entitled to recover from her husband arrears of maintenance though there be no decree of Court or mutual agreement in respect of such maintenance The distinction in this respect between Shafi and Hanafi school pointed out Mahomedan Law Texts examined. MALAMED HAJI v KALIMBI (1917)

I. L. R 41 Mad. 211

MAHOMEDAN LAW—MARRIAGE

See MARRIAGE

———————— Whether suit lies for breach of Contract of—

See CONTRACT

I L R 42 Bom 499

———————— Restraint on marriage of a girl sui juris—

See CUSTOM—MARRIAGE.

I L R 1 Lah 574

———————— Whether Conversion to Islam dissolves marriage with a Chamar—

See PENAL CODE s 494

I L R 1 Lah. 440

1 ———————— Dower—*Marriage—Act No XVIII of 1876 (Oudh Laws Act)* *Held* that the mere fact that a marriage was celebrated in Lucknow the parties being afterwards domiciled in the province of Agra was not sufficient to authorize a court in the province of Agra to apply to a suit brought by the wife against the heirs of her deceased husband for recovery of her dower the provisions of the Oudh Laws Act 1876 *Zakeri Begum v Sakina Begum I L R 19 Calc 689* followed. PUKIA BEGAM v MUHAMMAD KAZIM (1910) **I. L. R 32 All 477**

2 ———————— Allowance to bride—*Agreement by father in law of bride to pay annuity to her in consideration of her marriage to his son—* Kharch i pandan — *Pin money —Right to sue of persons not party to agreement—Agreement on behalf of minors—Refusal to live with husband—Unconditional agreement to pay allowance* In accordance with an arrangement made between the defendant and the father of the plaintiff (then a minor) on the occasion and in consideration of her marriage with the defendant's son (also a minor) the defendant executed a document whereby he agreed to continue to pay the sum of Rs 500 a month in perpetuity to the plaintiff for her pandan (betel nut) expenses etc.

MAHOMEDAN LAW—MARRIAGE—*contd*

from the date of the marriage i e from the date of her reception and made the payment of the allowance a charge on certain immoveable property specified in the agreement The plaintiff's reception into her husband's house took place in 1883 The husband and wife lived together till 1896 when owing to differences she left her husband's home and resided elsewhere when the defendant stopped the payments In a suit to recover arrears of the allowance *Held* (affirming the decision of the High Court) that the plaintiff though not a party to the agreement was entitled in equity to enforce her claim *Tweddle v Atkinson 1 B & S 393* being an action of assumpsit and decided on a rule of common law inapplicable to the circumstances of the present case in which the agreement specifically charged immoveable property with the payment of the allowance and the plaintiff was the only person beneficially entitled under it In India and among communities circumstanced as were Muhammadans among whom marriages were contracted for minors by parents and guardians serious injustice might be occasioned if the common law doctrine were applied to agreements or arrangements entered into in connexion with such contracts *Held* also that the allowance for *kharch i pandan* though having some analogy in its nature to the English pin money stood on a different legal footing arising from differences in social institutions It was a personal allowance to the wife over the application of which the husband had little or no control nor were there obligation attached to it as was the case with pin money in England On the terms of the agreement here the payment of the allowance was unconditional and under the circumstances the fact that the plaintiff had left her husband's house and refused to live with him did not bar her from recovering it KHWAJA MUHAMMAD KHAN v HUSAINI BEGUM (1910)

I L R 32 All 410

3 ———— Presumption of marriage—*Absence of proof of marriage—Long cohabitation—Life of presumption of alleged wife having been a prostitute when brought to alleged husband's house—Acknowledgment of woman as wife—Marriages of daughters in respectable men* In this case the appellant's success depended on his proving his status as the legitimate son of his parents *Held* by the Judicial Committee (upholding the decision of the Judicial Commissioner's Court) that there was no evidence of marriage between them and the presumption of marriage which might have arisen from their prolonged cohabitation did not apply because the mother before she was brought to the father's house was admittedly a prostitute Instances of alleged acknowledgment by the father of the mother as his wife and the fact that two of the appellant's sisters who were in the same case as to their legitimacy as he was were married to respectable men with due formalities were held under the circumstances insufficient to affect the question favourably for the appellant GHAZANFAR ALI KHAN v KANIZ FATIMA (1910)

I L R 32 All 345

4 ———— Marriage not performed through vakils—*Requisites—Proposal and acceptance* In the case of a marriage amongst Mahomedan adults not performed through vakils it is essential that words of proposal and acceptance must be uttered by the contracting parties in each other's presence and hearing and in the presences of two male or one male and two female witnesses who must be sane and adult Moslems and the whole transaction must be completed at one meeting SAHABI BIBI v KAMARUDDIN SARKAR (1911)

15 C W N 991

5 ———— Minor ward—Guardian for marriage necessity of consent of Court—*Functions of Court in such case—Procedure to be followed by the guardian for marriage of Mahomedan infant—Guardian and Wards Act (VIII of 1890) ss 4 (2) 24 25 26 41 sub s (1) cl (d) 42 sub s (1) 47 cl (a)—Practice—Order of District Judge not appealable* In the case of Mahomedans the words disposal in marriage cannot be treated as included in the general words such other matters as the law to which the word is subject requires occurring in s 24 of the Guardians and Wards Act In the absence of express statutory provision to this effect it cannot reasonably be held that the Mahomedan Law on the subject of guardianship in marriage has been abrogated by implication by s 24 of the Guardians and Wards Act Where the District Judge of Birbhum in the matter of the disposal in marriage of a Mahomedan female minor in respect of whose person and property guardians had been appointed by him proceeded to select a suitable husband for the minor from the preliminary list of possible candidates prepared by his Hindu Nazir (the guardian of the property) in opposition to the selection of the guardian of the person (her mother) and of the guardian for marriage (her father's step brother) both of whom had initiated the proceedings *Held* that the proceedings before the District Judge had been throughout irregular It was not the function of the District Judge to act as match maker but a ward of Court could not marry without the consent of the Court *Eyre v Shaftesbury 2 P Wms 103 Jeffreys v Vantes Mart 141 Tombes v Elers 1 D L 88 Subhadra Koer v Dhajadhari Goswami 16 C L J 147* followed *Irai Dirali v Moti Karson I L R 22 Bom 509* disapproved *Held* further (after laying down the proper procedure to be followed in cases of this description) that the choice had to be made in the first instance by the guardian for marriage and if on the materials before the District Judge he was satisfied that the marriage was not unsuitable he was to sanction it *Held* also that the order of the District Judge was not open to appeal as s 47 cl (a) of the Guardians and Wards Act read with s 43 sub s (1) and ss 24 25 and 26 did not cover the case MANIJAN BIBI v DISTRICT JUDGE BIRBHUM (1914)

I L R 42 Calc 351

6 ———— Shiahs—*Muta* and *nikah* marriage different consequences—*Proof of marriage—Cohabitation—Declaration by the man—Appreciation of evidence in Trial and Appellate Courts when neither has seen witnesses—Circumstances of suspicion calling for scrutiny—Examination of evidence by Judicial Committee—Deference to experience of High Court Judges—Suit by one of several co-heirs—The right of others time-barred—Decree for share only for plaintiff and for the balance for defendants* A *muta* marriage is according to the law which prevails among Shiahs a temporary marriage its duration being fixed by agreement between the parties. It does not confer on the wife any right or claim to her husband's property but children

MAHOMEDAN LAW—MARRIAGE—*contd*

conceived while it exists are legitimate and capable of inheriting from their father. A *nikah* marriage is a religious ceremony and confers on the woman the full status of wife and children born after it are legitimate. The term of a *muta* marriage may from time to time be extended by agreement. *Where it was alleged by the plaintiff* who claimed to be the only legitimate child and sole heiress of *M* a Shiah Mahomedan that her (the plaintiff's) father *M* and mother *A* had lived *together as man and wife for many* years but that they were married in *nikah* from only 1½ years before her birth and it was urged in defence that she was illegitimate and that if she was legitimate so were two other daughters of *M* and *A* born before the plaintiff and that in the latter case plaintiff could recover one third only of the inheritance the claim of her sisters being time barred and in evidence the plaintiff tendered a deed of dower executed by the father at the time he was alleged to have contracted the *nikah* marriage in which however *M* had expressly declared that he had contracted *muta* with *A* in the beginning but now for reasons stated in the deed had married her in *nikah* form and examined witnesses who deposed to the marriage ceremony taking place on the same date and the Subordinate Judge (who however had not seen the witnesses examined) disbelieved the witnesses and held the deed to be a forgery but on appeal the High Court having before it additional evidence of considerable importance held that the deed was genuine and that the *nikah* marriage had been performed as deposed to by the witnesses. *Held* by the Judicial Committee after a careful consideration of the evidence that they ought not to reverse the High Court's findings, though they thought there were good reasons why both the deed itself and the evidence of the witnesses in question ought to be looked upon with suspicion and scrutinised with great care. The Judges of the High Court who came to these findings had necessarily a large experience in matters of this nature and the Subordinate Judge had no more opportunity than they of seeing and observing the demeanour of the witnesses and they on the other hand had evidence before them which was not before the Subordinate Judge. *Held* also on the evidence that if the deed were treated as valid and the plaintiff's witnesses as reliable there was considerable evidence that co habitation of *M* and *A* commenced in a *muta* marriage and that in the absence of evidence to the contrary such marriage must be taken to have subsisted throughout the period which covered the conception and birth of plaintiff's sisters. That their claim as such being statute barred the expiration of the period of limitation would accrue for the benefit of the defendant and not for the benefit of the plaintiff. SHOHRAT SINGH *v* JAFRI BIBI (1914)

19 C W N 225

7 ———— **Marriage of a woman's natural son with her foster daughter**—*If valid* The prohibition of Mahomedan Law to the marriage of a woman's natural son with her foster daughter is absolute and not conditional upon the birth of the one and the suckling of the other occurring within any limited period. The principle of *f* [illegible] not render good in law a marriage which ought not in law to have been celebrated. Radha Mohun *v* Hardai Bibi I L R 22 Mad 398 followed. JANAB ALI MIA *v* NA AMADDIN (1915) **19 C W N 697**

8 ———— **Marriage with a wife's sister during the continuance of first marriage**—*Whether invalid or wholly void—Legitimacy of the issue of such marriage* Under the Mahomedan Law the marriage with a wife's sister during the subsistence of the first marriage is only *fasid* (invalid) and not *batil* (void). The issue of such marriage is legitimate and can inherit. Aizunnissa Khatoon *v* Karimunnissa Khatoon *I L R* 23 *Calc 130* dissented from. TAJBI *v* MOWLA KHAN (1917) **I L R 41 Bom 485**

9 ———— **Marriage of girl of below the age of 15 after death of her parents**—*Uncle or grandmother if entitled to consent—Proof that she had attained puberty and consented to marriage in the absence of guardian's consent essential—Burden of proof—Legal evidence—Hearsay evidence objection to admission of—Hearsay statements recorded by Commissioner if should be allowed to be read in Court* According to Mahomedan Law a girl becomes a major on the happening of either of two events *first* the completion of her fifteenth year and *second* on her attainment of a state of puberty at an earlier period. The burden of proving that a girl has in either of these ways reached her majority rests upon those who allege it and rely upon it. And this must be done by legal evidence. The evil consequence of the admission of hearsay evidence is not merely that it prolongs litigation and increases its cost but that it may unconsciously be regarded by judicial minds as corroboration of some piece of evidence legally admissible and thereby obtain for the latter quite undue weight and significance. The reading of undoubtedly hearsay evidence recorded by a Commissioner who is not empowered to rule out evidence on the ground of inadmissibility disapproved. ATKIA BEGUM *v* IBRAHIM RASHID (1916) **21 C W N 345**

10 ———— *Validity of Marriage—Guardianship of minor—Power of mother as de facto guardian to alienate her minor children's interests in immoveable property so as to bind the infants—Absence of entries in account books as evidence against validity of marriage where regular payments to other wives are shown by other entries—Production at first hearing of suit of documentary evidence relied on by parties—Civil Procedure Code 1908 O XIII r 1—Practice of Indian Courts in citing decisions of Foreign Courts* A wealthy Mahomedan died leaving widows two admittedly his lawful wives and children by each of them and a third one *Z* who claimed to be his married wife but the validity of whose *marriage* was disputed. She had two *minor* children and by a deed of 10th June 1906 without having been legally appointed their guardian she purported to transfer the shares of both herself and her children in the property of the deceased to the plaintiffs who sued for a declaration of the title and status of their vendor and for a decree for possession of the shares covered by the deed of sale. As to the validity of the marriage of *Z* entries in the books of account of the deceased tendered in evidence by the contesting defendants (the sharers other than *Z* and her children) showed regular payments to the admittedly lawful wives but the books contained no entries of payments to

MAHOMEDAN LAW—MARRIAGE—*concld*

Z They were not admitted in evidence by the lower Court *Held* by the Judicial Committee (who held the books of account admissible) that there was clear evidence of a reliable character regarding the acknowledgment by the deceased of the children of Z as his legitimate issue which gave rise to a legal presumption of her marriage and that such presumption was not displaced by the mere inferences the contesting defendants sought to draw from the absence of entries in her favour in the account books The marriage was therefore valid under the decision in *Malatala Bibee* v *Haleemoozaman 10 C L P* ? and Z and her children were entitled to their shares in the inheritance *Held* also that Z had no power to deal with the minors shares as she had done and that only her own shares passed under the deed of sale By Mahomedan Law the mother is entitled only to the custody of the person of her minor child up to a certain age according to the sex of the child But she is not the natural guardian the father alone or if he be dead his executor (under the Sunni law) is the legal guardian *Mata Din* v *Ahmed Ali I L P 34 All 213 L R 39 I A 49* referred to and discussed On a review of the provisions and principles of the Mahomedan Law on the question of how far and under what circumstances a mother s dealings with the property of her minor child are binding on the infant *Held* that one who has charge of the person or property of a minor without being his legal guardian and who may therefore be conveniently called a *de facto* guardian has no power to convey to another any right or interest in immovable property which the transferee can enforce against the infant nor can such transferee if let into possession of the property under such unauthorised transfer resist an action in ejectment on behalf of the infant as a trespasser It follows that being himself without title he cannot seek to recover property in the possession of another equally without title *Ayderman Kutti* v *Syed Ali I L P 37 Mad 514* referred to and commented on O XIII r 1 of the Civil Procedure Code 1908 requires the parties or their pleaders to produce at the first hearing of the suit all the documentary evidence of every description in their possession or power on which they intend to rely But it does not exclude the discretion of the Court to receive any such documentary evidence at any subsequent stage Their Lordships of the Judicial Committee deprecated the practice in some of the Indian Courts referring largely to decisions of Foreign Courts to which Indian practitioners could not be expected to have access which were often based on *consideration* and conditions totally differing from those applicable to or prevailing in India and are only likely to confuse the administration of justice IMAMBANDI v MUTSADDI (1918) I L R 45 Calc 878

MAHOMEDAN LAW—MINOR

See MAHOMEDAN LAW—ALIENATION GUARDIAN—MARRIAGE

———— *Minor*—De facto *guardian s powers over minor s properties —Sale by mother for expenses of minor s sisters marriages or for the discharge of proper family debts not binding* Under the Mahomedan Law the general rule is that the dealings of a *de facto* guardian of a minor with the minor s properties do not *ipso facto* bind the minor The rule is however subject to exceptions In cases of urgent and imperative necessity or where the transaction from its nature must necessarily be beneficial to the minor a *de facto* guardian can alienate the property of the minor whether moveable or immoveable According to Mahomedan Law sale of a minor s property by an unauthorized guardian even *if it* was not made for a valid cause is neither void nor voidable in the ordinary sense of the terms but *is regarded as mauquf or dependent that is in a* state of suspense its validity or invalidity being determined by the minor adopting or not adopting after he has attained majority though the effect of his decision will relate back to the date of inception of the transaction A person who choses to buy a minor s property from a person who has no power to deal with it however *bonâ fide* his action may have been cannot invoke any principles of justice and good conscience to support the transaction itself though such considerations may be a good ground for the Court refusing to give relief to the minor except on condition of his restituting whatever benefit he has derived from the transaction A sale by a mother of the *minor s property for finding money for the* marriage expenses of the minor s sisters or for the discharge of family debts and for other family purposes is not binding on the minor AYDERMAN KUTTI v SYED ALI (1912) I L R 37 Mad 514

———— *Sale of minor s property by mother* The mother of a Mahomedan minor is not the natural guardian of the minor and if she is not his authorised Guardian a sale of the minor s property by her not shown to be for his benefit or advantage is void

I Pat L J 188

———— *Right to sell minor s property—Necessity*—Bonâ fide *purchaser without notice* By a deed of conveyance dated 19th January 1904 one purported to convey on behalf of herself and her minor son the plaintiff certain immovable property to the defendant for the consideration of Rs 7 000 On the same day N passed an indemnity bond in favour of the defendant indemnifying him against the claim of the plaintiff The plaintiff sued to have the said deed of conveyance declared void and for the declaration that the plaintiff was entitled to the whole of the property to be conveyed *Held* that the plaintiff was entitled to succeed on the grounds that (1) there was absolutely no evidence that the sale was in any way necessary for the maintenance of the minor (2) the purchaser was not a *bonâ fide* purchaser without notice of the *plaintiff s rights The purchaser of an estate who* takes with notice of a breach of trust is in the same position as the vendor who committed the breach of trust FAKIRUDDIN v ABDUL HUSAIN

I L R 35 Bom 217

MAHOMEDAN LAW—MUTAWALLI

See MOHAMEDAN LAW—ENDOWMENT—WAKF

———— Mutawalliship *of property annexed to a mosque—Right to succeed by principle of heredity—Proof and validity of such right* *Held* on the facts of the case that the plaintiff who claimed to be the *mutawali* of the plaint mosque by right of heredity had not established by clear proof that that was the method of succession to the office and that he was there

MAHOMEDAN LAW—MUTAWALLI—*contd*

fore the lawful *mutawalli* *Held* also as a valid appointment of a *mutawalli* could be made only in one of three modes viz (a) by the original author of the waqf or by some person expressly authorized by him or (b) by the executor of the author or (c) lastly by the Court any person claiming to be a *mutawalli* by heredity must show by strict proof of precedents that that mode of appointment was one which must be necessarily deemed to have been sanctioned by the author of the trust It is frequently provided that each *mutawalli* should have the power to appoint his successor where there has been a long established practice for the *mutawalli* to nominate his successor it is assumed (unless the contrary is proved) that power to do so was given by the founder of the *waqf* But where from past practice it is sought to be established that the *mutawalliship* is to devolve hereditarily there must be something from which a rule of hereditary succession sufficiently precise or definite may be deduced and the mere fact that for some time prior to 1874 three persons from the family of the plaintiff were successively *mutawallis* does not show that *mutawalliship* devolved by heredity in the absence of proof that they were not appointed or nominated by somebody *Sayad Abdula Edrus* v *Sayad Zain Sayad Hasan Edrus I L R 13 Bom 555 562* referred to *Per* SADASIVA AYYAR J Heredity as a principle of succession to any office is highly objectionable PHATMABI v HAZI MUSA SAHIB (1913)

I L R 38 Mad. 491

———— *Mortgage of the office of a* mutwali *if valid and enforceable in law—Such office if alienable at all* One Ahadali a priest of Peer Saheb mortgaged his right in the office to three persons and subsequently one of the mortgagees brought a suit against Ahadali s minor son to enforce the *mortgage* by sale of the mortgaged turn of worship The latter too brought a suit for getting the mortgage set aside *Held* that the office of a priest in such cases is not alienable and therefore the mortgage cannot be enforced SAHED BUKSH v GOLAM NABI KHANDKAR (1918)

22 C W N 996

MAHOMEDAN LAW—PRE EMPTION

See PRE EMPTION

———— In Bulshar district—

See PRE EMPTION I L R 44 Bom 887

———— Sale by Mahomedan to Hindu—

See PRE EMPTION I L R 45 Bom 1056

1 ———— Shafi i sharik—*Shafi i khalit—Shafi i jar—Effect of perfect partition* When a mahal has been perfectly partitioned no right of pre emption under the Mahomedan Law subsists in favour of the owner of one of the new mahals in respect of the other new mahal or any portion of it on the ground of vicinage alone *Mahadeo Singh* v *Mussamat Ze nut un nissa 11 W P 169* *Sheikh Mahomed Hossein* v *Shaw Mohsin Ali 6 B L R 41* and *Abdul Rahim Khan* v *Kharag Singh I L R 15 All 104* referred to Nor will the fact that a village chaupal has remained undivided give the owner of either of the new mahals a right of pre-emption against the owner of the oth r as a *shafi i khalit* *Rahtab Singh* v *Tahal Misser 10 B R 314* and *Shaikh Karim Buksh* v *Kamr ud-deen Ahmad 6 N W P H C 377* distinguished *Abdul Rahim Khan* v *Kharag Singh I L R 11 All 104* and *Lalla Purtag Dutt* v *Shaikh Bunde Hossein 15 W P 225* referred to But a right of pre emption as *shafi i sharik* may subsist in relation to villages in large estates equally with houses gardens and small plots of ground *Sheikh Mahomed Hossein* v *Shaw Mohsin Ali 6 B L R 41* and *Shaikh Karim Buksh* v *Kamr ud-deen Ahmad 6 N W P H C 377* referred to MUNNA LAL v HAJIRA JAN (1910)

I L R 33 All 28

2 ———— Hindus in Bihar—*Pre emption—Customary right—Right of pre emption—Co sharers—Assertion of right of pre emption delay in making—Power to perform ceremonies of assertion—Manager appointed by Court of Wards of estate of disqualified proprietor' under the Court of Wards Act (Ben Act IX of 1879)—Powers and duties of manager under section 40 of Act—Basis of right of pre emption among co sharers in undivided mahal—Sanction of Court of Wards* The Mahomedan Law of pre emption has long been judicially recognised as existing among the Hindus in Bihar to which the district of Champaran appertains *Fakir Rawat* v *Emambaksh B L R Sup Vol 35 W R F B 143* followed In a suit for pre emption in respect of certain undivided shares in a number of villages comprised in a mahal the estate of the plaintiff was in charge of the Court of Wards as that of a disqualified proprietor under Bengal Act IX of 1879 s 40 of which provides that the manager shall manage the property diligently and faithfully for the benefit of the proprietor and shall in every case act to the best of his judgment for the ward s interest as if the property were his own *Held* that the manager appointed by the Court of Warior was independently of the provisions of section of the Court of Wards Act competent on behalf of the plaintiff to perform the preliminaries essential to the assertion of the right to pre emption though if in that case the validity of his action depended on the sanction of the Court of Wards their Lordships were of opinion that s 40 gave him full authority to act as he had done and in that view the adoption of his acts by the Court of Wards became unnecessary A mahal is a unit of property and though all the villages of which it consists may be separately assessed for revenue purposes and each of the sharers may not have an interest in them all the sharers are all co sharers in the whole mahal and jointly liable for the Government revenue Each co sharer therefore has a right of pre emption against the other in respect of any part of the mahal sold by any of them to a stranger After partition by the Revenue authorities each share so partitioned becomes a unit of property JADU LAL SAHU v JANKI KOER (1912) I L R 39 Calc 915

3 ———— Survival of the action to executors and administrators on the pre emptor's death—*Personal action—Probate and Administration Act (V of 1881) s 89—Action personalis moritur cum persona* The right of pre emption under Mahomedan Law does not abate at the pre emptor s death but survives to his executors and administrators under s 89 of the Probate and Administration Act (V of 1881) SYYAD JIAUL HUSSAN v SITARAM BHAU (1911)

I L R 36 Bom 144

4 ———— Shafa, right of—*Delay in assertion—Waiver—Right of pre emption accrual of—General law to govern the incident of sale in apply*

ing the law of pre emption and not the pure Mahomedan Law Per CARNDUFF J The right of *shafa* cannot arise until there has been a sale to a third party for the right of *shafa* recognised by the Mahomedan Law is not the right of pre-emption known to the Roman Law that is to say the right arising out of an obligation on the part of an intending vendor to sell preferentially to the obligor if he offers as good conditions as any intended vendee but rather the obligation attached to a particular status which binds the purchaser from the person obliged to hand over the subject matter to the other party to the obligation on receiving the price paid by him for it The right accrues only when the property has passed from the original owner to a purchaser The general law which is paramount and has superseded the Mahomedan Law should govern the incident of sale in applying the law of pre emption. Per RICHARDSON J Where possession is not given and the price is not paid till registration the right of pre emption arises upon registration and not before *Jadu Lall Sahu* v *Janki Koer I L R 35 Calc 575* referred to *Begum* v *Muhammad Yakub I L R 16 All 344 Ladun* v *Bhyro Ram* 8 *W R* 255 *Najm un nissa* v *Ajaib Ali Khan I L R 22 All 343 Ojeeonissa Begam* v *Rustam Ali (1864) W R 219 Torul Komhar* v *Mussamut Achhee 18 W R 401 Kooldeep* v *Ram Deen Singh 24 W R 193 Sheo Tahul* v *Ramkooer (1864) W R 311 Brojo Kishore* v *Kirtee Chunder 15 W R 247 Jehanjir* v *Lala Bhikari 6 B L R 42 note Kanhai Lal* v *Kalla Prasad I L R 27 All 670* discussed BUDHAI SARDAR *v* SONAULLAH MRIDHA (1914)

I L R 41 Calc 943

5 ———— Hindus—Adoption of pre emption as usage—*Burden of proof—Ancient and invariable custom—Pre emption a personal right not decendible to heirs—A custom cannot be proved by the admission of parties or their counsel* In litigation between Hindus where one party alleges the adoption of a whole branch of the Mahomedan Law such as that of pre emption and the other party repudiates the application of the foreign law it lies very heavily on the party alleging to prove that that law has been adopted as a usage and could be proved to have been so adopted by proof of ancient and invariable custom Such a party must stand or fall by the strict Mahomedan Law of pre emption Generally speaking the right of pre emption is a personal right which under the Mahomedan Law would not descend to heirs Per MACLEOD J A custom must be proved by evidence in the first instance and once it is proved the Courts are entitled to recognize its existence A custom cannot be proved by the admission of the parties or their counsel before the Court DAHYABHAI MOTIRAM *v* CHUNILAL KESHORDAS (1913) **I L R 38 Bom 183**

6 ———— Sale—*Demands—Assignment in lieu of dower debt* If at the time of *talab i mowasibat* the pre emptor has an opportunity of invoking witnesses in the presence of the seller or the purchaser or on the premises to attest the immediate demand it would suffice for both the demands and there would be no necessity for the second demand. *Nundo Pershad Thakur* v *Gopal Thakur I L R 10 Calc 1008* referred to *Held* further that when property is sold by a husband to his wife in lieu of dower a suit for pre-emption can be maintained by a person entitled to a preferential right to purchase that property *Fida Ali* v *Muzaffar Ali I L R 5 All 65* followed NATHU *v* SHADI (1915) **I L R 37 All 522**

7 ———— Question of law at what stage of case can be raised—*Decree of nature—When Court should take notice of events happening after institution of suit* A person who seeks the assistance of a Court with a view to enforce a right of pre emption is bound to establish that the right existed at the date of the sale at the date of the institution of the suit and also at the date of the decree of the primary Court *Ram Gopal* v *Piari Lal I L R 21 All 441* and *Tafazzul Husain* v *Than Singh I L R 32 All 567* followed When a question of law is raised for the first time in a Court of last report upon the construction of a document or upon facts either admitted or proved beyond controversy it is not only competent but expedient in the interests of justice to entertain the plea *Connecticut Fire Insurance Co* v *Kavanagh (1892) A C 473* followed Ordinarily the decree in a suit should accord with the rights of the parties as they stand at the date of its institution But where it is shown that the original relief claimed has by reason of subsequent change of circumstances become inappropriate or that it is necessary to have the decision of the Court on the altered circumstances in order to shorten litigation or to do complete justice between the parties it is incumbent upon a Court of justice to take notice of events which have happened since the institution of the suit and to mould its decree according to the circumstances as they stand at the time the decree is made *Rai Charan Mandal* v *Biswa Nath Mandal 20 C L J 107* referred to NURI MIAN *v* AMBICA SINGH (1916)

I L R 44 Calc 47

8 ———— Kolaba District—*A co sharer selling his share to a Hindu purchaser—Applicability of the law of pre emption by agreement of parties—Observance of the formalities of Talab i Mowasibat and Talab—Ishhad before the completion of sale whether premature—Right of an administrator to continue the suit on the death of the pre emptor pendente lite—Probate and Administration Act (V of 1881) s 89* S a Mahomedan owner of an undivided one fourth share in certain Inam villages in Kolaba District entered into an agreement with the defendants on the 14th October 1908 for the sale of his share for R 30 000 the terms of the agreement being that if the owner of the three fourths share (i e the plaintiff) was willing to purchase S s share and if S agreed to the purchase he should immediately return the amount received from the defendants On the same day a notice was accordingly served on the plaintiff by S asking him if he was anxious to pre empt the quarter share On receipt of this notice the plaintiff on the 15th October performed the *Talab i Mowasibat* On the 1 th October the plaintiff through his attorneys wrote a letter to S declaring his intention to exercise the right of pre emption and at the same time performed *Talab i Ishhad* The copies of S s notice and plaintiff's solicitor's reply of the 1 th October were duly forwarded to the defendants and whilst the correspondence between S and the plaintiff was going on the former received the full amount of the purchase money from the defendants and executed a sale deed in their favour The plaintiff thereupon sued to recover the share by right of pre-emption. The defendants con

MAHOMEDAN LAW—PRE-EMPTION—contd

tended *inter alia* that the right of pre emption could not be exercised against them as they were Hindus, that the property over which it was claimed was not a small one that the law of pre emption was not made applicable to Kolaba District that the *talabs* performed before the completion of the sale were premature On these fact *Held* (i) that the defendants were bound to comply with the plaintiff s demand for a transfer of the quarter share in the villages to him since it was clear from the contract and the subsequent correspondence that the defendants agreed with the vendor that the law of pre emption applying between the vendor and his co sharer should be applicable to the defendant s purchase (ii) that the action of the plaintiff in performing the *talabs* was not premature as the intention of the parties as to the date when the bargain was to be considered as concluded was the date of the contract itself (iii) that there was no limit to the size of the property of which pre emption might be claimed by a co sharer though there was a limit in the case of those who based their claim on vicinage A question being raised as to whether on the death of a pre emptor *pendente lite* a suit can be proceeded with by his administrator under s 89 of the Probate and Administration Act 1881 *Held* that the suit could be proceeded with by the administrator as the relief sought namely conveyance of a share could be enjoyed by a personal representative after the death of the pre emptor inasmuch as it added the property in suit to the estate of the deceased SITARAM BHAURAO v SAYAD SIRAJUL (1917) I L R 41 Bom 636

9 ——— Sale disguised as a lease—*In order to defeat pre emption—Device not permissible under the Mahomedan Law* In a suit for pre emption whether the right is claimed under the Mahomedan Law or by virtue of a custom of pre emption it is the duty of the Court if the question is raised to consider and decide whether the transaction in respect of which the claim is brought is or is not in substance a sale though it may be disguised in some other form as for instance in that of a lease There is no rule of Mahomedan Law which renders it permissible for a transaction of sale to be framed as a lease so as to avoid claims for pre-emption MUHAMMAD NIAZ KHAN v MUHAMMAD IDRIS KHAN (1918) I L R 40 All 322

10 ——— Though the Hindustan Surat have adopted the Mahomedan Law of pre emption by a long established custom with regard to houses it is an open question whether they have adopted the law with regard to agricultural land JAGJIVAN HARIBHAI v KALIDAS MULJI I L R 45 Bom 604

MAHOMEDAN LAW—RELIGIOUS OFFICE

See MAHOMEDAN LAW—MUTAWALLI

——— *Astan—Mujavar—Religious office—Competency of women to hold or succeed to such office—Right to perform fatiha—Rule of Mahomedan Law* A religious office can be held by a woman under the Mahomedan Law unless there are duties of a religious nature attached to the office which she cannot perform in person or by deputy and the burden of establishing that a woman is precluded from holding a particular office is on those who plead the exclusion Though there is no general rule of Mahomedan Law prohibit-

MAHOMEDAN LAW—RELIGIOUS OFFICE—contd

ing a woman from holding a religious office prohibition may arise by local usage or custom *Imam Bee v Molla Kaheem Sahib (1916) 5 L W 296* followed *Shahco Banoo v Aga Mahomed Jaffer Bindanim I L R 34 Calc 118* referred to *Held* (on the facts of the case) that a woman was competent to succeed to the office of Head Mujavar of the suit Astan MUNNAVARU BEGAM SAHIBU v MIR MAHAPALLI SHAHIB (1918) I L R 41 Mad 1033

MAHOMEDAN LAW—RESTITUTION OF CONJUGAL RIGHTS

——— *Suit for restitution of conjugal rights—Defence to suit—Cruelty* In a suit by a Mahomedan husband against his wife for restitution of conjugal rights it was found on issues remitted by the High Court that there was no very satisfactory evidence of actual physical cruelty but that the parties were on the worst possible terms and the reasonable presumption was that the suit was brought for the purpose of getting possession of the defendant s property There had been a good deal of ill treatment short of physical cruelty and the court was of opinion that by a return to her husband s custody the defendant s health and safety would be endangered In these circumstances the High Court refused to interfere with the decree of the Court below dismissing the suit *Armour v Armour I A L J 318* referred to HAMID HUSSAIN v KUBRA BEGAM (1918) I L R 40 All 332

——— *Suit by husband for restitution of conjugal rights where he had entered into agreement that his wife should live permanently in the house of her parents—payment of dower—discretion of Court* The plaintiff sued his wife for restitution of conjugal rights and for an injunction against her parents and friends who were alleged to prevent her from living with him On their marriage the plaintiff had agreed to the dower being fixed at Rs 500 without specifying what part of it was prompt or deferred and also that the girl should live for the whole of her life with her parents Defendants pleaded that in the face of those agreements plaintiff was not entitled to restitution of conjugal rights till he had paid the dower of Rs 500 and could not claim that his wife should live with him at his house and not at her parents The first Court decreed plaintiff s suit and the Lower Appellate Court upheld the decree of the first Court with the condition that plaintiff before applying for execution shall pay 1/5th part of the dower fixed i e Rs 100 The defendants appealed to this Court It was found as a fact that the wife did live with her husband for a time at his residence and there gave birth to a child *Held* that the agreement that the wife should live with her parents was not legal and could not be utilized to defeat the husband s claim for restitution of conjugal rights and that in any case the wife by living with her husband for a time away from her parents' house had waived the right if any, acquired under the agreement *Imam Ali Pat wari v Afzalunnissa (18 Cal W N 693)* followed *Hamid un Nissa Bibi v Zohir ud Din (I L R 17 Cal 670)* referred to also Ameer Ali s Muhammadan Law Volume II 1917 Edition pages 369 and 4 8—80 Tyabji s Muhammadan Law II Edition (1919) page 109 disapproved *Held also*

MAHOMEDAN LAW—RESTITUTION OF CONJUGAL RIGHTS—*contd*

that the Lower Appellate Court in its discretionary power having fixed the part of the dower to be paid by plaintiff this Court was not prepared to hold that it had not exercised its discretion properly *Musammat* FATIMA BIBI *v* NUR MUHAMMAD I L R 1 Lah 597

——— *Direction by Court that conjugal rights should be exercised at the residence of the wife s parents if invalid* A Mahomedan husband executed a kabilnama in which the wife was given the right to leave her husband s house in case of ill treatment There was ill treatment by the husband and the wife went to her parents house The husband sued for restitution and got a decree with a direction that such rights must be exercised in the house of the wife s parents *Held* that the Kabilnama was good but the condition of the decree bad SAEED KHAN *v* BILATUNNESSA BIBI 25 C W N 888

MAHOMEDAN LAW—SALE

See MAHOMEDAN LAW—ALIENATION

——— whether complete without Registration—

See TRANSFER OF PROPERTY ACT 1882 s 54 I Pat L J 174

——— *Sale of minor s property by widow validity of* The mother of a Muhammadan minor is not the natural guardian of the minor and if she is not his authorised guardian either a sale of the minor s property by her not shown to be for his benefit or advantage is void SHAIKH PAJA ALI *v* SHAIKH WAZIR ALI I Pat L J 188

MAHOMEDAN LAW—SUCCESSION

See CUSTOM I L R 39 All 574
I L R 45 Calc 450

See KHOJAS I L R 38 Bom 449

See KUNJPURA STATE OF
I L R 39 Calc 711

See SUCCESSION CERTIFICATE ACT (VII OF 1889) ss 4 AND 7
I L R 32 All 335

——— Heirs holding as tenants in common —Suit by a heir to recover his share—

See LIMITATION ACT (IX OF 1908) SCH I ARTS 123 AND 144
I L R 45 Bom 519

——— Heir entitled to bring a suit for account and administration not bound to file a suit for partition—

See ADMINISTRATION SUIT
I L R 45 Bom 75

——— Succession by a Christian to the sons of a convert to Islam—

See ACT XXI OF 1850
I L R 1 Lah 3°6

——— Exclusion of female heirs—*Custom excluding females from succession in Oudh—Limitation—Relinquishment—Estoppel* If a Mahomedan of Oudh died leaving two widows *B* and *I* and his mother His estate passed first to his mother

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and on her death to his widows in equal shares. After *B* s death on 24th January 1888 *I* retained possession of the whole estate until her death in 1894 When mutation was effected in favour of the sons of the brothers of *B* and *I* a sister of *B* instituted two suits for recovery of her share In the first suit the Subordinate Judge held that the succession was governed by the Mahomedan Law and that the custom of excluding female heirs was not proved and decreed the suit The Judicial Commissioners affirmed these findings *Held* that the concurrent findings of fact were fatal to the appeal The second suit was instituted on 11th February 1903 The dispute related to the estate left by the plaintiff s brother Mubarak who died on 7th February 1891 including in that estate the property he had inherited from *B* and his father *Held* that limitation began to run against the plaintiff at soonest from the death of *I* and that therefore the suit was not barred *Held* further that the plaintiff had not relinquished her claim nor was she estopped from pressing it MUHAMMAD KAMIL *v* MUSAMMAT IMTIAZ FATIMA (1909) 14 C W N 69

——— Self acquisitions—*Acquisition by member of family if to be presumed as acquired out of joint family funds—Estoppel* Two sons of a deceased Mahomedan and his widow inherited 42 96ths 42 96ths and 12 96ths respectively of his properties The properties were however partitioned between them later on in equal halves by an arbitration award to which the widow was no party the award specifically stating that the properties dealt with were the whole properties which were subject to division and that nothing more fell to be divided and provision being made for the grant by the sons of a maintenance allowance in money to the widow After the death of the widow whom one of the sons predeceased Plaintiff the surviving son *inter alia* claimed his share in certain items of property which were excluded from the award and which had been acquired in the name of his deceased brother after their father s death as the property of his father and the widow s share in certain other items of property dealt with by the award and divided half and half between the brothers by the award as the widow s heir *Held*—That the succession of a Mahomedan being an individual succession there is no presumption in the case of a Mahomedan such as exists in the case of a Hindu joint family that property purchased in the name of a member of the family was purchased out of joint undivided property That *primâ facie* therefore the property bought in the name of the deceased brother was bought with his money and the statement in the award established that it was That the Plaintiff was estopped by his own proceeding in the arbitration wherein he received his full half of the properties belonging to his father upon the footing of the exclusion of the mother from claiming a share therein through his mother MUHAMMAD WALI KHAN *v* MUHAMMAD MOHI UD DIN KHAN 24 C W N 321

——— Where one of the co heirs of a deceased Mahomedan in possession of the whole or part of the estate of the deceased sells property in his possession forming part of the estate for discharging debts of the deceased such sale is not binding on the other co heirs or creditors of the deceased ABDUL MAJEETH *v* KRISHNAMACHARIAR.
I. L. R. 40 Mad. 243

1 ———— Revocation of trust—*Wakf—Gift—Essential elements for validity—Power of revocation—General principles—Vested remainder* In 1902 a Shia Mahomedan by deed conveyed certain immoveable property to himself and other trustees for himself for life and after his death for the payment of annuities to his widow and daughter and the balance to certain charities Further clauses provided that on the death of his widow her annuity was to go to certain other charities and that on the death of his daughter a lump sum was to be given to her son. A further proviso reserved power to the settlor at any time to revoke all or any of the above trusts In 1908 he revoked the trust and executed a mortgage of the property In 1909 he died and receivers of his estate were appointed His daughter then filed a suit for a declaration *inter alia* that the revocation and subsequent mortgage were invalid and that the original trusts still subsisted *Held* that the conveyance in 1902 was invalid Looked at from the standpoint of the Mahomedan law giver a private trust would be no more than a private gift *inter vivos* through the medium of the third party and therefore subject to all the conditions of a valid gift but *quære* whether private trusts were known to Mahomedan law *Banoo Begum* v *Mir Abed Ali* I L R 32 Bom 172 discussed and distinguished JAINABAI v R D SETHNA (1910) I L R 34 Bom 604

2 ———— Khoja Mahomedans—*Settlement—Settlor himself trustee—No delivery of possession—Son born after Settlement—Power of Settlor to revoke settlement—Settlor's intention not carried out owing to Settlor's death—Power of Court to aid defective execution—Suit by after-born son to set aside settlement—Limitation Act (IX of 1908) s 10—Resulting trust back to Settlor—Adverse possession—Difference between estoppel and res judicata—Validity of Wakf contained in deed containing other gifts—Local usage cannot override Mahomedan Law—Registration—Has Major* By an Indenture of settlement dated 7th January 1886 J P a Khoja Mahomedan purported to convey certain immoveable properties to trustees for the benefit of his family The trusts were in effect for J P for life and after his death subject to certain rights of residence and maintenance to pay the net income of the trust properties to N M for his life and in the event (which subsequently occurred) of the death of N M without leaving male issue to divide the trust funds into ten equal parts to be held in favour of certain donees four tenths being given to charity The Indenture also reserved to the settlor power to revoke or vary any of the trusts contained therein There was no surrender of the property in fact to anyone except J P himself in his character as trustee for himself The donor however opened an account in his books of this property as trust property On the 26th October 18[illegible] a second son the plaintiff was born to J P whereupon J P being desirous of providing for this second son desired to vary the terms of the deed of the 7th of January 18[illegible] and to resettle the same so that his two sons should share equally A draft deed of declaration of new trusts was accordingly prepared by J P's attorneys and on the 24th of July 18[illegible] was finally settled and approved by J P An engrossment was thereupon made and duly stamped but on taking the engrossment to J P for his execution on July 29th it was found that owing to an error of the engrossing clerk several pages of it were missing Another engrossment was prepared forthwith but on the same day before the new engrossment was ready J P died The plaintiff thereupon brought a suit to have it declared whether or not the deed of 1886 was a valid deed and prayed that the defective execution of the second deed might be aided by the Court and the provisions of the said second deed declared to be valid *Held* (i) That the plaintiff was not time barred as against the trustees from bringing the action (ii) That however restricted the gift was in form to J P it was in effect a gift absolute to him for life and that entirely irrespective of the power of revocation (iii) That all the gifts in the trust settlement made contingent upon N M dying without issue were bad (iv) That that portion of the instrument which purported to create a *wakf* in respect of four tenths of the settled property was bad and void. (v) That the gift was bad for want of contemporaneous delivery of possession (vi) That this was a case if ever there was a case in which the Courts might act upon those principles which have always guided the Court of Equity in England and aid defective execution of a power defective not through any fault on the part of the person intending to execute it but by reason of an act of God and that the unsigned deed ought to be effectuated by the Court to the extent of making it binding on the conscience of the trustees *Per Curiam* It is only in the event of the trusts or some of them being bad that the question of limitation can arise For if a trust deed in its entirety is good then of course effect must be given to it irrespective of any question of lapse of time Where what purports to be a trust deed turns out to have been entirely void and therefore not to have passed the legal estate the position of those who took possession believing themselves to be trustees but not in law real trustees necessarily assumes the character of possession by trespass and is therefore from its inception in law adverse against all the world Where however the trust-deed in itself is good and valid to the extent of passing the legal estate but the trusts declared are in themselves wholly or partially bad then there is a resultant trust to the author of the trust and the possession of the trustees whatever they might think of it and however they might intend to use it for the purpose of carrying out of the bad trusts could not in law be adverse to the *cestui que trust* that is to say the grantor Widely different is the case of trustees who obtain the legal estate from the author of the trusts to apply the beneficial uses to specified objects which may or may not be good For then from the beginning there is always a relation between the author of the trusts and the trustees in whom his confidence has been reposed and there is always the legal possibility at least of another relation coming into existence between them where owing to the failure of the declared trusts there is a resultant trust back to the grantor who from that moment becomes in law the *cestui que trust* of the trustees Where it was the intention that there should be an ultimate trust in favour of the grantor it is usual to express that on the face of the deed A deed so framed as upon its very face to provide for the springing back of the trust fund or a part of it in certain events to the author of the trust does create what is at once an express and resultant trust The current of authority seems to have set steadily against the extension of section 10 of the Limitation Act to all

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cases of resultant implied or constructive trust Where the ultimate resultant trust which is to spring back to the settlor is consistent with the discharge of the declared trust then it may by loose use of language be said to be expressed on the face of the deed but when the extinction or failure of all the intended trusts is a condition precedent to the resultant trusts coming into being then the latter is clearly a true resultant trust and is not express and never can be expressed on the face of the deed The answer to the question—What is the true position when declared trusts failed and there is a resultant trust over to the settlor or his heirs—is to be found in the very elementary proposition that the possession of the trustee is always that of *cestui que trust* and therefore however he may think or wish to be holding as trustee for trusts which have failed in the eye of the law he is really holding when those trusts failed as trustee for the settlor Then the position is simply this so long as he retains and professes to retain the character of a good and legal trustee he is holding the legal estate as stake holder for two claimants the intended beneficiaries of the declared trusts which have failed and the resultant trustee that is the settlor And no length of possession by a trustee can be adverse to his *cestui que trust* as soon as that legal person is discovered and ascertained So long as a trustee occupies the position of a trustee as soon as declared trusts failed and there is a resultant trust in favour of the settlor the trustee's possession is essentially that of his *cestui que trust* and can only be changed into adverse possession by a conscious and deliberate act that is to say that he must repudiate all intention of holding for the resultant *cestui que trust* and he must assert his intention of continuing to apply the trust fund to uses which the Court has declared or which are known to him to have failed Then his possession might become adverse to his legal *cestui que trust* and if that person did not take steps within twelve years he might not be able to avail himself under the Indian authorities of the provision of section of 10 the Limitation Act Estoppel and *res judicata* are entirely distinct *Res judicata* precludes a man averring the same thing twice over in successive litigations while estoppel prevents him saying one thing at one time and the opposite at another It is consistent with the Mahomedan Law that a Mahomedan may devote his property in *wakf* and yet reserve to himself and his descendants in a very indefinite manner the usufruct of property *Jairabai* v *R D Sethna I L R 34 Bom 604* considered The power of revocation is inherent in the donor of every gift so that expressing it as is usually done by English draftsmen in the voluntary settlements is merely surplusage and so far from invalidating the gift as a whole would necessarily be implied in it were it not expressed Under the Mahomedan Law where a gift is conditioned by a power restricting alienation the gift is absolute and the condition is void A gift to the donor himself for his life and then over to others could not be reconciled with any recognised principle of the Mahomedan Law of gift and must necessarily therefore so far as the remoter donees are concerned be had *ab initio* *Jairabai* v *R D Sethna I L R 34 Bom 604* followed A vested remainder in the strict sense of the English words and *a fortiori* a contingent remainder could not possibly by any stretch of ingenuity be made the subject of a valid Mahomedan gift *inter vivos* consistently with the

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requirements of the Mahomedan Law on that head and for this very simple reason that no man can give possession *in præsenti* of that which may never come into possession at all It is of the essence of a Mahomedan gift *inter vivos* that the donor should divest himself of the actual possession of the thing given and transfer it to the donee and if the donee does not take physical possession of it at the time of making the gift then till he does the gift is revocable There is no authority to be found anywhere in the Mahomedan Law books themselves for the proposition that a man giving *inter vivos* may give an estate first to himself and then to *A* for life and then to *B* absolutely It is undoubtedly a rule of the Mahomedan Law that where a donor makes a gift and accepts in exchange something whether that something be independent of or part of the original gift then the rest of the gift is irrevocable No gift *in futuro* can be made by a Mahomedan *inter vivos* in order to validate such a gift there must be an actual delivery of seisin to the donee there must be a transfer of possession and that transfer of possession must be from the donor to the donee While the Mahomedan Law insists that a gift to private persons should be free of all pious and religious purpose this does not necessarily prohibit the making of the gift to *wakf* which may be contained in a deed which makes other gifts at the same time to private person It appears to be the Mahomedan Law that a donor may give his property in *wakf* that is to say appropriate and dedicate the *corpus* to the service of God while reserving for himself a life interest in the usufruct But as in the case of gifts to private individual the Mahomedan Law never contemplated and will not allow a merely contingent gift in *wakf* This necessarily flows from the jural conception of a *wakf* which is the immediate appropriation and consecration of specified property to the service of God and the reservation of the donor's life interest in that property does not in any way clash with that conception for the *corpus* is there and then definitely and finally appropriated to its intended purpose But it is plainly otherwise while the gift is conditioned upon the happening of some future uncertain event There can in such *circumstances* be no appropriation synchronizing with the declaration because should the future events happen it is neither the donor's intention then nor after the happening of that event that the property ever should be appropriated to the service of God It would be passing the limits of the application of the maxim *Leu et conventio vincunt legem* if it were sought to be shown that the Khojas are allowed by local usage to override the Mahomedan Law which prohibit any Moslem from disposing of more than one third of his property by will CASSAMALLY JAIRAJBHAI *v* SIR CURRIMBHOY EBRAHIM (1911)

I L R 36 Bom 214

MAHOMEDAN LAW—WAKF

See CIVIL PROCEDURE CODE 100 *s* 92 (1) I. L. R 35 All 98

See MAHOMEDAN LAW—ENDOWMENT

See MAHOMEDAN LAW—MUTAWALLI

See MAHOMEDAN LAW—WILL

I. L R 43 All. 503

MAHOMEDAN LAW—WAKF—*contd*

See MUSSALMAN WAKF VALIDATING ACT (VI OF 1913) s 3
I L R 39 Bom 563

See RELIGIOUS ENDOWMENT
6 Pat L J 218

See WAKF

1 ———— Valid wakf—*Charitable object—Expenses of fatiha of executant—Burning lamps in mosque—Salary of Hafiz* *Held* by BANERJI J (STANLEY C J *dubitante*) that a wakf by which a substantial portion of the income of the endowed property was appropriated for (i) expenses of the annual *fatiha* of the waqif of her husband and members of her family (ii) the annual expenses of burning lamps in a mosque and (iii) the salary of Hafiz and readers of the Quran was a valid waqf and that there was a substantial dedication of the property to religious or charitable purposes *Mahomed Ahsanulla Choudhri* v *Amarchand Kundu I L R 17 Calc 498* *Luchmiput v Amir Alum I L R 9 Calc 176* *Phul Chand v Akbar Yar Khan I L R 19 All 211* and *Biba Jan* v *Kalb Husain 6 All L J 115* *I L R 31 All 136* referred to *Kaleloola Sahib* v *Nuseer udeen I L R 18 Mad 201* and *Fakhr ud-din Shah* v *Kifayat ullah 7 All L J 1095* doubted *Per* STANLEY C J —The general dedication of villages in the name of God is not sufficient to render the waqf valid in respect of so much of the property as has been dedicated expressly for specific objects which are not proper objects of waqf *fatiha* ceremonies and the reading of the Quran in private do not seem to be such objects MAZHAR HUSAIN KHAN *v* ABDUL HADI KHAN (1911)
I L R 33 All 400

2 ———— Performance of fateha when a valid object of wakf—*Wakf when illusory—Rule to be adopted when one of the purposes of the wakf fails—Provision for heirs invalid as a wakf—Validity of direction to accumulate in a wakf* The performance of fateha (distribution of alms to the poor accompanied with prayers for the welfare of the souls of deceased persons) which so far as it involves the expenditure of any money consists in feeding the poor is a valid object of wakf A gift for the benefit of a man s own family or descendants will not be valid as a wakf and a gift really for such a purpose though ostensibly one for valid charitable purposes will be bad as only an illusory wakf It can be no objection to the validity of a wakf that some provision is made for the donor's family provided such provisions are not inconsistent with the gift being one substantially for charity If however such provisions in a deed purporting to be by way of wakf exhausts the bulk of the income or are to last for an indefinite period the wakf will be bad as illusory The fact that the donor did not direct the proportions in which the income should be divided between the charities and his heirs who were appointed trustees will not raise the presumption that he intended the heirs to take the whole It must be presumed that he intended the charities and his heirs to benefit equally Where a donor mentions several purposes as objects of charity and one of such purposes fails then if a general intention can be gathered of dedicating the property to charity the entire property will be devoted to the lawful objects if any mentioned in the deed and in the absence of any such to the poor whether or not any definite portion of the income has been set apart for the purpose which fails A gift by way of wakf partly for valid charitable purposes and partly for the donor s heirs will not be void because the latter is not a legal purpose of a waqf The waqf will be valid and the whole income will be devoted for the valid purposes A provision for accumulation which will enure solely for the benefit of charitable purposes will not be bad as offending the law of perpetuities RAMANADHAM CHETTIER *v* VADA LEVVAI MARAKAYAR (1910)
I L R 34 Mad 12

See I O T
I L R 40 Mad 116

3 ———— Sunni schools—*Injunction between co owners—Mahomedan burial grounds joint interests in* The Court will refuse to a co owner an injunction to prevent the carrying out of a necessary work by another co owner upon property held in common. According to the accepted view of the Sunni schools which comprise the followers both of Imam Abu Hanifa and Imam Shafei it is in the very conception of *wakf* which is the name for a grant by which mosques and similar institutions are dedicated that all proprietary rights of men should be extinguished in the property so dedicated. KUTTAYAN *v* MAMMANNA RAVUTHAN (1912)
I L R 35 Mad 631

4 ———— Subsequent failure of title of waqif—*Right of mutawalli to sue on indemnity bond executed in favour of wakif as purchaser—Right of plaintiff to shift basis of claim during suit—Practice* A purchased a village the vendors giving him an indemnity bond in case he should be dispossessed *A* then made a wakf of the property purchased naming himself as mutawalli and after him his son *M* *A* lost the property as the result of a suit and subsequently (*A* meanwhile having died) *M* sued as mutawalli to enforce the terms of the indemnity bond. *Held* that the wakf was invalid and that *M* could not be permitted to change the character of the suit by claiming as one of the heirs of *A* *Per* CHAMIER J —Even if the wakf was valid the mutawalli was not entitled to maintain the suit in the absence of a transfer to him as such of the vendee s rights under the indemnity bond MASIH UD DIN *v* BALLABH DAS (1912)
I L R 35 All. 68

4 (a) ———— Right to worship in mosques —Every Mahomedan who has a right to use a mosque for purposes of devotion is entitled to exercise such right without hindrance and can bring a suit against anyone who interferes but if he brings it in his personal capacity and not on behalf of the community the decision will be binding only as between plaintiff and defendant RAMCHANDRA *v* ALI MAHOMED
I L R 35 All 197

5 ———— Dedication subject to annuities —*Payable to the Members of the settlor s family* Where a *wakfnama* provided that about two-third of the income of the property were to be paid as allowances to the wife and children of the settlor and only about a third was to be spent for religious and charitable purposes and it was further provided that the allowances to the wife and children would have to be reduced in the event of the income of the estate being reduced but there was no provision that the amount to be spent for religious and charitable purposes was

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to be reduced for any reason though the amount might be increased with the increase of the income of the estate *Held* that the wakf was valid under the Mahomedan Law GHANI MIA *v* ADAK PATARI (1913) 17 C W N 1016

6 ———— Shia Sect—*Wakf—Marz ul maut —Validity of wakf made in marz ul maut* Under the Shia law a wakf made in death illness is valid only to the extent of one third if not assented to by the heirs even if possession has been delivered by the maker of the wakf *Nazar Husain* v *Rafeeq Husain 8 All L J 1154* approved ALI HUSAIN *v* FAZAL HUSAIN KHAN (1914) I L R 36 All 431

7 ———— Constitution of by deed of trust—*Objects charitable and religious—Validity of wakf* Where with the object of dedicating a house to the service of the Imams Hasan and Hussain and for other religious purposes the settler had conveyed the house to his grand daughter and his grand son on trust for the proper observance of the objects mentioned in the deed — *Held* that there was a valid wakf *Delroos Banoo Begum* v *Ashgar Ally Khan 15 B L R 167* discussed. *Phul Chand* v *Akbar Yar Khan I L R 19 All 211 Biba Jan* v *Kalb Husain I L R 31 All 136 Mazhar Husain Khan* v *Abdul Hadi Khan I L R 33 All 400* referred to RAM CHARAN LAW *v* FATIMA BEGAM (1915) I L R 42 Calc 933

8 ———— Dedication for expenses of mosque—*And maintenance of family members how far valid* Where a person belonging to the Hanafi School of Mahomedan Law made a wakf whereby he provided for the payment of expenses of and in connection with a mosque and for regular monthly maintenance of the members of his family *Held* that the dedication in connection with the mosque was valid but not so the provision for the payment of maintenance to members of the family RAHIMUNNISSA BIBI *v* SHAIKH MANIK JAN (1914) 19 C W N 76

9 ———— Res judicata—*Decision in previous suit between same individuals but brought by plaintiff in another capacity—Decision of High Court on legal grounds declaring a wakf invalid conclusive in later suit even when not strictly res judicata* Where in a suit by a creditor or representative of the wife of the original owner of property which the latter had made wakf before his death it was declared by the High Court on appeal on legal grounds that the wakf was invalid *Held* that this adjudication by the High Court of the invalidity of the wakf was binding between the parties to a subsequent suit brought against the same defendant by the same plaintiff but suing now as the heir of the owner's daughter MOHAMED BUKTH MAJUMDAR *v* DEWAN AJMOY RAJA (1915) 19 C W N 987

10 ———— Founder herself mutawalli if may renounce office—*And appoint another—Right of next in order of succession under original wakf to sue if arises immediately or on death of predecessor—Limitation*—A *mutawalli* cannot renounce his office except in the presence of the founder of the *cadi* but whether the founder is herself the *mutawalli* a renouncement by her to herself would be valid and the appointment by her of another *mutawalli* would be valid at least during her life time and limitation would not begin running against the person next entitled to succeed to the office under the original endowment until her death ABDUL GAFOOR MIAN *v* HAJI KHUNDKAR ALTAF HOSAIN (1915) 20 C W N 605

11 ———— Deed providing for charitable purposes and also for support of grantors family—*And descendants—Test whether deed is valid as a wakf or whether wakf is illusory—Property substantially given to charities the surplus to support family—Mussalmans Wakf Validating Act (VI of 1913)* The test of whether a deed was or was not valid as a wakf in the cases decided before Act VI of 1913 was that if the effect of the deed was to give the property substantially to charitable uses it would be valid but if the effect of it was to give the property in substance to the settlors family it would be invalid under Mahomedan Law *Mahomed Ahsanullah Chowdhry* v *Amarchand Kundu I L R 17 Calc 498 L R 17 I A 28 Abdul Fata Mahomed Ishak* v *Rasamaya Dhur Chowdhuri I L R 22 Calc 619 L R 22 I A 76* and *Mujibunnissa* v *Abdul Rahim I L R 23 All 233 212 L R 28 I A 15 23* referred to To determine whether any particular case answers the test all the circumstances existing at the date of the deed must be taken into consideration such as the financial position of the grantor the amount of the property the nature and the needs of the charity their probable or possible expansion the priority of their claim upon the settled fund and such like It does not follow because the share of the income going to the family which may be a dwindling sum is for a time larger than that going to the charities that the effect of the deed is to give the property in substance to the family and that it is therefore invalid as a wakf In the present case the sum devoted to the charities was not large though for the present it was abundant for their needs but having regard to all the circumstances of the case the dominating purpose and intention of the grantors in executing the deed was to provide adequately for those charities That was their main and paramount object The secondary and subsidiary object was to secure for their family and descendants any surplus that might remain after the needs of the charities had been satisfied. As the gift for the charities was perpetual it was necessary and right that the provision for capturing *any possible residue should also be perpetual* The provisions of the deed carry out these objects and in their Lordships opinion the effect of the instrument is not to give the trust property in substance to the family of the grantors but to give it substantially to the charitable purposes named in it The deed therefore was within the authorities a good and valid deed of wakf RAMANANDAN CHETTIAR *v* VAVA LEVVAI MARAKAYAR (1916)

I L R 40 Mad 116
L R 44 I A 21

13 ———— Mutawalli—*Jurisdiction of Court to appoint guardian in respect of wakf property—Guardians and Wards Act (VIII of 1890)* A Mahomedan died leaving two sons and a daughter all minors and having also constituted a wakf of a partly public partly private character under which on death of the waqf one or other of his to be mutawalli *Held* that it was the District Judge to appoint a ...

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the duties of the *mutawalli* pending either the coming of age of the minors or the institution of a regular suit by some persons interested in the endowment to contest the arrangement made by him EJAZ AHMAD v KHATUN BEGAM (1916)

I L R 39 All 288

14 ——— Validity of—*Determining test—Annuity to destitute illegitimate daughter of founder s husband if charitable gift* Where under a waqf a certain portion of the property was to go for objects religious and charitable but the main object was the benefit of the daughter of the settler and her successors *Held* that in the circumstances of the case the dominating purpose and intention of the grantor which is the true test in such cases was not to provide for charities That although the deed might not be wholly good it was competent for the Court to declare the charitable trusts constituted by the document to form a valid charge on the property That the annuity to an illegitimate daughter of the founder's husband who was destitute and unprovided was a charitable gift KARIMUNESSA CHOWDHRANI v EKINA BANOO (1917) 22 C W N 568

15 ——— Appointment of mutawalli by tauliatnamah—*Testamentary character and validity of—Mahomedan Endowments Committee at Chittagong—Statutory body—Regulation XIX of 1810—Religious Endowments Act (XX of 1863) s 7—Doctrine of marz ul maut* Where *A* mutawalli of a mosque executed a *tauliatnamah* a few months prior to his death in favour of *B* appointing him as his successor —*Held* that the Mahomedan Endowments Committee at Chittagong was a statutory body and its recognition of a person as the true and rightful mutwalli was authoritative *Semble* that according to Mahomedan Law a *tauliatnamah* was capable of being construed as a document of a testamentary character speaking as from the moment of death also that when a person had a right or power under the law to appoint a successor and if he freely executed a *tauliatnamah* as a testamentary document while he was of sound mind its validity could not be questioned *Sayad Muhammad* v *Fatteh Muhammad I L R 22 Calc 324 L R 22 I A 4 Sayad Abdula Edrus* v *Sayad Zain Sayad Hasan Edrus I L R 13 Bom 555* referred to SULTAN AHMAD v ABDUL GANI (1918)

I L R 46 Calc 13

16 ———Illusory dedication—*Mussalman Wakf Validating Act (VI of 1913) preamble and ss 3 and 4—Act not retrospective* The Mussalman Wakf Validating Act 1913 is not retrospective in its operation. If therefore a wakf purporting to be created before coming into operation of that Act is to be held valid it must conform to the law as established by the decisions of the Privy Council prior to the said Act that is to say the owner of the property the subject of the wakf must divest himself of it and appropriate it to religious or charitable purposes there must be a substantial dedication to religious or charitable purposes at some time or another there must be a substantial and not merely a colourable dedication of the property the religious or charitable purpose must not be so unsubstantial or illusory as to give to the settlement merely a colour of piety the real object being the aggrandisement of the settlor s family *Jh munnissa Bibi* v *Shaikh Manik Jan 10 C W N 76 Mahomed Buksh Majumdar* v *Dewan Ajman Reja I L R 43 Calc 158* and *Amir Bibi* v *Azi a Bibi I L R 39 Bom 563* referred to NAIM UL HAQ v MUHAMMAD SUBHAN ULLAH (1918) I L R 41 All 1

17 ——— Office of mutawalli devolving upon an entire family—*Division of the wakf property amongst the family—Right of some members of the family to sue for the setting aside of the transactions of other members relating to the wakf property* By the terms of a wakf constituted in 1845 the original *mutawallis* were two nephews of the wakif the sons of his brother Thereafter the office of *mutawalli* was to descend to the family of the brother generation after generation without a break and without any separation for ever In course of time it happened that the office of *mutawalli* devolved on three brothers who for their own purposes divided the wakf property amongst themselves One of these brothers entered into various transactions relating to portions of the wakf property which were inconsistent with his position as *mutawalli* and thereafter attempted to resign office in favour of his sons The sons then endeavoured to get the transaction entered into by their father set aside but failed Subsequently three of the sons of the third brother their father having died meanwhile brought the present suit to set aside the transactions referred to above *Held* that as on their father s death the office of *mutawalli* devolved upon the plaintiffs jointly with their uncle they were entitled to bring the suit ALI MUQTADA KHAN v ABDUL HAMID KHAN (1919)

I L R 41 All 412

18 ——— Shia sect—*Wakf created by trust deed—Ownership in property not divested from date of execution of deed* *Held* that a trust deed executed by a Mahomedan of the Shia sect and his wife which purported to create a wakf, but did not divest the executants *in praesenti* of their ownership or power of alienation in respect of the property therein dealt with could not operate to create a valid wakf ALI RAZA v SANWAL DAS (1918) I L R 41 All 34

19 ——— Illusory dedication —Where it was conceded that the annual value of property dedicated by way of wakf was about a thousand rupees but it appeared that the expenditure needed to carry out the stated charitable and religious purposes would amount to only a small fraction of the annual income and were in fact so insignificant or so remote as to be illusory *Held* applying the test laid down in *Mujibunnessa* v *Abdur Rahim I L R 23 All 233* s c *5 C W N 177* that the document was not a valid wakf MAKRAM ALI KHAN v NIJABAT ALI (1919)

23 C W N 903

20 ———Lease by mutawalli—*Sanction of Judge (Ka i) how obtainable—Civil Procedure Code (Act V of 1908) s 92* S 92 of the Code of Civil Procedure evidently relates to suits claiming any of the reliefs specified in sub s (1) thereof An application by a *mutawalli* for sanction to grant a lease is not a suit under sub s (1) of s 92 The application for sanction should be made to the District Judge if the property is situated in the moffusil or to the Judge on the Original Side of the High Court if it is within a Presidency Town It is not necessary to bring a suit for obtaining such sanction it will be granted upon

MAHOMEDAN LAW—WAKF—*contd*

a proper application being made by the *mutwalli* Any application made by the *mutwalli* will of course be enquired into by the District Judge before sanctioning a lease as *Kai* FAKRUNNESSA BEGUM *v* DISTRICT JUDGE OF 24 PARGANAS (1920) I L R 47 Calc 592

21 ———— Illusory—*Chief object of wakf to make provision in perpetuity for the family—Wakf how far valid—Court whether precluded from taking notice of illegality of wakf when illegality not disclosed in pleading* In a suit for recovery of the office of *mutwalli* and for possession of the properties covered by a *wakf* the Plaintiffs prayed that the first Plaintiff might be declared to be the *mutwalli* appointed in accordance with the long-established custom and usage of the family and in conformity with the provisions of the deed of *wakf* or if in the opinion of the Court the first Plaintiff had not been validly appointed *mutwalli* the Court might issue orders for the nomination and election of the *mutwalli* by the members of the family and thereafter appoint the person so nominated. The Defendant denied the claim and alleged that he had been duly nominated and appointed *mutwalli* by his father The Subordinate Judge dismissed the suit holding that the Defendant had been validly appointed *mutwalli* and that the alleged election of the first Plaintiff had no legal effect On appeal it was pointed out that the gift to charity was illusory and the chief object of the *wakf* was to create a settlement in perpetuity for the aggrandisement of the family It was urged on behalf of the Appellant that as in the Court below the parties had proceeded on the assumed basis that the *wakf* was good and valid this Court was not competent to determine whether this assumption was or was not well founded *Held*—That the Court was in no way bound by the assumption made by the parties as to the legality of the *wakf* in question and could not be invited by either of them to adjudicate upon their claim in relation thereto *Wakf* of this character had been pronounced invalid by the highest judicial tribunal as contrary to public policy If the illegality of a transaction is brought to the notice of the Court the Court will not assist the person who invokes its aid even though the Defendant has not pleaded the illegality and does not wish to raise the objection *Connolly v Consumers Cordage Co 2 Beauchamp P C 49 89 L T 347* (1903) *Scott v Brown [1892] 2 Q B 724 Hedge v Royal Exchange Corporation [1900] 2 Q B 214 Royal Exchange Assurance Corporation v Sjoforsakring [1902] 2 K B 384 Thomas v Dey [1908] 24 T L R 272* and *Luckett v Wood [908] 24 T L R 617* referred to NAWABZADA KHAJEH ATIKULLA *v* NAWAB KHAJEH HABIBULLA 24 C W N 306

22 ———— Sunnis—*Wakf—Delivery of possession essential.* According to the Mahomedan Law of the Hanafi school it is essential to the validity of a *wakf* that the *waqf* should actually divest himself of the property to be made *wakf* *Muhammad Aziz ud din Ahmad v The Legal Remembrancer I L R 15 All 321* followed MUHAMMAD YUNUS *v* MUHAMMAD ISHAQ KHAN I L R 43 All 487

23 ———— Whether a wakil can cancel the dedication subsequently—*And whether a house can be dedicated for purposes of prayer—Contingent dedication—wakf made exclusively for use of a particular sect—whether valid* One Chittu a member of a peculiar sect of Muhammadans called *Ahl i Quran* or *Chakralvi* purchased a house and on 23rd May 1903 executed a *waqfnama* by way of a will and declared the property *wakf* for the use of his sect and appointed himself as its *mutwalli* The *wakf* was to be acted upon after his life time and after his death *mutwallis* were to be elected to manage the *wakf* On 15th March 1905 he executed another document in which he made the *wakf* more complete and having given up his mutwallship placed the property in possession of certain persons who were appointed *mutwallis* In the first *wakfnama* there was a direction that a mosque should be erected to carry out the objects of the *waqf* but he consecrated the house itself for the purpose of prayers and the recitation of the *Quran* The newly appointed *mutwallis* failed to obtain a site for the building of a mosque and so they appointed Chittu again as *mutwalli* of the *wakf* in the hope that by his influence a site might be secured When Chittu came into the possession of the *waqf* property he apparently changed his mind and began to deal with the property as his own He made transfers and leases and gifted part of the house to his wife Thereon the other *mutwallis* removed him from the mutwallship and he accepted his dismissal on 3rd June 1909 In November 1911 he died and his legal heirs took possession of a portion of the *wakf* property The *mutwallis* then instituted the present suit against the heirs for a declaration that the property being *wakf* the defendants had no right to any portion of it *Held* that the second *wakfnama* followed by possession being given to the *mutwallis* created a valid and binding *wakf* in the life time of Chittu which could not be invalidated by Chittu's subsequent acts *Held also* that on a proper construction of both the *wakfnamas* it was not a condition of the dedication that a mosque should be built the house itself having been constituted as a *wakf* property in the *wakif's* life time and having been used as a house of prayer by the followers of the sect ever since It could not therefore be said that the *wakf* never came into existence or that it was a contingent one dependent on the fulfilment of the condition of building a mosque *Held further* that according to Mahomedan Law any place which is dedicated for the purposes of prayer may validly be treated as a mosque and it is not necessary that the building should have a minaret *Held lastly* that the fact that Chittu in both *wakfnamas* expressed a wish that only the *Ahl i Quran* should perform their prayers in the house could not invalidate the *waqf* which was made according to the rules of Mahomedan Law and the house must be treated as having become the property of God. Where a *wakf* has been validly made exclusively for the use of a particular sect the *wakf* is good and the condition attached to it is void *Ata Ullah v Azim Ullah (I L R 12 All 494 (501) F B per Edge C J)* referred to *Abdus Subhan v Korban Ali (I L R [illegible] Calc [illegible])* *Fatma Bibi v The Advocate General of Bombay (I L R 6 Bom 42)* *Muhammad Rustam Ali Khan v Muhammad Mushtaq Husain (35 Indian Cases 715)* and *Kuttayan v Mamsanna Rawuthan (18 Indian Cases 195)* distinguished MAULA BAKSH *v* AMIR UD DIN I L R 1 Lah 317

MAHOMEDAN LAW—WAKF—*contd*

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MAHOMEDAN LAW—WAKF—*contd*

24 ——— Sanction to s ll—*Jurisdiction*—*Pet th* On an appli tion made by the Mu a rihr to a wakf for sanction to sell *wakf* prop rty *He l* that there bein, no statute authorisin, such an appli ation su h sanction could only be obtained by means of a suit *In re* HALIMA KHATUN

I L R 37 Calc 870

25 ——— *Musalman wakf validating Act (VI of 1913)—Provision for support and maintenance of family how far valid—wakf—If wakf property be mortgaged at the time of dedication whether the wakf valid—Whether delivery of possession essential—Settlor and death illness—Wakf affects what share of the property—Death illness conditions of—Question when one of fact only and when of law and fact* In a wakf although provision is made for the maintenance and support of the family children and descendants of the settlor if the ultimate benefit is reserved for the poor and for other purposes recognised by the Mahomedan law as religious pious or charitable purposes of a permanent character then tested in the light of the provisions of the Musalman *wakf* Validating Act no valid objection can be taken to the legality of such a wakf The circumstance that the property dedicated was under a mortgage at the time of creation of the endowment and that provision was made in the *wakf* for the discharge thereof does not render the endowment invalid under the Mahomedan Law According to the Calcutta High Court a valid *wakf* is created by declaration of endowment by the owner and delivery of possession is not essential Where the settlor had appointed himself as the first *mutwalli* no formal delivery of possession from himself was a prerequisite to the validity of the *wakf* and even if transmutation of possession was necessary no formal delivery was essential A Muslim who is in *Marz ul maut* or death illness cannot make a valid disposition of more than one third of his property after payment of funeral expenses and debts and if he purports to make a *wakf* in such illness unless his heirs assent the *wakf* will affect only one third of his estate and will be invalid in respect of the excess notwithstanding that possession of the entire property dedicated has been delivered to the person nominated *mutawalli* In order to establish the existence of death illness there must be at least three conditions with regard to the illness which has caused death (*a*) proximate danger of death so that there is a preponderance of apprehension of death (*b*) there must be some degree of subjective apprehension of death in the mind of the sick person and (*c*) there must be some external indicia such as inability to attend to ordinary vocations Whether or not a particular illness constitutes *Marz ul maut* is primarily a question of fact but may sometimes be a mixed question of law and fact for instance where the question arises whether the facts found as to the physical condition of the deceased at the date of the execution of the deed constitute the essential elements of *Marz ul maut* as formulated by Mahomedan jurists BIBI JINJIRA KHATUN *v* MOHAMED FAKIRULLA

26 C W N 749

MAHOMEDAN LAW—WIDOW

See MAHOMEDAN LAW—DOWER

——— Bhag prop rty—widows power of alienation—

See WASTE I L R 44 Bom 727

MAHOMEDAN LAW—WIDOW—*contd*

——— Claim to dower—*Rights of widow in possession in lieu of dower—Proof of consent of husband or heirs not necessary* A Mahomedan widow to whom dower is due who enters into possession of her husband's property on his death is entitled to hold the estate against the other heirs until her claim to dower is satisfied subject to her liability to account for the profits which she may receive while so in possession It is not necessary for her to show that the deceased husband or his heirs consented to her getting into possession *Amanat un nissa v Bashir un nissa I L R 17 All 77* dissented from *Mussumat Bebee Bachun v Sheikh Hamid Hossein 14 Moo I A 377* *Ameer oon nissa v Moorad oon nissa 6 Moo I A 211* and *Imami Begam v Muhammad Karim ullah I L R 16 All 99* referred to HAMZAN ALI KHAN *v* AGHAI BEGAM (1910)

I L R 32 All 563

——— *Dower—Right of widow to remain in possession of property of her husband—Such right heritable* The right of a Mahomedan widow who has entered into possession of her husband's property peacefully and without fraud in lieu of her dower debt is a heritable right and her heirs are entitled to remain in possession until the debt is satisfied *Azizullah Khan v Ahmad Ali Khan I L R 7 All 353* followed *Amanat un nissa v Bashir un nissa I L R 17 All 77* doubted *Mussumat Bebee Bachun v Sheikh Hamid Hossein 14 Moo I A 377* *Mahomed Ussud ood lah Khan v Mussumat Ghasheea Beebee 1 Agra 130* *Mussamut Kummroon nissa Begum v Mahomed Hussein 1 Agra 287* *Mussamut Walid un nissa v Mussamut Shulrattun 6 B L R 54* *Ahmad Hossein v Mussammut Khodeja 10 W R C R 369* *Syud Pa ajet Hossein v Dooli Chand L R 5 I A 211* *Ali Muhammad Khan v Azizullah Khan I L R 6 All 50* *Ajuba Begam v Nasir Ahmad Ali Weekly Notes (1890) 115* *Hadi Ali v Akbar Ali I L R 20 All 262* and *Muzaffar Ali Khan v Parbati I L R 29 All 640* referred to ALI BAKHSH *v* ALLAHDAD KHAN (1910)

I L R 32 All 551

——— In possession of husband's property in lieu of dower—*Rights of widow—Transfer by widow—What acquired by transferee—Limitation—Act No IX of 1908 (Indian Limitation Act) sch I art 134* Where a Muhammadan widow is in possession of property belonging to her deceased husband in lieu of dower it is competent to her to sell it without necessarily selling her right to receive her dower Such a transfer conveys to the transferees the right to remain in possession during the widow's life time or until the widow's dower or the proportionate part thereof corresponding to the property transferred is satisfied *Mohammad Husain v Bashiran 12 A L J 1141* distinguished *Musammat Kummur ool nissa Begum v Mahomed Hussun N W P H C Rep 1866 237* and *Ali Bakhsh v Allahdad Khan I L R 32 All 551* referred to ABDULLA *v* SHAMS UL HAQ

I L R 43 All 127

——— share taken by as sole heir—Where a Mahomedan dies leaving a widow as his sole heir the widow will take one fourth as her share and the remaining ¾th by Return The surplus ¾th does not escheat to the Government

I L R 44 Bom 949

MAHOMEDAN LAW—WILL.

See PROBATE. 15 C W N 183
See WILL I L R 43 Bom 641

———— Bequest to an heir—Effect of—

See PROVINCIAL INSOLVENCY ACT 1900 s 16 I L R 42 All 593

1. ———— Probate—*Will admissibility of in evidence without probate—Probate and Administration Act (V of 1881) s 4—Succession Act (X of 1865) s 187—Hindu Wills Act (XXI of 1870) s* There is no provision of law rendering it obligatory in the case of a Mahomedan will to take out probate After due proof a Mahomedan will is admissible in evidence notwithstanding that grant of probate has not been obtained *Fatma v Shaik Essa I L R 7 Bom 266* not followed *Shaik Moosa v Shaik Essa I L R 8 Bom 241* followed *Kherodmoney Dassee v Durgamoney Dassee I L R 4 Calc 455 Administrator General of Bengal v Premlal Mullick I L R 22 Calc 788 Sarat Chandra Banerjee v Bhupendra Nath Basu I L R 25 Calc 103 Bhagvansang Bharaji v Bechardas Harjivandas I L R 6 Bom 73* and *Surbomungola Dabee v Mohendranath Nath I L R 4 Calc 508* referred to SAKINA BIBEE v MAHOMED (ISHAK 1910) I L R 37 Calc 839

2 ———— Legacy—*Limitation Act (XV of 1877) Art 123—Suit to recover legacy—Legacy not assented to by executor—Probate and Administration Act (V of 1881) s 112—Shiahs—Wakf—Bequest for Gadir ul khum feast—Fattiah dinners—Valid bequest—Cypres* Article 123 of the Second Schedule of the Limitation Act 1877 applies to a suit where the substantial claim is to recover a legacy even though not assented to by the executor and whether or not the suit involves the administration of the whole estate A Shiah Mahomedan directed his executors by his will to spend a portion of the income of his property upon the following charitable or religious objects (i) The Gadir ul khum feast at Mecca (ii) The Gadir feast at Rehmanpura in Surat and (iii) A Fattiah dinner on the testator s and his wife s account The Gadir feasts were to celebrate the appointment of Ali as successor of the Prophet *Held* that the first two bequests were valid but the validity of the third bequest was doubtful *Kaleloola Sahib v Nuseerudeen Sahib I L R 18 Mad 201 Zooleka Bibi v Zynul Abedin 6 Bom L R 1058* and *Biba Jan v Kalb Hussain I L R 31 All 136* followed Where the testator has indicated a general charitable intention in the bequest made by him and if these bequests fail, the Court can devote the property to religious or charitable purposes according to the *cypres* doctrine SALEBHAI ABDUL KADER v BAI SAFIABU (1911) I L R 36 Bom 111

3 ———— Bhagdari property—*Will in favour of widow and daughter—Suit by a residuary heir of the testator for a declaration that the will was invalid—Bhagdari custom—Testamentary capacity of the owner—Rule of Mahomedan Law to be applied—Validity of the will* A Mahomedan Bhagdar made a will by which he purported to dispose of his entire property including Bhagdari property in favour of his widow and daughter The plaintiff who was the residuary heir of the testator never consented to this form of the will He therefore sued for a declaration that the will was invalid under Mahomedan Law so far as the *Bhag* property was concerned and that he was entitled to succeed to it after the death of the widow under the Bhagdari custom The question being raised as to what was the rule which regulated the testator s power to make the will *Held* that the rule of Mahomedan Law was the only law which could be applied and according to it the will was invalid The plaintiff was therefore the presumptive reversioner under the Bhagdari custom AHMAD ASMAL v BAI BIBI (1916) I L R 41 Bom 377

MAHOMEDAN LAW—WILL—*contd*

3(a) ———— Mother as *de facto* Guardian—*If competent to alienate property of infant children—Remedy of infant whose property is so alienated—Suit for recovery of property within twelve years from date of sale or three years from attainment of majority—Limitation—Limitation Act (IX of 1908) Sch I Art 44* A Mahomedan died leaving his widow and infant children He had debts and to satisfy the decree obtained by one of the creditors against some of the heirs the widow acting on her own behalf and on behalf of her minor children sold a certain property and made over delivery of possession The other creditors took no steps to enforce their dues by suits The children on attaining majority sued jointly with the widow to recover possession of the property on declaration of title *Held* that as laid down by the Judicial Committee of the Privy Council in *Imambandi v Mutsuddi L R 45 I A 73 s c I L R 45 Calc 878 23 C W N 50* (1918) a mother has not power under the Mahomedan law to alienate or charge immoveable property as *de facto* guardian of her infant children If such an alienation is made it is not necessary for the infants to have it set aside within three years after attainment of majority under Art 44 of the schedule to the Limitation Act because the alienation must be deemed to have been effected not by a guardian but by a wholly unauthorised person The infant whose property has thus been alienated is consequently entitled to institute a suit for recovery of possessions within twelve years from the date of sale or within three years from the attainment of majority whichever may be the later date That the decree for possession in favour of the Plaintiffs should be conditional on repayment of a proportionate share of the ancestral debts which were payable out of the assets left by the original debtor and each heir with the exception of the widow who was competent to sell her own share and could not subsequently ignore her act was liable to satisfy the debt to the extent of the assets in his share That the suit must fail so far as the Plaintiff who attained majority more than three years before suit the sale having taken place fourteen years before LALOO KARIKAR v JAGAT CHANDRA SAHA

25 C W N 258

4 ———— Bequests to heirs and to strangers—*Civil Procedure Code (1908) O XXII r 4—Legal representative—Abatement of suit* In giving effect to the will of a Muhammadan which contains bequests to heirs and also to strangers the principle to be followed is that the bequests to the heirs will be invalid unless in each case they are assented to by the other heirs but the bequests to the strangers will be valid to the extent of one third of the testator s property *Held* also that an application to bring upon the record as representative of a deceased defendant a person who is not in fact such representative will be of

MAHOMEDAN LAW—WILL—concld

no avail to save the running of limitation in favour of the person who really is the legal representative MUHAMMAD JUNAID v AULIA BIBI
I L R 42 All 497

5 ———— Construction of document A Muhammadan lady by her will devised certain property to her two brothers enjoining them to sell the same and with the proceeds erect a mosque The will however provided further that if the devisees preferred to keep the property themselves they could do so if they devoted the value of the property (given in the will at Rs 2 500) to the construction of a mosque *Held* on a construction of the will that the waqf created thereby was a waqf of the value of the property and not of the property itself and would not render the property exempt from sale in execution of a decree against the devisees MUHAMMAD ISMAIL v MUHAMMAD ISHAQ
I L R 43 All 503

6 ———— *Will in favour of minor son with gift over in case of his death—effect of consent of minor's sisters—family arrangement* One M A S on 18th December 1907 made a will and died on 30th December 1907 leaving two daughters *Mussammat* S B and U ul B and an infant son W A S By the will M A S devised all his property to his son W A S and he declared that in the event of his death his nephew H A S who was married to his daughter *Mussammat* U ul B should succeed to the entire estate Both the daughters attested the will in token of their consent and they also expressed their assent to the will subsequent to the death of M A S On the 10th April 1910 the son died and *Mussammat* S B then sued for her share in the property *Held* that the will though originally invalid under Muhammadan Law was validated by the daughters assent to the will *subsequent* to the death of M A S and their infant brother W A S consequently took a vested and absolute interest in the estate devised to him by his father *Held also* that the bequest over after the son's death in favour of H A S the testator's nephew was repugnant to Muhammadan Law and could not be given effect to *Abdul Karim Khan* v *Abdul Qayum Khan* (*I L R 28 All 342*) followed *Held further* that the consent of the daughters to the will was not given as a family arrangement and plaintiff was not estopped from claiming her share *Mussammat Nurai Bibi* v *Ghulam Hussan Shah* (*20 P L R 1901*) and *Muhammad Umar Ali* v *Aman Ali* (*251 I L P 1911*) distinguished NASIR ALI SHAH v *Mussammat* SUGHRA BIBI
I L R 1 Lah 302.

MAHOMEDAN LAW—WORSHIP

———— *Wakf—Right of Mahomedans to worship in mosques—Suit by individual Mahomedans whose right is infringed—Civil Procedure Code 1908 O I r 8* Every Mahomedan who has a right to use a mosque for purposes of devotion is entitled to exercise such right without hindrance and is competent to maintain a suit against anyone who interferes with its exercise but if he brings his suit in his personal capacity and not on behalf of the whole Mahomedan community the decision will be binding only as between the plaintiff and the defendant and cannot be taken advantage of by or be binding on the Mahomedan community in general *Jawahra* v *Akbar Husain I L R 7 All 178* and *Daondhay* v *Muhammad Abu Nasar I L R 33 All 660* followed RAM CHANDRA v ALI MUHAMMAD (1913)
I L R 35 All 197

MAHOMEDANS

———— *Held* that the sects known as Ahmadis or Khadianis are Mahomedans HAKIM KHALIL AHMAD v MALIK ISRAFI
2 Pat L J 108

See LIMITATION ACT (IX OF 1908) SCH I ART 127 I L R 41 Bom 588

MAHRATTA BRAHMIN

See HINDU LAW—INHERITANCE. I L R 48 Calc 30

MAIDEN'S PROPERTY

See HINDU LAW—SUCCESSION I L R 38 Mad. 45

MAIDEN'S STRIDHAN

See HINDU LAW—SUCCESSION I L R 39 Calc 319

MAINTENANCE

See CIVIL PROCEDURE CODE 1908—
s 60 I L R 43 All. 617
O II r. 5 I L R 38 Bom 120
O XXXII r. 4 5 14 AND 15 2 Pat L J 55

See CRIMINAL PROCEDURE CODE (1898) s 488 I L R 37 Mad 565
4 Pat L J 189
I L R 39 Mad. 472
I L R 43 Bom 865

See CUSTOM I L R 2 Lah 243

See DIVORCE ACT (IV OF 1869) s 37 I L R 39 Bom 182

See HINDU LAW—ADOPTION I L R 39 Bom 528

See HINDU LAW—MAINTENANCE.

See HINDU LAW—WIDOW I L R 36 Bom 383
I L R 39 Mad. 658

See MAHOMEDAN LAW—MAINTENANCE.

See MALABAR LAW I L R 36 Mad 593
I L R 38 Mad. 79

See PARSIS I L R 38 Bom 615

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887) SCH II ART 41 I L R 40 All 135

See TALUKDAR RIGHTS OF I L R 32 All. 92

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 52 I L R 37 Bom 621

See WILL 15 C W N 121

———— *arrears of*—

See HINDU LAW—WIDOW I L R 36 Bom 131

———— by a Parsi wife for arrears of—
See PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882) I L R 45 Bom 318

MAINTENANCE—contd.

——— charge of—

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 16 (*d*)
I L. R 40 Bom 337

——— decree for against a soldier—

See ARMY ACT (44 & 45 VIC c 58) s 145 190 I L. R 43 Bom 368

——— future including allowances right to—

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 60 (*l*) I L. R 40 Mad 302

——— Marumakkathayam law of—

See MALABAR LAW
I L R 36 Mad 593

——— of child—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 488
I L R 39 Mad. 957

——— of daughter—

See WILL. I L. R 38 Calc 327

——— of junior members—

See HINDU LAW—MAINTENANCE
I. L. R 39 Mad 396

——— of members other than the senior male in a tarwad—

See MALABAR LAW
I L. R 39 Mad 317

——— on gift by widow to daughter—

See HINDU LAW—REVERSIONER
I L R 44 Bom 255

——— right to—

See MALABAR LAW I L. R 38 Mad 79

——— right to get from husband s estate—

See HINDU LAW—MAINTENANCE
I L. R 38 Mad 153

——— separate—

See ALIYASANTANA LAW
I L R 36 Mad 203

——— separate living member when entitled to—

See MALABAR LAW
I L R 36 Mad 591

——— suit for—

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 16 (*d*) I L R 40 Bom 337
See PROVINCIAL SMALL CAUSE COURTS (ACT IX OF 1887) SCH II ART 38
I L R 40 All 52

1 ——— Hindu widow—*Hindu Law—Maintenance allowed by will of husband to wife—Unchastity of wife after husband s death—Maintenance not affected—Unchastity—Starving maintenance* A Hindu widow was entitled to maintenance at the rate of Rs 24 a year under her husband s will. After the husband s death the widow led for some time an unchaste life and gave birth to a child but since then she remained chaste She sued to recover maintenance allowed to her under her husband s will. It was contended in reply that the plaintiff on account of the unchaste life which she had led for some time after her husband s death had forfeited her right even to bare or starving maintenance *Held* negativing the contentions that though the annuity was granted by the will as maintenance that word could not be understood as imposing any condition or restriction so as to cut down or extinguish the right to Rs 24 a year given by the will The rule that the will of a Hindu must be construed with due regard to Hindu habits and notions applies only where there is ambiguity Caution must be used in applying that rule and it must be adopted only where a suggested construction of doubtful language leads to manifest absurdity or hardship The general rule to be gathered from the texts is that a Hindu wife cannot be absolutely abandoned by her husband If she is living an unchaste life he is bound to keep her in the house under restraint and provide her with food and raiment just sufficient to support life she is not entitled to any other right If however she repents returns to purity and performs expiatory rights she becomes entitled to all conjugal and social rights unless her adultery was with a man of a lower caste in which case after expiation she can claim no more than bare maintenance and residence *Honamma* v *Timannabhat I L R 1 Bom 559 Valu* v *Ganga I L R 7 Bom 84* and *Vishnu Shambhog* v *Manjamma I L R 9 Bom 108* discussed PARAMI *v* MAHADEVI (1909) I L R 34 Bom 278

2 ——— Illegitimate son—*Right of offspring of illegitimate son of a married woman to maintenance from the joint family property of the survivors of the putative father—Criminal intercourse effect of on right to maintenance* The offspring of the intercourse of a man with his concubine who was a married woman is entitled to maintenance against the surviving members of the joint Hindu family to which the father belonged and who have taken his share by survivorship *Cheroturya Run Murdun Syn* v *Sahul Purhulad Syn 7 Moo I A 18* followed and *Muthusawmy Jagavera Yettappa Naicker* v *Vencataswara Yettaya 12 Moo I A 203* followed There is no distinction between the right of the illegitimate son of an unmarried woman to maintenance out of the estate of the putative father and that of the offspring of an adulterous intercourse *Venkatachella Chetty* v *Parvatham 8 Mad H C 134 143* followed *Viravamuthiudiyan* v *Singaravelu I L R 1 Mad 306* followed *Kuppa* v *Singaravelu I L R 8 Mad 325* followed *Rahi* v *Govinda Valad Teja I L R 1 Bom 97* followed The offspring of a criminal intercourse should not be deprived of maintenance on the ground of the criminal origin of its being *Vedanayaga Mudaliar* v *Vedammal I L R 27 Mad 951* distinguished SUBRAMANIA MUDALI *v* VELU (1910)
I L R 34 Mad 86

3 ——— Future maintenance—*Widow s right to transferable property—Right not one falling within s 6 Transfer of Property Act—Validity of transaction not governed conclusively by Act Civil Procedure Code s 266—Contract Act (IX of 1872) s 16—Undue influence.* A right to future maintenance is not an interest in property restricted in its enjoyment to the owner personally within the meaning of paragraph (*d*) of s. 6 of the Transfer of Property Act neither is it property the enabling words of s. 6 of that Act that the transfer of such an interest by

MALABAR COMPENSATION FOR TENANTS IMPROVEMENTS ACT (MAD I OF 1900)—*contd*

———— s 5 6—*contd*

———— *Decree for ejectment—Value for improvement ascertained and specifed in the decree—Improvements effected subsequent to decree not ascertained—Application for execution by ejectment whether maintainabl* Where a landlord in Malabar obtained a decree for ejectment of his tenant on payment by him of an ascertained amount for compensation for value of improvements applied for execution of the decree by ejectment of the tenant after depositing into Court the amount specified in the decree for value of improvements *held* that the landlord was entitled to an order in execution for ejectment of the tenant from all the lands specified in the decree even though the value of improvements effected by the tenant on some of the lands *subsequent to the decree* had not been ascertained under s 6 (3) of the Malabar Compensation for Tenants Improvements Act SANKARAN NAMBUDRIPAD *v* SANKARAN NAIR (1921) I L R 44 Mad 980

———— ss 5 6 9 to 19—*Contract to claim compensation according to custom no special contract within the meaning of s 19—Tenant can claim higher rates under Act in spite of contract before Act prescribing a lesser rate* Where under a contract entered into in 18— the tenant has agreed to accept compensation for improvements according to local custom such undertaking by the tenant is not a special contract within the meaning of s 19 of Madras Act I of 1900 which will debar the tenant from claiming under s 5 compensation as provided in ss 6 18 *Kerala Varmah Valia Rajah v Ramuni 3 Mad L J 51* referred to S 19 of Act I of 1900 deals only with contracts limiting the right to make improvements and claim compensation A mere contract regulating the rates of compensation whether before or after the 1st day of January 1886 is not touched by s 19 Where there is such a contract the tenant if the contract rates are lower than the rates provided in the Act can claim the latter rates under s 5 and if the contract rates are higher he can claim such rates notwithstanding s 6 of the Act KOZHIKOT SREEMANA A VIKRAMAN *v* CHUNDAYIL ANANTA PATTER (1910) I L R 34 Mad 61

———— ss 5 and 19—*Compensation rate of for tenants improvement—Compensation amount of methods of fixing—Contract made before 1st January 1886—No express reference to tenants right to make improvements—Contract less favourable to tenant than ss 5 and 6 of the Act—Contract not binding—ss 5 and 6 applicabl* Where a contract entered into between a landlord and a tenant in Malabar before the 1st January 1886 regulated the rates of compensation claimable by the tenant for improvements or provided for the methods of fixing the amount of compensation due to him but did not expressly refer to the tenants right to make improvements *Held* (by the Full Bench) that the contract is not binding on the tenant if it is less favourable to him than ss 5 and 6 of the Malabar Compensation for Tenants Improvements Act (I of 1900) and that the tenant is entitled to claim compensation according to the provisions of the Act *Held also* that there is no inconsistency between the judgment in *Pandupurayil Kunhitore v Valoth Kunhi Kannan I L R 32 Mad 1* and the judgments in *Kozhikot Sreemana Vikraman v Modathil Ananta Patter I L R 34 Mad 61* and *Paru Amma v Mootheram 22 Mad L J 2 1* and that the two last mentioned cases were rightly decided KOCHU FATHA *v* ABDURAHMAN (1913) I L R 38 Mad 589

———— ss 5 6 9 to 18 and 19—*Right to compensation—Contract to the contrary made before 1886 effect of—Distinction between restriction of right to make improvements and of right to the value of improvements—Validity of each restriction* Under the provisions of the Malabar Tenants Improvements Act (Madras Act I of 1900) a tenant is entitled to the full value of his improvements according to the rates provided in ss 9 to 18 s 19 does not cut down his right under ss 5 and 6 to the value of his improvements according to the rates prescribed in the Act even where a contract was entered into before 1st January 1886 limiting his right with respect to the amount of compensation claimable by him Accordingly a restrictive provision in a document limiting the amount of compensation cannot be enforced. But contracts made prior to January 1886 limiting the right to make improvements are not affected by s 19 and are valid *Kozhikot Kuduya Kovilagath Sreemana Vikraman v Chundayil Modathil Ananta Patter I L R 34 Mad 61* followed *Held* on a construction of the following provision in a *kanom* deed of 1884 If I make chamayams (or buildings) thereon exceeding Rs 25 in value I shall only remove and take them at the time of surrender and I shall not demand the value of improvements therefor that the meaning of the clause was not to restrict the *kanomdar* from building but to restrict his right to the amount of compensation if he built to Rs 25 if he is content to take it regard being had to the absence of any right on the landlord to require the tenant to remove any building worth more than Rs 25 *Per* CURIAM The provision for removing is merely a recognition of the right which a *kanomdar* has always possessed to remove any improvements made by him *Angammal v Islams Sahib 21 Mad L J 891* referred to PARU AMMA *v* KUNHIKANDAN (1913) I L R 36 Mad 410

———— s 7—*Stipulation in lease to receive compensation at ordinary rate does not exclude operation of the Act—Rate of compensation claimable is that prevailing when compensation is paid* The terms of a lease executed before the passing of Madras Act I of 1887 provided that the tenant at the time of surrender should receive compensation for fruit trees at the customary rate Before the surrender Madras Act I of 1887 was passed and provided a rate of compensation for fruit trees In a suit by the tenant to recover compensation under the lease *Held* that the stipulation aforesaid did not exclude the operation of the Act there being no such special contract as is contemplated by s 7 of the Act and that compensation must be paid at the rate provided by the Act KERALA VARMAH VALIA *v* ONDAN RAMUNNI (189) I L R 33 Mad 218

———— s 19—

See REGISTRATION ACT 1908 s 90 I L R 43 Mad 65

———— *Claim subsequent to Act—Contract before the Act fixing rate of compensa*

MALABAR COMPENSATION FOR TENANTS IMPROVEMENTS ACT (MAD I OF 1900)—*contd*

——— s 19—*contd*

tion enforceability of Contracts entered into between a Malabar tenant and his landlord before the 1st January 1886 according to which compensation is payable at certain rates therein specified are valid and binding whether the rates are more or less favourable to either party than the rates prescribed by the Malabar Compensation for Tenants Improvements Act (Madras Act I of 1900) and when the question of the rate of compensation comes up for determination at a date after the introduction of the Act it is not open to either party to the contract to elect to have the rates fixed according to the Act in preference to the rates mentioned in the contract *Kozhikot Sreemana Vikraman v Modathil Ananta Patter I L R 31 Mad 61 Paru Amma v Kunhikandan I L R 36 Mad 410* and *Kochu Rabia v Abdurahman I L R 38 Mad 589* overruled PALARAPPA ATIOTI *v* KELAPPA KURUP (1916)

I L R 40 Mad 594

——— *Lease—Stipulation for payment of fee in respect of trees cut down.* A stipulation in a Malabar lease for the payment of *Kuttikanam* (customary fee) to the landlord in respect of trees cut down is not necessarily contrary to the provisions of s 19 of the Malabar Compensation for Tenants Improvements Act (Madras Act I of 1900) It is a question of fact to be determined in each case whether the cutting down of trees is an improvement or not and whether the fee stipulated is reasonable or so unreasonable as to be prohibitive of the cutting down of trees at all *Semble* A customary fee of eight annas per tree is not unreasonable *Vasudevan Nambudripad v Valia Chathu Achan I L R 24 Mad 47* considered RAJA OF COCHIN *v* KITTUNNI NAIR (1916) I L R 40 Mad 603

——— *Compensation for tenants improvements—Contracts made after Act more favourable to tenant than the Act—Contract or Act enforceable —Value whether at the time of eviction or at date of contract payable* S 19 of the Malabar Compensation for Tenants Improvements Act does not prevent the tenant from claiming compensation under a contract made after passing of the Act if it is more favourable to him than the Act The value of improvements payable to a tenant is their value at the time of eviction *Kerala Varmah Valia Raja v Ramunni (1893) 3 M I J 31 (F B)* followed AMMALU AMMA *v* RAMAN NAIR (1920)

I L R 43 Mad 772

MALABAR LAW

See MAPPILLAS IN NORTH MALABAR
I L R 38 Mad 1052

See MARUMAKKATTAYAM LAW
I L R 34 Mad 387
I L R 35 Mad 648

See MORTGAGE I L R 37 Mad 420

——— Acquisition by manager of branch tarwad of the whole tarwad—*Property acquired by anandravan to be deemed property of the tarwad in the absence of evidence to show self-acquisition* The rule of Hindu Law that if nothing appears in the case except that a member of a joint family is in possession of property the burden of proving self acquisition lies on such person applies to property in the possession of an anandravan of a Malabar tarwad Where such anandravan is also the manager of a branch tarwad and was in possession of funds belonging to such branch the presumption will be that such property belongs to the branch MARI VEETIL CHATHU NAIR *v* MARI VEETIL MULAMPAROL SEKARA NAIR (1909) I L R 33 Mad 250

——— Karamkari tenure in South Malabar —*Alienation by tenure holder effect of even in the absence of clause for re entry* A holder of land on *Karamkari* or *Karaimakari* tenure in South Malabar has only a heritable or permanent right of cultivation but not a right of alienation which event puts an end to the tenure and the landlord entitled to the reversion is entitled to possession thereupon even in the absence of an express provision for re entry Moore s Malabar Law and Custom page 308 referred to *Parameshri v Vittappa Shanbaga I L R 26 Mad 157* and *Verapal Singh v Kalyan Das I L R 28 All 400* distinguished *Obiter* A *karamkari holder* in North Malabar has no heritable right at all ACHUTHA MENON *v* SANKARA NAIR (1913) I L R 36 Mad 380

——— Want of harmony among some members—*Separate living of one—When entitled to separate maintenance* A junior member of a Malabar tarwad leaving the tarwad house on the ground that he or she does not feel quite comfortable there or is not able to live there in complete harmony with others so as to ensure happiness is not entitled to separate maintenance if he or she was responsible for the discomfort complained of When a junior member will be entitled to separate maintenance considered KUNCHI *v* AMMU (1913)

I L R 36 Mad. 591

——— Maintenance—*Wife living in her husband s house leaving tarwad house—Right to maintenance from her tarwad* According to Marumakkathayam law a wife living with her husband in her husband s house is entitled to maintenance from her tarwad in the absence of any waiver to claim the same as leaving the tarwad house to live with her husband is a justifiable or proper purpose *Maravadi v Panikkar 22 Mad L J 409* followed *Janaki v Kamaran I L R 6 Mad 341* referred to *Obiter* The Marumakkathayam law of maintenance is the same as the Aliya santhana law prevailing in South Canara MUTHU AMMA *v* GOPALAN (1913) I L R 36 Mad 593

——— *Females self-acquisition descent of to her own heirs and not to tarwad—Tavazhi meaning of* The self acquisitions of a female member of a Marumakkattayam tarwad do not lapse on her death to her tarwad, but descend to her tavazhi which will be her issue if she has any and in the absence of the issue will be her mother and her descendants. Tavazhi defined *Corindan Nair v Sankaran Nair I L R 32 Mad 351* distinguished *Unniyanga v Appadorai Patter I L R 31 Mad 38* overruled KRISHNAN *v* DAMODARAN (1912)

I L R 38 Mad 48

——— *Suit against managing member of tavazhi—Tarwad property insufficient for mainten-*

MALABAR LAW—*contd*

ance—Gift by husband to wife—Mention of children—Interest taken by wife and other children—Right of tavazhi—Construction of deed of gift A member of a tavazhi has a right to sue the managing member of the tavazhi for his maintenance if maintenance is refused by such managing member where the karnavan of the tarwad is unable to maintain the member out of tarwad property It is immaterial whether the member of the tavazhi seeking maintenance has private means sufficient to provide for him an adequate maintenance without necessity of recourse to the tavazhi property *Tavazhi* property is held by the members of the tavazhi to which it belongs with the ordinary incidents of tarwad property *Per* ABDUR RAHIM J—Even apart from the fact whether there is sufficient property of the tarwad to which a member of a tavazhi can look for maintenance he has a right to demand an allowance in the nature of maintenance from the tavazhi property itself Maintenance is not a mere subsistence allowance It should be based on the value of the tarwad property the position of the members and not confined to what is just sufficient to satisfy the needs of the members A member of a tavazhi is entitled to an allowance for maintenance both from the tavazhi and tarwad properties Where a deed of gift in favour of a woman is clearly expressed to be to her and her children there is no warrant for construing it as conferring on the donee an absolute title to the property given where the donee is the wife of the donor and a member of a Marumakkattayam tarwad It makes no difference that the karnavan of the tarwad joined in the gift In estimating the amount of the income of the tavazhi property out of which maintenance is payable the interest payable upon debts binding on the tavazhi should be deducted but not interest on debts contracted after the period for which maintenance is claimed NAKU AMMA *v* RAGHAVA MENON (1919) I L R 38 Mad 79

——————— *Male member leaving tarwad house to live with his wife—Right of such member to separate maintenance—Menchilavu claim for whether on a higher footing than one for maintenance* A male member of a Malabar tarwad leaving the tarwad house for the purpose of living with his wife is entitled to separate maintenance from the tarwad A claim to menchilavu is on the same footing as a claim to maintenance GOVINDAN NAIR *v* KUNJU NAIR (1918) I L R 42 Mad 656

——————— Right of a member of a tarwad to separate maintenance—*Female member marrying under Malabar Marriage Act (IV of 1896)—Act whether bar to her claim for maintenance from tarwad* The right of every member of a Malabar tarwad to be maintained out of the tarwad property is based on his or her right as a co-proprietor in the same and a female member of the tarwad is not deprived of such right by reason of her marriage under the provisions of the Malabar Marriage Act (IV of 1896) AMMANI AMMA *v* PADMANABHA MENON (1918) I L R 41 Mad 1075

——————— Claim by an anandravan for arrears of menchilavu—*For himself and his wife maintainability of* An anandravan of a Malabar tarwad is not entitled to claim maintenance from his tarwad for his wife who belongs to another tarwad and much less is he entitled to claim for her any menchilavu (pocket money for meeting expenses other than maintenance) *Parvathi v Kamaran I L R 6 Mad 341* referred to and explained An anandravan is entitled to a decree from his tarwad for arrears of his *menchilavu* which in law stands on the same footing as arrears of maintenance *Kunhammah v Kunhi Kutti* ... *Mal 233* ... *Amma* ... *Nattuvar Ammal* ... and *Govindan Nair v Kunju Nair 35 M L J* ... followed RAVAN *v* ACHAN *v* THANKUNNI (1919) I L R 42 Mad 789

——————— Nambudri Illom—*No liability of sons to pay their father's debts* A Nambudri Illom differs in many respects from an ordinary joint Hindu family on account of the impartibility of its property and its close resemblance to a Nair tarwad The rule of Hindu Law which imposes the duty on a son to pay his father's personal debts neither illegal nor immoral is not applicable to Nambudris and the mere fact that there are no other members in the Illom besides the sons and grandsons of the Nambudri debtor cannot affect the principle *Vasudevan v Madhavan I L R 10 Mad* ... and *Govinda v Krishnan I L R 1... Mad ...3* followed *Kunhi ... v ... (1919) Mal W N ...* considered *Mulayan v Zemindar of Sivaganga I L R 6 Mad 1* distinguished KUNHU KUTTI AMMAL *v* MALLAIPATU (1915) I L R 38 Mad 527

——————— Partition—*Tarwad—Division by tavazhis—Right of minor members to upset partition—Division per stirpes and not per capita whether sufficient ground—Authority in favour of division per stirpes or per capita preponderance of* Members of a Malabar tarwad who were minors when a partition was made with the consent of all the adult members at the time cannot upset the partition on the ground that the division was *per stirpes* i e by tavazhis and not *per capita* *Sulaiman v Piyathkumma 3 M L J 13*, and *Veluthakkal Chirudeva v Veluthakkal Tarwad Karnavan 31 M L J 79* referred to NARAIN KUTTI *v* ACHUTHANKUTTI NAIR (1918) I L R 42 Mad 292

——————— Trade carried on by karnavan of a Mappilla tarwad—*Debts incurred by the karnavan in the trade whether binding on other members* Trade is not one of the ordinary pursuits of a Malabar tarwad and carrying on trade is not within the ordinary scope of authority of a Malabar karanavan hence in the absence of evidence that a trade carried on by a karnavan has been the trade of the tarwad as a whole or that the members of the tarwad or at least the adult member thereof consented to the trade being carried on by the karnavan the other members of the tarwad are not bound by the liabilities incurred by the karnavan in connection with the trade This rule applies even in the case of a Mappilla tarwad where all the male members habitually follow trade as their ordinary avocation ABDURLHEMAN KUTTI HAJI *v* HUSSAIN KUNHI HAJI (1919) I L R 42 Mad 781

——————— Gift—*Presumption—Incident of tarwad property—Right of management in the senior male—Maintenance of other member—Right to partition—Alienation of member's share—Its attachment and sale execution* When properties are given by a person to his wife and children

MALABAR LAW—*contd*

or children alone following the Marumakkatayyam law the presumption is that the donees take the property with the incidents of tarwad property and the right of management of the properties forming the subject of the gift is vested in the senior male member amongst the donees Persons subsequently born into the tavazhi are entitled to be maintained but not to claim partition Any one member of a tarward or a tavazhi cannot alienate his share nor can it be attached and sold in execution of a personal decree against any of the members *Per* SRINIVASA AYYANGAR J — It is not the giving of the properties by a person to his wife and children that constitutes the tarward but if properties are given to a wife and children following the Marumakkattayyam law they as tavazhi hold those properties with the incidents of tarward property and the right of management of the properties is vested in the senior male member of the tavazhi *Kunhacha Umma v Kutti Mammi Hajee I L R 16 Mad 201* followed CHAKKRA KANNAN v KUNHI POKKAR (1913) I L R 39 Mad 317

——————— *Gift by a husband to his wife and her children by him—Donees whether exclusively entitled as a branch tavazhi—Rights of her children by another husband—Rights of tarwad to such properties — Adverse possession by branch tavazhi against tarwad* Under the Malabar Law a separate branch of a tavazhi can be established consisting of a woman and her children by one husband to the exclusion of her children by another husband *Dictum of* SADASIVA AYYAR J *in Chakkra Kannan v Kunhi Pakker I L R 39 Mad 317* followed Where a husband gives property to his wife and his children there is no presumption that he intended to benefit her children by a former or subsequent husband in the absence of any expression of such intention Where the suit properties were acquired in the name of a woman and her son by a second husband out of the income of properties given by the latter to her and her children by him and it appeared that they had dealt with the properties for forty years exclusively although there were members of the tarwad senior to them and a suit was instituted by the karnavan of the whole tarwad to redeem the properties as belonging to the entire tarwad *Held* that the properties belonged in law to the branch of the tavazhi of the woman and her children by her second husband and that the branch tavazhi had also acquired title to the suit properties by adverse possession against the tarwad of which the plaintiff was the present karnavan IMBICHI BEEVI UMMA v RAMAN NAIR (1919) I L R 42 Mad 869

——————— Karnavan—*Junior members—Kanom—Redemption suit for —Suit by junior members whether sustainable—Transfer of Property Act (IV of 1882) s 91—Interest to redeem* Only under very special circumstances can junior members of a Malabar tarwad following the Marumakkattayam law maintain a suit for the redemption of a kanom granted by their karnavan SOOLI v MARIYOMA (1920) I L R 43 Mad 393

——————— *Karnavan—Lease four years before expiry of a prior lease—No necessity of justification for such lease—Expiry of prior lease when grantor was karnavan effect of on subsequent lease—Lease whether valid or binding on succeeding karnavan* Where a karnavan granted a lease to take effect on the expiry of a prior lease whose term was to expire four years later and it was found that there was no necessity or justification for granting the subsequent lease four years prior to the expiry of the term of the prior lease *Held* that the subsequent lease was not valid or binding on the succeeding karnavan even though the prior lease expired when the grantor continued to be the karnavan KUNHAMMAD v KUNHUNNI (1920) I L R 43 Mad 715

——————— *Karnavan removal of from office—Senior anandravan—Exclusion from succession to office of karnavan—Power of Court to declare senior anandravan unfit to succeed to office—Grounds of exclusion* A Court can for good cause remove a karnavan and declare the senior anandravan to be unfit to succeed to the vacant office *Kunhan v Sankara (1891) I L R 14 Mad 78* followed *Chindan Nambiar v Kunhi Paman Nambiar (1918) I L R 41 Mad 577 (F B)* referred to dictum of SADASIVA AYYAR J in *Cheria Pangi Achan v Unnalachan (1917) 32 M L J 593* dissented from NEMANNA KUDRE v ACHMU HENGSU (1920) I L R 43 Mad 319

——————— *Karnavan of tavazhi making a gift—Gift not questioned even by the last surviving member of the tavazhi—No right of attaladakkam heirs to question gift* An attaladakkam heir succeeds only to such of the properties of a tavazhi as have not been disposed of by its last members He cannot therefore question an alienation made by the karnavan of the tavazhi when the other members had not by any unequivocal act called it into question during their life time THAYYAL MAMMAD v PURAYIL MAMMAD (1921) I L R 44 Mad 140

——————— *Right of other members to remove such karnavan by suit for misconduct* *Held* by the Full Bench that a person appointed as *karnavan* of a *tarwad* by an agreement (*karar*) of the members of the *tarwad* is liable to be removed for gross misconduct by a suit at the instance of the other members *Cheria Pangi Achan v Unnalachan (1917) Mad W N 185* explained CHINDAN NAMBIAR v KUNHI PAMAN NAMBIAR (1918) I L R 41 Mad. 577

——————— Kanom—*Lease or mortgage—Deed of taraga construction of—Attestation of deed necessity for—Transfer of Property Act s 59 and 98—Anomalous mortgage—Civil Procedure Code (V of 1908) O I r 9—Non-joinder of parties—Decree against parties in appeal* A kanom is an anomalous mortgage falling under s 98 of the Transfer of Property Act with certain well known incidents attached to it under the customary law of Malabar and a kanom deed to be valid must be attested as a mortgage deed under s 59 of the Act The fact that the document is described as a taraga or royal grant or that the kanom amount is exceedingly insignificant does not alter the nature of the transaction KANNA KURUP v SANKARA VARMA RAJAH (1921) I L R 44 Mad. 8[illegible]

——————— Conversion of a member of Marumakkattayyam tarwad to Muhammadanism —*Right of convert to partition of tarwad property—Removal of Caste Disabilities Act (XXI of 1850) effect of* A member of a Marumakkattayam tarwad does not b[illegible] of his conversion to

MALABAR LAW—*contd*

Muhammadanism acquire right to a partition of the tarwad property Observation of WILSON J in *Matungini Gupta v Ram Rutton Roy (189) I L R 19 Calc 89 (F B)* at 291 followed *Kunhichekkan v Lydia Arucanden (1912) M W N 786* and *Abraham v Abraham (1863) 9 M I A 195* explained LATHUMMA v LAMAN NAMBIAR (1921) I L R 44 Mad (F B) 891

——— Tarwad—*Karnavan becoming a stani—Succeeding karnavan incapable of business management—Karar vesting management in stani—Renewal of an otti deed by karnavan validity of*—*Per* SESHAGIRI AYYAR J (NAPIER J *dubitante*) —An arrangement among the members of a Malabar tarwad by which a previous karnavan who had become a *stani* was given certain specific powers of management in respect of the tarwad without any express power to obtain renewals of mortgages in favour of the tarwad does not deprive the actual *karnavan* however incapable he may be of the power of renewing usufructuary mortgages in favour of the tarwad *The renewal* being binding on the members of the tarwad they cannot set up adverse possession but must submit to a redemption by the mortgagor The relation to the tarwad of a member who had become a *stani* discussed *Chappan Nayar v Assen Kutti I L R 12 Mad 219* doubted KRISHNAN KIDAVU v RAMAN (1915) I L R 39 Mad 918

——— Taraga Lease *for reclamation and improvement by a stanomdar for twelve years with a clause for renewal for another twelve years validity of* A *taraga* lease in Malabar given for reclaiming and improving lands contained the following clause by the lessee — I shall well improve this paramba and plant etc when the improvements have survived the period of decay and the cocoanut trees begin to bear their first fruits I shall take a *taraga* after fixing the rent in accordance with the local custom on an inspection of kuhikanoma *Held* that the clause entitled the lessee to a renewal of the lease for twelve years from the expiry of the first term of twelve years at an enhanced rent to be determined in accordance with it *Gopalan Nair v Kunhan Menon (1907) I L R 30 Mad 300* distinguished A stanomdar is entitled to grant a lease so as to last beyond his life time and to bind his successors provided the lease is beneficial to the estate KUTTIYAL v UMMAMMA (1921) I L R 44 Mad 509

MALABAR MARRIAGE ACT (IV OF 1896)

See MALABAR LAW I L R 41 Mad 1075

MALABAR TENANTS IMPROVEMENTS ACT MAD I OF 1900

See MALABAR COMPENSATION FOR TENANTS IMPROVEMENTS ACT

MALE HEIRS

——— failure of—

See JAGIR I L R 46 Calc 683

MALE MEMBERS

——— rights of—

See GHATWALI TENURE I L R 46 Calc 362

MALICE

See LIBEL I L R 37 Calc 760
I L R 48 Calc 304

MALICE—*contd*

See MARRIAGE CONTRACT OF I L R 39 Bom 682

——— absence of—

See SECRETARY OF STATE FOR INDIA I L R 39 Mad. 781

——— charge of—

See TRESPASS—SEARCH FOR ARMS I L R 39 Calc 953

MALICIOUS ARREST

See LIMITATION I L R 40 Calc 898

MALICIOUS PROSECUTION

See BENGAL TENANCY ACT 1885 s 58 1 Pat L J 149

See CRIMINAL PROCEDURE CODE s. 107 I L R 41 All 503
I L R 43 All 402

See DAMAGES SUIT FOR. 14 C W N 86

See INJUNCTION I L R 42 Calc 550

——— abatement of appeal regarding—

See CIVIL PROCEDURE CODE O XLI R 22 I L R 44 Mad. 828

1 ——— Cause of action—*Complaint laid but no Process issued* Where in a suit for malicious prosecution it was averred that a complaint had been laid by the defendant before a Magistrate who thereupon sent the case to the police for enquiry and report but there was no averment that the Magistrate had ever issued process — *Held* that the plaint disclosed no cause of action *Yates v The Queen L R 14 Q B D 648* followed *Clarke v Postan 6 C & P 423* and *Ahmedbhai v Framji, Edulji I L R 28 Bom 226* not followed *Thorpe v Priestnall [1897] 1 Q B 159* referred to DEL ROZARIO v GULAB CHAND ANUNDJEE (1910) I L R 37 Calc 358

2 ——— Complaint laid but no process issued—*Action on the case—Cause of action—Criminal Procedure Code (Act V of 1898) ss 202 203—Defamation—Privilege* Where a complaint had been laid before a Magistrate by the defendant against the plaintiff for criminal breach of trust and the Magistrate had referred the matter to the Police under s 202 of the Criminal Procedure Code for enquiry and report and finally dismissed the complaint under s 203 of the Criminal Procedure Code without issuing process —*Held* that the prosecution had not commenced and no suit for malicious prosecution was maintainable *Yates v The Queen L R 14 Q B D 648* and *Clarke v Postan 6 C & P 423* referred to Nor would there lie any action on the case analogous to malicious prosecution *Held* further that the complaint even if defamatory was absolutely privileged GOLAP JAN v BHOLANATH KHETTRY (1911) I L R 38 Calc 880

3 ——— What has to be proved—*Onus on plaintiff—What amounts to malice—Recklessness is what amounts to malice* In a suit for damages for malicious prosecution it is not on the defendant to show that there was reasonable and probable cause but on the plaintiff to prove its absence All that the defendant has to be satisfied about is that there is reasonable

MALICIOUS PROSECUTION—*contd*

and probable cau e for the charge i e reasonable grounds for believing that the plaintiff is guilty of the offence and not reasonable grounds for coming to the conclusion that the Court would convict him of it Careles ness on the part of the defendant in deciding whether there was rea onable and probable cause would not amount to malice and both malice and ab ence of reason able and probable cau e have to be proved If a man is reckless whether the charge be true or false that might amount to malice but not reckles ness in coming to the conclusion that there was reasonable and probable cause What would amount to rea onable and probable cause is a que tion of fact VYDINADIER v KRISHNA SWAMI IYER (1913) **I L R 36 Mad 375**

3 (a) ———— Where com plaint was made in the Police Court against the Plaintiff for criminal breach of trust and the Magistrate referred the matter to the Police for enquiry under s 202 of the Criminal Procedure Code and after such enquiry refused to issue process *Held* that a suit for malicious prosecution would not lie as unless process i issued the person complained against cannot be regarded as an accused person GOLAP JAN v BHOLA NATH KHETRY **15 C W N 917**

4 ———— *Suit for damages for—Onus—Plaintiff if must prove innocence—Judgment of discharge by Criminal Court if con clu ive* The plaintiff in a suit for damages for malicious prosecution has amongst other matters to prove his innocence if only to establi h that the prosecution was commenced maliciously and without reasonable and probable cause The finding in the criminal case acquitting or discharging him is not conclu ive on the matter *Per* BOWEN *L J* in *Abrath v North Eastern Railway Co 11 Q B D 440 455* approved *Gunesh Dutt Singh v Mugneeram Chowdry 17 W R 28*, *Corea v Peiri* *[1909] App Cas 549* referred to MUCHI OSTA v HORSMUL MARWARI (1912) **17 C W N 434**

5 ———— *Suit for malicious —Criminal Pr cedure Code pre ent on f offence prov sion for—Mal c ous proceed ng under such provi ons f sufficient basis for su t— Prose cution meaning of* It is not that an action for damages for malicious prosecution lies only when the original proceeding was a pro ecution in the sense in which the term is used in the Code of Criminal Procedure it is not e ential that the original proceeding should have been of such a nature as to render the p r on again t wl om it was taken liable to be arrested fined or im prison ed Where there has been a deliberate abu e of the proce s of the Criminal Court and alutary provisions framed by the Legislature to secure the prevention of offence have been utili ed mali ciously and without rea onable and probable cau e for the hara ment of the plaintiff who has thereby suffered damage in reputation and property an action for malicious pro ecution or malicious abu e of judicial process i maintainable *Per* MOOKERJEE *J*—An action for mal ciou ly put ting the law in motion lies in all ca es where there is concurrence of the following elements (i) the commencement or continuance of a criminal pro ceeding (ii) its legal cau ation by the present def ndant again t the plaintiff who was d f nd ant in the original proceeding (iii) its *bona fide* termination in favour of the present plaintiff (iv) the ab ence of probable cau e for such pro ceeding (v) the presence of malice therein (vi) damage conforming to legal standards resulting to the plaintiff *Abrath v N E Ry Co 11 App Cas 247 Cox v English Scottish and Australian Bank [1905] App Cas 168* referred to Any enforcement of the criminal law through Courts of Justice concerning a matter which will sub ject the accused to prosecution without regard to the technical form in which the charge has been preferred and irrespective of the grade of the crimi nal offence is a sufficient proceeding upon which an action for malicious pro ecution may be based *Els e v Smith 2 Chitty 304 24 P R 59 Leigh v Webb 3 Esp 164* referred to *Per* BEACH CROFT *J*—If a person sets the criminal law in motion it is no defence for him to say that the law took a direction which he did not anticipate and did not desire The responsibility of the per on begins with the presenting of the complaint but it does not end there and is not limited to the prayer contained in it CROWDY v L O REILLY (1912) **17 C W N 554**

6 ———— Prosecution what amounts to—*Magistrate sending only notice but not sum mons or warrant and dismissing complaint no prosecution—Criminal Procedure Code (Act V of 1898) s 202* Where on receiving a complaint of an offence of defamation a Magistrate issued only a notice but not a summons or a warrant to the accused which notice simply informed him that a preliminary enquiry would be held at a certain time in the matter of the complaint preferred by the complainant and the compla nt wa dismissed under s 202 Criminal Procedure Code after hearing coun el for both parties *Held* that there was no prosecution of any offence by the complainant so as to give room for any suit for malicious pro e cution *Iele i v Ghulab Chand Arrindee I L R 3 Calc* ... *J n v Dolonath Khettry I L R* ... *Calc 550* followed Sending such notice and the hearing thereon are not authorized by the Criminal Procedure Code Pro ecution commences with the i sue of process (summons or warrant) after the complaint has been entertained by the Magistrate and that the prior proceedings constitute at most an attempt by the complainant to pro ecute the accu ed SHEIK MEERAN SAHEB v RATNAVELU MUDALI (1912) **I L R 37 Mad 161**

7 ———— *Suit for dama es — Prosec t on what t means and when commen ces—Accu ed attend ng at judicial enquiry upon not ce f ng s e on failure of prosecution* The action for damage for malicious prosecution is not a creature of any statute To determine whether such an action lies the term pro ecution should not be interpreted in the re tricted sense in which it is u ed in the Code of Criminal Proce dure A proceed ng maliciously taken against a person to compel him to furni h surety to keep the peace may be made the foundation of a s t for damage for malicious pro ecution A pro secution exi t when a criminal charge is made before a judicial officer or tribunal and an person who make or is actively instrumental in the making or prosecuting of such a charge i deemed to pro ecute it If a ... n malic ou y and without rea onal e and p ... au e sets the

MALICIOUS PROSECUTION—*contd*

machinery of the criminal law in motion he is responsible for the consequences and cannot escape liability on the ground that the action taken by the Court was such as he did not intend or was erroneous in law The prosecution commences as soon as the complaint is made to the Magistrate irrespective of the result of the prosecution or of the stage at which it may fall through When no action at all has been taken against the plaintiff upon such a complaint the action would fail not because there was no prosecution commenced but because there was no damage done to the plaintiff Where on a complaint being filed by the defendant against the plaintiff the Magistrate ordered an enquiry by a Subordinate Magistrate and the latter gave the plaintiff notice so that he might appear at the enquiry and he heard and the plaintiff did so and the complaint was in the end dismissed *Held* that upon these facts the plaintiff had a cause of action for damages for malicious prosecution and would be entitled to get damages for loss which he may prove to have suffered in consequence That it was not open to the defendant in such a suit to urge that the plaintiff need not have appeared *Imdad Khan v Sh Rasul* 13 Mal L J 0 and *Mehran v Ratna* 1 L R 37 Mal 181 dissented from *Quartz v O'Reilly* 17 C W N ... 17 C L J 10 followed *Clarke v Postan* 6 C & P 423 *Yates v Queen* 14 Q B D 648 *De Rozario v Golap Khand* I L R 37 Cal 358 and *Golap Jan v Bholanath* I C W N 917 ... I L R 38 Cal 880 considered *Ahmed Bhai v Framjee* I L R 28 Bom 22 approved BISHUN PERSHAD NARAIN SINGH v PHULMAN SINGH (1914)

19 C W N 935

8 ——————— *Prosecution by the police—Report made by a person to a village munsif of theft by another—Investigation by police—Prosecution for theft instituted and conducted by police—Acquittal—Suit by accused for damages for malicious prosecution against informant whether maintainable* A suit for damages for malicious prosecution is maintainable by a person who was prosecuted by the police and acquitted against another who had made the report containing maliciously false information against the former to a village munsif as the result of which the police after investigation launched and conducted the prosecution even though the informant was not the prosecutor in the criminal case *Varasinja Rao v Muthia Pillai* I L R 6 Mad 3 dissented from *Gaya Prasad v Bhagat Singh* I L R 30 All 52 referred to PERIYA GOUNDAN v KUPPA GOUNDAN (1919)

I L R 42 Mad 880

9 ——————— *Cause of action—Criminal proceedings against the plaintiff dismissed upon technical ground* To support a suit for damages for malicious prosecution it is not necessary that the criminal proceedings instituted against the plaintiff should have been heard out to the end it is sufficient if criminal proceedings have been initiated though they may have fallen through for technical reasons unconnected with the merits *Nallappa Goundan v Kalappa Goundan* I L R 21 Mad 59 not followed *Bishun Persad Narain Singh v Phulman Singh* 19 C W N 935 and *Ahmedbhai v Framji Edulji* I L R 28 Bom 226 referred to A complaint was filed against the plaintiff in Criminal Court and he was summoned to answer the charge but the complaint was dismissed as the complainant did not deposit diet money within the time fixed by the Court The plaintiff filed this suit for damages for malicious prosecution *Held* that the accused having been summoned to answer the charge there was a prosecution and the prosecution having failed the suit was maintainable AHMAT ALI v QURBAN AHMAD

I L R 42 All 305

10 ——————— *Institution of criminal proceedings—Reasonable and probable cause—Malice—Inference of Malice—Damages* One A had obtained on lease a piece of land from Government Under an arrangement made with A plaintiff No 3 raised crop on the land The crop was sold by plaintiff No 3 to plaintiff No 1 The defendant claimed to be a purchaser of the crop from A and began to reap it On being obstructed by the plaintiffs the defendant filed a complaint against them for theft They were convicted by the Magistrate but on appeal the conviction was set aside on the ground that the probabilities were strongly in favour of plaintiff No 3 's assertion that under the arrangement he made with A he had a right to the crop The plaintiffs thereupon sued the defendant for damages for malicious prosecution *Held* that the plaintiffs were entitled to damages as on the facts of the case there was no reasonable and probable cause for instituting the prosecution and malice could safely be inferred from the circumstances JAMNADAS SHIVRAM v CHUNILAL HAMBIRMAL (1920)

I L R 45 Bom 227

11 ——————— *Right to sue for and damages for whether survives the person entitled to sue—Probate and Administration Act (V of 1881) s 89—Evidence Act (I of 1872) s 23—Admission made to Panchait whether admissible* Where a person who had a right to sue for damages for malicious prosecution dies the right to sue does not survive to his legal representatives The words "or other personal injuries not causing the death of the party" in s 89 of the Probate and Administration Act 1881 are *ejusdem generis* not only with "assault" but also with "defamation" and include malicious prosecution An admission made to a *panchait* is admissible in evidence and is not excluded by s 23 of the Evidence Act 1872 but it is for the Court to decide what weight should be attached to such an admission PUNJAB SINGH v RAMAUTAR SINGH 4 Pat L J 676

MALIKANA

See BENGAL LAND REVENUE SETTLEMENT REGULATION 1822

2 Pat L J 266

See CIVIL PROCEDURE CODE (1908) s 94 O XXXVIII R 5 O XXXIX R 1

I L R 37 All 423

See LIMITATION ACT (IX OF 1908) SCH I ART 132 I L R 35 All 185
I L R 41 All 259

See PRE EMPTION I L R 42 All 262

See SETTLEMENT CONSTRUCTION OF

I L R 39 Calc 1

——————— *Malikana or dasturat payable to proprietors out of whose estate jagir carved—Mode of assessment—Amount if fixed or variable*

MALIKANA—*contd*

—*Resumption of jagir by Government—Permanent settlement of specific mouzahs—Malikana allowance if liable to alteration* Jagir Meherullah Khan was granted by Emperor Alamgir out of an estate belonging to the appellant s predecessors who thereupon became entitled to an allowance by way of compensation known as *dasturat* or *malikana* The East India Company on acquiring the Dewani made enquiries regarding the amount of the *malikana* due on account of this and other *jagirs* and by parwanas fixed the *malikana* due on this *jagir* at Rs 736 odd calculating it at 10 per cent of the proceeds for the year 1778 *Held* on a construction of the parwanas that what was fixed was the amount and not a percentage varying from year to year with the proceeds That the Government on resuming the *jagir* became liable to pay this *malikana* but when subsequently it caused Mouzah Sahu one of the mouzahs comprised in the *jagir* to be permanently settled it incurred no liability to pay an additional sum as *malikana* due in respect of the mouzah That the fact that a specified sum of Rs 482 was entered as *malikana* in an account attached to the settlement did not show that the *malikana* as fixed previously was thereby altered but that it was merely one of the items to be taken into account in fixing the annual *jumma* to be paid by the person with whom the settlement was made PAMESHWAR SINGH *v* THE SECRETARY OF STATE FOR INDIA (1911)
(15 C W N 1029

———— *Interest in immoveable property—Money charged on immoveable property—Limitation Act (XIV of 1859) s 1 (IX of 1871) Art 132 Sch II—Right not exercised for more than 12 years before Act IX of 1871 came into operation—Right if barred* Under Act XIV of 1859 *malikana* was an interest in immoveable property and governed by Act XIV of 1859 s 1 and would be barred if there had been no enjoyment of the *malikana* for a period of 12 years *Bhoale Singh v Neemoo Behoo I L R 4 18 Gobind Chunder Roy Chowdhary v Ram Chunder Chowdhary 19 W R 91* and *Hurra d Shoo v Oeru J W R 102* followed Where therefore the right to *malikana* was established by decree of Court in 1855 but the right was not enjoyed for more than 12 years before Act IX of 1871 came into force the right was extinguished under Act XIV of 1859 and could not be revived by any subsequent statute of limitation *Chhagan Lal v Bapubhai I L R Bom 68* distinguished MAHESHRI PROSHAD SINGH *v* BAIJ NATH HAZARI (1913)
19 C W N 410

———— When the malikanadars of 10 as odd share of a certain village sued the proprietors and remaining malikanadars for recovery of arrears of their share it was held following the analogy of s 148 A of the Bengal Tenancy Act 1885 that the plaintiffs were entitled to a decree giving them a charge on the land and that the suit was governed by the 12 years rule of limitation MAHARAJA SIR RAMESHWAR SINGH BAHADUR *v* CHAUDHARI SURAJ NARAIN JHA
6 Pat L J 35

MALIK O QABIZ

See HINDU LAW—WILL.
I L R 38 All 445

MAMLATDAR

See CIVIL PROCEDURE CODE (ACT V OF 1908)—
ss 3 115 I L R 37 Bom 114
s 115 I L R 44 Bom 595
O XXI R 89 I L R 44 Bom 50

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 195 (1) (*c*)
I L R 39 Bom 310

See REVENUE JURISDICTION ACT (BOM ACT X OF 1876) ss 4(*c*) 5 AND 6
I L R 37 Bom 542

MAMLATDARS COURTS ACT (BOM ACT II OF 1906)

See BOMBAY MAMLATDARS COURTS ACT

See LIMITATION ACT (IX OF 1908) ART 47
I L R 45 Bom 1135

———— ss 19 23 (1) (2)—*Civil Procedure Code (Act V of 1908) s 115—Possessory suit—Decree of the Mamlatdar dismissing the suit—Application to the Collector—Revision—Non interference with legal and regular finding of fact—Entry in Revenue Record* A Collector acting under s 23 of the Mamlatdars Courts Act (Bom Act II of 1906) is not authorized to interfere with the finding of fact of the mamlatdar in a promissory suit the findings being on their face legal and regular and arrived after a consideration of the evidence on record The provisions of cl (2) of s 23 of the Act which empower the Collector to interfere by way of revision when he considers any proceeding finding or order in a suit to be improper must be harmonized with the provision in cl (1) that there shall be no appeal from any order passed by a Mamlatdar *Semble* The word improper in cl ( ) of s 23 of the Mamlatdars Courts Act (Bom Act II of 1906) has no different meaning from the word irregular occurring in the expression irregularity in s 115 of the Civil Procedure Code (Act V of 1908) The entry of a person s name as owner or occupier in the books of Revenue Authorities is not in itself conclusive evidence either of title or possession *Fatma Kom Nubi Saheb v Darya Saheb 10 Bom H C 187 189* and *Bhagoji v Bapuji I L R 13 Bom 75* referred to KASHIRAM MANSING *v* PAJARAM (1911)
I L R 35 Bom 487

———— s 23—

———— *Possessory suit—Collector s powers to revise—The powers can be exercised by Assistant Collector in charge of the district—Land Revenue Code (Bom Act V of 1879) s 10* An Assistant Collector who is placed in charge of portions of a district under section 10 of the Bombay Land Revenue Code (Bombay Act V of 1879) has the power to exercise all the powers conferred upon the Collector by section 23 of the Bombay Mamlatdars Courts Act (Bombay Act II of 1906) I r IAV JAIRA I (1911)
I L R 36 Bom 123

———— *S t c f j et on—M l der order—Appeal—D t ict D pu t Colle c o —J r ict* Under s 23 of the Mamlatdars Courts Act (Bom Act II of 1906) the Collector or the District Deputy Collector invested with the revenue administration of a taluka has no jurisdiction to exercise the powers of an appellate

MAMLATDARS' COURTS ACT (BOM ACT II OF 1906)—*contd*

——— s 28—*contd*

Court against any order passed by a Mamlatdar under the Mamlatdars Courts Act (Bom Act II of 1906) HASAN v RASUL (1913)
I L R 37 Bom 595

——— *Possessory Suit—District Deputy Collector s authority to revise—Bombay General Clauses Act (Bom Act I of 1904) s 3—The term Collector does not include District Deputy Collector —Land Revenue Code (Bom Act V of 1879) s 10* The term Collector in s 23 of the Mamlatdars Courts Act (Bom Act II of 1906) does not include District Deputy Collector in view of the express definition of the term in s 3 of the Bombay General Clauses Act (Bom Act I of 1904) A District Deputy Collector has therefore no authority to pass any order under the Mamlatdars Courts Act (Bom Act II of 1906) *Keshav v Jairam I L R 36 Bom. 123* dissented from SONU JANARDAN v ARJUN WALAD BARKU (1915) I L R 39 Bom 552

MANAGEMENT

See CHURCH I L R 39 Mad. 1056

——— right of—

See CHURCH I L R 36 Mad 418

See MAHOMEDAN LAW—ENDOWMENT
I L R 43 Calc 1085

——— scheme of—

See TRUST I L R 41 Calc 19

——— transfer of—

See TRUSTEES OF A TEMPLE
I L R 39 Mad 456

MANAGER

See HINDU LAW—JOINT FAMILY

See HINDU LAW—MANAGER

See HINDU LAW—MINOR
I L R 34 Bom 72

See IDOL I L R 36 Bom 135

See MAHOMEDAN LAW—ENDOWMENT
I L R 36 Bom 308

——— alienation by—

See HINDU LAW—ALIENATION
I L R 35 Mad 177

——— in a joint Hindu family—

See LIMITATION ACT 1908 s 7 SCH I ART 44 I L R 38 Bom 94

——— Employment of workmen at a textile factory after prescribed hours—

See FACTORIES ACT (XII OF 1911) ss 29 AND 41 I L R 45 Bom 220

——— liability of—

See COSTS I L R 43 Calc 190

——— Liability of for mesne profits—

See HINDU LAW—JOINT FAMILY
I L R 44 Bom 179

——— of a temple—

S HINDU LAW I L R 44 Bom 466

MANAGER—*contd*

——— payment by of on behalf of minor member of Hindu joint family—

See LIMITATION ACT (XV OF 18) s 20
I L R 37 Calc 461

——— suit for account against—

See LIMITATION ACT (IX OF 1908) SCH I ART 62 AND 61
I L R 45 Bom 313

MANAGER AND DIRECTOR OF NEWSPAPER COMPANY

——— liability of—

See CONTEMPT OF COURT
I L R 45 Calc 169

MANAGER UNDER COURT OF WARDS

See MAHOMEDAN LAW—PRE EMPTION
I L R 39 Calc 915

MANAGING AGENT

See MORTGAGE I L R 39 Calc 810

MANAGING MEMBER

See HINDU LAW—ADOPTION
I L R 44 Mad 656

See HINDU LAW—JOINT FAMILY
I L R 45 Calc 733

——— contract by—

See SPECIFIC RELIEF ACT (I OF 1877) s 1 I L R 37 Mad 387

MANDADARI TENURE

——— *Nature of such tenure—Land held under it not transferable —Occupancy holding* *Held* that land held under what is known in Gorakhpur chiefly as a *mandadari* tenure is nothing more than an occupancy holding and is not therefore transferable Such land cannot therefore be sold in execution of a decree upon a mortgage thereof KEDAR NATH KASONDHAN v NAIPAL SINGH (1911) I L R 34 All 155

MANDAMUS

See MUNICIPAL ELECTION
I L R 39 Calc 598

See LEADERSHIP EXAMINATION
I L R 40 Calc 588

See MADRAS CITY MUNICIPAL ACT (III OF 1904) I L R 38 Mad 41

See UNIVERSITY LECTURERSHIP
I L R 41 Calc 518

——— Action for—

See MUNICIPAL CORPORATION
I L R 40 Calc 836

——— *Specific Relief Act (I of 1877) ss 45 46—Mandamus writ of on the Board of Revenue—Want of necessary party—Other legal remedy being available whether the Court will interfere* A *mandamus* will never be granted to enforce the general law of the land which may be enforced by action *A* having obtained a decree for recovery of possession of an estate against an infant under the Court of Wards and the Collector of the District representing that Court applied during the pendency of an appeal by the defendants to the High Court to the Members of the Board of Revenue

MANDAMUS—contd

fo ming the Court of Wards that the e tate might be relea ed in his favour This application having been rejected A obtained a Rule from the Original Side of the High Court under s 45 of the Specific Relief Act calling upon the Members of the Board only to show cau e why they should not forthwith relea e the estate The Rule wa not erved upon the infant who e interest would be affected if the Rule were made absolute *Held* that inasmuch as the petitioner had failed to comply with rule 483 of the Rules of the High Court Original Side by not serving the Rule upon the infant and that inasmuch as he had an adequate legal remedy by way of execution of the decree obtained by him the Rule was liable to be discharged and the petitioner could not get any relief under s 46 of the Act *Held* further that unle s the Court was sati fied that the doing of or forbearing from an act was con onant to right and justice and such doing and forbearing was under any law for the time being in force clearly incumbent on the per son again t whom the order was sought no *mandamus* ought to be granted and that title to property would not be tried in *mandamus* proceedings and the writ would not issue when it was necessary to try or decide complicated or extended questions of fact KESHO PRASAD SINGH v THE BOARD OF REVENUE (1911) I L R 38 Calc 553

MANDATORY INJUNCTION

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XXXIX R 2 I L R 38 Bom 381

See FOOTINGS I L R 38 Calc 687

See INJUNCTION I L R 46 Calc 103

MANPAN

——— dispute as to—

See CIVIL PROCEDURE CODE (ACT V OF 1908) SCH II s 20 I L R 37 Bom 442

MANUFACTURE SALE OR POSSESSION

See EXCISEABLE ARTICLES I L R 39 Calc 1053

MANU KYAY

——— Book X rr 5 14—

See BURMESE LAW I L R 44 Calc 379

MAPPILLAS OF NORTH MALABAR

——— *Law applicable—Question of fact—Custom requisites of a valid—Judicial notice—Reasonableness or legality—Question of law—Custom derogating from the Mahomedan law—Madras Civil Courts Act (III of 1873) s 16* The law applicable to the parties to a suit is the law which the parties as a matter of fact by their customs and u ages have adopted not the law which the Courts by a con ideration of the historical circumstances relating to the parties or of their religious books or otherwi e consider to be the law that they ought to have adopted If that law being sufficiently certain and not opposed to public policy is of such a nature that the Courts can give effect to it then the principles underlying s 16 of the Madras Civil Courts Act require that they should give effect to it

MAPPILLAS OF NORTH MALABAR—contd

Jammya v *Diwan I L R 23 All 10 Muhammad Ismail Khan* v *Lala Sheomukh Rai 17 C W N 97* and *Harbai* v *Sonabai Per O C 110* referred to The question whether the particular parties are governed by the Marumakkattayam or the Mahomedan law is one of fact *George* v *Davies [1911] 2 K B 445 Assar* v *Pathumma I L R 22 Mad 494* and *Kunhimbi Umma* v *Kandy Moithin I L R 27 Mad 77* referred to A custom to hold good in law must be not unreasonable and must apply to matters which the written law has left undetermined and the majority at least of any given class of persons must look upon it as binding and it must be establi hed by a series of well known concordant and on the whole continuous instances The que tion whether an alleged rule of conduct can be enforced at all or whether it is uncertain or oppo ed to public policy or unreasonable is one of law and may be con idered irrespective of the question whether the cu tom actually exists *Moult* v *Halliday* [1898] *1 Q B 125* followed S 16 of the Madras Civil Courts Act discu sed KUNHAMBI v KALANTHAR (1914) I L R 38 Mad 1052

MARFADARI RECEIPT

See ITMAM I L R 47 Calc 979

MARINE INSURANCE

See INSURANCE 16 C W N 991 I L R 36 Bom 484

MARITIME NECESSARIES

See ARREST OF SHIP I L R 42 Calc 85

MARK BY ILLITERATE EXECUTANT

See MARKSMAN

MARKET

See U P LAND REVENUE ACT (III OF 1901) s 56 86 I L R 32 All 193

MARKET FRANCHISE

——— *Contract—Procuring breach of contract—Justification—Picketing with intimidation and force if actionable—Appellate Court discretion of in considering evidence* In Bengal there appears to be no such thing as a market franchise or a right to hold a market conferred by grant from the Crown nor can such right be acquired by pre cription The right to hold a market is treated as incident to the owner ship of land and a proprietor may set up a market in proximity to his neighbour s market without infringing the maxim sic utere tuo ut al e um non laeda The proprietor of the old market has no monopoly or privilege which is entitled to protection and no immunity from competition He has no remedy at law merely becau e his profits are dimini hed *Lalla* I Addy v Lu ma Sundari De I L R 1 Calc 58 Narda Kumar Sirkar v Emperor 11 C W N 11 [illegible] and *Hammerton* v *Earl of Dysart (1916) 1 A C 57* referred to When illegal means in the nature of intimidation and physical compul ion are employed by the agents of the owner of the new market to dis suade traders from attending the old market the owner of the old market is entitled to a civil re



MARKET FRANCHISE—*contd*

medy by way of a suit for damages A Court of Appeal should be slow to differ from the Trial Court on the credibility and veracity of witnesses but where the trial Judge has approached the evidence from a wrong standpoint or has applied to that evidence wrong standards of probability or improbability it is not merely a question of credibility of witnesses and the Appeal Court is not obliged to accept the estimate of the trial Judge According to the doctrine of the common law apart from violence mere besetting or watching may by itself be actionable in trade disputes *Ward v Lewis h Medical Association (1919) 1 I B 214 Carrell v Taylor Cro Jac 567 9 L J 485* and *Tarleton v McGauley 1 Peake 270 3 I R 659* relied on Where however there is a dispute between two rival market owners in Bengal and the question is whether such a rival owner is justified in inducing people by means of persuasion to attend his market or shop and to dissuade people from attending the market or shop of the rival owner it is doubtful whether the abovementioned doctrine of the common law applies HEM CHANDRA ROY CHAUDHURY v KRISHNA CHANDRA SAHA SARDAR (1920) I L R 47 Calc 1079

MARKETABLE TITLE

See SPECIFIC PERFORMANCE
I L R 35 Bom 110

———— proof of—

See VENDOR AND PURCHASER
I L R 41 Bom 300

MARKET VALUE

See LAND ACQUISITION
I L R 41 Calc 967

See LAND ACQUISITION ACT s 23
14 C W N 134
I L R 36 Calc 967

MARKSMAN

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 59 I L R 41 Bom 384

———— execution of a promissory note by—

See NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881) s 27
I L R 40 Mad 1171

MARRIAGE

See BREACH OF CONTRACT OF MARRIAGE
I L R 41 Bom 137

See BURMESE LAW
I L R 39 Calc 492

See CHRISTIAN MARRIAGE ACT (XV OF 1872) ss 3 68 I L R 40 All 393

See CIVIL COURTS ACT s 16
I L R 33 Mad 342

See CONTRACT ACT 18 _ s 23
I L R 43 All 650

See DAMAGES I L R 41 Bom 1?7

See DIVORCE ACT (IV OF 1869)
ss 14 I L R 41 Bom 36
s 57 I L R 34 All 203
I L R 38 Mad 452

See GUARDIAN WARD ACT 1890 ss 12 43 AND 47 I L R 44 Bom 690

MARRIAGE—*contd*

See HINDU LAW I L R 38 Calc 700
I L R 34 Mad 277

See HINDU LAW—ALIENATION
I L R 32 All 575

See HINDU LAW—MARRIAGE.

See HINDU LAW—WILL.
I L R 37 Bom 18

See MAHOMEDAN LAW—BIGAMY
I L R 39 Calc 409

See MAHOMEDAN LAW—MARRIAGE

See MARRIAGE WITH WIFE'S SISTER

See PENAL CODE (ACT XLV OF 1860) s 498 I L R 34 All 589
I L R 42 All 401

See RESTITUTION OF CONJUGAL RIGHTS
I L R 41 Bom 454

———— Asura form—

See TRUSTS ACT (II OF 1882) s. 88.
I L R 43 Bom 173

———— Breach of contract of—

See CONTRACT

———— dissolution of—

See BOMBAY CIVIL COURTS ACT (XIV OF 1869) s 1 I L R 39 Bom 136

See DIVORCE ACT (IV OF 1869) ss 3 16 37 44 I L R 40 Bom 109

———— evidence and recognition of—

See HINDU LAW—MARRIAGE
I L R 38 Calc 700

———— of coparcener—

See HINDU LAW—PARTITION
I L R 39 Mad 587

———— presumption as to form of—

See HINDU LAW —INHERITANCE
I L R 34 Bom 553

———— presumption of from acknowledgment—

See MAHOMEDAN LAW—LEGITIMACY
I L R 46 Calc 259

———— presumption of by—continuous cohabitation—

See HINDU LAW I L R 2 Lah 207

———— Right of Hindu mother to select a bridegroom for her daughter—

See GUARDIANSHIP I L R 1 Lah 146

———— validity of—

See MAHOMEDAN LAW—MARRIAGE
I L R 45 Calc 878

————Marriage of a Sunni Mahomedan with a pregnant woman—Concealment of pregnancy not rendering marriage invalid—

See MAHOMEDAN LAW
I L R 45 Bom 151

————Requisites to validity of Parsi marriage—

See PARSI MARRIAGE AND DIVORCE ACT (XV OF 1865) ss 3 6 8 AND 9 TO 14 I L R 45 Bom 140

MARRIAGE—*contd*

——— marriage contract entered into by Mahomedans whether binding—

See MAHOMEDAN LAW

I L R 1 Lah 597

——— Breach of Contract of—*Procuring breach of—Parent or guardian procuring breach maliciously or by false representation liable* An action is maintainable against a person for inducing a party to break a contract of marriage entered into by such party A parent or guardian inducing a child or ward to break such a contract is liable when such parent or guardian does so maliciously or by false representations Although malice is not the gist of the action in such case it may if alleged and proved displace the protection or privilege which arises from the relation between the party procuring the breaking of the contract and the party breaking it IRENE FANNY COLQUHOUN v FANNY SMITHER (1909)

I L R 33 Bed 417

——— Restitution of conjugal Rights—Under the Mahomedan Law a wife s conversion from Islam to Christianity effects a complete dissolution of marriage with her Mahomedan husband The fact of such conversion is therefore a bar to a suit by the husband for restitution AMIN BEG v SARNAN I L R 33 All 90

——— Contract to pay money to a mother for giving her daughter in marriage—*Public policy—Hindu Law—Contract Act (IX of 1872) s 23* A contract whereby a guardian whether natural or appointed agrees to dispose of his ward in marriage for his own personal pecuniary gain is not enforceable in a Court of law *Dholidas Ishwar* v *Ful Chand Chagan I L R 22 Bom 658 Venkata Kristnayya* v *Lakshmi Narayana I L R 32 Mad 185 Ram Chand Sen* v *Audaito Sen I L R 10 Calc 1054* (the opinion expressed by *Garth C J*) followed *Juggesuar Chuckerbutty* v *Punchcouree Chuckerbutty 14 W R 154 Panee Lallun Mone Dosse* v *Nobin Mohon Singh 25 W R 3 Baki Das* v *Nadu Da 1 C L J 261 265* distinguished *Venkatanathan* v *Saminathan I L R 13 Mad 81* dissented from The rule rests on the broad and general principle that where any one is in a fiduciary position with respect to a person and is bound to exercise skill care and judgment for the benefit of that person he must not take a reward from some other person for the exercise of his powers in some particular way whether the course taken is in fact beneficial or the reverse to the person whose interest he is bound to protect Where a Hindu mother sought to recover a sum of money which the defendant had agreed to pay to her in consideration of her consenting to give her daughter in marriage to his son —*Held* that the suit was not maintainable the agreement being opposed to public policy BALDEO DAS AGARWALLA v MOHAMAYA PERSAD (1911) 15 C W N 447

——— Legitimacy—*Cohabitation—Presumption of law in favour of legal marriage—Presumption may be rebutted—Finding of fact by disregard of presumption if may be set aside in Second Appeal* When it is proved that two persons have lived together for many years as husband and wife and their child has always been recognised as legitimate the presumption of law is that they were lawfully married The presumption can be repelled only by conclusive evidence and is not displaced merely because the direct evidence of marriage which took place many years ago is not satisfactory *Piers* v *Piers 2 H L C 331 Morris* v *Davies 5 Cl & Fin 163* and *Mouji Lal* v *Chandrabati Kumari I L R 38 Calc 700* referred to Where the lower Appellate Court reversed the finding of the trial Judge in favour of legitimacy without reference to the above principle and upon a mere balance of probabilities its finding was set aside on Second Appeal as being contrary to law BEPIN BEHARY DAS BAIRAGI v ATUL KRISHNA DAS BAIRAGI (1911) 17 C W N 494

——— Procuring breach of contract of—*Conspiracy—Cause of action—Malice an essential ingredient—Tort* The first plaintiff betrothed his son the second plaintiff to one *J* Subsequently *J* s father married her to the first defendant Thereupon the plaintiffs brought this action against the first defendant and his sisters the second and third defendants to recover damages alleging that they (the defendants) had plotted and conspired together wrongfully to procure the breach of the first contract of marriage The conspiracy alleged was not proved at the trial nor was it proved that the first defendant knew at the time of his marriage with *J* of her previous betrothal to the second plaintiff *Held* (i) that the suit was not maintainable (ii) that no legal right inhering in the plaintiff had been violated since according to Hindu law by which the parties were governed a father was entitled to break off his daughter s engagement should a more suitable bridegroom be available In an action of conspiracy to procure a breach of contract malice is an essential ingredient of the cause of action Rule in *Lumley* v *Gye 22 L J Q B 463* considered and its universal applicability doubted KHIMJI VASONJI v NARSI DHANJI (1914) I L R 39 Bom 682

——— in Kanti form among Vaishnabs The Petitioner applied for letters of administration to the estate of the deceased who was after the death of her husband married to him in *Kanti* form *Held*—That marriage by *Kantibadal* (exchange of garlands) among Vaishnabs is valid and the Petitioner was entitled to letters of administration PRENODE BEHARY ADHIKARY v SHASHI BHUSHAN BHUR 24 C W N 958

MARRIAGE BROKAGE AGREEMENT

See CONTRACT ACT (IX OF 1872) ss 23

[illegible] L R 41 Mad 19[illegible]

MARRIAGE CUSTOM

See CUSTOM 20 C W N 406

See JEWISH LAW I L R 40 Calc 266

MARRIAGE EXPENSES

——— of male members—

See HINDU LAW—JOINT FAMILY

I L R [illegible] Bed [illegible]

MARRIAGE SETTLEMENT

See JEWISH LAW I L R 38 Calc 708

MARRIAGE WITH WIFE'S SISTER

See BURMESE LAW—MARRIAGE.

I L R 39 Calc 492

MARRIED WOMAN

See ABDUCTION I L R 45 Calc 641

See PENAL CODE (ACT XLV OF 1860) s 498 I L R 36 All 1

MARRIED WOMENS PROPERTY ACT (III OF 1874)

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 60 I L R 37 Bom 471

See LIFE INSURANCE I L R 35 Mad 162

——— ss 2 4 6—*Hindu effecting a policy of life insurance for benefit of wife and children—Policy money if available for his debts on death—Statute application of leading to anomaly—Interpretation* A policy of life insurance effected by a Hindu for the benefit of his wife and children is not governed by the provisions of s 6 of the Married Womens Property Act of 1874 *Per* RICHARDSON *J* *Although s 2 of the Act* expressly provides that nothing in the Act applies to any married woman who at the time of her marriage professed the Hindu amongst other religions or whose husband at the time of such marriage professed that religion and does not expressly exempt their children from the operation of the Act the intention of the Legislature taking the Act as a whole is to exclude the children also from the benefits of s 6 of the Act If the words of an Act are so plain that no other construction is reasonably possible the anomaly must be accepted and effect must be given to the language which the Legislature has chosen to employ But if the language is of doubtful import the most reasonable construction of which it is fairly capable ought to be adopted *Held per* CURIAM that the money due under the policy in question formed part of the estate of the assured and was *available for payment of his debts after his death* ESHANI DASI *v* GOPAL CHANDRA DEY (1914) 18 C W N 1335

——— s 6—*Applicability to Hindus—Insurance—Policy for the benefit of wife and children if creates a trust—Policy amount payable to the executors administrators and assigns of the assured—Right of beneficiary to enforce—Presumption of advancement* Where a Hindu male effected a policy of insurance on his own life expressed on the face of it to be for the benefit of his wife or his wife and children or any of them but payable to his executors administrators and assigns and died leaving a daughter *Held* by the Full Bench that s 6 of the Married Womens Property Act (III of 1874) applied to the case and by virtue thereof a trust was created in favour of the daughter in regard to the policy amount against which the creditors of the assured have no right to proceed *Oriental Government Security Life Assurance Limited* v *Vanteddu Ammiraju I L R 35 Mad 162* overruled *Per* WHITE C J (SANKARAN NAIR J concurring) Ss 4 5 6 7 8 and 9 of Act III of 1874 do not apply where either of the spouses at the time of the marriage professed the Hindu religion The primary object of s 6 is to enable a man (though a Hindu male) to make provision for his wife and children by insuring his life for their benefit without executing a separate deed of trust though the result may be that a Hindu woman derives a benefit thereby *Per* WHITE C J S 6 does not affect the law of contract or the law of trust as regard the persons entitled to enforce the

MARRIED WOMENS' PROPERTY ACT (III OF 1874)—*contd*

——— s 6—*contd*

contract under the policy The person entitled to enforce the rights of the beneficiary is the trustee if a trustee has been appointed and if no special trustee has been appointed the Official Trustee to whom the money is payable and not the daughter the beneficiary *Held* also that the daughter was not entitled to enforce her claim against the insurance company or as against a creditor as (i) the company was under a contractual obligation to pay the amount to the executor or administrator of the assured and (ii) the presumption of advancement of a daughter was rebutted by the words for the benefit of his wife and children the policy not being one for the benefit of such of the children as are daughters *Per* TYABJI J The daughters right under the insurance policies is affected by s 6 of Act III of 1874 and the operation of s 6 is not prevented by s 2 For the daughter is not a married woman within the meaning of ss 2 and 6 though she may be married as the expression married woman cannot refer to any woman other than one who is married to the assured BALAMBA *v* KRISHNAYYA (1913) I L R 37 Mad 483

MARSHALLING

See MORTGAGE I L R 35 Bom 395

See TRANSFER OF PROPERTY ACT 1882 s 56 I L R 42 All 336

MARTIAL LAW—

——— Trial of Offences by Commissions—

See GOVERNOR GENERAL IN COUNCIL I L R 1 Lah 326

MARTIAL LAW ORDINANCES (I AND IV OF 1919)

See GOVERNOR GENERAL IN COUNCIL I L R 1 Lah 326

See CRIMINAL LAW I L R 2 Lah 34

——— *Government of India Act of 1915 s 65 cls (2) and (3) ss 72 and 84—Ordinance issued by Governor General if void as affecting the unwritten law and constitution of the United Kingdom etc—Ordinance contravening s 65 (3) as to British-born subject if void altogether—Government of India Act of 1916 s 2* Sub s (2) to s 65 of the Government of India Act 1915 does not prevent the Indian Government from passing a law which may modify or affect a rule of the constitution or of the common law upon the observation of which some person may conceive or allege that his allegiance depends It refers only to laws which directly affect the allegiance of the subject to the Crown as by a transfer or qualification of the allegiance or a modification of the obligations thereby imposed *In re Ameer Khan 6 B L R 392 459 (1870) The Queen* v *Burah I R 3 A C 889 907 s c L R 5 I A 178 I L R 4 Calc 172 (1878)* and *Besant* v *The Advocate General of Madras L R 46 I A 176 191 s c 23 C W N 896 (1919)* referred to Ordinance IV of 1919 if it was repugnant to s 65 (3) of the Government of India Act so far as British born subjects were concerned was under s 2 of the Government of India Act of 1916 void to the extent of that repugnancy but not otherwise BUGGA *v* KING EMPEROR (P C) 24 C W N 650

MARUMAKKATTAYAM LAW

See MALABAR LAW

——————— *Tarwad is the heir to the property of a deceased member subject to the liability to discharge debts of deceased—Devolution of property acquired by or for benefit of Tavazhi—Survivorship—Property acquired by individual member devolution of* Co parcenary exists among the members of an undivided Malabar Tarwad Where therefore one of the members dies the Tarwad is the heir to the property of deceased subject to the liability to discharge the debts of the deceased member *Pyrappan Nambiar* v *Kelukurup I L P 4 Mad 150* referred to Where property is acquired for the benefit of the Tavazhi the incidents of such property will depend on the constitution of the Tavazhi If the Tavazhi forms a distinct branch from the main Tarwad with separate properties and has its own karnavan it will in law form a Tarwad and the incident of Tarwad property will attach to it None of the members will have an alienable interest in such property and it cannot be attached in execution of a decree against any of the members *Kanath Puthen Vittul Tavazhi* v *Narayanan I L R 28 Mad 182 189* referred to If however the members of the Tavazhi have not separated from the main branch by taking their share of Tarwad property or renouncing their interest therein the mere acquisition of such property will not make them a separate Tarwad and the karnavan of the main Tarwad will retain all his right and obligations towards them The property will be the separate property of the Tavazhi and not Tarwad property and the incident of impartibility which attaches to Tarwad property will not attach to it The interest of each member will be the same as in an ordinary Hindu family and will be liable to be attached and sold If however any member dies without his interest being alienated in his life time his interest lapses to the other members and it cannot be sold *Kuntachumma* v *Kuttimammi Hajee I L R 6 Mad 901* referred to If property is acquired solely for the benefit of two members of a Tavazhi they must be treated as tenants in common They cannot be treated as a separate branch and on the death of one the share will pass to the heir of the deceased which according to the preponderance of authority will be the Tarwad The principle of joint tenancy is unknown to Hindu Law except in the case of the members of an undivided Hindu family *Joyesuar Narain Deo* v *Ramchendra Dutt I L R 23 Calc 6 0* referred to UMMANGA v ATTADORAI PATTER (1910)

I L R 34 Mad 387

——————— *Gift to a woman and her children enures for their benefit with the incidents of tarwad property—Members subsequently born acquire an interest by birth—Karnavan power of to alienate—Right of one member of tarwad to erect buildings in tarwad property—Compensation claim to for demolition of building—Malabar Tenants Improvement Act s 5* A gift to a woman governed by the Marumakattayam law and her children enures in favour of the donee and her children with the incidents of tarwad property As members of a tarwad acquire an interest in the tarwad property by birth children born subsequent to the gift will acquire an interest in such property A karnavan cannot make an alienation for such a long period as sixty years in the absence of special necessity or special benefit Such an alienation cannot be held good for a portion of the term i e, the usual period of twelve years as it will have the effect of creating a new contract between the parties Although in the case of ordinary co parcenaries the Courts will not order the demolition of buildings erected by one co parcener in joint property unless some substantial injury is shown the case will be different in the case of tarwad property The members of the tarwad have not like the members of an ordinary co parcenary the right of compulsory partition and it would not be fair or equitable to compel the karnavan to purchase the building erected by a junior member or to deprive the karnavan of possession of part of the property for ever The junior members cannot therefore on general principles resist recovery or demolition of the building A lessee whose lease is disputed and who is put on inquiry as to the real title of the lessor before constructing buildings on the land leased cannot after constructing buildings on a wrong view of the lessor's title claim on eviction compensation for the buildings as a *bona fide* tenant under s 5 of the Malabar Tenants Improvements Act KALLIANI AMMA v GOVINDA MENON (1912)

I L R 35 Mad 648

MARZ UL MAUT

See MAHOMEDAN LAW—GIFT
I L R 36 All 289
I L R 40 All 238

See MAHOMEDAN LAW—WAKF
I L R 36 All 431
I L R 46 Calc 13

MASTER

See MASTER AND SERVANT

——— authority of—

See REVIVOR I L R 43 Calc 903

MASTER AND SERVANT

See ADULTERATION
I L R 39 Calc 682

See BENGAL MOTOR CAR AND CYCLE ACT s 3 I L R 38 Calc 415

See COMPANY I L R 38 Mad 991

See OPIUM ACT (I OF 1878) ss 5 9
I L P 34 All 319

See PENAL CODE s 3 9
15 C W N 414

See SCHOOL MASTER
I L R 44 Calc 917

See TORT I L R 43 Bom 103

See DISMISSAL FOR MISCONDUCT
I L R 33 Mad 126

See TRUST I L R 41 Calc 19

See WORKMEN S BREACH OF CONTRACT ACT (XIII OF 1859) ss 2 AND 3
I L R 41 All 390

——— ground for dismissing an Editor—

See COMPANY I L P 38 Mad 991

——————— *Ganja—Illegal possession of ganja by servant acting on his own behalf and beyond the scope of his employment—Liability of the master for the act of the servant—Bengal*

MASTER AND SERVANT—*contd*

Excise Act (Beng V of 1909) ss 46 (a) and 56 To support a conviction under s 56 of the Bengal Excise Act it is necessary to show not only that a servant was in the employ of the master but also that he was acting within the scope of his employment and for the benefit of the latter Where a servant whose duty was to remain at his master's shop and to conduct the business there was found travelling to another place with *ganja* in his possession in contravention of s 46 (a) of the Act *Held* that the master could not be convicted under s 56 as his servant acted beyond the scope of his employment and for his own private purpose *Suffer Ali Khan v Golam Hyder Khan 6 W R Cr 60* referred to *Emperor v Haji Shaik Mahomed Shustari I L R 32 Bom 10* distinguished UTTAM CHAND v EMPEROR (1911) I L R 39 Calc 244

——— *Clerk engaged on a monthly salary—Relinquishment of employment without consent of master—Clerk not entitled to salary for broken portion of month in which he left his service* *Held* that an office clerk engaged on a monthly salary is not entitled to any salary for the broken portion of a month in the course of which he leaves his service without the consent of his employer *Ridgeway v Hungerford Market Company 3 A & E 171 Dhunee Lehara v Sevenoaks I L R 13 Cal 80* and *Ramji Manor v Little 10 Bom H C R 57* referred to RALLI BROTHERS v AMBICA PRASAD (1912) I L R 35 All 132

MATADARS ACT (BOM VI OF 1887)

——— s 9 and 10— *Heir next in succession —Succession to Matadari property—Succession not confined to the limits of Matadar family —Heir to be ascertained by reference to the personal law governing the parties* One *R* the representative Matadar who inherited his Mata from his mother's side having died disputes arose as to the succession to the Matadari property between *B* who was the daughter of a maternal cousin of *R* and *D* who was the grand nephew of *P* *Held* that *D* was the preferential heir to *B* as in order to ascertain the heir of a deceased Matadar the Court was not confined to the limits of the Matadar family and should have in the first instance reference to the personal law which governed the parties DAYA KHUSAL v BAI BHIKHI (1915) I L R 39 Bom 478

MATERIAL IRREGULARITY

See REVIEW 14 C W N 244

MATERIAL PREJUDICE

See REVISION I L R 47 Calc 438

MATERNAL UNCLE

See HINDU LAW—SUCCESSION I L R 43 Calc 1

MATE'S RECEIPTS

See CONTRACT I L R 41 Calc 670

MATH

See HINDU LAW—ENDOWMENT L R 46 I A 204

See LIMITATION I L R 37 Calc 885

See MUTT

MATHIRI KASUVU AND SADALWAR

See MADRAS ESTATES LAND ACT (I OF 1908) s 13 CL (a) I L R 39 Mad 84

MATRIMONIAL CAUSES ACT 1857 (20 & 21 VICT C 85)

——— s 28—

See DIVORCE I L R 45 Calc 525

MATWALI

See MAHOMEDAN LAW—WAKF I L R 47 Calc 592

MAXIMS

See ACTIO PERSONALIS MORITUR CUM PERSONA I L R 35 Bom 12

——— "a man cannot take advantage of his own fraud"—

See HINDU LAW—WIDOW I L R 41 Bom 93

——— "generalia specialibus non derogant"—

See SPECIFIC MOVEABLE PROPERTY I L R 39 Mad 1

——— Ut res magis valeat quam pereat'

See LANDLORD AND TENANT I L R 46 Calc 458

MAYUKHA

See DAUGHTERS INHERITANCE OF I L R 34 Bom 510

See HINDU LAW—INHERITANCE I L R 34 Bom 553

See HINDU LAW—PARTITION I L R 36 Bom 379

See HINDU LAW—STRIDHAN I L R 36 Bom 424

See HINDU LAW—SUCCESSION I L R 34 Bom 385
I L R 39 Bom 87

MEASURE OF DAMAGES

See DAMAGES

MEASUREMENT OF LAND

See BENGAL TENANCY ACT s 91 14 C W N 231

——— *Excess area—Bengal Tenancy Act (VIII of 1885) s 52 (6) as amended by Beng Act I of 1907 s 13* The words at the time the measurement on which the claim is based was made in s 52 (6) of the Bengal Tenancy Act do not refer to the measurement upon which the excess area is found out before the institution of the suit The section merely provides that if the landlord proves that at the time the measurement on which the claim is based was made there existed a practice of settlement being made after measurement of the land assessed with rent it may be presumed that the area specified in the patta kabulyat or counterfoil rent receipt was entered in it after measurement though the landlord is not able to prove that as a matter of fact the lands in the particular case were settled after measurement *Uma Singh v Rai Tarini Prosad Bahadur 19 C L J 451* referred to KHAJEH HABIBULLAH v UMED ALI (1919) I L R 47 Calc 266

MEASUREMENT OF LAND—*contd*

——— *Bengal Tenancy Act (VIII of 1885) s 52 (6)* The expression at the time the measurement on which the claim is based was made in s 52 (6) of the Bengal Tenancy Act refers to the measurement upon which the area in excess or defect as the case may be is found out before the institution of the suit it does not refer to the measurement made at the time of the original settlement or the last preceding adjustment of rent *Khajeh Habibullah v Umed Ali I L R 47 Calc 266* dissented from NILMANI KAR v SATI PROSAD GARGA (1920)
I L R 48 Calc 556

MEASURE OF PIGHT

See EASEMENT I L P 39 Calc 59
I L R 42 Calc 46

MEDICAL WORKS

——— reference to—

See LIMITATION I L R 40 Calc 898

MEDICINAL PREPARATION

See EXCISABLE ARTICLE
I L P 45 Calc 82

MEHR

See CONSTRUCTION OF DOCUMENT
I L R 41 Bom 5

MELVARAM

——— grant of—

See MADRAS ESTATES LAND ACT (I OF 1908) s 8 I L R 38 Mad 891

MELVARAMDAR

——— receiver of—

See LIMITATION ACT (IX OF 1908) s 22
I L R 38 Mad 837

——— right of to trees—

See LANDLORD AND TENANT
I L R 38 Mad 155

MEMBER

See STOCK EXCHANGE
I L R 47 Calc 623

MEMONS

See SUCCESSION L R 43 I A 35

See WILL I L R 43 Bom 641

——— *Halai Memons and Bombay Memons—Hindu law governs Halai Memons of Kathiawar in matters of succession and inheritance—Custom—Domicile—Change of domicile of origin—Value of judgments of a foreign Court for proving a custom peculiar to a community—Indian Evidence Act (I of 1872) s 13—Value of evidence of tradition given by leading men of the community* A Halai Memon a native of Porebunder in Kathiawar died intestate at Bombay leaving him surviving a widow the second defendant one son the first defendant and two married daughters one of whom had since died the survivor being the plaintiff The estate of the deceased con[illegible] ed of five immoveable properties in Bombay a share in a business in Bombay and a house and land at Porebund r The plaintiff claimed to be entitled as a daughter to 7 3[illegible] of the estate as her share on the footing that the deceased as a Bombay Memon was

MEMONS—*contd*

governed by the Mahomedan law of succession and she was supported in her contention by the representatives of the deceased daughter The first defendant contended that Hindu law applied and that under that law he was entitled to the whole estate subject to the maintenance of the deceased s widow The second defendant supported the first defendant though as widow of the deceased she would have been entitled under Mahomedan law to 4 32 of the estate The Court of first instance decreed the plaintiff s suit holding that though the deceased belonged to a family of Halai Memons who had settled in Porebunder the Halai Memons settling in Porebunder did not as regards succession and inheritance retain Hindu law at the time of their conversion nor had they adopted Hindu law by immemorial custom The first defendant appealed —*Held* reversing the decree of the lower Court (i) that the plaintiff was not entitled to any share in the estate of her deceased father as he was governed by Hindu law and not by Mahomedan law in matters of succession and inheritance (ii) that the evidence established that the Memons of Kathiawar of whatever group or sect followed the Hindu rule of succession and this conclusion was supported as to Porebunder Memons particularly by a large number of instances in which widow and daughters had been excluded from succession sons had divided the property with their father in his life time or equally with each other after his death and the right of predeceased brother s sons to share with their uncles had been repeatedly recogni ed all these results being incidental to the Hindu and not to the Mahomedan system *Per* SCOTT *C J* —There is no principle recogni ed by the law admini tered in this country upon which a Hindu s or Mahomedan s possessions may be distributed partly by one law and partly by another according to the locality of the possession They mu t all fall under either the law of the religion or the customary law of the community There is no *lex loci* for the purpose of distribution Permanent residence in Bombay does not necessarily import the Mahomedan law of succession for one who e ancestors were converted from Hinduism Severance from the domicile of origin and permanent residence in Bombay would in the case of persons falling within the purview of the Indian Succession Act effect change of domicile and with it a change of law *e g* from French to Anglo Indian or Portuguese to Anglo Indian but it would not change the law of succession for Hindus or Mahomedans *Kojahs and Memons ca e (1847) Perry s O C 110 Bai Bayi v Bai Santok I L R [illegible] Bom 53 Abdurahim Haji Ismail Mithu v Halimabai L R 43 I A [illegible]5* and *Abdul Hussein Khan v Bibi Sona Dero L R 45 I A 10* referred to MAHOMED HAJI ABU v KHATUBAI (1918)
I L R 43 Bom 647

MEMORANDUM OF AGREEMENT

See STAMP ACT (II OF 1899) s [illegible]
I L R 38 Mad 249

MEMORANDUM OF APPEAL

See APPEAL

See CIVIL PROCEDURE CODE (ACT V OF 1908) ss. 107 149 O VII r. 11 cl. (c) I L P 38 Bom 41

MEMORANDUM OF APPEAL—*contd*

ss 115 151 O XLI r 23
I L R 42 Bom 363

See COURT FEE I L R 39 Calc 906

See REFUND OF COURT FEE
I L R 40 Calc 305

———— order returning—

See CIVIL PROCEDURE CODE (1908) O XLIII r 1 I L R 40 All 659

MEMORANDUM OF ASSOCIATION

See COMPANIES ACT, 1882 ss 6 40 41
I L R 40 Calc 1

MENACE TO PERSON AND PROPERTY

See SECURITY FOR GOOD BEHAVIOUR.
I L R 46 Calc 215

MERCHANDISE MARKS ACT (IV OF 1889)

———— ss 6 7—

See TRADE MARK I L R 40 Calc 281

MERCHANT SEAMEN ACT (I OF 1859)

———— ss 58 & 83—*Merchant Shipping Act (57 and 58 Vic C 60) s 114 cl 3 and 225 cls (b) and (c)—Wilful disobedience of lawful commands—Order given to transfer from one ship to another—Seaman disobeying the order—Clause about transfer in articles of agreement not ultra vires* The accused signed articles of agreement in London with the Master of the SS *Arcadia* (a steamer belonging to the Peninsular and Oriental Steam Navigation Company) under which he agreed *inter alia* to obey the lawful commands of the Master or the superior Officers and to transfer to any other vessel of the Company when required during the period of service These articles were initialled by an Officer of the Board of Trade When the SS *Arcadia* arrived in the Bombay Harbour it was sold by the Company to an Indian Merchant The accused was then ordered by the Marine Superintendent of the Company in the presence of the Chief Officer of the SS *Arcadia* to transfer himself to the SS *Salsette* another boat belonging to the Company For a wilful disobedience of this order the accused was convicted under s 83 cl 4 of the Merchant Seamen Act (I of 1859) The accused applied to the High Court against the conviction contending first that the article respecting transfer was *ultra vires* and secondly that the order as to transfer given by the Marine Superintendent of the Company was not a lawful command —*Held* that having regard to s 114 cl 3 of the Merchant Shipping Act (57 and 58 Vic C 60) and to the fact that the articles of agreement had been initialled by an Officer of the Board of Trade the article as to transfer was not *Ultra vires* *Held* further the order to transfer having been given by the Marine Superintendent of the Company in the presence of the Chief Officer of the SS *Arcadia* was a lawful command of the latter failure to obey which was punishable under s 83 cl 4 of the Merchant Seamen Act (I of 1859) EMPEROR *v* A GOODHEW (1916) I L R 39 Bom 558

MERCHANT SHIPPING ACT (57 & 58 VICT C 60)

See HIGH SEAS I L R 42 Bom 234

MERCHANT SHIPING ACT (57 & 58 VICT C 60)—*contd*

———— ss 114 cl (3) and 225 cl (B) and (C)—

See MERCHANT SEAMEN ACT (I OF 1859) s 83 cl (4) I L R 39 Bom 558

———— s 684 683—

See HIGH COURT JURISDICTION OF
I L R 39 Calc 487

MERGER

See CIVIL PROCEDURE CODE (1908) s 2
I L R 33 All 393

See CIVIL PROCEDURE CODE 1908 O IX r 13 I L R 39 All 13

See DECREE FOR POSSESSION
I L R 38 All 509

See LANDLORD AND TENANT
I L R 43 Calc 164

See LIMITATION ACT (IX OF 1908) Sch I Arts 120 132
I L R 39 All 74

———— *Mokurari tenure specially registered under Act XI of 1859 granted by the zemindar—Subsequent grant of putni by the zemindar—Purchase of putni and mokurari by the same person—Merger—Transfer of Property Act ss 2 (c) 111 (d) 117* Where a *mokurari* tenure has all along been treated as a distinct sub tenure there was no merger by the acquisition of a *putni* tenure and the *mokurari* tenure by the same person apart from the provisions of the Transfer of Property Act *Woomesh Chander Goopto* v *Raj Narain Roy 10 W R 15 Thomas Savi* v *Punchanon Roy 25 W R 503 Prosunno Nath Roy* v *Jagat Chunder Pundit 3 C L R 129* referred to *Jibanti Nath Khan* v *Gokool Chunder Choudhury I L R 19 Calc 769* followed *Surja Narain Mandal* v *Nanda Lal Sinha I L R 33 Calc 1212 Ulfat Hossain* v *Gayani Dass I L R 36 Calc 802* distinguished Where a person acquires the superior and the subordinate interests piece meal at different times but ultimately the entire interests of the lessor and the lessee are vested in the same person at any point of time there is a merger of the two interests in any case to which the provisions of s 111 (*d*) of the *Transfer of Property Act* are applicable A *mokurari* was created before the passing of the Transfer of Property Act and a *putni* was granted of the zemindary within which the *mokurari* was created. Afterwards in 1886 the entire *putni* and the entire *mokurari* were acquired by the same person *Held*—that the provisions of s 111 (*d*) of the Transfer of Property Act do not apply and there was no merger of the *mokurari* interest in the *putni* interest *Promotho Nath Mitter* v *Kali Prosonno Chowdhury I L R 28 Calc 744* followed *Ulfat Hossein* v *Gayani Dass I L R 36 Calc 802* explained HIRENDRA NATH DUTT *v* HARI MOHAN GHOSH (1914)
18 C W N 860

———— *Union of superior and subordinate rights in land in mofussil taking place before the Transfer of Property Act (IV of 1882) and Bengal Tenancy Act (VIII of 1885)* In cases unaffected by the provisions of the Transfer of Property Act and the Bengal Tenancy Act the union of a superior and a subordinate interest did not by operation of law necessarily merge the subordinate in the superior interest But

MERGER—*contd*

although in such cases the union of the superior and subordinate interests may not automatically cause a merger of the latter in the former the conduct of the party concerned may show that he did not intend to keep the two interests alive as mutually distin t rights PAM BISSEN DUTT v HARIPADA MUKERJI (1919) 2. C W N 830

———— *Merger doctrine of if applied in mofussil before Transfer of Property Act —Merger a question of intention— Acquisition of s perior and inferior interests b joint Hind family in the names of d fferent individuals to indicate in en ion to prevent merger* Quere —Wh tuor pr or to the Tra i fer of Property Act th re was a law of merger applicable in the mofuss l *Hi ndra Nath Dutt* v *Hari Mohan Ghosh 18 C W N 8?0* refe red to M rger is not a thing which o curs *ipso f re* upon the a quisition of what for the sake of a ju t generali ation may be called the uperior with the inferior right The question to be settled in the application of the doctrin is was such a coalescence of right meant to be accomplished as to extingui h that separation of title whi h the records contain ? The fact that acquisitions of the superior and inferior interests on behalf of a joint Hindu family have been made in the names of different m mbers thereof may point to an intention to keep the two interests from merging DULHIN LACHLANPATI KUMPI v BODHNATH TIWARI (P C) 26 C W N 565

MESNE PROFITS

See CIVIL PROCEDURE CODE (1882) s 583 I L R 38 All 163

See CIVIL PROCEDURE CODE (1882)—
s 583 I L R 32 All 79
s 11 EXPL V O XX R 12 I L R 40 All 292
s 110 3 Pat L J 377
O II RR 2 AND 4 I L R 38 Mad 829
O XX R 12 2, C W N 369

See COURT FEES 3 Pat L J 101

See DEKKHAN AGRICULTURISTS RELIEF ACT (XVII OF 1879) s 13 I L R 39 Bom 587

See EXECUTION OF DECREE I L R 41 All 517

See HINDU LAW—ALIENATION I L R 39 All 61

See HINDU LAW—JOINT FAMILY I L R 39 Mad 265

See HINDU LAW—PARTITION I L R 44 Bom 179 621

See HINDU LAW—WIDOW 15 C W N 383 859

See JURISDICTION I L R 43 Calc 650

See MADRAS ESTATES LAND ACT I L R 42 Mad 315

See MORTGAGE—REDEMPTION 14 C W N 1001

See RESTITUTION 3 Pat L J 36?

See REVENUE SALE I L R 3? Calc 559

MESNE PROFITS—*contd*

See SMALL CAUSE COURT 14 C W N 1001

See TRANSFER OF PROPERTY ACT 1882 s 6

———— appl cation to c rtain wheth r is an application in exec ition—

See LIMITATION ACT 1908 SCH I ART 182 I L R 45 Bom 819

———— claim for by plaintiff from date of deposit—

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 83 I L R 39 Mad 579

———— d c e for—

See EXECUTION OF DECREE I L R 40 All 211

———— Estimation of on proprietor's private land—

See CIVIL PROCEDURE CODE 1908 s 2 6 Pat L J 166

———— Pendente Lite—

See CIVIL PROCEDURE CODE 1908 O XX R 12 6 Pat L J 54

———— right to past transfer of—

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 6 CL (e) I L R 38 Mad 308

———— suit for of a grove—

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887) SCH II ART 31 I L R 40 All 142

———— whether a decre for mesne profits and costs in a redemp ion is a money de cree—

See CIVIL PROCEDURE CODE 1908 O XXI R 53 4 Pat L J 336

1 ———— *Civil Courts Act (XII of 188) ss 18 19 21—Civil Procedure Code (Act XIV of 188?) ss 211 212 211—Jurisdiction—Mesne profits antic dent to the suit decree for if can be executed to an amount which taken with the value of the land would exceed jurisdiction of Court passing decree—Mesne profits pendente lite ex ceeding the pecuniary jurisdiction of the Court making the de ree—Forms of application for re covery* Where a plaintiff instituted his suit for possession of property and mesne profits in the Court of a Munsif and valued it so as to bring it within the jurisdiction of the Munsif and the suit was decreed —*Held* that he could not recover mesne profits accruing before the institution of the suit to the extent of more than the difference between the maximum pecuniary juri diction of the Munsif and the value of the land as stated in the plaint *Golap Singh* v *Indra Kumar 9 C L J 367 s c 13 C W N 493* followed *Sudarsham* v *Ramphershad 7 Ind Cas 785* not followed In this respect mesne profits antecedent to the institution of the suit and mesne profits *pendente lite* in respect of which the cause of action had not arisen at the date of the suit and which could not at that date be approximately valued stand on a different footing *Held* further that the value of the mesne profits *pendente lite* claimed in the application for execution of the decree being in excess of the pecuniary jurisdiction of a Munsif

MESNE PROFITS—*contd*

the Munsif had no jurisdiction to entertain the application *Parmeswar v Dilu I L R 21 Calc 550* distinguished and doubted *Gulab v Abdul 8 C W N 2*3 *s c I L R 31 Calc 365 Ijja tulla v Chandra Mohan I L R 34 Calc 954 11 C W N 1133 s c 6 C L J 255 Golap Singh v Indra Kumar 9 C L J 367 s c 13 C W N 493 Mannalal v Samanda 46 I R 1906 91 P L R 1906* referred to In so far as the application for mesne profits *pendente lite* was concerned the Court therefore directed its return for presentation to the proper Court No objection as to the jurisdiction of the Court to try the original suit having been raised before the decree and the decree as to recovery of land having become final the Court refused to give effect to the contention that in view of the amount of mesne profits now claimed the Court had no jurisdiction to make the decree BHUPENDRA KUMAR CHAKRABARTI *v* PURNA CHANDRA BOSE (1910)

I L R 43 Calc 650
15 C W N 506

2 ———————— *Execution of decree —Immovable property suit for—Purchaser pendente lite whether legal representative of the original owner—Civil Procedure Code (Act V of 1908) OO XX r 12(2) XXI r 102 and XXII r 10 and s 2 (11)* Proceedings for the assessment of mesne profits after a decree had been obtained in a suit for recovery of possession of immovable property are proceedings in continuation of the original suit A suit for recovery of possession of immovable property was brought against *A* During the pendency of the suit *B* and *C* purchased the property from *A* but they did not apply to have their names added as defendants in the pending suit The suit having been decreed the decree holder applied for execution of the decree against *A B* and *C* and asked for possession of land and for the assessment of mesne profits On an objection taken by *B* and *C* that they were not the legal representatives of *A* and that they could not be made liable in execution proceedings for the mesne profits decreed against *A* *Held* that although *B* and *C* were not the legal representatives of *A* the execution proceedings being proceedings in continuation of the original suit and they being purchasers *pendente lite* they were liable for the mesne profits decreed against *A* MIDNAPORE ZEMINDARI COMPANY LD *v* NARESH NARAIN ROY (1911)

I L R 39 Calc 220

3 ———————— Although a plaintiff may perhaps recover mesne profits though out of possession still in order to recover damages in a case where he was out of possession the plaintiff must show that he has a right to immediate possession ELAHI BUKSH MANDAL *v* RAM NARAYAN GHOSH (1911) 16 C W N 288

3(a) ———————— Where a father as manager alienates joint Hindu family property without legal necessity and the sons repudiate the sale a purchaser who has no notice that the father was incompetent to sell is in equity only liable to pay mesne profits for the date of repudiation LHIROU NATH CHAUBE *v* RAI SINGH TIWARI

I L R 39 All 61

4 ———————— *Jurisdiction—Suit for recovery of possession with mesne profits —Mesne profits as assessed in the execution proceedings—Amount assessed more than the pecuniary jurisdiction of the Court* A suit for recovery of possession of certain lands with mesne profits from the date of dispossession up to the date of restoration of possession was brought in the Munsif's Court It was decreed together with the mesne profits claimed and the Court directed that the amount of mesne profits would be determined in the execution proceedings The decree having been affirmed on appeal the decree holder applied to the executing Court for ascertainment of mesne profits The total amount of mesne profits ascertained by the Munsif was Rs 1 030 8 0 including interest On an *objection taken by the judgment debtor* that the executing Court being a Munsif was not entitled to award mesne profits of a higher amount than Rs 1 000 *Held* that the executing Court had jurisdiction to award the mesne profits ascertained in the present case *Parmeswar Mahton v Dilu Mahton I L R 21 Cal 550* followed in principle *Bhupendra Kumar Chackrabarti v Purna Chandra Bose 13 C L J 13*? distinguished PANCHUPAM TEKADAR *v* KINOO HALDAR (1912)

I L R 40 Calc 56

5 ———————— *Suit for recovery of mesne profits or damages without a declaratory suit whether maintainable—Symbolical possession—Bengal Tenancy Act (VIII of 1885) s 157 principle laid down in* If a person who has been dispossessed from an immovable property brings a suit for recovery of mesne profits the suit is not maintainable The proper remedy is to institute a suit for declaration of title and recovery of possession with mesne profit *Lep Singh v Kumar I L R 21 Calc 214* referred to When the title of the plaintiff is denied by the defendant he (plaintiff) ought not to obtain a decree for mesne profit till his title has been established in a Court of competent jurisdiction Where the title of the plaintiff is established in a Court of competent jurisdiction that decision is conclusive between the parties for all time to come The symbolical possession by the plaintiff is effective as against the judgment debtor though it may not be operative as against strangers to the suit Where the title of the plaintiff to immovable property has been restored and he has obtained symbolical possession and allowed the defendant to continue in actual occupation of the land and successfully asserted his right to be paid a fair and reasonable amount of damages for use and occupation of the land it is not open to the defendant to question the title of the plaintiff and there is no intelligible reason why the latter should not be allowed to maintain an action for recovery of damages for use and occupation of the land This principle is recognised by the Legislature in s 157 of the Bengal Tenancy Act GIRI NARAIN CHATTERJI *v* MODHU SUDAN MUKERJI (1911)

17 C W N 324

6 ———————— *Application to assess Limitation—Decree for mesne profits application for execution of by assignee—Right of assignee to apply for substitution in pending suit nature of—application for ascertainment of mesne profits is pending suit limitation applicable to—Benamidar if may apply—Assignee from assignee of party to suit application for substitution by—Claim for mesne profits if can be transferred—Stranger if may question assignment—Civil Procedure Code O XX r 12 O XXII r 10—Limitation Act (IX of 1908) Art 181* A *durputni* held by three brothers *D P* and *R* was sold for rent and pur-

MESNE PROFITS—*contd*

chased by the *putnidar* One of the three brothers *D* brought a suit and obtained a decree for the recovery of po es ion of the *durputni* and mesne profits After *D*s death his widow got herself substituted in his place and in execution of the decree took possession of the property and subsequently a deed was executed between her elf and the two other brothers *P* and *R* in terms that the property belonged to the three brothers and she as the widow of the eldest was entitled to two annas and the remaining 14 annas were divided between her and the two brothers in equal shares as also the mesne profits The *durputni* was thereafter sold in execution of a money decree and ultimately passed into the hands of one *A* On 21st May 1907 the two brothers *P* and *R* by a conveyance a signed their share of the costs and mesne profits under the decree obtained by *D* to *M* a *benamidar* of *A* and on the 10th June 1907 *D*s widow by another conveyance as igned her share of the mesne profits and co ts to *A* On 22nd February 1909 *A* applied for execution of the decree and the application was admitted by the Subordinate Judge but under orders of the District Judge in appeal the application was returned for amendment on 4th March 1911 and amended on the same day On appeal the High Court directed that this applicat on presented by *A* should be treated as an application under O XX r 12 and remanded the case whereupon the amended application was placed on the record to be dealt with under O XX r 12 and *A* was sub tituted on the record in place of the original plaintiff *Held* that the application should be treated as having been made on the date on which it was originally presented and that date being within 3 years of the dates of the conveyances assigning mesne profits and costs to *A* the application was not barred even if Art 181 of the Limitation Act was applicable That even if th application was considered as having been made on the date on which it was amend d the right of the assignee to apply for substitution in a pending suit is a right which accrues from day to day and is therefore not barred by limitation That an application in a pending suit for ascertainment of mesne profits is not barred by the three years rule of limitation contained in Art 181 corresponding to Art 178 of the old Limitation Act The law has not been changed by the new Limitation Act or the new Code of Civil Procedure *Puran Chand* v *Rai Radha Kishen I L R 19 Calc 13* followed *Held* (as to the contention that *A* could not be substituted when his two assignees *P* and *R* were not parties to the suit) that the property being the joint property of the three brothers and the suit having been brought by *D* as the elde t member of the family he might be taken to have represented the other two brothers also That even if *P* and *R* were con idered as assignees from *D*s widow the position was that *A* was an assignee from *D*s widow who was a party to the suit with respect to one third of the property and an assignee from *P* and *P* who in their turn were assignees from *D*s widow with respect to two thirds, and O XX r 10 was applicable to an application made by a person who has not obtained an assignment directly from a party to the suit but who has obtained an assignment derivatively from a party to the suit That a right to sue for damages cannot be transf rr d but in the pr s nt case the claim for mesne profits had already merged in a judgment before the assignment and the right under the judgment was assignable although the original cause of action was not There is nothing in law to prevent a *benamidar* from applying to the Court for ascertainment of mesne profit A stranger cannot take exception to an assignment on the ground of inadequacy of consideration that being a matter between the assignor and assignee *Bhagwat Dayal* v *Debi Dayal I L R 35 Calc 420 s c 1. C W N 393* relied on. PRASANNO KUMAR PANJA v ASHUTOSH RAY (1913) **18 C W N 450**

7 ——————— *Application for ascertainment of—estimated claim higher than court s pecuniary jurisdiction—order refusing application appeal from* Where the question of a court s jurisdiction is concerned it is the plaint alone which should be considered Where the holder of a decree for possession of certain property with costs and mesne profits (which had not been claimed in the plaint) applied for ascertainment of the mesne profits and estimated the amount due therefore at Rs 1 140 12 *held* that the court had jurisdiction to entertain the application although its pecuniary jurisdiction was limited to Rs 1 000 An application for the ascertainment of mesne profits is an application for an order in the suit and is not an application for the execution of a decree and therefore no appeal lies from an order returning such an application for presentation to the proper Court O VII r 10 of the Code of Civil Procedure 1908 applies only to the paper on which a suit is instituted and not to an application made in the course of a suit Therefore an application for ascertainment of mesne profits does not fall within the provisions of that rule SHEIKH MOHAMMAD ABDUL GHAFOOR v MAHTAB CHOUDHURY **2 Pat L J 894**

8 ——————— *Date of decree—Appeal—Court fee applicatio for refu d of—Code of Civil Procedure (Act V of 1908) O XX r 1 and O XLI r 23—Court fees Act VII of 1870 s 13* Where the Privy Council on the 7th March 1913 dismissed an appeal from a d cree of the High Court affirming a decree of the court of first instance dated the 28th November 1905 under which the plaintiffs were awarded mesne profits from the date of the decree to the date of recovery of possession and some of the plaintiffs obtained delivery of possession on the 29th May 1914 and others on the 14th January 1916 *Held* that the decree to be executed was the decree of the Privy Council which affirmed the decree of the first court and that in effect the Privy Council decree awarded the plaintiffs mesne profits from the 28th November 1905 up to the date of delivery of possession and that effect would be given to the decree without contravening the provisions of O XX r 12 O XLI r 23 of the Code of Civil Procedure 1908 applies only where the original court has di posed of a suit on a preliminary point A certificate for refund of court fees paid on an appeal again a preliminary decree cannot be granted under s. 13 of the Court fees Act 1870 NANDKUMAR SINGH v BILAS RAM MARWARI **3 Pat. L. J 116**

9 ——————— *Claim against trespasser—Costs of cultivation and reaping* Where

MESNE PROFITS—*concld*

mesne profits are claimed from a trespasser the costs of cultivation and reaping should be allowed BALDEO RAI v RAM EKBAL SINGH

4 Pat L J 301

10 ———————— *Partition suit—Relief for future mesne profits claimed in suits—Decree not referring to future profits—Relief must be deemed to have been refused—Separate suit for future profits—Civil Procedure Code (Act V of 1908) s 11, Expl V* In a suit for partition a claim was made for possession past mesne profits and future profits The decree which granted partition made no reference to future profits although past profits were awarded The plaintiff having filed a separate suit to recover future profits for three years. *Held* that the plaintiff having claimed future mesne profits and the Court having in its decree said nothing with regard to the future profits the claim in respect of the same must be taken to have been refused and a separate suit for that relief was not maintainable under Expl V to s 11 Civil Procedure Code 1908 *Doraiswami Ayyar v Subramania Ayyar (1917) 41 Mad 188* and *Muhammad Ishaq Khan v Muhammad Rustam Ali Khan (1918) 40 All 29?* not followed ATMARAM BHASKAR v PARASHURAM BALLAL (1920)

I L R 44 Bom 954

MHARKI VATAN

See HEREDITARY OFFICES ACT (BOM. ACT III OF 1874 AS AMENDED BY BOM ACT III OF 1910) ss 25 36 63 AND 64

I L R 41 Bom 23

MIADI SARBARAKARI TENURE

See ORISSA TENANCY ACT 1913 s 3

4 Pat L J 387

MIGRATION

See HINDU LAW—JOINT FAMILY

I L R 40 Calc 407

See SUCCESSION L R 43 I A 35

MILITARY OFFICER

———— in the Indian Staff Corps—

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 60 cl 2 (b)

I L R 38 Bom 667

MINES AND MINERALS

See LANDLORD AND TENANT —MINERAL RIGHTS I L R 37 Calc 723

I L R 39 Calc 696

See LEASE 1 Pat L J 441

I L R 45 Calc 87

See MINING LEASE

———— Income from rent and Royalties of

See INCOME TAX ACT 1918 s 5

6 Pat L J 62

———— rights of grantee to—

See GRANT I L R 44 Calc 585

1 ———————— *Coal mine working of by lessee—Suit for perpetual injunction to restrain lessee from connecting leased mine with*

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other mines from instroke working and from cutting or changing the thickness of supporting pillars—Suit if to fail if premature in respect of one of several reliefs—Injunction circumstances justifying the grant of—Breach of contract between lessor and lessee—Lessee if bound to leave barrier of coal to prevent communication with adjoining mine—Instroke right of—Lessee if can be deprived of right of instroke working without express provision in lease—Presumption of right in favour of lessee—Subsidence owner's right of support against—Circumstances under which Court should protect such right by injunction After the death of the lessee of a coal mine his sons transferred their interest in the mine to a person who had mines in the immediate vicinity The plaintiff lessor sued for a perpetual injunction to restrain the purchaser (i) from connecting the disputed mine with the adjacent mines (ii) from raising the coal from the disputed mine through the pits of his mines (iii) from ever cutting off or changing or diminishing the thickness of the pillars of coal in the disputed mine The Subordinate Judge granted an injunction on the first two grounds and refused an injunction on the third ground It appeared that under the lease the lessee was entitled to remove all the coal of the demised mine but he undertook to manage the work according to the prevailing practice with special care and expertness It was not suggested that the defendant had acted in breach of this covenant The plaintiff alleged that the transfer had been made with a view to enable the purchaser to injure the plaintiff by an improper working of the mine he further asserted that there was a conspiracy amongst the defendants who had threatened to cause him loss The defendant denied the truth of these allegations *Held* that it is well settled that a man who seeks the aid of the Court by an injunction must show that the act complained of is in fact a violation of his right or is at least an act which if carried into effect will necessarily result in a violation of the right The mere prospect or apprehension of injury or the mere belief that the act complained of may or will be done is not sufficient That as the defendant claimed a right to take away the entire coal the Court was competent to grant an injunction if it was established that what the defendant asserted he had a right to do would constitute a breach of contract between the lessor and lessee That as regards the mode of removal of the coal the plaintiff failed to prove that he had any ground for an injunction in this respect but the suit could not consequently be deemed premature in respect of all the reliefs claimed though the objection might hold good with regard to one of them That the principle that a lessee who removes a barrier between the demised and an adjoining mine is guilty of waste had no application to the circumstances of the present case That it was not obligatory upon the lessee to have a barrier of coal merely to prevent communication with adjoining mines and the injunction granted by the Court below restraining the defendant from breaking through the existing barrier of coal could not be supported That the right of instroke is the right of conveying minerals leased to the surface through a pit or shaft in the adjoining mine it is the converse right to that of outstroke which is the right of conveying minerals from an adjoining mine to the sur

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face through a pit or shaft in the mine leased and a lessee is *primâ facie* entitled to work by instroke but not by outstroke and if the lessor desires to deprive the lessee of his right of instroke working he must do so by clear and unambiguous provision That in the present case the original lessee had no other land in the neighbourhood and could work the mine only through pits sunk therein and the original parties to the lease did not contemplate the contingency which happened and did not provide for it in the contract There would consequently be a presumption of right in the lessee to work in the most advantageous way subject to his not committing a fraud on the lessor and no fraud on the part of the lessee having been proved the injunction to restrain the defendant from working the mine by instroke could not be sustained That *primâ facie* the owner of the surface has a right of support and the lessee is not entitled to work the mine so as to cause a subsidence This right to support will be protected by an injunction if the Court is satisfied that injury is imminent and certain to result from the defendant s acts. The Court will also interfere by injunction when the defendant claims the right to do acts which must inevitably cause a subsidence But in the present case there were no materials to show that the plaintiff had the right to the surface and till such right was established, he could have no right to claim protection against subsidence of the surface Even assuming that the plaintiff had right in the surface there was no evidence to show that the pillars need be maintained in the present size and number to prevent subsidence and in view of the statutory rules for the working of mines it was extremely improbable that the defendant could alter the pillars in such a way as to endanger the surface and the injunction in this respect was rightly refused RAMJAS AGARWALLA *v* BRAJAMOHAN SINGH (1914) **19 C W N 887**

——— *Lessee for years or for life—Lessee in perpetuity—Intention of parties—Landlord s rights* It is well settled in England that a tenant for life or for years has no right to work unopened mines *Clegg* v *Rowland 2 Eq 160* and *Campbell* v *Wardlaw 8 Ap Cas 641* referred to *Gordon Stuart & Co* v *Pikaitnee Seobas Kouaree (1864)* W P 3 0 not followed *Prince Mahomed Bukhtyar Shah* v *Rani Dhojamani 2 C L J 90* and *Tituram Mukerji* v *Cohen I L R 33 Calc 203* referred to There is no difference in principle between a lessee for years and a lessee in perpetuity when nothing is known or can be inferred about the intentions of the parties at the time of the inception of the lease The landlord continues to have a reversion in mines discovered after the inception of the lease *Kally Dass Ahiri* v *Monmohini Dassee I L R 24 Calc. 440* referred to *Abhiram Goswami* v *Shyama Charan Nandi I L R 36 Calc. 1003* followed. *Sonet Kooer* v *Himmut Bahadoor I L R 1 Calc 391 L R 3 I A 9* referred to *Ishwar Shyam Chand Jiu* v *Ram Kanai Ghose I L R 38 Calc. 526* not followed *Shama Charan Nandi* v *Abhiram Goswami I L R 33 Calc 511* and *Megh Lal Pandey* v *Rajkumar Thakur I L R 34 Calc 358* distinguished. *Brojonath Bose* v *Durga Prosad Singh I L R 34 Calc. 753* not followed and held to be practically overruled by *Hari Narayan Singh Deo* v *Sriram Chakravarti I L R 37 Calc 723 L R 37 I A 136* JYOTI PRASAD SINGH *v* LACHIPUR COAL COMPANY (1911) **I L R 38 Calc 845**

——— *Moghali Brahmottar—Grant* Moghali Brahmottar grant of a mauza does not pass the minerals under it to the grantee *Hari Narayan Singh Deo* v *Sriram Chakravarti I L R 37 Calc 723* and *Jyoti Prasad Singh* v *Lachipur Coal Co I L R 38 Calc 845* followed *Sonet Kooer* v *Himmut Bahadur I L R 1 Calc 391* distinguished KUNJA BEHARI SEAL *v* DURGA PRASAD SINGH (1914) **I L R 42 Calc 346**

——— *Mining Rights—Brahmottar grant of mauza of entire mau a before Permanent Settlement effect of in relation to mining rights* The effect of a grant of a rent free brahmottar of the whole of a mauza made before or after the Permanent Settlement is not to transfer any mining rights *Jyoti Prasad Singh* v *Lachipur Coal Co 16 C W N 241 s c I L R 38 Calc. 845* and *Kunja Behary Seal* v *Raja Durga Prosad Singh 19 C W N 203* relied on. *Hari Narain Singh Deo* v *Sriram Chakravarti L R 37 I A 136 s c I L R 37 Calc 723 14 C W N 746* followed. NOWAGHUR COAL CO LD *v* SASHI BHUSAN RAY (1914) **19 C W N 375**

——— *Zamindar grant of rent free debottar by—Grantee if entitled to underground rights* Where a zamindar grants a tenure in lands within his zamindari and it does not clearly appear by the terms of the grant that a right to the minerals is included the minerals do not pass to the grantee The principle applies to a rent free tenure RAGHUNATH ROY MARWARI *v* RAJA DURGA PRASAD SINGH (1919) **23 C W N 914**

——— *Grant by zamindar of part of zamindari land—Lease in perpetuity—In absence of evidence that zamindar expressly granted right to dig coal no such right passes by grant.* Where a zamindar grants a tenure of lands within his zamindari and it does not clearly appear by the terms of the grant that a right to the minerals beneath the soil is included the minerals do not pass to the grantee *Hari Narain Singh* v *Sriram Chakravarti I L R 37 Calc 723 L R 37 I A 136 Durga Prosad Singh* v *Brajanath Bose I L R 39 Calc 696 L R 39 I A 133* and *Shashi Bhusan Misra* v *Jyoti Prasad Singh Deo I L R 44 Calc 585 L R 44 I A 46* followed. This principle applies as well as to rent free grants as to grants of tenure at fixed rents A grant by the Rajah of Jheria of rent free *brahmottar* land part of this Raj property of which the terms were You should enjoy it comfortably by cultivating and getting the same cultivated by others hence this *potta* is granted to you was held not to pass the underground minerals to the grantee RAGHUNATH ROY MARWARI *v* DURGA PRASHAD SINGH (1919) **I L R 47 Calc 95**

——— *Minerals right to—Surface rights and subsoil mineral rights—Distinction between copyholders and lease of freehold land in England—Construction of the terms Restrictions and conditions as to the exercise of the power in mining lease—Limitation—Adverse possession.* Where the mineral rights were never in contemplation of the parties when the lease was

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granted in 1830 and the lessees never exercised any mineral rights whatsoever barring taking small quantities of coal from the outcrop for domestic purposes and burning lime and the zemindar by the lease granted a village containing 380 bighas at the abnormally low rent of Rs 17 per annum the presumption made in the absence of the original document was that only the surface rights were conveyed to the grantees In such a case the mines and minerals and the property in the subsoil remained the property and in the possession of the zemindar The surface rights with their incidents became vested in the grantees as tenure holders *Hari Narain Singh Deo Bahadur* v *Sriram Chackerbutty L R 37 I A 136 s c I L R 37 Calc 723 14 C W N 746* and *Durga Prasad Singh* v *Braja Nath Bose I L R 39 Calc 696 s c 16 C W N 482* relied on. *Kunja Behari Seal* v *Durga Prasad Singh I L R 42 Calc 316 s c 19 C W N 403* referred to If the mines are presumed to be vested in and to be the property of the zemindar his rights must be just the same as those of a free simple free hold owner of land according to English Law who makes a grant with an express reservation of the mines to himself together with the incidents that follow therefrom By reason of that presumption and by reason of the severence of the tenement and the reservation that must be deemed to rise in favour of the Raja the latter has an incident to his right of property and ownership in the mines the right by implication of law to enter upon the surface of the tenure holder s mouzah for all reasonable and necessary purposes to enable him to work the mines and exercise his mineral rights The case of *Prince Mahomed Bakhtyar Shah* v *Rani Dhajamoni 2 C L J 20* in so far as it decided that the owner of a limited estate in possession can prevent the grantor or his lessee to work and appropriate the mineral during the existence of such limited estate unless the grantor had expressly reserved the mineral right in his own favour was wrongly decided by the misapplication of the English Law of copyholds to the case of owners and tenants of freehold land. The distinction between freehold and copyhold law is that under the latter there is no division into strata and the tenant obtains possession of the entire surface and sub soil to the centre of the earth so that the lord of the manor cannot work the mines unless he proves a right or custom to that effect It is under only the copyhold law and where there is no reservation of custom proved that a deadlock occurs and neither landlord or tenant can work the mines Under the law applicable to freehold land there can be no deadlock or if the mines be excepted the grantor has an implied right to work them incidental to such exception if there be no exception then that right is with the grantee as owner of the surface and sub soil Where a tenement is severed the person in whose favour the reservation is made is the absolute owner of the sub soil and the rights of such a person are that he has by implication of law the power to go upon the surface and do all things reasonably necessary in order to exercise the enjoyment of his property *Latten Pool* v *Kennedy (1907) 1 Ch 256* and *Ramsay* v *Blair L R 1 A C 701* referred to *Held* on the construction of a mining lease that under cl (3) of Part II of the lease the lessees had merely power and liberty to enter upon lands in direct possession of the Raja himself in order to exercise the mineral rights vested in them The implied liberty to enter and work the mines subject to reasonable restrictions is not to be curtailed by the express conditions of the lease unless the intention is apparent Part III of the lease headed ' Restrictions and conditions as to the exercise of the above liberties powers and privileges must be construed as only restricting the liberties and privileges expressly conferred by Part II and not as any restriction upon the general right of access which is implied by law *Earl of Cardigan* v *Armitage 2 B & C 197 107 Eng Rep 361* referred to *Held* also that the defendant acquired no title by adverse possession to the mines and minerals of the land in question. NAWAGARH COAL CO LD v BEHARILAL TRIGUNAT (1916)

20 C W N 1135

——————— *Land Law in Bengal—Mokarari Lease— With all rights* A mokarari lease of lands with all rights (*mai hak hakuk*) does not carry a right to the sub jacent minerals *Sashi Bhusan Misra* v *Jyoti Singh L R 44 I A 46* followed and applied GIRIDHARI SINGH v MEGH LAL PANDEY (1917)

L R 44 I A 246

——————— *Coal mines—Royalty received by proprietor of estate from lessees of coal mines—Liability to Cess under Bengal Cess Act (Bengal Act IX of 1880) ss 6 and 72—Return of annual net profits of coal mines—Income tax* *Held* (upholding the decision of the High Court) that a royalty received by the appellant from person to whom he had leased a portion of his estate in Bengal for the purpose of working the coal mines situated therein was within s 6 and 72 of the Bengal Cess Act (Ben Act IX of 1880) part of the annual net profits of the mines and that he had been properly assessed with cess on such royalty The return required by s 27 was not with regard to the mine owner s profit but had reference to the general net profits of the property The fact that the obligation to make the return was laid on the person most cognizant of the circumstances under which the mine was worked and of the profits derived from it did not alter the character of the royalty received by the proprietor for his share of the property of the mine MANINDRA CHANDRA NANDY v SECRETARY OF STATE FOR INDIA (1910)

I L R 38 Calc 372

——————— *Minerals under the soil right to—grant of surface to permanent tenure holder—reservation as to minerals presumption from—grantor s right to enter the surface holder s land to work minerals transferee of grantor s rights rights of* The plaintiffs obtained from the Rajah of Katras a lease of the underground mines and mineral rights in Mouzah Kumarjuri dated the 2nd October 1899 They were prevented from working the mines by the defendants who claimed both the surface and sub soil rights in the Mouza under a deed from the Rajah of Katras ancestor dated the 21st March 1830 The deed was not produced but it was said to have conferred upon the defendants a *Moghuli Brahmottar* tenure in respect of 830 bighas of land at a rent of Rs 17 *per annum* In appeal the defendants asked the Court to presume a grant in their favour on the basis of a lost grant The Court presumed a grant

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to the defendants as permanent tenure holders of the surface rights of the Mouzah and held that at the time of the grant there must be presumed to have been a severance of the surface rights from the property in the sub soil The surface rights with their incidents became vested in the defendants as tenure holders and the mines and minerals in the Rajah as the owner of the property as if there had been a reservation in his favour *Held further* that by reason of this presumption and by reason of the severance of the tenement and the reservation deemed to have arisen in favour of the Rajah the latter had as incidental to his right of property and ownership in the mines the right by implication of law to enter upon the tenure holder s land for all reasonable and necessary purposes to enable him to work the mines and exercise his mineral rights A transferee of the Rajah s right to the mines and minerals would have the same right to enter the tenure holder s land as the Rajah himself had NAWAGAR COAL CO LTD v BEHARI LALL TRIGUNAIT

1 Pat L J 275

———————*Minerals*—Patni *lease whether conveys underground rights*— Adha Urdha Hak Hakuk *meaning of in a lease—low rent—ignorance of parties to conveyance as to value of sub soil rights effect of* In the absence of express words conveying the underground rights a *patni* lease does not entitle the *patnidar* to work the minerals The words *adha urdha* followed by the words *hak hakuk* in a lease convey the underground rights When sub soil rights are expressly transferred by the terms of a deed the fact that the rent is low or that the parties were not aware at the time of the execution of the deed that there were valuable minerals under the soil does not render the lease invalid RAM LAL KAVIRAJ v RAJA MAHARAJA KUMAR SATYA NIRANJAN CHAKRAVARTY 5 Pat L J 563

——————— *grant of surface effect of—Adverse possession acquisition of title to minerals by—constructive possession—Limitation Act (IX of 1908) Art 120—Bengal Regulation I of 1793 Art 8 (3)—Bengal Regulation XIX of 1793 cl 2 (1)* A grant by a *zamindar* of a tenure in lands within his *zamindari* does not pass the minerals unless it appears clearly from the terms of the grant that the minerals were included in the grant The mere fact that such a grantee has given leases which purport to give a right to the soil and the sub soil of his tenure and that minerals have been worked by the lessees will not convey a title by adverse possession on the grantee as against the *zamindar* from whom he acquired his grant Although possession of a part of a certain property is constructive possession of the whole if the whole is otherwise vacant this constructive possession is an incident of ownership and results from title The doctrine of constructive possession is not applicable to a case where the occupant defends himself on the ground of his possession only without proving any title A wrong doer s rights by adverse possession must be confined to land of which he is in actual possession and this principle applies equally to mines Where an owner of land sells it reserving to himself the mineral he retains possession of the minerals in the same way as if he had not sold the surface Mere non user is not an abandonment of possession and consequently no matter how long mines remain unworked by the owner his right is not barred so long as they are not worked by some one else There are cases in which a title by adverse possession can be made out in respect to minerals but it does not follow that by working a part of the minerals or opening up particular quarries possession over a continuous field of minerals or quarries of which the portion worked forms a part can be acquired A fresh course of action for a declaration that the mineral rights in certain land are vested in the plaintiff arises whenever any particular portion of the minerals is removed The mere fact that no rent is reserved in a *patta* does not necessarily imply that by it a revenue free estate was granted Direct payment of cess on account of rent free lands is not conclusive that those rent free lands constitute a separate estate KUMAR PRAMATHA NATH MALIA v A J MEIK

5 Pat L J 273

MINING LEASE

See LANDLORD AND TENANT

I L R 41 Calc 493
I L R 46 Calc 552
L R 45 I A 275

See MINES AND MINERALS

See TENANTS IN COMMON

I L R 39 Mad 1049

——————— *Parcels—Area stated within specified Boundaries—Alleged Deficiency—Abatement of Rent* The appellant was lessor and the respondents lessees under a mining lease the terms of which were contained in a kabuliyat granting the rights of cutting raising and selling coal beneath 400 bighas of land described in the schedule below in Mauza Dobari the schedule specified boundaries and added right in the coal underneath the 400 bighas of land within these boundaries In a suit to recover arrears of rent the respondents alleged that they were in possession of less than 400 bighas and claimed to be entitled to an abatement of rent *Held* (i) that the construction of the kabuliyat as to the land included in the lease could not be varied by evidence of the negotiations which led to the contract or by evidence that there were not 400 bighas within the specified boundaries (ii) further that the respondents had failed to prove what was the area in fact contained within the boundaries or that of which they had been given possession DURGA PRASAD SINGH v RAJENDRA NARAYAN BAGCHI (1913)

I L R 41 Calc 493
L R 40 I A 223

——————— *Construction—Rule of construction—Issue raised in the pleadings but neither at the hearing nor in appeal not allowed to be raised before the Privy Council* In construing the terms of a deed the question is not what the parties may have intended but what is the meaning of the words which they used Where a grantee of underground and coal mining rights in a village which at the date of the grant had railway communication only by the East India Company stipulated to pay royalty at a certain rate on all coals despatched by the said railway line but in view of the contemplated construction of another line by the Bengal Nagpur Railway Company agreed that if by reason of such construction the freight of coal were reduced by two annas or more

MINOR—*contd*

1 ———— Mortgage executed by—*Money borrowed to discharge debts of father—Contract executed by minor effect of* In this appeal which was one from the decision of the High Court in *Maharaj Singh* v *Balwant Singh I L R 28 All 508* their Lordships of the Judicial Committee on the evidence upheld that decision on the question whether the defendant Maharaj was a minor at the time he signed the mortgage and said Having found as a fact that Maharaj Singh was a minor at that time it is not necessary for their Lordships to consider any other issues This suit has been brought on the mortgage deed of the 28th of October 1892 by the assignee of that mortgage and as their Lordships have held that the mortgage was not made by Sheoraj Singh as the manager of the family or in any respect as representing Maharaj Singh and as Maharaj Singh was then a minor the mortgage deed as against him and his interest in the estate was not merely voidable it was void and of no effect and must be regarded as a mortgage deed to which he was not even an assenting party and as a mortgage deed which did not affect him or his interest in the estate BALWANT SINGH v R CLANCY (1912)

I L R 34 All 296

2 ———— Sale—*Sale in favour of minor void* A sale in favour of a minor is void *Mohori Bibee* v *Dharmodas Ghose I L R 30 Calc 539* followed NAVAKOTTI NARAYANA CHETTI v LOGALINGA CHETTI (1909) I L R 33 Mad 312

3 ———— Custody of—*Determination of custody of minor—Contract of apprenticeship by minor how far enforceable—Injunction against minor for breach of such contract—When Court will take minors from custody of parents or persons selected by them* A minor may bind himself by a contract of apprenticeship if it be for his benefit but such a contract cannot be specifically enforced against him either directly or by restraining him from taking service under others or by restraining others from employing him *De Francesco* v *Barnum 43 Ch D 165* referred to If the contract is for the benefit of the minor apprentice an action will lie for enticing away such apprentice and to recover his earnings Parents and guardians cannot divest themselves of their right of guardianship by any contract A delegation of such right is revocable at any time and the parent or guardian is bound to revoke it if it is used to the detriment of the children and it is open to the Court within whose jurisdiction the children are found to exercise the same power if cause is shown for such interference The jurisdiction of the Courts to take away children from parents or from persons elected by them is a parental one and the Courts must do what a wise parent under the circumstances would or ought to do *The Queen* v *Gyngall (1893) 2 Q B 232 248* referred to The main consideration to be acted upon is the benefit or welfare of the child the welfare of the child means not only its physical but also its moral and religious welfare A male child above the age of 14 and a female child above the age of 16 years will not ordinarily be compelled to remain in custody to which he or she objects and in the case of younger children who are still old enough to form an intelligent preference their wishes will form one of the elements for consideration The Court will remove children from the custody of one from whom cruelty or corruption is apprehended POLLARD v ROUSE (1910) I L R 33 Mad 288

4 ———— Fraud—Misrepresentation—*Minor—Estoppel—Evidence Act (I of 1872) s 115—Co sharer landlord notice to quit by if valid* When a person between 18 and 21 years of age executes a conveyance with the knowledge that his minority has been extended by reason of an order under s 7 of the Guardians and Wards Act in favour of vendees who are not aware of that fact there is misrepresentation and legal fraud on his part and he is estopped from taking advantage of his minority to show that the conveyance by him is inoperative *Mohun Bibi* v *Sarat Chand 2 C W N 18 Dhanmull* v *Ram Chunder I L R 24 Calc 265* relied on *Mohori Bibee* v *Dharmodas Ghose I L R 30 Calc 539 s c 7 C W N 441* referred to SURENDRA NATH ROY v KRISHNA SAKHI DASI (1910)

15 C W N 239

5 ———— Representation of minor—*Appointment of guardian* ad litem—*Absence of affidavit as required by s 456 of the Code of Civil Procedure 1882—Suit by minors to set aside proceedings—Civil Procedure Code 1882 s 443* Where an order was made by Court appointing a person guardian *ad litem* on behalf of certain minors in a suit in which a decree was duly made against them *Held in a suit* by the minors on attaining majority to set aside the decree and sale in execution thereunder that the absence of an affidavit such as is required by the provisions of s 456 of the Civil Procedure Code (Act XIV of 1882) at the time the application for the appointment of a guardian was made was not sufficient to render the proceedings illegal and void as against the minors on the ground that they were not properly represented therein *Walian* v *Banke Behari Pershad Singh I L R 30 Calc 1021 L R 30 I A 182* followed The order being on the record the presumption was in the absence of evidence to the contrary that everything was regularly and properly done MANNU LAL v GHULAM ABBAS (1910)

I L R 32 All 287

6 ———————— *Suit to set aside compromise of and decrees in suits to which minors were parties—Civil Procedure Code 1882 ss 443 456 and 462—Minors unrepresented owing to fraud and misrepresentation of* de facto *guardian whose interest conflicted with theirs—Form of decree—Civil Procedure Code 1908 s 98—Specific Relief Act (I of 1877) s 42—Question of law* In this case the appellants sued for a declaration that a compromise of certain pre emption suits and decrees based thereon made on their behalf in 1899 when they were minors were not binding on them having been obtained by the fraud and misrepresentation of the respondent (who was then their *de facto* guardian and manager of their property) and in proceedings in which they were practically unrepresented and they prayed that they might be restored to the position held by them prior to the date on which the compromise and decrees were made It appeared that although the appellants were described in the proceedings as under the guardianship of one *H P* he had never been properly appointed their guardian *ad litem* by the Court as required by s 443 of the Civil Pro

MINOR—*contd*

cedure Code 1882 that no *bonâ fide* application had ever been made under s 456 to have a guardian *ad litem* appointed by the Court and that the leave of the Court had not been obtained to enter into the compromise on the appellants behalf as was necessary under s 462 *Held* that the appellants were entitled to the declaration they sought *H P* had their Lordships found, been introduced into the suits of 1899 by the respondent as the guardian or next friend of the appellants to advance the interests of the respondent and to defeat the interests of the appellants which conflicted with those of the respondent he had throughout acted under the directions and on behalf of the respondent and in his interest and contrary to the interests of the appellants and the respondent had taken advantage of his position to the detriment of the appellants There was therefore no one to protect them and they were unrepresented in the proceedings which were therefore not binding on them *Manohar Lal* v *Jadunath Singh I L R 28 All 585 L R 33 I A 128* followed S 42 of the Specific Relief Act (I of 1877) which had been applied to the case by the majority of the Court of the Judicial Commissioner was held not to be applicable *Semble* The question whether on certain stated facts the relief which the appellants prayed for should be granted or refused was a question of law within the meaning of s 98 of the Civil Procedure Code (Act V of 1908) and where on a difference of opinion on that question between two Judges of the Court the case was referred under that section to a third Judge that was the only question he had jurisdiction to consider and decide PARTAB SINGH *v* BHABUTI SINGH (1913)

I L R 35 All 487

7 ———————— *Guardian* ad litem *refusing to act—Mitakshara father if proper guardian in suit on mortgage of family property by him—Hindu law Mitakshara family—Debts son s liability for—Mortgage decree if binds infant son who is not represented —Equity of redemption if barred by such decree—Decree form of—Practice—Redemption decree for passed* In a suit on a mortgage executed by a Mitakshara father the father was proposed as guardian *ad litem* of his infant son by the plaintiff but he refused to accept service of notices on him as such and entered appearance only on his own behalf and not as guardian of his son No further step was taken by the plaintiffs to have a guardian *ad litem* appointed for the infant and the suit was decreed *Held* that the infant was not represented in the suit and the decree was therefore not binding on him *Walian* v *Banke Behari I F 30 I A 18 I L R 30 Calc 1021* distinguished *Khiarajmal* v *Diam I L R 32 Calc 296 9 C W N 201* referred to In a suit by the infant for a declaration that the decree was fraudulent and not binding on him it was found that the mortgage was executed for legal necessity and that the infant son was not born at the time of the mortgage *Held* that it would be unfair to drive the mortgagor to a fresh suit to enforce the mortgage against the infant when the case had been decided on the merits and the mortgage found binding on the infant But although the mortgage was binding on the plaintiff he had since his birth a share in the equity of redemption and his right to redeem could not be shut out by a mortgage decree in a suit to which he was not a party Although therefore there was no prayer to be allowed to redeem in this suit decree for redemption was passed BALKISSEN LAL *v* CHOWDHURY TAPESUR SINGH (1911)

17 C W N 219

8 ———————— Decree against—*Effect of if void—Minor sued as major and unrepresented by guardian* ad litem *if party to a suit* A decree against a person who is neither a party nor is properly represented on the record is a nullity and might be disregarded without any proceeding to set it aside *Khiarajmal* v *Diam 9 C W N 201 I L R 32 Calc 296* referred to Where a suit for rent was brought and an *ex parte* decree passed against a person who though sued as a major was found to have been a minor at that time and remained unrepresented by a guardian *ad litem* *Held* that the minor was not a party to the suit and the decree passed against him was nullity *Rashidunnessa* v *Ismail Khan 13 C W N 1182 Narsing* v *Jahi 15 C L J 5* followed *Walian* v *Banke Behary 7 C W N 774 I L R 30 Calc 1021* distinguished *Held* also that the ignorance of the plaintiff as to the minority of the defendant did not affect the rights of the minor PURNA CHANDRA KUNWAR *v* BEJOY CHAND MAHATAB (1913)

17 C W N 549

9 ———————— Guardian—*Custody—Plaint in District Court—Transfer to High Court—Jurisdiction—Letters Patent 1865 cls 13 and 20—Guardians and Wards Act (VIII of 1890) ss 9 10 and 52* The first respondent instituted a suit against the appellant in a District Court by a plaint claiming a declaration that he was entitled to the guardianship and custody of his two minor sons (the added respondents) and for an order that they should be handed over to him The suit having been transferred to the High Court under the Letters Patent 1865 s 13 that Court declared that the minors should be wards of the Court that the first respondent was guardian of their person and ordered the appellant to hand them over to him The minors were in England both when the suit was instituted and when the order was made they were not made parties to the proceedings nor were they represented before the Court *Held* (i) that the District Court had no jurisdiction since the minors were not ordinarily resident in the district as required by s 9 of the Guardians and Wards Act 1890 and since the suit was not instituted by petition as required by s 10 of that Act (ii) that even if the High Court had any jurisdiction with regard to minors beyond that which might have been exercised by the District Court (which it was not determined) the mandatory order ought not to have been made since an attempt to enforce it would expose the appellant to *habeas corpus* proceedings in England and since the minors were not represented before the Court nor adequate steps taken to ascertain their wishes and interests BESANT *v* NARAYANIAH (1914)

L R 41 I A 314

10 ———————— Guardian ad litem—*appointment of procured by suppression of the existence of near relation—Whether decree liable to be set aside —Fraud* In a suit for the recovery of money against a father and his minor son the father refused to act as guardian *ad litem* of his minor

MINOR—contd

whereupon the Court appointed its Head Clerk as guardian on the affidavit of the plaintiff that there was no fit and proper person alive to act as the guardian of the minor while as a matter of fact the plaintiff knew that the minor was living under the protection of his maternal grand father The decree passed in this suit was sought to be set aside by the minor on the ground of fraud *Held* that the statement in the affidavit could not be held to be deliberately false so as to constitute fraud in the absence of any allegation of collusion between the plaintiff and the Head Clerk and the decree could not be set aside unless there was no appointment of a guardian *ad litem* or the appointment was induced by fraud or what the Court would regard as tantamount to fraud *Hanuman Prasad v Muhammad Ishaq I L R 28 All 137 Ramchandra Das v Jots Prasad I L R 29 All 675* and *Babaji bin Kusaji v Maruti 11 Bom H C 18?* distinguished MARUTHAMALAI v PALANI (1912)

I L R 37 Mad 535

11 ———— In solvency—*Provincial Insolvency Act (III of 1907) ss 4 cls (b) (g) 16—Contract Act (IX of 1872) ss 11 47 253 254—Infant adjudication of as an insolvent—Receiver in Insolvency powers of—Hindu joint family—Bankruptcy Act 1883 (46 & 47 Vict c 52) ss 33 102—Insolvency of partner—Dissolution of partnership* In India as in England an infant partner of a firm cannot as such be adjudicated an insolvent *Lovell & Christmas v Gilbert Walter Beauchamp (1894) A C 607* followed The creditors of the firm are not entitled to proceed against him personally being restricted only to his interest in the property of the firm (*vide* s 247 of the Indian Contract Act) There is no difference in principle between the nature of the liability of an infant admitted by *agreement* in a partnership business and that of another (*e g* a Hindu) on whose behalf an *ancestral* trade is carried on by his guardian *Joykisto v Nittyanand I L R 3 Calc 738, Ram Partab v Foolibai I L R 20 Bom 767* referred to It is not open to the Court to direct the receiver in insolvency to deal with assets other than those belonging to the persons who have been adjudicated insolvents *Lovell & Christmas v Gilbert Walter Beauchamp (1894) A C 607* explained Whereas in England the bankruptcy of a partner works dissolution of the partnership without an order of the Court it is not so in India *Vide* ss 253 254 of the Indian Contract Act A receiver appointed under s 16 of the Provincial Insolvency Act merely replaces the insolvent partner in respect of the business of the firm The position of a receiver is the same both with regard to a Hindu joint family partnership assets and acquisitions therefrom SANYASI CHARAN MANDAL v ASHUTOSH GHOSE (1914)

I L R 42 Calc 225

12 ———— Settlement accepted by—*Transfer of property by husband acting as attorney—Impossibility to restore status quo bar to reopening settlement—Ratification* Where by a division of property by independent arbitrators a share was allotted to an infant who after coming of age sold a valuable property so allotted at a profit and it appeared that she was throughout acting with her husband who held a power of attorney from her and of whose acts as attorney she had not complained and who if the infancy had been known would have been appointed her guardian and as guardian would have acted exactly as he had acted as attorney and it was only after the greater part of what she had received had been dissipated that she sought to set aside the transaction on the ground of her infancy *Held* that though there could be no ratification by an infant after coming of age of the invalid power of attorney as it was impossible for her to restore the property she had received and a general redistribution of the property divided could not possibly be ordered she could not be allowed to reopen the settlement *Held* also that he was bound by a transaction which was not concealed from her in any way and formed part of the settlement CHUAH HOOI GUOH NEOH v KHAW SIM BEE (1915)

19 C W N 787

13 ———— Representation of—*Suit to set aside a decree against a minor—Minor properly represented in such suit—Fraud or collusion of guardian* A decree obtained against an infant properly made a party and properly represented in the case cannot be set aside by means of a separate suit except upon proof of fraud or collusion on the part of the guardian BENI PRASAD v LAJJA RAM (1916) I L R 38 All 452

14 ———— Purchase of immoveable property by or—*Suit by purchaser for possession of property purchased—Transfer of Property Act (IV of 1882) ss 54 and 55* A minor is capable of purchasing immoveable property and where such a purchase has been completed by execution and registration of a sale deed he can sue to recover possession of the property purchased upon tender of the balance of the purchase money Such a suit is not a suit for specific performance of a contract and no question of mutuality arises *Mir Sarwarjan v Fakhruddin Mahomed Chowdhuri I L R 39 Calc 232* and *Mohori Bibee v Dharmodas Ghose I L R 30 Calc 539* distinguished. *Shib Lal v Bhagwan Das I L R 11 All 244 Baijnath Singh v Paltu I L R 30 All 125 Velayutha Chetty v Govindaswami Naiken I L R 30 Mad 524 Ulfat Rai v Gauri Shankar I L R 33 All 657 Munni Kunwar v Madon Gopal I L R 33 All 62 Bahauddin v Rafaqat Husain 18 Indian Cases 451 Raghunath Bakhsh v Haji Sheikh Mahomed 18 Oudh Cases 115* and *Muniya Konan v Perumal Konan 24 Mad L J 342* referred to *Navakotti Narayana Chetty v Logalinga Chetty I L R 33 Mad 312* dissented from NARAIN DAS v MUSAMMAT DHANIA (1916)

I L R 38 All 154

15 ———— Mortgage in favour of *minor who has advanced the whole of the mortgage money—Enforceability of by him or by any other person on his behalf—Contract Act (IX of 1872) s 11—Transfer of Property Act (IV of 1882) s 7* A mortgage executed in favour of a minor who has advanced the whole of the mortgage money is enforceable by him or by any other person on his behalf *Mohori Bibee v Dharmodas Ghose I L R 30 Calc 539 30 I A 114* explained and distinguished *Semble* A sale to a minor under similar circumstances is equally good *Navakotti Narayana Chetty v Logalinga Chetty I L R 33 Mad 312* overruled English and Indian Law reviewed RAGHAVA CHARIAR v SRINIVASA RAGHAVA CHARIAR (1916) I L R 40 Mad. 308

16 ———— Liability of, when ancestral trade carried on on his behalf—*Contract Act (IX of 1872) s 247—Interest not contracted for and*

MINOR—*contd*

... recovered ... *Act* (XXXII of 18..) ... A minor on whose behalf ... is ... liable for ... in ... that ... contested to a party ... under ... of the Contract Act. The amount ... have been ... that the ... contract to pay interest was proved and the case was not covered by the ... Act ... no interest should be allowed by way of damages for the ... of the money. ... v. ... (1 IC) 2 C W N 45?

1? ———— ... entered into by guardian of a Hindu minor *for a just purpose* ... —*Form of decree in a suit on bond—Liability of minor and his estate for loan.* Held by AYLING and KUMARASWAMI AYYAR JJ—(a) that on a contract entered into on behalf of a minor by his guardian under which the guardian borrowed money but no charge was created on the minor's estate, no decree can be passed against the minor on his attaining his majority or his estate except in cases in which the minor's estate would have been liable for the obligation incurred by the guardian under the personal law to which he is subject and that (b) a decree can be passed against the estate of a Hindu minor for a debt contracted by his guardian for the marriage of his sister. *Per* WALLIS C J.—A decree cannot be passed against a minor on his attaining his majority or his estate on a covenant entered into on his behalf by a guardian *for his benefit*. RAMAJOGAYYA v. JAGANNADHAN (1918) I L R 42 Mad. 185

18 ———— Advance to guardian to pay off decree *obtained against minor—Liability of minor's estate for advance in excess of requirements—Mortgage.* Where certain co-sharer landlords obtained a decree for the rent of the holding of two co-sharer tenants one of whom was a minor and one of the co-sharer landlords advanced money to the minor's guardian on the security of a mortgage executed by the guardian on behalf of the minor for the purpose of averting a sale of the holding and for the payment of arrears of rent and *the minor's guardian* paid off the whole of the decretal amount and the arrears of rent with the money so advanced *Held* in a suit by the mortgagee for recovery of the mortgage debt that the minor was liable for only half the sum advanced as he was concerned with paying off only half the amount decreed in the rent suit and half the arrears of rent. *Held also* that the money having been borrowed for the *purpose of saving the minor's estate from sale* the latter was liable to refund half the amount of the loan although it was not expressly stated in the mortgage bond that the minor's estate or the minor personally would be liable to repay the money advanced. KALI RAI v. KARU SINGH 3 Pat L J 78

19 ———— Lease in favour of, *whether void—ejectment—Chota Nagpur Tenancy Act (Ben Act VI of 1908) s 41* A lease to a minor imposing a liability on him to pay rent and perform certain covenant is null and void. A person who claims to have entered into possession of land under a lease which is null and void is a mere trespasser and cannot claim protection for ejectment under s. 41 of the Chota Nagpur Tenancy Act 1908. PRABHA ... DAS v. JOOSHUA MANDAL 3 Pat L J 518

20 ———— Agreement by manager that ... *Maintenance*—... In a suit for maintenance for the three years prior to the suit against an ... who was being managed under the Court of Wards the plaintiff an illegitimate son of a ... holder of the estate compromised the suit with the manager of the estate on the following terms—the plaintiff was awarded a certain ... maintenance and it was agreed that he should receive Rs. ?0 *per mensem* as maintenance during the minority of the ward. The manager also covenanted that the ward should continue to pay the plaintiff Rs. ?0 *per mensem* as maintenance after the ward attained majority. The suit was decreed according to the compromise. On attaining majority the ward instituted the present suit to set aside the compromise. The first court held that the decree made the ward personally liable for future maintenance and was therefore invalid. The court held however that the decree should be considered as a decree against the estate and ordered that the defendant should be paid maintenance at the rate of Rs 50 *per mensem* from the estate. *Held* that although the first court had power to set aside the decree based *on the compromise in so far as it bound the plaintiff* personally it had no power to substitute in lieu thereof an entirely different liability which had not in fact been decreed. RAJ KUMAR JAGARNATH PRASAD SINGH v. MIRZA JEBAI BAHADUR 5 Pat L J ?33

21 ———— Agent appointed by guardian—*Liability of agent to account to minor—Settlement of accounts by arbitrator or mediator—Whether liable to be reopened.* An agent appointed by the guardian of a minor is not liable to account to the minor for his acts even though he received properties belonging to the minor. A settlement of account by arbitrators or mediators cannot be reopened except on the ground of fraud. RAMANATHAN CHETTIAR v. MUTHIAH CHETTY (1920) I L R 43 Mad 429

22 ———— Appointment of guardian—*Jurisdiction— Property — Guardians and Wards Act (VIII of 1890) s 9 (2)* A guardian can be validly appointed of the property of a minor in the hands of the administratrix to his father's estate. *Brajanath Dey Sirkar v Anandamayi Dasi 8 B L R 208* relied on. LALIT KUMAR MUKERJEE v. DASARATHI SINGHA (1920) I L R 46 Calc 802

23 ———— Fraudulent representation by minor that he was of age—*estoppel—Indian Evidence Act I of 1872 s 115* Plaintiff sued to recover the principal and interest due on a bond executed by defendant on 4th February 1912. *Defendant pleaded inter alia* that he was not liable as he was a minor on that date. Defendant was born on 10th December 1891 and he was therefore about 20 years and 2 months old when the bond was executed. A guardian had been appointed for him but the guardian resigned and on the 18th May 1910 the District Judge passed an order that though the minor was 18 or 19 years of ... minority would continue till the age of 2... ppointment of a fresh guardian was ... and as the minor

MINOR—*contd*

whereupon the Court appointed its Head Clerk as guardian on the affidavit of the plaintiff that there was no fit and proper person alive to act as the guardian of the minor while as a matter of fact the plaintiff knew that the minor was living under the protection of his maternal grand father The decree passed in this suit was sought to be set aside by the minor on the ground of fraud. *Held* that the statement in the affidavit could not be held to be deliberately false so as to constitute fraud in the absence of any allegation of collusion between the plaintiff and the Head Clerk and the decree could not be set aside unless there was no appointment of a guardian *ad litem* or the appointment was induced by fraud or what the Court would regard as tantamount to fraud. *Hanuman Prasad* v *Muhammad Ishaq I L R 28 All 137 Ramchandra Das* v *Jot Prasad I L R 29 All 675* and *Babaji bin Kusaf* v *Maruti 11 Bom H C 187* distinguished MARUTHAMALAI v LALANI (1912)

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11 ———— In solvency—*Provincial Insolvency Act (III of 1907) ss 4 cls (b) (g) 16—Contract Act (IX of 1872) ss 11 247 253 254—Infant adjudication of as an insolvent—Receiver in Insolvency powers of—Hindu joint family—Bankruptcy Act 1883 (46 & 47 Vict c 52) ss 33 102—Insolvency of partner—Dissolution of partnership* In India as in England an infant partner of a firm cannot as such be adjudicated an insolvent *Lovell & Christmas* v *Gilbert Walter Beauchamp (1894) A C 607* followed The creditors of the firm are not entitled to proceed against him personally being restricted only to his interest in the property of the firm (*vide* s 247 of the Indian Contract Act) There is no difference in principle between the nature of the liability of an infant admitted by *agreement* in a partnership business and that of another (*e g* a Hindu) on whose behalf an *ancestral* trade is carried on by his guardian *Joykisto* v *Nittyanand I L R 3 Calc 738 Ram Partab* v *Foolibai I L R 20 Bom 767* referred to It is not open to the Court to direct the receiver in insolvency to deal with assets other than those belonging to the persons who have been adjudicated insolvents *Lovell & Christmas* v *Gilbert Walter Beauchamp (1894) A C 607* explained Whereas in England the bankruptcy of a partner works dissolution of the partnership without an order of the Court it is not so in India *Vide* ss 253 254 of the Indian Contract Act A receiver appointed under s 16 of the Provincial Insolvency Act merely replaces the insolvent partner in respect of the business of the firm The position of a receiver is the same both with regard to a Hindu joint family partnership assets and acquisitions therefrom SANYASI CHARAN MANDAL v ASHUTOSH GHOSE (1914)

I L R 42 Calc 225

12 ———— Settlement accepted by—*Transfer of property by husband acting as attorney—Impossibility to restore* status quo *bar to reopening settlement—Ratification* Where by a division of property by independent arbitrators a share was allotted to an infant who after coming of age sold a valuable property so allotted at a profit and it appeared that she was throughout acting with her husband who held a power of attorney from her and of whose act as attorney she had not complained and who if the infancy had been known would have been appointed her guardian and as guardian would have acted exactly as he had acted as attorney and it was only after the greater part of what she had received had been dissipated that she sought to set aside the transaction on the ground of her infancy *Held* that though there could be no ratification by an infant after coming of age of the invalid power of attorney as it was impossible for her to restore the property she had received and a general redistribution of the property divided could not possibly be ordered she could not be allowed *to reopen the settlement Held* also that she was bound by a transaction which was not concealed from her in any way and formed part of the settlement CHUAH HOOI GUOH NEOH v KHAW SIM BEE (1915)

19 C W N 767

13 ———— Representation of—*Suit to set aside a decree against a minor—Minor properly represented in such suit—Fraud or collusion of guardian* A decree obtained against an infant properly made a party and properly represented in the case cannot be set aside by means of a separate suit except upon proof of fraud or collusion on the part of the guardian BENI PRASAD v LAJJA RAM (1916) I L R 38 All 452

14 ———— Purchase of immoveable property by or—*Suit by purchaser for possession of property purchased—Transfer of Property Act (IV of 1882) ss 54 and 55* A minor is capable of purchasing immoveable property and where such a purchase has been completed by execution and registration of a sale deed he can sue to recover possession of the property purchased upon tender of the balance of the purchase money Such a suit is not a suit for specific performance of a contract and no question of mutuality arises *Mir Sarwarjan* v *Fakhruddin Mahomed Chowdhuri I L R 39 Calc 232* and *Mohori Bibee* v *Dharmodar Ghose I L R 30 Calc 539* distinguished. *Shib Lal* v *Bhagwan Das I L R 11 All 244 Baijnath Singh* v *Paltu I L R 30 All 125 Velayutha Chetty* v *Govindaswami Naiken I L R 30 Mad 524 Ulfat Rai* v *Gauri Shankar I L R 33 All 657 Munni Kunwar* v *Madon Gopal I L R 38 All 62 Bahauddin* v *Rafaqat Husain 18 Indian Cases 451 Raghunath Bakhsh* v *Haji Sheikh Mahomed 18 Oudh Cases 115* and *Muniya Konan* v *Perumal Konan 24 Mad L J 342* referred to *Navakoti Narayana Chetty* v *Logalinga Chetty I L R 33 Mad 312* dissented from NARAIN DAS v MUSAMMAT DHANIA (1915)

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15 ———— Mortgage in favour of minor *who has advanced the whole of the mortgage money—Enforceability of by him or by any other person on his behalf—Contract Act (IX of 1872) s 11—Transfer of Property Act (IV of 1882) s 7* A mortgage executed in favour of a minor who has advanced the whole of the mortgage money is enforceable by him or by any other person on his behalf *Mohori Bibee* v *Dharmodas Ghose I L R 30 Calc 539 30 I A 114* explained and distinguished *Semble* A sale to a minor under similar circumstances is equally good *Navakoti Narayana Chetty* v *Logalinga Chetty I L R 33 Mad 312* overruled English and Indian Law reviewed RAGHAVA CHARIAR v SRINIVASA RAGHAVA CHARIAR (1916) I L R 40 Mad 308

16 ———— Liability of when ancestral trade carried on on his behalf—*Contract Act (IX of 1872) s 247—Interest not contracted for and*

MINOR—*contd.*

[illegible] Interest Act (XXXII of 1839) [illegible] awarded [illegible] whose [illegible] [illegible] which [illegible] [illegible] than that [illegible] to a portion [illegible] under s. 2 of the Contract Act. The amount [illegible] [illegible] that the [illegible] contract to pay [illegible] was [illegible] by the Interest Act [illegible] should be allowed by way of [illegible] [illegible] [illegible] Kumar [illegible] (1910) 2 C. W. N. 45[illegible]

17 —— [illegible] contracted by guardian of a Hindu minor — [illegible] — *Form of decree in a suit* [illegible] [illegible] *of a minor* [illegible] Held by Wallis C.J. and Seshagiri Ayyar JJ.—(a) that when a contract entered into on behalf of a minor by his guardian under which the guardian borrowed money but no charge was created on the minor's estate, no decree can be passed against the minor on his attaining his majority or his estate except in cases in which the minor's estate would have been liable for the obligation incurred by the guardian under the general law to which he is subject, and that (b) a decree can be passed against the estate of a Hindu minor for a debt contracted by his guardian for the marriage of his sister. *Per* Wallis, C. J.—A decree cannot be passed against a minor on his attaining majority or his estate on a covenant entered into on his behalf by a guardian for his benefit. [illegible] *v.* Jagannathan (1918) I. L. R. 42 Mad 185

18 ———— Advance to guardian to pay off decree *against minor*—*Liability of minor's estate for advance to* [illegible]—*Mortgage.* Where certain [illegible] landlords obtained a decree for the rent of the holding of two co-sharer tenants, one of whom was a minor, and one of the co-sharer landlords advanced money to the minor's guardian on the security *of a mortgage executed by the guardian on behalf* of the minor for the purpose of averting a sale of the holding and for the payment of arrears of rent and the minor's guardian paid off the whole of the decretal amount and the arrears of rent with the money so advanced, *Held* in a suit by the mortgagee for recovery of the mortgage debt that the minor was liable for only half the sum advanced as he was concerned with paying off only half the amount decreed in the rent suit and half the arrears of rent. *Held also* that the money having been borrowed for the purpose of saving the minor's estate from sale the latter was liable to refund half the amount of the loan although it was not expressly stated in the mortgage bond that the minor's estate or the minor personally would be liable to repay the money advanced. Kali Pai *v.* Karu Singh 3 Pat L J 78

19 ———— Lease in favour of, *whether void*—*ejectment*—*Chota Nagpur Tenancy Act (Ben Act VI of 1908) s 41.* A lease to a minor imposing a liability on him to pay rent and perform certain covenant is null and void. A person who claims to have entered into possession of land under a lease which is null and void is a mere trespasser and cannot claim protection for ejectment under s. 41 of the Chota Nagpur Tenancy Act 1908. Pratima [illegible] Das *v.* Joogiram Mandal 3 Pat L J 518

20 —— —— Agreement by manager that minor would pay maintenance [illegible] — [illegible]. In a suit for maintenance for the three years prior to the suit against an estate which was being managed under the Court of Wards the plaintiff an illegitimate son of a former holder of the estate compromised the suit with the manager of the estate on the following terms:—the plaintiff was awarded a certain sum as past maintenance and it was agreed that he should receive Rs. [illegible]0 *per mensem* as maintenance during the minority of the ward. The manager also consented that the ward should continue to pay the plaintiff Rs. [illegible]0 *per mensem* as maintenance after the ward's attained majority. The suit was decreed according to the compromise. On attaining majority the ward instituted the present suit to set aside the compromise. The first court held that the decree made the ward personally liable for future maintenance and was therefore invalid. The court held however that the decree should be considered as a decree against the estate and ordered that the defendant should be paid maintenance at the rate of Rs. 50 *per mensem* from the estate. *Held* that although the first court had power to set aside the decree based on the compromise in so far as it bound the plaintiff personally it had no power to substitute in lieu thereof an entirely different liability which had not in fact been decreed. Raj Kumar Jagarnath Prasad Singh *v.* Mirza Ekbal Bahadur 5 Pat L J 33

21 ———— Agent appointed by guardian —*Liability of agent to account to minor*—*Settlement of account by arbitrator or mediator*—*Whether liable to be reopened.* An agent appointed by the guardian of a minor is not liable to account to the minor for his acts even though he received properties belonging to the minor. A settlement of account by arbitrators or mediators cannot be reopened except on the ground of fraud. Ramanathan Chettiar *v.* Muthiah Chetty (1920) I L R 43 Mad 429

22 ———— Appointment of guardian—*Jurisdiction— Property — Guardians and Wards Act (VIII of 1890) s 9 (2).* A guardian can be validly appointed of the property of a minor in the hands of the administratrix to his father's estate. *Brajanath Dey Sirkar v. Anandamayi Dasi 8 B L R 208* relied on. Lalit Kumar Mukerjee *v.* Dasarathi Singha (1920) I L R 48 Calc 802

23 ———— Fraudulent representation by minor that he was of age—*Estoppel—Indian Evidence Act I of 1872 s 115.* Plaintiff sued to recover the principal and interest due on a bond executed by defendant on 4th February 1912. Defendant pleaded *inter alia* that he was not liable as he was a minor on that date. Defendant was born on 10th December 1891 and he was therefore about 20 years and 2 months old when the bond was executed. A guardian had been appointed for him but the guardian resigned and on the 18th May 1910 the District Judge passed an order that though the minor was 18 or 19 years of age and m[illegible] ould continue till the age of 21 as the [illegible] of a fresh guardian was discretiona[illegible] he minor

MINOR—*contd*

did not wish a fresh guardian to be appointed and was old enough by appearance to act for himself no fresh guardian need be appointed. After this defendant managed his own affairs and acted as a man who has attained majority would do. The plaint alleged that the dealings were entered into on defendant's assurance that he had become an adult. This was disputed by defendant but the High Court found on the evidence (contrary to the finding of the District Judge) that the defendant did represent himself to be of full age and that the plaintiff was misled by the false representation. *Held* that s 115 of the Evidence Act is applicable to the case and that the defendant's plea of minority can not be heard. *Ganesh Lal* v *Bapu* (*I L. R 21 Bom 198*) *Nelson* v *Stocker* (*4 de Gex and J 458*) *dictum of Turner L J cited in I L R 26 Calc. at page 393* and *Levene* v *Brougham* (*Times L. R Vol 24 p 801*) followed. *Dharmo Das Ghose* v *Brahmo Dutt* (*I L. R 26 Cal 616*) and *Mohori Bibi* v *Dharmo Das Ghose* (*I L. R 30 Calc. 539 P C*) distinguished. *Dharmull* v *Ram Chandra Ghose* (*I L. R 24 Calc 265 F B*), *Brahmo Dutt* v *Dharmo Das Ghose* (*I L. R 26 Calc 381 F B*) *Sarat Chand Mitter* v *Mohun Bibi* (*I L. R 25 Calc 371 F B*) and *Balak Ram* v *Dadu* (*6 P R 1910*) not followed. WASINDA RAM v SITA RAM I. L. R 1 Lah 389

MINOR CO-PARCENER

———— Purchaser from—

See PARTITION SUIT

I L. R 45 Bom. 983

MINOR REVERSIONER

See HINDU LAW—JOINT FAMILY PROPERTY I L. R 47 Calc 274

MINOR WIDOW

See GUARDIAN I. L. R 42 Calc 953

MINORITY

See CIVIL PROCEDURE CODE, 1908—

s. 48. I L. R 39 Bom 256

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I L. R 41 All. 473

See HINDU LAW—ALIENATION

I L. R 40 Calc 866

See LIMITATION ACT (IX OF 1908)—

s 7 I L. R 41 All. 435

SCH I ART 152 (6) ...

I. L. R 39 All. 620

See MINOR.

See TITLE, PROOF OF

I. L. R 45 Calc 909

———— of Mahomedan when to cease—

See PENAL CODE (ACT XLV OF 1860)

s. 363 I L. R 37 Mad. 557

MIRASDAR

See KADIM INAMDAR

I L. R 42 Bom 112

———— general rights of, over house-sites and waste in villages—

See MIRASI VILLAGE.

I. L. R. 40 Mad. 410

MIRASDAR—*contd*

———— Holding under a Kadim Inamdar who is a grantee of the soil as well as of the royal share of revenue—

See LAND REVENUE CODE (BOM. ACT V OF 1879) s. 217

I L. R 45 Bom 61

MIRASI LEASE

See SARANJAM I L. R 34 Bom. 329

MIRASI LEASE AND MORTGAGE

See HEREDITARY OFFICES ACT (BOM III OF 1874) ss II IIA.

I. L. R 37 Bom. 57

MIRASI VILLAGE.

———— *House-sites in—Ownership of—Legal presumption of ownership in Government and not in mirasdars—Prescription or user by mirasdars effect of—General rights of mirasdars over house-sites and waste in villages* The plaintiffs claiming to be mirasdars of a mirasi village in the Chingleput district sued to eject certain persons from a portion of the gramanattam (house-sites) which the defendants claimed to hold and enjoy under a patta granted to them by the Government. On the plea taken by the Government that the Government and not the mirasdars are the owners of house-sites in mirasi villages the following question was referred to the Full Bench "*Whether in a mirasi village the mirasdar is entitled to recover possession of a house-site held under a patta from Government?*" On a review of the history of mirasi tenure in the Presidency both before and after the establishment of the British Government and on a review of several revenue and judicial records relating to the question *Held* by the Full Bench —In the absence of proof to the contrary the presumption is that the Government and not the mirasdars are the owners of house-sites in mirasi villages *Per* WALLIS C J.—But where there is evidence of user by the mirasdars the presumption of their ownership readily arises *Per* AYLING J —The mirasidars may show that they are the owners by proving a previous grant by Government or prescription as against the Government *Per* KUMARASWAMI SASTRIYAR J —(i) In mirasi villages the rights of Government over waste (including nattam and cheri) are subject to the rights of the mirasidars (ii) The nature and extent of such rights are not uniform throughout the Presidency but vary and the onus is on the mirasidars to prove that any specified incidents attached to mirasi rights in any particular district there being no presumption that gramanattam is the exclusive property of the mirasidars (iii) The rights of mirasidars over waste are not extinguished by the mere fact that the Government grants pattas to strangers *Secretary of State for India* v *Bai Rebai I L. R 34 Bom 635 Sakharam Rau* v *Lachmana Goundan I L. R 2 Mad 149 Sivarama Naicken* v *Vaithi Purva Charu I L. R 26 Mad 371 Secretary of State for India* v *M Krishnayya I L. R 28 Mad 257 Vasudeva Gramani* v *Venkataram Reddi I L R 30 Mad 510* and *Bhadrappa* v *The Collector*

MISDIRECTION—*contd*

ss 24 27 30 It is a misdirection which must have misled the Jury to instruct them to take into consideration statements not amounting to confessions by an accused as against the co accused It is a misdirection to put to the Jury and to leave it to them to determine whether a confession to a Magistrate and how much of a confession to the police are admissible It is the duty of the Judge to determine the question of the admissibility of evidence in accordance with the law on the subject and of the Jury to estimate the value of such evidence after its admission by the Judge The Judge should avoid the use in the charge to the Jury of interrogative expressions assuming the guilt of the accused such as *Is not this* or *Does not that* and of slang and colloquial phrases S 27 of the Evidence Act qualifies not only ss 25 and 26 but also s 24 *Queen Empress v Babu Lal I L R 6 All 509* approved Though the accused has himself produced the stolen articles so much of his anterior statements as led to the discovery are admissible under s 27 of the Evidence Act but not statements contemporaneous with the act of production such as *I got these ornaments as my share in the dacoity* *Queen Empress v Nana I L R 14 Bom 260* and *Legal Remembrancer v Chema Nasliya I L R 25 Calc 413* referred to S 27 does not render admissible the whole history of the investigation or an account of the various steps by which the police obtained and worked up clues and finally succeeded in arresting the accused Under the section the whole of the statement of an accused is not admissible but only so much as led directly to the discovery or related directly to the fact discovered *Per* SHAMSUL HUDA J If a single statement contains more information than is contemplated by s 27 the whole statement is not admissible but only the particular information which led to the discovery Where an accused states to the police that he killed *A* with a knife and concealed the corpse at a particular place the only part of the information admissible under the section is that relating to the concealment and not the murder *Queen Empress v Babu Lal I L R 6 All 509* followed *Per* TEUNON J Verification proceedings are not wholly illegal and may be useful in testing the truth of the confession *e g* as to the accused s knowledge of the localities he has mentioned or as furnishing clues to a further inquiry *Per* SHAMSUL HUDA J Verifications in the company of the accused lead to very great abuses and should be avoided though a verification independently of and unaided by the accused is unobjectionable *Held per* CURIAM In connection with such proceeding the Courts must ensure against the reception of evidence not strictly admissible Statements to the verifying Magistrate when not recorded in the manner provided by s 164 of the Criminal Procedure Code are inadmissible and cannot be proved orally by such Magistrate *Emperor v Radhe Hulaai* [illegible] *C W N 2?0* *King Emperor v Pajani Ratto Koer 8 C W N 22* *Queen Empress v Bhairab Chunder Chuckerbutty* [illegible] *C W N 70?* and *Queen Empress v* [illegible]*ran I L R 9 Mad 2?4* followed *Per* SHAMSUL HUDA J Even if the statements are recorded after the verification is complete it would be difficult to hold that they were voluntary AMIRUDDIN AHMED v EMPEROR (1917) I L R 45 Calc 557

MISDIRECTION—*contd*

——— *Misdirection to Jury—Prosecution duty of to produce material evidence—Circumstantial evidence—Presumption of innocence—Criminal Procedure Code (Act V of 1898) s 342—Court s power to draw inferences from answers of accused—Evidence Act s 106* The appellant and two other persons *P* and *A* were accused of having committed murder of a man travelling in a boat of which they were the boatmen *R* was tried first and at this trial *A* was given a pardon and examined as a witness The appellant was tried subsequently and the prosecution did not examined *A* The jury by a majority returned a verdict of guilty against the appellant who was convicted by the Sessions Judge In appeal the High Court set aside the conviction on the ground of misdirection to the jury *Held* (as to the non examination of *A*) *Per* TEUNON J—That the case of *Dhannoo Kas I L R 8 Calc 121* is not an authority for the proposition that the prosecution is required to produce and examine such a witness but as he was examined as an approver at the former trial of *P* it would have been more satisfactory if the prosecution had at least secured his attendance and failing in this had given detailed evidence of the efforts made in that direction *Per* SHAMSUL HUDA J—That the omission to direct the attention of the jury to the question whether the prosecution was bound to call *A* as a witness and whether there was sufficient explanation why the prosecution did not call him was a defect in the charge which prejudiced the accused That in the absence of anything to show that an effort was made to ascertain his whereabouts and to produce him in Court his absence from his village deposed to by one of the prosecution witnesses was not a sufficient explanation for his non production *Held* (as to the direction of the Sessions Judge that the accused had said nothing about what had happened to the deceased and had given no explanation as to how he came by his death and this was a strong point against the accused) *Per* TEUNON J—That where a *primâ facie* case of circumstances making out or tending to support the charge against the accused is established and the accused withholds evidence in disproof or explanation available to him and not accessible to the prosecution an inference unfavourable to the accused may legitimately be drawn Under s 342 Criminal Penal Code it is open in the Court and jury to draw such inferences as they think just from the answers made by the accused to the necessary questions put to him by the Court *Per* SHAMSUL HUDA J—That the accused is merely on the defensive and owes no duty except to himself that he is at liberty as to the whole or any part of the case against him to rely on the witnesses for the prosecution or to call witnesses or to meet the charge in any other way he chooses and no inference unfavourable to him can properly be drawn because he takes one course rather than the other Where in a criminal case there is a conflict between presumption of innocence and any other presumption the presumption of innocence prevail *Per* SHAMSUL HUDA J (TEUNON J dissenting) The strength of this presumption varies according to the seriousness of the charge upon which an accused person is put on his trial The greater the crime the stronger is the proof required for conviction *Per* SHAMSUL HUDA J—That whatever force a presumption arising under s 106 of the Indian Evidence Act

MISDIRECTION—*contd*

may have in civil c in l s in us criminal ca es in a trial for murder it is extr ly weak in com parison with th d nart pre ption of innocence *Held* (a to th direct n t the jury that th y mu t not acquit the accused simply because in their opin n he m y p ly n t be guilty but tha they should l do so if they thought the prosecution evidence was f r good reason not satisfactory) *Per* SHAMSUL HUDA J —That th case tested on circum s art al evidence and before the jury could find the prisoner guil y they had to be sati fied not only that the circumstances were con s ent with his having committed the act but that the facts were such as to be incon i tent with any other rational conclusion than that the prisoner was the guilty person That the prosecution evidence may be quite satisfactory and yet may leave ample room for doubt regarding the complicity of the accused in the crime and it was the duty of the Judge to have given the jury clear and unambiguous direction on these point ASHRAF ALI *v* KING EMPEROR (1917)
21 C W N 1152

MISJOINDER

See CHARITABLE TRUSTS
I L R 34 Mad. 406

See COMMON CARRIER, LIABILITIES OF
I L R 38 Calc 28

See JURY RIGHT OF TRIAL BY
I L R 37 Calc 467

See PRELIMINARY DECREE
I L R 37 Bom 60

MISJOINDER OF CAUSES OF ACTION

See ADMINISTRATOR 2 Pat L J 642

See AGRA TENANCY ACT (II OF 1901) s 34 I L R 35 All 512

See CIVIL PROCEDURE CODE 1882 ss 13 44 I L R 35 Bom 297

See CIVIL PROCEDURE CODE 1908—
s 47 O XXI RR 100 AI 10
I L R 40 Mad 964

O I R 3 I L R 40 All 7

O II R 5 I L R 38 Bom 120

See PRE EMPTION I L R 32 All 14

1 ———— *Persons whose separate rights have b en infringed by a single act of another cannot join in one suit—Course to be adopted wh n there is a misjoinder of causes of action—Civil Procedure Code Act V of 1908 s 99* Where the separate right of each of several persons is affected by a single act of another person each of such persons has a separate cause of action against such other person and they cannot bring a suit jointly against such other p rson *Smurthwaite* v *Hannay (1894) A C 494* referred to Where there has been a misjoinder of cause of action which has prejudiced the defendant on the merits and no objection to such misjoinder was taken in the written statement or at the settlement of issues the provisions of s 99 of the Civil Procedure Code Act V of 1908 will apply and the ends of justice will be suffi i ently met by findings in the case of each separa tely instead of dismissing the suit AIYAVU MUPPAN *v* VELLAYA NADAN (1910)
I L R 34 Mad 55

MISJOINDER OF CAUSES OF ACTION—*contd*

———————— Decision that a suit as framed not maintainable is a judgment and is appealable und r cl 15 of the Letters Patent NARENDRA NATH ROY *v* BROJENDRA NATH DAS (191)
21 C W N 794

MISJOINDER OF CHARGES

See CHARGE I L R 40 Calc 318 319
I L R 41 Calc 66 7.2
I L R 42 Calc 957
I L R 46 Calc 712
I L R 47 Calc 154

See CRIMINAL PROCEDURE CODE ss 2 2 ( ) 33 I L R 38 All 42

s 3 3 I L R 1 Lah 562

See EXCISE I L R 41 Calc 694

See PENAL CODE (ACT XLV OF 1860) s 408 I L R 40 All 565

———————— *Joint trial for offences under s 1 0 B of the Penal Code and ss 19 (f) 20 of th Arms Act committed in pursuance of the object of the conspiracy—Identity of transaction—Criminal Procedure Code (Act V of 1898) s 39—Joint possession of arms—Mere keeping of fire arms not an offence Fire arms whether inclusive of parts of the same—Arms Act (XI of 18 8) ss 4 5 14 19(a) (f) 0—Criminal conspiracy proof of —Punishment when act contemplated not done—Penal Code (Act XLV of 1860) ss 109 116 120B* A charge of criminal con piracy to manufacture rms un ler s 1 0B of the Penal Code read with 19(a) of the Arms Act (XI of 18 8) may be tried jointly with charges of offences under ss 19 (f) and 0 f the latter Act committed in pur suance of th bject of the conspiracy As long a the conspiracy continu s the tran action which began with th f rming of the common intention ntinues and the offences under ss 19 (f) and 0 of the Arms Act are committed in the course of the same tr n a tion *Legal Remembrancer Bengal* v *Mon Mohan Roy 19 C W N 6 2 I C L J 19* followed Where two persons rented a house and lived in it and parts of arms were found in one of the rooms —*Held* that both being in joint occupation of the house were in joint possession of the articles so found The word fire arms in s 14 read with the meaning of arms in s 4 of the Arms Act includes parts of fire arms Fire arms means only arms fired by gunpowder or other explosives *Ahmed Hossein* v *Queen Empress I L R 27 Calc 692 Emperor* v *Dhan Singh 5 Cr L J 435 3 A L J 3* followed The offence under ss 5 and 19 (a) of the Arms Act is not a mere keeping of arms but a keeping of the same for sale In cases of conspiracy the agreement between the con pirators cannot generally be directly proved but only inferred from the established facts of the case Wh re two persons took a house in which a con siderable number of pieces of fire arms was found with tools and implements and work had been actually done to some of the parts of fire arms the Court may and ought to infer a conspiracy to manufacture arms *Per* CURIAM Where there is only a conspiracy to manufacture arm without an actual manufacture the sentence should be imposed under s 1 0B of the Penal Code read with s 19 (a) of the Arms Act and s 116 of the Penal Code and the maximum term of impri on

MISJOINDER OF CHARGES—*contd*

ment awardable under these sections is 9 months *rigorous imprisonment* Per BEACHCROFT J The punishment awardable under s 120B of the Penal Code varies according as the offence has or has not been committed in consequence of the conspiracy If an offence has been committed the *punishment is that provided by s 109 of the* Penal Code though strictly speaking there should not be a conviction in such cases of conspiracy but of abetment If it has not been committed the punishment is governed by s 116 of the Penal Code HARSHA NATH CHATTERJEE v EMPEROR (1914) I L R 42 Calc 1153

MISJOINDER OF PARTIES

See CIVIL PROCEDURE CODE (1908) O 1 R 3 I L R 36 All 406
s 99 I L R 1 Lah 295
See PRE EMPTION I L R 32 All 14
I L R 41 All 423

See RELIGIOUS ENDOWMENTS ACT 1863
s 7 1 Pat L J 393

———— Joint trial—*Commission of criminal breach of trust in the same transaction as abetment of cheating and attempt to cheat and as part of a common design—Joint trial of one accused under ss 408 and $\frac{40}{109}$ with another under ss $\frac{40}{511}$ of the Penal Code—Legality of separate sentences—Concurrent sentences—Criminal Procedure Code (Act V of 1898) s 239* Where *A* a railway ticket collector made over two used tickets which he had collected from passengers to *B* and instructed him to apply for a refund of the fares covered by the same as unused tickets at the place of issue and the latter proceeded there and made such an application but was discovered in the act —*Held* that the joint trial of *A* on charges under ss 408 and $\frac{40}{109}$ and of *B* under ss of the $\frac{420}{511}$ Penal Code was legal under the provisions of s 239 of the Criminal Procedure Code *Parmeshwar Lal v Emperor 13 C W N 1089* distinguished *Subrahmania Ayyar v King Emperor I L R 25 Mad 61* referred to *Held* also that *A* had committed two distinct offences in the same transaction and that separate sentences were not illegal, though concurrent sentences were under the circumstances more appropriate *Re Koujan 7 Mad H C R 375* referred to The two parts of s 239 of the Criminal Procedure are not mutually exclusive so that if *A* includes *B* to cheat and *B* attempts to do so they may be tried together *for abetment of and attempt at cheating respectively* and if in the course of the same transaction *A* commits the separate offence of criminal breach of trust in furtherance of the conspiracy to cheat he may be separately charged for such offence at the same trial KALI DAS CHUCKERBUTTY v EMPEROR (1911) I L R 38 Calc 453

———— *Wrongful confinement on one day wrongful confinement and assault of the same persons on a subsequent day—Identity of transaction—Unity of object—Criminal Procedure Code (Act V of 1898) s 239* Where in consequence of certain persons having killed a cow on a zamindar s estate contrary to practice and eaten its flesh they were taken to the *cutcherry* on the 14th December fined therefor and confined till they had furnished security for the payment of the fine within three days and on their failure to do so were again taken to the *cutcherry* and detained there and on information given to the police one of them was beaten and all ejected —*Held* that the illegal confinement on the first day and the similar confinement and assault on the second day were parts of the *same transaction the object of the accused on* both days being the same *viz* to punish the persons for a breach of the rule by extorting the fine and the assault on the second day being the conclusion of the transaction and that the joint trial of the accused for offences under s 347 of the Penal Code committed on the 14th and 18th and for that under s 352 on the latter date by them was legal *Emperor v Datto Hanmant Shahapurkar I L R 30 Bom 49* and *Emperor v Sherufalli Allibhoy I L R 27 Bom 135* approved *Budhai Sheikh v Emperor I L R 33 Calc 292* and *Gul Mahomed Sircar v Cheharu Mandal 10 C W N 53* distinguished DEPUTY LEGAL REMEMBRANCER v KAILASH CHANDRA GHOSE (1914)
I L R 42 Calc 760

———— *Parties—Appeal—causes of action—Practice—Judgment—Civil Procedure Code (Act V of 1908) O I rr 1 and 3 O II r 3—Letters Patent 1865 cl 15* An appeal lies under the Letters Patent from an order of the High Court on its Original Side refusing to allow plaintiff to proceed in one suit against several defendants on the ground of misjoinder and giving him time to elect how he would proceed with his suit and which of the defendants he would retain on the *record* O I r 1 and O I r 3 of the Civil Procedure Code apply to questions of joinder of parties as also of causes of action *Umabai v Bhau Balwant I L R 34 Bom 358* and *Jankibai v Shriniwas Ganesh I L R 38 Bom 120* dissented from The plaintiff brought a suit against four sets of defendants for the recovery of certain documents of title and the goods covered thereby and *in the alternative* for damages In his plaint he alleged that the goods in suit were *his property* that the defendant No 1 obtained from him the documents of title relating *thereto by fraud* and made them over to defendant No 2 that defendant No 2 knowing that defendant No 1 had no title either to the documents or to the goods wrongfully dealt with them and sold the goods to defendants Nos 3 and 4 that defendants Nos 3 and 4 wrongfully claimed to retain the goods and the documents of title and lastly that *one of the documents of title is* a railway receipt was pledged by defendant No 1 to defendant No 5 though the goods covered by it were in the possession of defendant No 3 *Held that* the suit was not bad for misjoinder of parties and causes of action RAMENDRA NATH ROY v BRAJENDRA NATH DASS (1917)
I L R 45 Calc 111

———— *Property received by receivers separately and at different times—Joint trial of receivers legality of—Criminal breach of trust at one place and dishonest receipt subsequently at another place—Joint trial of thief and receivers legality of—Some of the offences charged not committed in the same transaction—Illegality vitiating the whole trial—Criminal Procedure Code (Act V of 1898) s 239* Where property is stolen and

MISJOINDER OF PARTIES—*contd*

the proceeds [illegible] are received by different persons separately and at different times they cannot be tried together [illegible] *Emperor* I L R 43 Calc [illegible] The joint trial of two receivers who had received [illegible] separately and at different times was therefore held illegal When goods are stolen and subsequently received by three persons the legality of the joint trial of the thief and receiver depends upon whether the thief and the receivers are parts of the same transaction [illegible] *Emperor* [illegible] The joint trial of the petitioner for criminal breach of trust committed [illegible] of two receivers who received the property subsequently at *J* was held bad in law To justify a joint trial of several persons all the offences charged must have been committed by them in the one and the same transaction If any of the offences so charged were not committed in the same transaction the whole trial is illegal under s 239 of the Criminal Procedure Code for misjoinder OHI BHUSAN ATHIKARI v EMPEROR (1918)

I L R 46 Calc 741

MISJOINDER OF PERSONS AND OFFENCES

See CHARGES I L R 46 Calc 712

MISREPRESENTATION

See ADVERSE POSSESSION I L R 40 Calc 1[illegible]3

See CHUKANI RIGHT I L R 42 Calc 28

See COMPANY I L R 42 Bom 264

MISTAKE.

See CLERICAL MISTAKE. I L R 39 Calc 265

See CONTRACT ACT (IX OF 1872) ss 20 [illegible] I L R 40 Bom 638

See DECREE I L R 40 Bom 118
3 Pat L J 465

See REGISTRATION I L R 41 Calc 972

See REGISTRATION ACT 1877 ss 17 49 I L R 34 Bom 202

See RES JUDICATA 2 Pat L J 313

See SALE IN EXECUTION OF DECREE I L R 41 Calc 590

———— amendment of—

See POWER OF ATTORNEY I L R 37 Calc 399

———— in description of plaintiff—

See CIVIL PROCEDURE CODE ACT (V OF 1908) O I R 10 I L R 40 Mad 743

———— in drawing up of a decree—

See CIVIL PROCEDURE CODE (1908) s 152 I L R 37 All 323

———— in sale deed—

See EVIDENCE ACT (I OF 1872) s 92 CL (a) I L R 39 Mad 792

———— rectification of—

See DECREE I L R 40 Bom 118

MISTAKE—*contd*

———— Discovery of when first Court's decree was passed—

See LIMITATION ACT (1908) SCH I ART 96 I L R 45 Bom 582

———— *Mistake evidence of—Similar mistake in other documents—Admissibility—Concurrent finding of fact based on no evidence* The proper description of houses in towns for the purpose of registration is by the street in which they are situated and the number which they bear in that street Where a stranger to a mortgage decree passed in the Original Side of the High Court who had previous thereto acquired a title in property actually intended to be conveyed (all of which was outside Calcutta) proved that there was no property in Calcutta bearing the street name and number given to the only item of Calcutta property included in the mortgage and that the property in Calcutta which in fact answered the description of that property by metes and bounds given in the mortgage deed did not belong to the mortgagor *Held* that the onus of proving (as it was open to him to prove) that there was a clerical or other error in the description of the property and that in fact an existing property situated in Calcutta was intended by both parties to be mortgaged was on the mortgagee decree holder That to prove this the mortgagee should have examined himself as also his mortgagor That as no evidence whatever was given to prove this case it was not open to the Courts in India to come to the conclusion that the entry of the property was a mistake Evidence to show that the mortgagor had purported to mortgage with other mortgagees the same property under the same description and had been compelled by them to consent to rectification was irrelevant at the trial to prove that the entry in the document was a mistake That the principle of concurrent findings of fact did not apply to such a case as it was a case of no evidence and it was open to the Privy Council to hold from the conduct of the mortgagee in not examining himself or his mortgagor and from other evidence in the case that the entry was intentionally fictitious HARENDRA LAL ROY CHOWDHURI v HARI DASI DEBI (1914) I L R 41 Calc 972
18 C W N 817

———— *Suit to set aside previous decree on ground of mistake—Competence of compromise and decree thereon—Rectification—Fraud* A decree can be set aside by suit on the ground of fraud if of the required character But a suit does not lie to set aside a decree in a previous suit on the ground that the Judge in passing that decree made a mistake *Jogeswar Atha* v *Ganga Bishnu Ghattack 8 C W N 473* dissented from *Mahomed Golab* v *Mahomed Suliman I L R 21 Calc 612* *Sadho Misser* v *Golab Singh 3 C W N 375* and *Bhands Singh* v *Doulat Ray 17 C W N 82 15 C L J 675* referred to While in the case of a compromise as the contract is capable of being rectified for an appropriate mistake so as the necessary consequence is the decree which is merely a more formal expression given to that contract *Huddersfield Banking Co Ld* v *Henry Lister and Sons Ld (1895) 2 Ch 273* followed KUSODHAJ BHUKTA v BRAJA MOHAN BH[illegible]A (1915)

[illegible] R 43 Calc 217

MOGULI RENT

———— - *Moguli rent meaning of* Moguli is a word of doubtful meaning and at the best imports no more than that the rent assessed represents a proportion of the Government revenue NAWAGARH COAL CO LD *v* BEHARILAL TRIGUNAIT (1916) 20 C W N 1135

MOKARARI LEASE—*contd*

See LANDLORD AND TENANT (LEASE) 14 C W N 268

See LEASE (11) I L R 45 Calc 87

See MINERALS L R 44 I A 246

MOMBASA, MIGRATION TO

See SUCCESSION L R 43 I A 35

MONEY

———— left with purchaser for payment to mortgagee—

See MORTGAGE (SALE OF PROPERTY) I L R 38 All. 209

———— suit for—

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887) SCH II ART 3 I L R 37 Mad. 533

MONEY DECREE.

See EXECUTION OF DECREE. I L R 45 Calc 520

See OCCUPANCY HOLDING I L R 48 Calc 181

———— execution of—

See LIMITATION (44) I L R 45 Calc 630

MONEY HAD AND RECEIVED

———— *Money deposited in usum jus habentis improperly withdrawn by a person not entitled to it* Where money is deposited in Court *in usum jus habentis* and it is withdrawn by a person who is declared not to have any right thereto the money so obtained may properly be held to be received for the use of the person entitled to it. *Litt v Martindale 18 C B 314* referred to MAHDI HUSAIN v SUKH CHAND (1911) I L R 33 All 450

MONEY LENDER

See CIVIL PROCEDURE CODE (ACT V OF 1908) SS 115 AND 151 *I L R 38 Bom 638*

MONEY ORDER

———— Receipt on—

See STAMP ACT S 65 I L R 34 All. 192

MONEY PAID UNDER DECREE

———— suit for—

See VOLUNTARY PAYMENT I L R 40 Calc 598

MOOPU

See HINDU LAW—PARTITION I L R 44 Mad 740

MOPLA

See MAHOMEDAN LAW—GIFT I L R 36 Mad 385

MORPHIA

———— Whether included in the term "opium"—

See OPIUM ACT 1878 S 3 I L R 1 Lah 443

MORTGAGE

See ADVERSE POSSESSION I L R 33 All 463
I L R 36 Mad 97
I L R 44 Calc 425
23 C W N 815

See AGRA TENANCY ACT (II OF 1901)
- ss 19 20 I L R 32 All 383
- s 20 I L R 33 All 136
- I L R 37 All 278
- s 21 I L R 33 All 779

See AGREEMENT AGAINST PUBLIC POLICY I L R 40 Calc 113

See ATTESTING WITNESS I L R 48 Calc 61

See BENGAL TENANCY ACT 1885 S 65 1 Pat L J 161

See BHAGDARI AND NARWADARI TENURES ACT (BOM V OF 1862) S 3 I L R 39 Bom 358

See BOMBAY CITY LAND REVENUE ACT (BOM II OF 1876) SS 30 35 39 AND 40 I L R 39 Bom 664

See BUNDELKHAND ALIENATION OF LAND ACT (II OF 1903)
- s. 9 I L R 36 All 376
- s 16 I L R 42 All 142
- s 17 I L R 38 All 351

See BUNDHELKHAND ENCUMBERED ESTATES ACT (I OF 1903) S. 13 I L R 33 All 138

See CENTRAL PROVINCES GOVERNMENT WARD ACT S 18 I L R 40 Calc 784

See CENTRAL PROVINCES TENANCY ACT (XI OF 1898) S. 45 I L R 46 Calc 76

See CHOTA NAGPUR ENCUMBERED ESTATES ACT APPLICATION OF I L R 46 Calc 1

See CIVIL AND REVENUE COURTS I L R 35 All 464

See CIVIL COURTS ACT (XII OF 1887) S 21 I L R 41 All 384

See CIVIL PROCEDURE CODE 1882.
- s 13 I L R 32 All 215
- ss 13 43 I L R 32 All 119
- s 257A. I L R 38 Bom 219
- ss 278 282 283 287 I L R 41 Bom 64
- ss 366 371 I L R 40 Bom 248
- s 411 I L R 34 All. 223

See CIVIL PROCEDURE CODE 1908
- s 11 I L R 40 Bom 614, 679
- s. 11 EXPL. IV AND II R 2 I L R 39 Bom 138
- s 11 EXPL. V I L R 40 All 584
- s 47 I L R 42 All 544
- s 60 I L R 34 All 25
- O I, R 9 1 Pat L J 468

MORTGAGE—*contd*

O II r 2 I L R 36 All 264
I L R 39 All 506
I L R 45 Bom 55

O V r 5 I L R 38 Bom 377

O XXII r 10 I L R 37 All 226

O XXXIV r 1
I L R 35 All 441 484
I L R 44 Bom 698

rr 4 5, 10 I L R 41 All 473

rr 4 5 I L R 38 All 398

r 5 I L R 38 All 21
I L R 39 All 641
I L R 42 All 517

r 6 I L R 40 All 551 553
I L R 41 All 581
I L R 42 All 519

r 8 I L R 35 All 116
I L R 43 All 25

r 14 I L R 32 All 377
I L R 35 Bom 248
I L R 35 All 518
I L R 39 All 36
I L R 41 All 399
I L R 44 Bom 366
I L R 42 All 566
I L R 43 All 677

See COMPANY I L R 36 Bom 564
I L R 42 Bom 215

See CONSIDERATION
I L R 45 Calc 774

See CONSTRUCTION OF DEED
I L R 39 Bom 119
I L R 40 Bom 74

See CONSTRUCTION OF DOCUMENT
I L R 33 All 122

See CONTRACT ACT IX OF 1872

ss 20 65 I L R 40 Bom 638

s, 39 I L R 34 All 273

s 70 I L R 40 Bom 646

s 74 I L R 32 All 448

ss 126 140 I L R 42 All 70

See COURT FEES ACT (VII OF 1870)—

s 7 cl (IX) I L R 35 All 92 94

sch I Art I Sch II Art 11
I L R 35 All 476

See DEKHAN AGRICULTURISTS RELIEF ACT 1879—

s 2 I L R 34 Bom 161
I L R 44 Bom 217

ss 3 (*w*) 12 13
I L R 40 Bom 655

s 10A I L R 45 Bom 87

s 13 I L R 41 Bom 453
I L R 43 Bom 1

ss 13 15 (*1*) 16
I L R 39 Bom 73

s 15 I L R 44 Bom 372

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See EQUITABLE MORTGAGE

See EQUITY OF REDEMPTION

See ESTOPPEL I L R 39 Calc 513

See EVIDENCE I L R 35 All 194
I L R 44 Calc 345
I L R 45 Calc 320

See EVIDENCE ACT I OF 1872—

ss 58 92 I L R 42 Mad 41

s 68 I L R 35 All 254

ss 68 69
I L R 39 All 109 112 & 241

ss 69 70 I L R 35 All 364

s 92 I L R 44 Bom 55

s 94 I L R 38 All 103

See EXPROPRIETARY TENANT
I L R 36 All 248

See FAMILY FIRM
I L R 36 Bom 515

See FORFEITURE I L R 36 Bom 539

See FRAUD I L R 36 Bom 185

See HIGH COURT I L R 37 Bom 631

See HINDU LAW—ALIENATION
I L R 40 Calc 721
I L R 42 Calc 876
I L R 39 All 500
I L R 40 All 171
I L R 45 Bom 105

See HINDU LAW—JOINT FAMILY

See HINDU LAW—MORTGAGE

See HINDU LAW—WIDOW
I L R 35 All 311 326

See INSOLVENCY I L R 41 All 481

See JURISDICTION I L R 42 Mad 813
I L R 48 Calc 882
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See LIMITATION I L R 37 Bom 326
I L R 42 Calc 244 294
I L R 47 Calc 746

See LIMITATION ACT (XV OF 1877)

SCH II ARTS 134 148
I L R 32 All 160

SCH II ART 148 I L R 36 All 195

SCH II ART 179
I L R 39 Bom 20

See LIMITATION ACT (IX OF 1908)—

ss 6 7 AND ART 144
I L R 43 Bom 487

s 20 I L R 41 All 111
I L R 44 Bom 500

s 22 I L R 39 Bom 729

s 31 I L R 35 All 167

SCH I ARTS 91 AND 120
I L R 37 All 640

SCH I ARTS 126 144 148
I L R 41 Mad 650

SCH I ARTS 132
I L R 36 All 567
I L R 43 All 596

MORTGAGE—*contd*

Sch I Art 134 I L R 37 All 660
I L R 38 All 138
I L R 44 Bom 614

Sch I Arts 134 144 and 148
I L R 43 All 164

Sch I Arts 140 141
I L R 40 Bom 239

Sch I Art 148 I L R 40 All 65

Sch I Art 181 I L R 40 All 225
I L R 43 All 320

Sch I Arts 181 and 182
I L R 43 Bom 689

See Mahomedan Law—Dower
I L R 33 All 421

See Mahomedan Law—Endowment
I L R 37 Calc 179
I L R 47 Calc 866

See Malabar Tenants Improvements Act (Mad I of 1900) ss 3 5
I L R 38 Mad 954

See Minor I L R 34 All 296

See Mortgage Bond

See Mortgage Debt

See Mortgage Decree.

See Mortgage Deed

See Mortgage or Sale.

See Mortgage Suit

See Mortgagee.

See Mortgagor

See Occupancy holding
14 C W N 71
I L R 43 All 81

See Occupancy Raiyat
I L R 40 All 228

See Palas or turns of Worship
I L R 42 Calc 455

See Purdanashin Lady
14 C W N 165

See Penalty I L R 44 Calc 162

See Pre emption I L R 32 All 45
I L R 34 All 416
I L R 38 All 361 530

See Provincial Insolvency Act 1907
s 16 I L R 43 All 555

See Redemption 3 Pat L J 490

See Registration
I L R 41 Calc 972

See Registration Act (III of 1877)
s. 50 I L R 34 All 631

See Registration Act (XVI of 1908)—
s 17 I L R 41 Bom 510
s 17 (2) (xi) I L R 34 All 528
s 50 I L R 35 All 271
s 77 I L R 2 Lah 202

See Simple Mortgage

See Sonthal Parganas—
L R 41 I A 197

See Specific Relief Act 1877 s 39
I L R 42 Mad 20

MORTGAGE—*contd*

See Transfer of Property Act (IV of 1882)—
s 2 (d) I L R 35 Bom 199
s 4 I L R 39 All 196
ss 58 to 117

See Trusts Act—
s 5 I L R 36 Bom 398

See United Provinces Court of Wards Act 1912 s 8 I L R 43 All 478

See Usufructuary Mortgage

See Vatan I L R 34 Bom 175

See Vendor and Purchaser
I L R 41 Bom 300

———— anomalous—

See Transfer of Property Act (IV of 1882) ss 58 60 98
I L R 39 Mad 1010

See Mortgage construction
I L R 38 All 97
15 C W N 722

———— attestation of—

See Transfer of Property Act 1882
s 59 I L R 44 Bom 405

———— between Hindus—

See Damdupat rule of
I L R 42 Calc 826

See Assignment
I L R 35 Bom 199

———— by agriculturist—

See Dekkhan Agriculturists Relief Act (XVII of 1879) s 15B
I L R 37 Bom 614

———— by Directors of a Company—

See Presidency Banks Act (XI of 1876) ss 36 37
I L R 39 Mad 101

———— by conditional sale—

See Construction of Document
I L R 33 All 737 585
I L R 38 All 570

See Sale deed I L R 44 Bom 961

See Pre emption I L R 39 All 544

See Regulation XVII of 1806 s 8
I L R 40 All 387

See Transfer of Property Act (IV of 1882) ss 60 and 98
I L R 38 Mad 667

———— by Executor—
See Will I L R 34 Bom 209

———— by Hindu widow—

See Res judicata I L R 41 Calc 69

———— by Karta—

See Hindu Law—Joint Family
I L R 39 All 500

———— by minor—

See Mortgage. I L R 38 Mad 1071

———— by Talukdar—

See Broach and Kaira Incumbered Estates Act (XXI of 1881) s 28
I L R 41 Bom 546

MORTGAGE—*contd*

O 11 R 2 I L R 36 All 284
I L R 39 All 506
I L R 45 Bom 55

O V R 5 I L R 38 Bom 377

O XXII R 10 I L R 37 All 226

O XXXIV, R 1
I L R 35 All 441 484
I L R 44 Bom 698

RR 4 5 10 I L R 41 All 473

RR 4, 5 I L R 38 All 398

R 5 I L R 38 All 21
I L R 39 All 641
I L R 42 All 517

R 6 I L R 40 All 551 553
I L R 41 All 581
I L R 42 All 519

R 8 I L R 35 All 116
I L R 43 All 25

R 14 I L R 32 All 377
I L R 35 Bom 248
I L R 35 All 518
I L R 39 All 36
I L R 41 All 399
I L R 44 Bom 368
I L R 42 All 566
I L R 43 All 677

See COMPANY I L R 36 Bom 564
I L R 42 Bom 215

See CONSIDERATION
I L R 45 Calc 774

See CONSTRUCTION OF DEED
I L R 39 Bom 119
I L R 40 Bom 74

See CONSTRUCTION OF DOCUMENT
I L R 33 All 123

See CONTRACT ACT IX OF 1872

ss 20 65 I L R 40 Bom 638

s 39 I L R 34 All 273

s 70 I L R 40 Bom 646

s 74 I L R 32 All 448

ss 126 140 I L R 42 All 70

See COURT FEES ACT (VII OF 1870)—

s 7 CL (IX) I L R 35 All 92 94

SCH I ART I SCH II ART 11
I L R 25 All 476

See DEKHAN AGRICULTURISTS RELIEF ACT 1879—

s 2 I L R 34 Bom 161
I L R 44 Bom 217

ss 3 (*w*) 12 13
I L R 40 Bom 655

s 10A I L R 45 Bom 87

s 13 I L R 41 Bom 453
I L R 43 Bom 1

ss 13 15 (*d*) 16
I L R 39 Bom 73

s 15 I L R 44 Bom 372

MORTGAGE—*contd*

See EQUITABLE MORTGAGE

See EQUITY OF REDEMPTION

See ESTOPPEL I L R 39 Calc 513

See EVIDENCE I L R 35 All 194
I L R 44 Calc 345
I L R 45 Calc 320

See EVIDENCE ACT I OF 1872—

ss 58 92 I L R 42 Mad 41

s 68 I L R 35 All 254

ss 68 69
I L R 39 All 109 112 & 241

ss 69 70 I L R 35 All 364

s 92 *I L R 44 Bom 55*

s 94 *I L R 38 All 103*

See EXPROPRIETARY TENANT
I L R 36 All 248

See FAMILY FIRM
I L R 36 Bom 515

See FORFEITURE I L R 36 Bom 539

See FRAUD I L R 36 Bom 185

See HIGH COURT I L R 37 Bom 631

See HINDU LAW—*ALIENATION*
I L R 40 Calc 721
I L R 42 Calc 876
I L R 39 All 500
I L R 40 All 171
I L R 45 Bom 105

See HINDU LAW—JOINT FAMILY

See HINDU LAW—MORTGAGE

See HINDU LAW—WIDOW
I L R 35 All 311 326

See INSOLVENCY *I L R 41 All 481*

See JURISDICTION I L R 42 Mad 813
I L R 48 Calc 832
24 C W N 633

See LIMITATION I L R 37 Bom 326
I L R 42 Calc 244 294
I L R 47 Calc 746

See LIMITATION ACT (XV OF 1877)

SCH II ARTS 134 148
I L R 32 All *160*

SCH II ART 148 I L R 36 All 195

SCH II ART 179
I L R 39 Bom 20

See LIMITATION ACT (IX OF 1908)—

ss 6 7 AND ART 144
I L R 43 Bom 487

s 20 I L R 41 All 111
I L R 44 Bom 500

s 22 I L R 39 Bom 729

s 31 I L R 35 All 167

SCH I ARTS 91 AND 120
I L R 37 All *640*

SCH I ARTS 126 144 148
I L R 41 Mad 650

SCH I ARTS 132
I L R 36 All 567
I L R 43 All 596

MORTGAGE—*contd*

Sch. I Art 134 I L R 37 All 660
I L R 38 All 138
I L R 44 Bom 614

Sch I Arts. 134 144 and 148
I L R 43 All 164

Sch I Arts. 140 141
I L R 40 Bom 239

Sch I Art 148 I L R 40 All 683

Sch I Art 181 I L R 40 All 235
I L R 43 All 320

Sch I Arts. 181 and 182
I L R 43 Bom 689

See Mahomedan Law—Dower
I L R 33 All 421

See Mahomedan Law—Endowment
I L R 37 Cal 179
I L R 47 Calc 866

See Malabar Tenants Improvements Act (Mad I of 1900) ss 3 5
I L R 38 Mad 954

See Minor I L R 34 All 296

See Mortgage Bond

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See Occupancy holding
14 C W N 71
I L R 43 All 81

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I L R 40 All 228

See Palas or turns of Worship
I L R 42 Calc 455

See Purdanashin Lady
14 C W N 165

See Penalty I L R 44 Calc 162

See Pre emption I L R 32 All 45
I L R 34 All 416
I L R 38 All 361 530

See Provincial Insolvency Act 1907, s 16 I L R 43 All 555

See Redemption 3 Pat L J 490

See Registration
I L R 41 Calc 972

See Registration Act (III of 1877) s 50 I L R 34 All 631

See Registration Act (XVI of 1908)—
s 17 I L R 41 Bom 510
s 17 (?) (xi) I L R 34 All 528
s 50 I L R 35 All 271
s 77 I L R 2 Lah 202

See Simple Mortgage

See Sonthal Parganas—
L R 41 I A 197

See Specific Relief Act 1877 s 39
I L R 42 Mad 20

See Transfer of Property Act (IV of 188)—
s 2 (d) I L R 35 Bom 199
s 4 I L R 39 All 196
ss 8 to 11

See Trusts Act—
s 5 I L R 36 Bom 396

See United Provinces Court of Wards Act 1912 s 8 I L R 43 All 478

See Usufructuary Mortgage

See Vatan I L R 34 Bom 175

See Vendor and Purchaser
I L R 41 Bom 300

——— anomalous—

See Transfer of Property Act (IV of 188) ss. 58 60 98
I L R 39 Mad 1010

See Mortgage construction
I L R 38 All 97
15 C W N 722

——— attestation of—

See Transfer of Property Act 1882 s 59 I L R 44 Bom 405

——— between Hindus—

See Damdupat rule of
I L R 42 Calc 826

See Assignment
I L R 35 Bom 199

——— by agriculturists —

See Dekkhan Agriculturists Relief Act (XVII of 1879) s 15B
I L R 37 Bom 614

——— by Directors of a Company—

See Presidency Banks Act (XI of 1876) ss 36 37
I L R 39 Mad 101

——— by conditional sale—

See Construction of Document
I L R 33 All 337 585
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See Sale deed I L R 44 Bom 961

See Pre emption I L R 39 All 544

See Regulation XVII of 1806 s 8
I L R 40 All 387

See Transfer of Property Act (IV of 1882) ss 60 and 98
I L R 38 Mad 667

——— by Executor—

See Will I L R 34 Bom 209

——— by Hindu widow—

See Res judicata I L R 41 Calc 69

——— by Karta—

See Hindu Law—Joint Family
I L R 39 All 500

——— by minor—

See Mortgage I L R 38 Mad 1071

——— by Talukdar—

See Broach and Kaira Incumbered Estates Act (XXI of 1881) s 28.
I L R 41 Bom. 546

MORTGAGE—*contd*

——— by vatandar—

See HEREDITARY OFFICES ACT (BOM III OF 1874) s 5
I L R 39 Bom 587

——— by widow —

See HINDU LAW—ALIENATION
I L R 40 Calc 721

——— decree absolute for sale on—

See CIVIL PROCEDURE CODE (1908) O XXXIV R 5 I L R 38 All 21

——— decree for redemption—

See LIMITATION ACT (IX OF 1908) ARTS 181 182 I L R 43 Bom 689

See SPECIFIC RELIEF ACT (I OF 1877) s 39 I L R 42 Mad. 20

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 67 I L R 41 All 631

——— decree for Road Cess—Priority of—

See BENGAL TENANCY ACT 1885 s 65
1 Pat L J 161

——— dispossession of mortgagee by person with better title—

See TRANSFER OF PROPERTY ACT 1882 s 68 I L R 43 All 484

——— divisibility of—

See CHOTA NAGPUR ENCUMBERED ESTATES ACT 6 Pat L J 328

——— executed by Collector—

See BUNDELKHAND ALIENATION OF LAND ACT (II OF 1903) s 17
I L R 38 All 351

——— extinguishment of—

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 60 (c)
I L R 39 Mad 959

——— Forfeiture—Effect of—

See BOMBAY LAND REVENUE ACT 1879 s 56
I L R 37 Bom 692

——— in fraud of creditors—

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 53 I L R 36 Mad 29

——— money borrowed on suit to recover—

See HINDU LAW—ENDOWMENT
I L R 40 Mad 402

——— Money decree—priority of—

See EXECUTION OF DECREE
1 Pat L J 449

——— Mortgage in possession—obligations of—

See TRANSFER OF PROPERTY ACT 1882 s 76 5 Pat L J 492

—New charge on old security—whether a new mortgage—

See REGISTRATION ACT 1908 s 77
I L R 2 Lah 202

——— non joinder of parties in Mortgage Suit—

See CIVIL PROCEDURE CODE 1908 O 1 R 9
1 Pat L J 468

MORTGAGE—*contd*

——— Maha Brahmins Rights—

See TRANSFER OF PROPERTY ACT (IV OF 1882) ss 6 58 I L R 39 All 196

——— of Mukarrari interest—

See TRANSFER OF PROPERTY ACT 1882 s 70 6 Pat L J 347

——— of occupancy holding—

See NORTH WESTERN PROVINCES RENT ACT (XII OF 1881)
I L R 37 All 444
s 9 I L R 39 All 186

See LANDLORD AND TENANT
I L R 33 All 335

——— of promissory note—

See TRANSFER OF PROPERTY ACT (IV OF 1882) ss 130 AND 134
I L R 38 Mad 297

——— of stock in trade—

See CONSTRUCTION OF DOCUMENT
I L R 37 All 390

——— proof of execution of—

See EVIDENCE ACT (I OF 1872) —
ss 68 69 I L R 39 All 109 112 241
s 69 70 I L R 35 All 364

——— redemption of—

See CIVIL PROCEDURE CODE (1908) O XXII R 10
I L R 37 All 226

See LIMITATION ACT (XV OF 1877) SCH II ART 148 I L R 36 All 195

See LIMITATION ACT (IX OF 1908)—
SCH I ARTS 134 144
I L R 38 All 138
SCH I ART 148
I L R 40 All 683

——— Sale deed when may be construed as mortgage—

See DEKKHAN AGRICULTURIST RELIEF ACT 1879 s 2
I L R 44 Bom 217

——— suit on a—

See AMENDMENT OF PLAINT
I L R 45 Calc 305

See CIVIL PROCEDURE CODE (ACT V OF 1908) O V R 5
I L R 38 Bom 377

See GUJARAT TALUKDARS ACT (BOM ACT VI OF 1888 AS AMENDED BY BOM ACT II OF 1905) ss 29 29B (1) (2) (3) AND 29F I L R 38 Bom 604

See LIMITATION I L R 41 Calc 654

——— Suit on a prior mortgage without impleading puisne mortgagee—

See TRANSFER OF PROPERTY ACT 1882 ss 85 AND 89 I L R 43 All. 204

——— surplus proceeds—

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 69 I L R 40 Mad 767

——— with possession by lessee—

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 108 (j)
I L R 40 Mad. 1111

MORTGAGE—*contd*

——— Vatan mortgaged with possession

See LIMITATION ACT (IX OF 1908) s 20 CL ( ), ART 116
I L R 45 Bom 1206

——— Sale to mortgagee in possession—subsequent sale to stranger—

See NOTICE I L R 45 Bom 910

——— Mortgagee having the option to sue for interest or for possession on mortgagor s failures to pay interest

See CIVIL PROCEDURE CODE, 1908 O II r. 2 I L R 1 Lah 457

——— Acquisition of equity of redemption by adverse possession

See EQUITY OF REDEMPTION
I L R 1 Lah 549

ASSIGNMENT

See TRANSFER OF PROPERTY ACT ss 130—139

——— Application of the Rule of damdupat—Transfer of Property Act (IV of 1882) s 2 (d) The fact that the person entitled to sue on a mortgage happens by assignment to be a Parsee cannot affect the (Hindu) mortgagor s right to claim the advantage of the rule of damdupat if it existed when the mortgage was entered into It is not proper to infer that because it has been expressly enacted that nothing in Chapter II of the Transfer of Property Act (IV of 1882) shall be deemed to affect any rule of Hindu Law the Legislature has deprived a Hindu mortgagor of the protection afforded him by the rule of damdupat The right of a mortgagee to sue for his principal and interest arising from a contract must be taken to be made subject to the usages and customs of the contract in parties JEEWANBHAI v MANORDAS (1910) I L R 35 Bom 199

———Suit by assignee of mortgage bond—Set-off by the defendant of a decree debt against the assignee—Imputable set-off whether allowable—Transfer of Property Act (IV of 1882) ss 3 and 132—Actionable claim nature of The doctrine of equitable set off is always confined to unascertained sums arising out of the same transaction *Subramanian Chettiar v Muthuswami Aiyangar 17 Mad L J 481* dissented from Where a mortgage is transferred without the privity of the mortgagor the transferee takes subject to the state of account between the mortgagor and mortgagee at the date of the transfer but not subject to any independent debt in no way connected with the mortgage *Turner v Smith [1901] 1 Ch 749* followed *Chinnayya Pavuthan v Chidambaram Chetti I L R 2 Mad 212* distinguished SUBRAMANIA AYYAR v SUBRAMANIA PATTAR (1916) I L R 40 Mad 683

ATTACHMENT

———Attachment—Civil Procedure Code (Act V of 1908) O XXXVIII r 5 The plaintiff in a mortgage suit after the preliminary decree and before the date appointed for payment into Court applied for attachment of certain other properties of the defendants on the ground of insufficiency of the mortgaged security—*Held* that as the plaintiff would ultimately have to apply for a personal decree against the defendants she had a right to get an attachment under O XXXVIII r 5 of the Civil Procedure Code *Bishambhar Sahai v Sukhdeei I L R 16 All 186* and *Jaiparkash Narain Singh v Basanta Kumari Debi 15 Ind Cas 601* referred to JOGEMAYA DASSI v BAIDYANATH PRAMANICK 1918 I L R 46 Calc 245

ATTESTATION

See EVIDENCE ACT 1872 ss 68 AND 69

See TRANSFER OF PROPERTY ACT 1882 ss 58 AND 98

———Transfer of Property Act (IV of 1882) s 58—Co executant if may attest execution by others—Evidence Act (I of 1872) ss 68 69 70 A mortgage bond executed by several persons was sought to be proved by the evidence of one of the executants who was also the scribe of the document *Held* that a party executing a document required by law to be attested cannot be an attesting witness thereof and his evidence even if he was present at and witnessed the executions of it by others cannot be accepted as that

MORTGAGE—*contd*

ATTESTATION—*contd*

of an attesting witness in regard to such executions *Jogendra Nath* v *Nitai Churn 7 C W N 385* distinguished *Bryan* v *White 2 Robertson 315 317 Sharpe* v *Birch L R 8 Q B D 111 Wright* v *Tatham 1 Ad & Ell 3 23 Freshfield* v *Reed 9 M & W 404* and *Seal* v *Claridge L R 7 Q B D 516* relied on *Quære* Whether admission of execution by a party is not receivable in proof of execution of such document by himself PEARY MOHAN MAITI v SREENATH CHANDRA MAITI (1908) **14 C W N 1046**

——————————*Transfer of Property Act (IV of 1882) s 59—Execution of mortgage by pardanashin lady attestation of —Requirements as to identity of executant and as to witnesses seeing actual execution of deed—Acknowledgment of her signature by executant* On a question whether a mortgage sued upon had been properly attested under the provisions of s 59 of the Transfer of Property Act (IV of 1882) the evidence showed that the attesting witnesses had not though present seen the executant (a *pardanashin* lady) sign the deed but had subsequently to the execution received from her son who had been with her on the other side of the *pardah* an acknowledgment that the signature on the deed had been made by his mother *Held* (reversing the judgment of the High Court) that the requirements of s 59 had not been complied with and the deed was therefore invalid as a mortgage *Shamu Patter* v *Abdul Kadir Ravuthan I L R 35 Mad 607 L R 39 I A 35* and *Padarath Halwai* v *Ram Nain Uphadia I L R 37 All 474 L R 42 I A 163* distinguished GANGA PERSHAD SINGH v ISHRI PERSHAD SINGH (1918)
I L R 45 Calc 748

——————————*Attesting witness—Scribe—Execution admitted by adult executant whether binding on minor—Evidence Act (I of 1872) ss 68 and 70* Where it is sought to prove the execution of a mortgage by the evidence of a person who signed the deed as a scribe it must be established that the latter in signing as a scribe intended to sign as a witness Where a person who has signed a deed as a scribe subsequently asserts that he signed as a witness the onus of proving this assertion lies very heavily on him NAGESHWAR PRASAD v BACHU SINGH
4 Pat L J 511

CONSENT DECREE

——————————*Consent decrees between mortgagors and mortgagee—Joint management—Equal division of rent and produce—Prohibition against partition—Mortgagee competent to grant mirasi lease—Mortgagors to get one fourth of the nazarana (present)—Rights of the mortgagors conveyed to the mortgagee—Equitable mortgage by mortgagee—Settlement by mortgagee in favour of his relations—Suit by equitable mortgagee—Decree—Execution—Auction purchaser put in possession—Suit by donees under the settlement—Donees entitled to possession—Rights of the parties to be worked out by amicable settlement or by a suit—Suit by representatives of auction purchaser to recover one fourth share by partition—Plaintiffs entitled to possession of th[illegible] as t[illegible]ts in common—Mirasi lease by mortgagee's assignee without mortgagor's consent—Lease not to enure for the benefit of the assignee* The

MORTGAGE—*contd*

CONSENT DECREE—*contd*

owners of certain land mortgaged it to *S* In the year 1866 consent decrees Exhibits 57 and 58 were passed between the mortgagors and the mortgagee *S* The consent decrees provided that both parties should jointly carry on the management of the land each being entitled to half of the produce and rent that the land itself should not be partitioned that *S was competent to grant a mirasi* lease provided the *nazarana* (present) accepted was not less than Rs 500 and that the said *nazarana* should be divided between the mortgagors and *S* in the proportion of ¼ and ¾ respectively The said *rights of the mortgagors were subsequently* conveyed by them to *S* for consideration Exhibit 64 Afterwards *S* in April 1891 deposited Exhibit 64 by way of equitable mortgage with two persons In October 1891 *S* settled the property which was *subject to the equitable mortgage* on his relatives *J* and *M* In 1892 the two equitable mortgagees sued *S* to recover their equitable mortgage debt and got a decree against the property equitably mortgaged and against *S* personally The property was put up for sale in execution and purchased by *H* for Rs 5 42 which covered the claim of the equitable mortgagees *J* and *M* obstructed the auction purchaser *H* in his attempts to obtain possession and their obstruction having failed they brought a suit against *H* The final decree in the suit made a declaration that as against *H J* and *M* were entitled to the properties and their possession subject to *H*'s right conveyed to the mortgagee *S* under Exhibit 64 and subsequently purchased by *H* and that the rights of the parties as thus declared must be worked out by amicable settlement between them or by means of a separate suit The plaintiffs as executors under the will of *H* deceased who was deprived of possession under the aforesaid decree having brought a suit against the assignees of *J* and *M* to recover by partition ¼ share of the land the lower Courts dismissed the suit for the recovery of ¼ share by partition on the ground that the clause in the consent decrees Exhibits 57 and 58 affected to prohibit partition On second appeal by the plaintiffs *Held* reversing the decree that though the plaintiffs as tenants in common would be entitled to partition yet by virtue of the consent decrees they were estopped from exercising such right *Held* further that though the consent decrees did empower the mortgagee *S* to grant a *mirasi* lease without the mortgagor's consent yet this power did not enure for the benefit of his assignees COWASJI TEMULJI v KISANDAS TICUMDAS (1911)
I L R 35 Bom 371

CONSIDERATION

See TRANSFER OF PROPERTY ACT s 59

——————————*Consideration—Recital in mortgage deed of receipt of consideration—Burden of proof* Where a mortgage deed is proved to have been executed and the document contains an acknowledgment of the receipt of the consideration this is strong *prima facie* evidence that the consideration has been actually received and is evidence not only against the mortgagors but also against persons claiming under them subsequent to the date of the mortgage The mere fact that a

MORTGAGE—*contd*

CONSIDERATION—*contd*

Court was not satisfied with the evidence which the plaintiff adduced in addition to the acknowledgment would not absolve the defendants from proving that notwithstanding the acknowledgment in the body of the deed there was no consideration in fact BARELI v SITA RAM (1914) I L R 36 All 478

———————— *Consideration—Receipt in mortgage deed of receipt of consideration—Evidence—Burden of proof* Where execution of a mortgage deed has been proved as required by law an acknowledgment contained therein of receipt of consideration is evidence not only as against the mortgagor but also as against a purchaser from the mortgagor or an auction purchaser at a sale held in execution of a decree on the mortgage although the value of the acknowledgment as evidence may vary and possibly it may be more weighty as against a purchaser by private contract than against an auction purchaser but it is clearly evidence as against both *Lallu v Sita Ram I L R 26 All* and *Nawal Kunwar v Bakhtawar Singh 10 A L J 340* followed NARAIN DAS v DILAWAR (1918)

I L R 41 All 2 0

————————*Consideration failure of part of effect of* When a mortgagee has advanced a part but not the whole of the amount stipulated for in the mortgage bond he is entitled to enforce the mortgage for the amount actually advanced by him. Notwithstanding the terms of s 4 of the Transfer of Property Act 1882 the provisions of s 39 of the Contract Act 1872 do not apply to the case of a transfer by way of mortgage when an interest in the mortgaged property has actually vested in the mortgagee on execution and registration of the mortgage bond Failure on the part of the promisor to perform a promise which formed the whole or part of the consideration inducing an executed conveyance does not give the promisee a right of rescission Mere registration does not render a sale of immovable property or a mortgage operative from the time of registration if there is a condition attached to the contract that the operation of sale of mortgage is to be postponed till the actual payment of the full amount of consideration In every case the onus is upon the person setting up such a condition MOKHAN LAL MARWARI v HANUMAN BUX

2 Pat L J 168

CONSOLIDATION

————————*Right of does not arise when equities of redemption are severed—Subsequent mortgage executed by some of the descendants of original mortgagor whether mortgagee may consolidate* The right of consolidation can be exercised against successors in title to the mortgagors only so long as the equities of redemption are not severed There cannot be a consolidation of mortgages where the first mortgage is executed by the sole owner of the land mortgaged and the subsequent mortgage is executed by some one of the successors of the original owner There cannot be two different usufructuary mortgages on the same land at the same time LALA RAM NARAIN LAL v LALA MURLIDHAR 5 Pat L J 644

CONSTRUCTION

1 ————Decree mortgage of—*Mortgagee has a charge on amount realised in execution of decree in respect of it—Civil Procedure Code Act XIV of 1882 s 276—Attachment and mortgage of decree on same day—Mortgage valid unless attaching creditor shows it to have been effected during the pending of attachment* Where a decree is mortgaged and the amount due under the decree is subsequently realised in execution the mortgagee has a charge on the amount so realised. The mortgagee is entitled to a charge on property which through no fault of his has taken the place of the mortgaged property *Singaravelu Udayan v Pima Iyer 13 Mad L J 306* dissented from The receipt by one Court of a notice of attachment by another Court is not a judicial act to which the principle that judicial acts must be presumed to have been done at the earliest point of time of the date thereof would apply Where therefore a decree is mortgaged on a certain date and notice of attachment of such decree is received by the Court on the same day it lies on the attaching creditor seeking to set aside such mortgage as made during the pendency of attachment under s. 276 of the Civil Procedure Code to show that the receipt of such notice was prior to the execution of the mortgage when a decree is attached and the attachment is subsequently withdrawn by agreement the attachment does not continue against the money realised in execution of such decree in the absence of anything to that effect in the agreement VENKATRAMA IYER v ESUMSA ROWTHER (1909) I L R 33 Mad 429

2 ———— Mortgaged for family purposes—*Liability of minor son when authority may be presumed—Alienation—Onus of proof—Evidence Act (I of 1872) s 106—Transfer of Property Act (IV of 1882) ss 85, 90—Civil Procedure Code (V of 1908) O XXXIV r 6* Where a mortgage purports to charge the entire interest in a property and the mortgage money was advanced for legitimate family purposes express or implied authority of minor co parceners may be implied and the mortgage may be enforced against the entire family interest *Suraj Bunsi Koer v Sheo Prasad Singh I L R 5 Calc 148 L R 6 I A 88* referred to Authority to mortgage may also according to the peculiar circumstances of a case be implied even in cases where the mortgage money was not advanced for legitimate family purposes A mortgage is an alienation even though it is for a very particular purpose *e g* as security only for the amounts drawn or paid on account of instalments of rent *Gharib Ullah v Khalak Singh I L R 25 All 407 L R 30 I A 165* referred to Where on the one side it is proved that the whole of the mortgage money with the exception of a very small portion of it was advanced for legitimate family purpose and there is therefore a sufficient foundation for a decree for sale on the mortgage and on the other side it is not shown that the small portion of the debt was not for any immoral purpose the smaller item may be regarded as a debt of the father binding on the son. *Hunoomanpersaud Panday v Munraj Koonweree 6 Moo I A 393 18 W R 81 n Luchmun Dass v Giridhar Chowdhry I L R 5 Calc 855 Maheswar Dutt Tewari v Kishun Singh I L R 34 Calc 184 Kishun Pershad Chowdhry v Tipan Pershad Singh I L R 34 Calc 735 Lala Suraj Prosad v Golab Chand I L R 28 Calc 517*

MORTGAGE—*contd*

CONSTRUCTION—*contd*

referred to BISWANATH PERSAD MAHTA *v* JAGDIP NARAIN SINGH (1912)
I L R 40 Calc 342

3 ———— **Redemption**—*Covenant that the loan would be repaid within a year —Mortgagor if may redeem within a year* Unless there is an agreement to the contrary the right of foreclosure and the right of redemption must be deemed co extensive Whether there is any special provision in the contract which takes the case out of the general rule must be determined upon the terms of the contract between the parties Where the mortgage deed provided that the money would be paid principal and interest within one year *Held* that the case fell within the class of cases in which the mortgage is payable before a certain day and not within the class where a day is fixed for the payment of the debt and it was open to the mortgagor to redeem the mortgage within one year of the taking of the loan PURNA CHANDRA SARMA *v* PEARY MOHAN RAI (1912)
17 C W N 149

4 ———— **Usufructuary mortgage followed by lease to mortgagor**—*Contemporaneous deeds—Interpretation—Lease on easy terms surrendered by mortgagor—Mortgagee if may insist on appropriation of whole profits to interest—Unregistered agreement to vary mortgage deed if admissible—Registration Act (III of 1877) ss 17 49—Evidence of preliminary negotiations if admissible—Evidence Act (I of 1872) ss 91 92* Where in a mortgage bond it was stipulated that the mortgagee should be in possession of the mortgaged property and take the profits in lieu of interest but by a practically contemporaneous instrument the mortgagee granted a lease to the mortgagor on easy terms reserving a rent of Rs 4 200 only when the interest worked out to Rs 6 000 but the mortgagor being unable to pay this rent gave up possession to the mortgagee *Held* in a suit for redemption of the mortgage that the mortgagee was entitled to appropriate the whole of the profits realised by him towards interest according to the terms of the mortgage bond That the mortgage and the lease were parts of one and the same transaction but there was no inconsistency between the two instruments It is not permissible to contradict or vary the express and unambiguous terms of a written instrument by reference to preliminary negotiations or previous conversations An unregistered agreement purporting to set out in what manner the rents and profits of the mortgaged property were to be dealt with at variance with the stipulation in that behalf contained in the registered mortgage-deed was inadmissible in evidence by the provisions of the Registration Act ABDULLAH KHAN *v* BASHARAT HUSSAIN (1912)
I L R 35 All 48
17 C W N 233

5 ———— **Anomalous mortgage**—*Suit for foreclosure—Limitation—Limitation Act (IX of 1908) Sch I Art 135—Regulation No XVII of 1806* A mortgage was made on the 25th of February 1861 for a period of six years It was provided that if after six years anything remained due to the mortgagee they might forthwith enter into possession of the mortgaged property and realize the principal and interest It was further provided that the property would not be transferred so long as any principal or interest remained due and that if it was transferred or if the money due to the mortgagee was not paid the mortgagee without waiting for the expiry of the six year might bring a suit for recovery of the principal and interest and might also get possession by completion of sale Nothing at all was paid by the mortgagor in the way of either principal or interest and in 1867 part of the mortgaged property was transferred Proceedings under s 8 of Regulation XVII of 1806 were not taken by the mortgagee In the year 1910 the representative of the mortgagee instituted a suit for foreclosure *Held* on a construction of the mortgage bond in suit that the cause of action accrued in 1867 and the suit was barred by limitation *Kishori Mohun Roy v Ganga Bahu Debi I L R 23 Calc 228* distinguished, *Srinath Das v Khetter Mohan Singh I L R 16 Calc 693* followed *Shyam Chander Singh v Baldeo 10 All L J 592* and *Ram Dawar Rai v Bhirgu Rai 10 All L J 538* referred to BANS GOPAL *v* SHEO RAM SINGH (1915)
I L R 38 All 97

6 ———— **Mortgage not validly executed if creates a charge**—*Personal liability to repay if to be implied from fact that document mentioned advance of money—Transfer of Property Act (IV of 1882) ss 59 67 100* *Held* on the construction of a document which purported to be a usufructuary mortgage but was not enforceable as such by reason of its not being attested as required by s 59 of the Transfer of Property Act that the mortgagor did not intend that he should be personally liable to repay the advance and the Trial Court and the High Court erred in assuming from the mention in the document that a certain sum had been advanced that it might be inferred that it was the intention of the parties that the mortgagor should be personally liable That the document did not create a charge within the meaning of s 100 Transfer of Property Act RAM NARAYAN SINGH *v* ADHINDRA NATH MUKHERJI (1916) 20 C W N 989

7 ———— **Agreement postponing payment of interest and selling property to mortgagee if not then paid**—*Construction of contract—Mode of calculating the manner of payment of purchase money under the contract on execution of decree or specific performance—Delay in transfer of property to mortgagee—Rules of English Courts as to rights of Vendor and Purchaser—Transfer of Property Act (IV of 1882) s 54* A mortgage deed of certain land was executed in favour of the appellant to secure re payment of Rs 50 000 with interest which the mortgagor expressly covenanted to pay on 30th December 1905 which was afterwards extended for three months from 3rd January 1906 On 4th April 1906 the mortgagor being unable to pay the interest wrote as follows to the mortgagee I write this to inform you that as I have not got the interest due on Rs 50 000 ready now I request you to give me three months more for payment to you of all interest due thereon Should I fail to do so on or before 6th July 1906 I agree to the whole land being sold to you for Rupees one lakh (Rs 1 00 000) After deducting

MORTGAGE—*contd*

CONSTRUCTION—*contd*

out o th an unt I 0,000 r al y received fr m and all n e t l th m th balance would l p id t n wh n th land all become v ars uncondit na y Th n rt a ee agreed to th t rm and th l n wa r n w l on 4th April 18 th in n t wa n t p i n 6th July and mortgag r r fused t x ut a conveyance of th property In a uit f r p t l p rformance of th contract o 4th April 1 th rt ee obtained a decree in May 1 1 t ut h l n t n l into p ssi n f th pr p rty n 24th March 1911 On an application for ex t n of th decree a qu m ar e a t th mann r n which th purchase m ney payabl und r th contract ought to be cal ulat d, and an App l B n h of th Chief C urt decided th t th m rt a ee was only entitled to bring into account th am unt due for principal and inter t up to 6th July 188 *Held* by the Judicial Committee (reversing that decision) that on th true con tru tion of the contract the appellant was entitled to deduct interest up to the date of his getting possession. The general rules by which the rights of vendors and purchasers are regulated were not applicable here because the rights as to the payment of interest were governed by the express provisions of the contract *Semble* The rules of English Courts of Equity had no application to the sale of real estate in Lower Burma, s. 54 of the Transfer of Property Act expressly providing that (apart from a registered instrument) such a contract created no interest in or charge upon the land MAUNG SHWE GOH v. MAUNG IN (1916)

I L R 44 Calc 542

8 ———— Oral evidence to vary terms of mortgage admissibility of—*Contract Act (IX of 1872) s 74—Stipulation to pay exorbitant rate of interest if stipulation by way of penalty—Contract Act s 44—Release of one debtor if releases co-debtors* A mortgage executed by six persons each of whom mortgaged a quantity of land to secure the loan provided that each of the mortgagors was liable for the whole amount of the mortgage and interest and that the loan should be repaid within two months with interest at one anna in the rupee per mensem and in case of default the interest was to run at that rate till payment *Held* that under s 92 of the Evidence Act evidence to prove a verbal agreement that the mortgagee would hold each of the mortgagors liable for his own share only was inadmissible That the agreement to pay interest at 75 per cent per annum was in the circumstances of the case a stipulation by way of penalty and the mortgagee was entitled under s 74 of the Contract Act to only reasonable *compensation which in this case was interest at* 1? per cent *Per* MOOKERJEE *J*—That it is competent to a Court to grant relief whenever the stipulation for payment of interest at a specified rate appears to the Court to be a stipulation by way of penalty What constitutes a stipulation by way of penalty must be determined in each individual case upon its own special circumstances *Per* SANDERSON *C J*—Release by the mortgagee of one of several co-mortgagors without expressly reserving his remedies against the others does not release the latter SANAT KUMAR DAS v. INDRA NATH BARMAN (1916)

I L R 44 Calc 162
21 C W N 749

9 ———— Whether mortgage extinguished by subsequent mortgage—*Intention to release the loan by return of mortgage deed—Intention frustrated by subsequent mortgage being unenforceable—If is not consistent with equity and good conscience—Contract Act (IX of 1872) s 41—Contract not performed* The question in this appeal was whether the appellants could enforce against the respondents a mortgage dated the 13th of November 1876 for Rs 000 of a five sixth share in a certain mauza The mortgagor died leaving a widow and a separated nephew who was the owner of the other sixth share of the mauza which in 1879 and 1881 he mortgaged to the same mortgagee for Rs 1,000 and Rs 3,000 respectively In September and October 188 the widow and the nephew executed two mortgages to the same mortgagee each purporting to affect the entire mauza the first being in respect of the principal and interest due on the mortgage of 1876 and the second for the principal and interest due on the nephew's mortgages of 1879 and 1881 On the execution of these the mortgagee handed the mortgage deed of 1876 to the nephew In 1896 the mortgagee brought a suit on the basis of the mortgages of 1887 in which a decree was made against the entire mauza The nephew and the widow both appealed but the nephew died and his heirs (the respondents in the present appeal abandoned his appeal The widow's appeal was allowed by the High Court it being held that the deeds of 1887 (even if executed by her) were not binding on her Pending an appeal by the mortgagee to the Privy Council the widow died and the respondents in the present appeal were made parties in her place as heirs of her husband the mortgagor of the deed of 1876 they succeeded therefore to the property subject to that mortgage but free from any further charge created by the nephew *Held* that the intention of the mortgagee after the two deeds of 1887 were executed was to accept in them a new security but that intention was entirely frustrated by the fact that the deeds of 1887 were held to be not binding on the widow and it was not in accordance with equity and good conscience that the respondents who had successfully maintained that the transaction embodied in the deeds of 1887 *was not binding on the widow and consequently* did not bind them as the heirs of her husband should now claim the benefit of that transaction as a release of the mortgage of 1876 Their Lordships therefore in the events that had happened were of opinion that the mortgage of 1876 was wholly unaffected by the mortgages of 1887 S 41 of the Contract Act (IX of 1872) on which the High Court had relied had no application to the present case it applies only where a contract has been in fact performed by some person other than the person bound thereby Here the contract contained in the mortgage of 1876 had not in fact been performed at all HAR CHANDI LAL v. SHEORAJ SINGH (1916) I L R 39 All 178

10 ———— Prior mortgagee who had obtained a decree absolute for sale but had not executed it—*Decree barred under Sch II Art 179 of Limitation Act 187 —Subsequent mortgagee not made a party to suit under s 85 of Transfer of Property Act 188 —Registered later mortgage as notice to prior mortgagee—Suit to enforce later mortgage—Prior mortgagee's right merged in decree and ex-*

MORTGAGE—*contd*

CONSTRUCTION—*contd*

tinguished—Transfer of Property Act s 89 construction of The question in this appeal was whether property mortgaged to the respondent on the 15th of October 1881 should when sold under a decree absolute for sale be treated as sold subject to an alleged prior right of the appellant under an earlier mortgage of the same property dated the 25th of February 1880 The appellant in 1883 acquired the title of the mortgagor and also such title as remained to the mortgagee under the earlier mortgage In 1892 the prior mortgagee brought a suit on his mortgage and in 1895 obtained a decree absolute for sale under the Transfer of Property Act The suit was however only against the mortgagor and the second mortgagee was not made a party to it Neither the prior mortgagee nor his successor took any steps to execute that decree and it became barred and inoperative after the lapse of three years from the date on which it became absolute It was admitted that the later mortgage was duly registered and that the earlier mortgagee must be taken to have had notice of it when he brought his suit and obtained a decree in 1892 *Held* in a suit brought on the 26th of July 1910 by the first respondent on his mortgage of the 15th of October 1881 against among others the appellant that respondent was entitled to a decree absolute under O XXXIV r 2 of the Code of Civil Procedure 1908 for sale but that the sale was not *subject* to the prior mortgage of the appellant The true construction of s 89 of the Transfer of Property Act is that on the making of *the order absolute* for sale under that section the security as well as the defendant s right to redeem were both extin*guished and that* for the right of the mortgagee under his security there was substituted the right to a sale conferred by the decree HET RAM *v* SHADI RAM (1918) I L R 40 All 407

11 ———— Mortgage Bond—Rice lent—*Covenant of repayment—Mortgagees to realise money in case of default by sale of mortgaged properties—Suit on mortgage bond whether a suit for recovery of money charged on mortgaged properties* Where in a suit to enforce a mortgage the plaintiffs lent a certain amount of rice and there was in the bond the usual covenant of repayment and interest and the bond also provided that if default was made in the *kists* the mortgagees would be competent to realise the money which would be due at the rate of Rs 6 per maund by sale of the mortgaged properties belonging to the mortgagors *Held* that the primary object of the suit was to recover money and what the Court would give the plaintiffs would be money and not rice if they succeeded in the suit and that that money was a charge on the mortgaged property *Held* also each case must turn on the construction that the Court places on the mortgage deed in that particular case SRIPATI LALL DUTT *v* SARAT CHANDRA MONDAL (1918) 22 C W N 790

12 ———— Two Mortgagees—Separate sums secured—*Tenants in Common—Right of each Mortgagee—Undue Influence—Pardanashin—Compromise—Independent Advice —True Test* Upon a mortgage to two mortgagees to secure two separate sum the whole mortgaged property being conveyed to the mortgagees as tenants in common and there being no covenant to repay to each separately if one mortgagee desires repayment his co mortgagee not consenting to proceeding his proper course is to sue for a mortgage decree in respect of the whole sum secured—joining his co mortgagee as a defendant the decree should provide for all necessary accounts and payments but no personal decree against the mortgagor in favour of the mortgagee who sues To support an agreement by a pardanashin lady in compromise of litigation it is sufficient to show that the general result of the compromise as distinct from the details and legal technicalities involved was understood by her and that disinterested and competent persons with a fair understanding of the whole matter advised her to execute it SUNITABALA DEBI *v* DHARA SUNDARI DEBI CHOWDHURANI (1919) L R 46 I A 272

13 ———— Mortgage of entire sixteen annas of village—*Without reservation—Grove lands* Where a zamindar mortgages his entire zamindari rights in a village without any reservation whatever there is no reason why the mortgage should not be held to include the mortgagor s rights in grove land purchased some time before the execution of the mortgage HASAN ALI KHAN *v* AZHAR UL HASAN (1918) I L R 41 All 45

14 ———— Debtor executing a mortgage of his properties in favour of alleged creditor (a relation)—*Soon after suspending payment —Bona fides of transaction how to be determined—Consideration of facts as a whole and in relation to each other essential* C and D were related to each other and had between them numerous business dealings which it was alleged left D indebted to C to the extent of Rs 90 000 On 26th September 1898 just after D s shop had suspended payment D purported to execute a usufructuary mortgage of all his immoveable properties in favour of C in consideration of the said alleged debt owed by D to C Certain creditors of D who in the meanwhile had instituted suits against D attached before judgment the said properties whereupon C unsuccessfully laid claim to the properties under s 278 of Act XIV of 1882 *Held* in a suit by C to set aside the attachment that the question for determination in the case was whether the mortgage was a *bond fide* transaction entered into with the object of securing the debt of C or whether it was a mere contrivance for defeating or delaying the just claims of the other creditors and retaining the properties for the benefit of or in trust for D That taking the facts as a whole the mortgage was a mere device for rescuing the bulk of the available assets of D for the benefit of his family and indirectly for himself That also Court of first instance *fell into* an error in taking each fact which militated against the *bond fide* of the mortgage separated from the rest of the facts and proceeding to demonstrate that it was quite consistent with good faith whereas in a case like the present it was essentially necessary that the facts should be considered in relation to each other and weighed as a whole as was done in the Appeal Court whose decision the Judicial Committee affirmed GHUNSHAM DAS *v* UMAPERSHAD (1919) 23 C W N 817

15 ———————— Mortgage of several properties—*Sale of some under a paramount title—Failure of mortgagee to take payment out of surplus sale proceeds of amounts to release—Mortgagee if may realise the whole debt from remain*

MORTGAGE—contd.

CONSTRUCTION—contd.

property —Transfer of Property Act (IV of 1882) s 82 If properties A B and C are mortgaged they are all equally liable in the hands of the mortgagor for the mortgage If however during the subsistence of the mortgage they pass into other hands they are still similarly liable but the owners *inter se* when the mortgagee enforced are entitled to have the liability apportioned rateably between the properties according to their value at the date of the mortgage (s 82 of the Transfer of Property Act) This however is a right between the holders of the properties *inter se* and does not affect the mortgagee's right to enforce his mortgage against all or any of the properties. If however the mortgagee releases one or more of the properties from liability under the mortgage with knowledge that there has been a change of ownership as to some or all of the properties then the properties which remain liable are only liable to such part of the mortgage debt as is proportionate to their value at the date of the mortgage Whether a mortgagee's neglect to enforce his charge against the surplus sale-proceeds of mortgaged properties sold under a paramount title amounts to a release of the properties from their liability to the mortgage debt is a question of fact. THE MIDNAPUR ZEMINDARY CO LD v ABINASH CHANDRA MITTER (1918) 23 C W N 308

16 ———— "Muakhiza —*Transfer of Property Act (IV of 1882) ss 58 100* A deed the basis of a suit for sale as on a mortgage opened with a recital that the executant had borrowed a sum of money followed by a promise to pay the amount with interest at 2 per cent per month within a certain time and then provided *mua kh a a l o sud ta yom ul wasul upar* (description of the share) *Iaqiyat min muqir qaim ral ega liha a batarid tamas ul muakhiza yalad ka ikhaya* *Held* that this deed could not be construed as mortgage The word *muakhiza* did not necessarily imply a power of a sale and there was nothing else in the deed from which an intention to give a power of a sale could be inferred. DALIP SINGH v BAHADUR RAM (1912) I L R 34 All 446

17 ———— When only part of the consideration paid——*Mortgagee in possession cannot prescribe for higher interest by asserting a larger amount as due—Limitation Act Sch II Arts 144 148* Where only a part of the consideration for a mortgage has been paid the mortgage is a good security for the amount that has validly passed The mortgagee by remaining in possession for more than 12 years under such a mortgage cannot by merely claiming to hold for the full amount acquire by prescription a right to hold as mortgagee for such full amount Notwithstanding the assertion by the mortgagee of a larger interest than was validly passed to him by the mortgage article 148 of the Limitation Act will apply to a suit for redemption by the mortgagor Article 144 will not apply as article 148 specially provides for the case RAJAH TIRUMAL RAJU v PANDLA MATHIAL NAIDU (1911) I L R 35 Mad 114

18 ———— Collateral agreement —Where a mortgage is executed but there is a collateral agreement that no obligation should attach under the instrument till payment of money on the on hand and delivery to the registering officer on the other the moment the condition is fulfilled obligation attaches with effect from the date of execution and attestation of the document There is no analogy between a common law deed in England and a mortgage deed in this country in this respect JAIKISHAN LAL v RAM ADHAR SINGH v DEO NARAIN SINGH (1911) 16 C W N 612

19 ———— Liability for deficiency in interest—*whether personal merely or a charge on the mortgaged property* A mortgage deed provided that the mortgagee should take possession of the mortgaged property and out of the rents and profits pay the Government revenue and appropriate Rs 13 per annum on account of interest at the rate of 11 annas per cent per mensem It further provided that should the amount of profits calculated on the basis of the patwari's accounts be found insufficient to cover the whole amount payable for interest the deficiency would be made good by the mortgagor together with interest at the rate of Rs 2 per cent per mensem. *Held* that deficiency in the stipulated interest was realizable as well from the mortgaged property as from the mortgagor personally *Muhammad Husain v Seodarshan Das 4 All L J 1 6* referred to CHINTAMAN v DULARI (1910) I L R 33 All 107

20 ———— Interest partly in kind and partly in cash—*Interest when payable—Suit for arrears of interest—Words amounting to covenant to pay year by year* In this case their Lordships of the Judicial Committee held (reversing the decision of the High Court) that on the true construction of the mortgage there was clearly a personal covenant to pay interest on the mortgage money from year to year and that the suit which was for arrears of interest was therefore maintainable MADAPPA HEGDE v RAMKRISHNA NARAYAN (1911) I L R 35 Bom 327

21 ———— Personal decree, suit for——*Mortgaged properties if must be first proceeded against* *Held* on the construction of the mortgage bond in this case that it contained an express promise to pay the amounts secured so that the mortgagee was entitled to sue for a personal decree only *Held* further that a stipulation that if the debt be not paid off by the hypothecated properties the mortgagee will be able to realise the money by sale of the mortgagor's other moveable and immoveable properties did not imply that the part agreed to postpone the remedy against the person and other properties to that against the mortgaged properties BENOY KRISHNA DEB v DEBENDRA KISHORE NANDY (1911) 15 C W N 722

22 ———— Simple or anomalous mortgage——*Covenant to pay—Option of mortgagee to take possession on default of payment of interest—Mortgage if usufructuary—Decree for sale if proper* *Held* on the terms on the bond in suit that it was a simple mortgage A simple mortgagee is entitled to a decree for sale as a matter of course, notwithstanding that under the terms of the mortgage bond he has the option on the mortgagor's default in payment of interest to take possession of the mortgaged properties and to enjoy the same as under a usufructuary mortgage KRISHNA BHUPATI DEVU GARU v SULTAN BAHADUR OF VIZIANAGRAM (1911) 15 C W N 441

MORTGAGE—contd.

CONSTRUCTION—contd

23 ———— Attornment clause in mortgage deed—Construction of Deed The courts in India will not in the absence of the strongest reasons give a construction to an alleged attornment clause in a mortgage deed which will have the effect of creating rights of tenancy in derogation of the rights of the mortgagee By a deed dated the 14th August 1896 defendants 1st party mortgaged to the plaintiffs their shares in several mauzas inclusive of 200 bighas of zerait land Out of the 200 bighas of zerait land 50 bighas was left in the possession of the mortgagors at a nominal rent By a kabuliat dated the 25th September 1902 a further area of 4 bighas 10 cottahs of jungle land was let to the defendants at a rental of Rs 14 5 6 The plaintiffs sued for arrears of rent and for khas possession in terms of the mortgage Held on a construction of the mortgage deed that with regard to the 50 bighas of zerait land the real relationship between the parties was not that of landlord and tenant but mortgagee and mortgagor and that the arrears of rent claimed in the present suit were really on account of principal and interest The plaintiff was entitled to a decree for the amount claimed as rent and for recovery of possession of the 50 bighas Obiter dictum As the Bengal Tenancy Act 1885 does not contemplate a raiyat who does not come under any of the clauses of s 4 of that Act the mortgagor must with regard to the zerait land be held to be a non occupancy raiyat Held further on a construction of the kabuliyat that with regard to the 4 bighas 10 cattahs the relationship of landlord and tenant existed and that the mortgagor was not precluded from obtaining the status of an occupancy raiyat under the mortgagee The plaintiff was entitled to a decree for arrears of rent but not to recovery of possession as the mortgagor was found to have acquired occupancy rights in the holding UDAI CHAND v SANG BAHADUR SINGH 1 Pat L J 353

24 ———— Simple mortgage essentials of—recitals in mortgage deed effect of—mortgagor in possession acts of how far binding on mortgagee The recitals in a mortgage deed are important in considering the nature and the scope of the implied authority which arises as between the mortgagor and mortgagee when the former is allowed to remain in apparent possession and ownership of the mortgaged property A deed which is expressly called a mortgage deed and which expressly mortgages and hypothecates the property charged as security for the mortgage debt is according to the law of India a valid simple mortgage When a mortgagor remains in possession after the date of a mortgage he can deal with the property in the usual and customary way so as to bind the mortgagee but he must not do anything prejudicially affecting the mortgaged property as security for the debt The fact that a mortgage deed declares itself to be executed by a Manager appointed under the Guardian and Wards Act 1890 rather limits than extends the ordinary rights of a mortgagor in possession Where a person obtains a contractual benefit from a mortgagor in possession after the date of the mortgage the onus is upon such person to prove that it was a benefit which he might derive and retain in the usual course of the management of the property The High Court is entitled to examine and enquire into the grounds and basis upon which an entry in the Record of Rights was made ANANDA RAM MARWARI v DHANPAT SINGH 1 Pat L J 563

25 ———— What charges may be added to mortgage debt—whether payments on account of road cess may be added A mortgagee is not entitled to add the expenses incurred for payment of road cess to the sum due on the mortgage The payment of a public charge for which the mortgaged property may not be summarily sold cannot be constituted a charge upon the property S 72 of the Transfer of Property Act 1882 does not cover a case in which the right title and interest only of the mortgagor may be put up for sale The section includes only payments made to save the security itself RAJENDRA PRASAD v BAHURIA RATAN JOTI KUAR 1 Pat L J 580

CONTRIBUTION

See TRANSFER OF PROPERTY ACT 1882 s 82

———— Payment by co mortgagor—Guardian and Minor—Power of de facto guardian to mortgage minor's property—Mahomedan law Held that where a joint mortgagor seeks contribution upon the ground that he has paid the whole mortgage debt and thus relieved the property of his co mortgagor from a burden it is not necessary for him to plead that he did so under compulsion Held also that the de facto guardian of a minor Mahomedan is competent in case of necessity and for the benefit of the minor to make a valid mortgage of the minor's property ABID ALI v IMAM ALI (1915) I L R 38 All 92

———— Property subject to three mortgages sold under decrees on two—Decrees not satisfied—Property sold not liable to contribute to third mortgage Where property the subject of more than one mortgage is sold in execution of a decree on a prior mortgage and that decree still remains unsatisfied it cannot thereafter be made liable to contribution under a decree on a second or third mortgage Hari Raj Singh v Ahmad ud din Khan I L R 19 All 545 and Bohra Thakur Das v The Collector of Aligarh I L R 28 All 29 referred to BHAGWATI PRASAD v SHAFAAT MUHAMMAD CHAUDHRI (1920) I L R 43 All 42

———— Limitation of suit for contribution by co mortgagor—Contribution suit by co mortgagor paying off mortgage decree in excess of his share period of limitation for—Limitation Act (IX of 1908) Arts 60 99 120 or 132 which of them applies—A co mortgagor redeeming a mortgage if to be treated as an assignee of the original security A B and C mortgaged their properties to H in 1888 the due date of the mortgage being September 1891 In 1903 the mortgagee brought a suit upon his mortgage and a preliminary decree was passed in June 1903 In February 1904 some of the mortgagors paid a portion of the mortgage debt to the mortgagee In may 1908 order absolute for sale of the mortgaged properties was passed and the mortgagee thereafter put up the properties to sale To prevent the sale two of the mortgagors satisfied the mortgage decree by depositing the decretal amount in Court on the 23rd March 1909 and one of them brought the present suit for contribution on the 7th October 1917 against his co mort

MORTGAGE—contd

CONTRIBUTION—contd

gagor Held that the position of the co mortgagor redeeming a mortgage is that of an assignee of the original security and that the period of limitation is the same as that within which the original mortgagee could have brought his suit on his mortgage had he not been redeemed Therefore the suit having been brought more than 12 years after the due date of the original mortgage was barred by limitation under Art 132 Limitation Act *Parcham v Ili I L R 4 All 58* (1881) *Nura Bibi v Jagat I L R 8 All 35* (1886) *Ashfaq v Wazir I L R 14 All 1* see also *I L R 11 All 43* (1889) *Har Prasad v Raghunandan I L R 31 All 166* (1908) *and Digambar v Harendra 14 C W N 61* (1910) followed *Lasud b v Balaji I L R 26 Bom 500* (1902) referred to Besides the suit having been brought more than six years after the dates of the payments was barred, whether Art 60 or 99 or Art 120 of the Limitation Act applied SREEMATI RAJKUMARI DEBI v MUKUNDALAL BANDOPADHAYA
25 C W N 283

DEPOSIT OF TITLE DEEDS

See MORTGAGE (REGISTRATION)
24 C W N 599

See MORTGAGE (MISCELLANEOUS)
I L R 43 Calc 1052

See REGISTRATION ACT 1908 s 49
I L R 40 Mad 547

——————Equitable mortgage—*Security scope of—Title-deeds deposited as security and endorsement made on promissory note given—Addition subsequently made to memorandum endorsed on note—Scope of security limited to original memorandum.* Where title-deeds of property are handed over with nothing said except that they are to be security the law supposes that the scope of the security is the scope of the title deeds Where however title-deeds are handed over accompanied by a bargain that bargain must rule Lastly when the bargain is a written bargain it and it alone must determine what is the scope and extent of the security *Shaw v Foster L R 5 E & I App 321 per* Lord Cairns followed. On obtaining a loan the defendants executed a promissory note and made an endorsement on it As security grant of a house in 14th Street to which admittedly some months afterwards words were added which caused the endorsement to read As security grant of a house in Strand Road and 14th Street *There was in their Lordships opinion* satisfactory evidence for the defendants of identification to show that the security consisted of only one house and that the references to it in books of account and elsewhere were always in the singular and on the other hand the plaintiffs the persons holding the security on whom it lay to clearly satisfy the Court of the scope of the security had failed to do so *Held* therefore (upholding the appellate decision of the Chief Court) that the scope of the security was limited by the original endorsement on the note PRANJIVANDAS JAGJIVANDAS MEHTA v CHAN MA PHEE (1916)
I L R 43 Calc 895

DISCHARGE

See UNDER SUB HEADING SALE OF MORTGAGED PROPERTY 15 C W N 800

MORTGAGE—contd

DISCHARGE—contd

1 ———————— Co mortgagees—*Payment by mortgagor to one of them who gives him full discharge—Other mortgagees if bound by it—Effect on the interest of mortgagee who gave the discharge* Payment to one of several joint creditors does not necessarily operate as a discharge of the debt in so far as the other creditors are concerned In the absence of any evidence or circumstances which would justify a contrary inference it will be presumed notwithstanding the form of the obligation that a debt due to a number of joint creditors is due to them in severalty Where after relations between co mortgagees had become strained one of them acknowledged receipt of payment from the mortgagor and gave the latter a discharge in respect of the mortgage debt *Held* that the discharge operated as a valid discharge in respect only of the share of the mortgage money due to the co mortgagee by whom it was given. HAKIM v ADWAITA CHANDRA DAS DALAL (1918) 22 C W N 1021

2 ————————Equity of redemption *of moiety of mortgaged property—Purchase by mortgagee—Extinction of mortgage.* In the absence of fraud the purchase by the mortgagee in Court auction of the equity of redemption of some items of the mortgaged properties discharges that portion of the mortgage debt which was chargeable on those items that is it discharges a portion of the mortgage debt which bears the same ratio to the whole mortgage debt as the value of those items bears to the value of all the mortgaged properties *Bisheshur Dial v Ram Sarup (1910) I L R 22 All 284 (F B)* followed *Sami Rowappa v Kuppusami Iyengar (1911) 2 M W N 342* overruled PONNAMBALA PILLAI v ANNAMALAI CHETTIAR (1920) I L R 43 Mad 372

3 ———— Payment to one mortgagee whether discharges the whole security—*Contract Act (IX of 1872) s 38 (3)* Payment to one of two mortgagees is not a discharge of the mortgagor s liability to the other Unless the contrary is shewn mortgagees must be regarded as having a separate interest in the money advanced by them although they take a joint security and must be treated as in the position of tenants in common and not joint tenants S 38 (3) of the Contract Act 1872 relates to joint promisees and not to co mortgagees whose interests are several SYED ABBAS ALI v MISRI LALL 5 Pat L J 576

4 ———— Heirs of original mortgagee whether one of them is entitled to receive the entire debt — One of the heirs, or an assignee of one of the heirs of a deceased mortgagee is not competent to grant a release of the interests of the others BANAMA SATPATHI v TALNA RAMHARI PATRA 5 Pat L J 161

5 ——————A mortgage lien is not extinguished on the passing only of the decree upon it It is not extinguished till the sale takes place in execution of the mortgage decree and the sale proceeds are distributed in satisfaction of the mortgage debt BIDHUMUKHI DASI v BHAYA SUNDARI DASI 24 C W N 961

ESTOPPEL

See PALAS OR TURNS OF WORSHIP
I L R 42 Calc 455

1 ———— Mortgage of entire property by owner of half share —*Purchase by defendant*

MORTGAGE—*contd*

ESTOPPEL—*contd*

of entire property pending mortgage suit—Sale and purchase by mortgagee in presence of defendant—Defendant if estopped from proving title to the other half—Ignorance of plaintiff of real fact and misleading by defendant's conduct to be proved J who owned a half share in a property purported to mortgage the whole After a preliminary decree had been passed in favour of the mortgagee in his suit against J brought on the mortgage N purchased the interest of J and his co sharer and was brought on the record as the successor in interest of J The mortgage decree was thereafter made absolute and the property put up to sale and purchased by the mortgagee In a suit by the latter against N to establish his title to the entire mortgaged property *Held* that N would not be estopped from showing that the mortgage sale passed only J's half share in the property to the plaintiffs unless it was established that the mortgagee was not aware that J had only a half share in the property which he purported to mortgage and that he was misled by some representation by conduct of N into believing that J had full title KAMAL KUMAR NANDI *v* KALI MEAH (1911)

15 C W N 572

2 ——— Power of representatives of mortgagor to question validity of mortgage— *Adverse possession—Possession adverse to mortgagor not necessarily adverse to mortgagee* *Held* that although the representatives of a mortgagor cannot as such question the validity of the mortgage it may be open to them as *mutawallis* to plead that the property was wakf and that the mortgage of it was void *Gulzar Ali v Fida Ali I L R 6 All 24* distinguished *Held* also that a simple mortgage being not merely a security for a debt but a transfer of an interest in the property mortgaged a trespasser who ousts the mortgagor and holds the property adversely to him may by prescription become the owner of the limited estate which the mortgagor had in the property but such adverse possession cannot extinguish the right of the mortgagee *Agency Company v Short L R 13 A C 793* *Smith v Lloyd 9 Ex 562* *Secretary of State for India v Krishnamoni Gupta I L R 29 Calc 518* and *Ismdar Khan v Ahmad Husain I L R 30 All 119* referred to *Ramaswami Chetty v Panna Padayachi 21 Mad L J 397* and *Pratap Bahadur Singh v Maheshwar Bakhsh Singh 12 O C 45* not approved *Amadar Mandal v Makhan Lal Day I L R 33 Calc 1015* and *Parthasarathi Naikan v Lakshmana Naikan 21 Mad L J 467* approved and followed *Karan Singh v Bakar Ali Khan I L R 5 All 1* discussed NANDAN SINGH *v* JUMMAN (1912)

I L R 34 All 649

3 ——— Purchase of mortgaged property by mortgagee in execution of his decree for sale— *Subsequent suit for sale by a prior mortgagee—Plea of incompetence of Mortgagor raised by mortgagee—Purchaser* *Held* that a mortgagee who in execution of a decree for sale in his favour has purchased the mortgaged property himself could not be permitted in another suit on a prior mortgage of the same property in which he was arrayed as defendant to set up the defence that the mortgagor was incompetent to execute the mortgage in suit *Bishumbhar Dayal v Parshadi Lal 10 All L J 119* *Bakhshi Ram v Liladhar I L R 35 All 353* and *Prayag Raj v Sidhu Prasad Tiwari I L R 35 Calc 877* referred to *Radha Bai v Kamod Singh I L R 30 All 38* distinguished TOTA RAM *v* HAR GOBIND (1913)

I L R 36 All 141

EXECUTION OF MORTGAGE DECREE

1 ——— Order in which properties to be sold discretion of Court as to— *Execution of mortgage decree—Partial execution application for if may be entertained*—Two properties A and B were mortgaged by one deed by S Subsequently S sold the property A to one P The mortgagee brought a suit on the mortgage and got a decree against S and P The decree holder applied for execution against both the properties but the Court, in the exercise of its discretion ordered execution against the property B in the first instance Thereupon the decree holder had the petition for execution dismissed and made a fresh application for execution against the property A alone *Held* that the discretion as to the order in which the execution should issue is vested in the Court alone and the decree holder cannot be allowed to fetter the hands of the Court by petition for partial execution *Held* also that execution could not be ordered unless the decree holder included both the properties in his petition *Amir Chand v Bakshi Sheo Pershad I L R 34 Calc 13* distinguished MAHOMED SADDIK *v* SAUDAGAR MIAN LAHARI (1910) 15 C W N 80

2 ——— Mortgage by co-parcener— *Hindu Law—Mitakshara—Decree directing property to be held in specific shares and charging mortgagor's share with the mortgagee's dues if enforcible in execution—Separate suit to enforce lien if necessary* A mortgage by a co parcener in a Mitakshara joint family was declared to be void in so far as it purported to affect the specific share of the mortgagor but the Court directed by its decree that the mortgagor and his co sharer do hold the properties in specified shares and that the share of the mortgagor be held subject to the lien of the mortgagee for the sum advanced with interest The mortgagor or his co sharers not having asked to redeem the share of the mortgagor by paying off the mortgage money with interest no decree for redemption was made *Held* that the mortgagee could bring the share to sale in execution of the decree and it was not incumbent on him to institute a separate suit to enforce the lien RAM SUNDAR DAS *v* NATHUNI SINGH (1911)

15 C W N 748

3 ——— Interest— *Transfer of Property Act (IV of 1882) ss 83 84—Mortgage interest on up to what date payable—Prior incumbrancers joined in suit by puisne mortgagee if may get interest at contract rate after date fixed in preliminary decree for repayment* A puisne mortgagee having joined the prior mortgagees in his suit a decree was passed fixing the period of redemption for the plaintiff but not in regard to the prior incumbrances The decree did not also determine the amounts payable to the latter In execution the property was sold and the purchase money deposited Subsequently the mortgagor brought a suit to set aside the sale which was ultimately dismissed and the sale was then confirmed On the question up to what date the prior mortgagees would be entitled to get interest *Held* that interest would be payable on the principle of s 84 of the Trans

MORTGAGE—*contd*

EXECUTION OF MORTGAGE DECREE—*contd*

fer of Property Act up to the date of confirmation of sale and not up to the late fixed for payment in the decree Although it may be open to the Court to distribute the sale proceeds amongst the claimants before the sale has been confirmed it is not obligatory on the Court to distribute it then nor is the sum distributable as a matter of course Order for distribution ought not ordinarily to be made before the confirmation of the sale *Jogendra Nath Sirkar v Chunder Chunder Add I L R 12 Calc 59 Hafiz Mahomed Ali Khan v Damodar Paramanick I L R 18 Calc 24* explained. The order for distribution by the Court was a decree within s. 2 read with s 47 sub s (1) of the Civil Procedure Code and appealable as such BENODE LAL BANDOPADHYA v HARISH CHANDRA TEWARI (1910) 15 C W N 783

EXONERATION OF CERTAIN ITEMS MORTGAGED

——— Suit for sale of one *item exonerating other items mortgaged—Right of mortgagee to exonerate—Contribution duty of which is lost by exoneration—Transfer of Property Act (IV of 1882) ss 60 and 82* A mortgagee seeking to realize the amount due to him brought a suit for sale of one only of the items mortgaged impleading therein the mortgagor and the person who purchased the equity of redemption in the one item in execution of a money decree The mortgagee exonerated from liability the other items mortgaged *Held* by the FULL BENCH that a mortgagee voluntarily releasing from the suit a portion of the mortgaged property is not bound to abate a proportionate part of the debt and is entitled to recover the whole of the mortgage amount from any portion of the mortgaged property *Ponnusami Mudaliyar v Srinivasa Naickan I L R 31 Mad 333 and Surjiram Marwari v Barhamdeo Persad 1 C L J 337* dissented from *Semble* A release of certain items by the mortgagee has not the effect of releasing those items from liability for contribution under s 82 of the Transfer of Property Act *Jugal Kishore Sahu v Kedar Nath I L R 34 All 606* referred to PERUMAL PILLAI v RAMAN CHETTIAR (1917) I L R 40 Mad 968

FEMALES REPRESENTATION OF

——— *Mortgage bond executed by male members of Mahomedan family—No proof of custom to exclude females as in Hindu family—Female members added as defendants in mortgage suit though not executants of bonds—Form of decree—Whether females were represented in the mortgage transaction by male members of family—Estoppel by conduct* The appellants were the female members of a Mahomedan family which had adopted the Hindu religion in matters of worship and as to which both Courts in India concurrently held that there was no custom proved excluding female members from inheritance which was the case set up by the respondent In a suit brought by the latter to enforce a mortgage bond which has been executed only by the male members of the family in which suit the appellants were also joined as defendants the first Court made a decree against the interests of the male defendants only in the property but the High Court decreed the suit against both the male and female defendants on the grounds that because the female members had not actively interfered in the management of the property the male defendants must be taken to have represented them in the mortgage transaction. It appeared that in other transactions the male members of the family had dealt with the family property without the active concurrence of the females *Held* by the Judicial Committee reversing the decision of the High Court that the evidence did not prove that the male defendants had represented the appellants The latter were *purdanashin* ladies and naturally left the management of the property to their male relatives There was nothing to show that the appellants had misled the respondent either by word or conduct to the belief that they had no proprietary interest in the property and he made no inquiries in the matter from them or their husbands as he might have done if he had any doubt in the matter The decree of the High Court was therefore erroneous so far as it made the appellants liable and should have been limited to making liable only the interests in the property of the male defendants the executants of the mortgage bond AZIMA BIBI v SHAMALANAND (1912) I L R 40 Calc 378

FORECLOSURE.

1 ——— Order absolute application for—*Mortgage—Foreclosure—Limitation—Execution of decree application for—Revival of pending execution—Limitation Act (IX of 1908) Sch II Art 181* Previous to the passing of the Limitation Act (IX of 1908) and the Civil Procedure Code (V of 1908) there was no rule of limitation applicable to an application for order absolute of a decree *nisi* made under s 86 of the Transfer of Property Act (IV of 1882) *Tiluck Singh v Parsotein Proshad I L R 22 Calc 924 Rahmat Karim v Abdul Karim I L R 34 Calc 672* referred to An application for execution of a decree may be treated as one in continuation or revival of a previous application similar in scope and character the consideration of which has been interrupted by the intervention of objections and claims subsequently proved to be groundless or has been suspended by reason of an injunction or like obstruction *Qamaruddin Ahmad v Jewahir Lal I L R 27 All 334 L R 32 I A 102 Pyara Narain Guria v Pachu Maity I L R 23 Calc 437 Narayan Gobind Mantk v Sono Sadashiv I L R 24 Bom 345 Rahim Ali Khan v Phul Chand I L R 18 All 482 Mir Ajmuddin v Mathura Das 11 Bom H C 206 Suppa Peddiar v Arudai Ammal I L R 28 Mad 50 Para Ram v Gardner I L R 1 All 355* referred to The Limitation Act (IX of 1908) does not profess to provide for all kinds of applications whatsoever *Govind Chunder Goswami v Rungunmoney I L R 6 Calc 60 Sital Prosad v Abdul Rashid 11 Oudh Cases 208* referred to Nor does it apply to an application to a Court to do what the Court has no discretion to refuse *Kyla a Goundan v Ramasami Ayyan I L R 4 Mad 172 Balaji v Kushaba I L R 30 Bom 415* referred to Nor is it applicable to an application to the Court to terminate a pending proceeding the final order in which has been postponed for the benefit of the defendant or for the convenience of the Court *Puran Chand v Roy Radha Kishen I L R 19 Calc 132* refe

MORTGAGE—contd

ESTOPPEL—contd

of entire property pending mortgage suit—Sale and purchase by mortgagee in presence of defendant—Defendant if estopped from proving title to the other half—Ignorance of plaintiff of real fact and misleading by defendant's conduct to be proved J who owned a half share in a property purported to mortgage the whole After a preliminary decree had been passed in favour of the mortgagee in his suit against J brought on the mortgage A purchased the interest of J and his co sharer and was brought on the record as the successor in interest of J The mortgage decree was thereafter made absolute and the property put up to sale and purchased by the mortgagee In a suit by the latter against A to establish his title to the entire mortgaged property *held* that A would not be estopped from showing that the mortgage sale passed only J's half share in the property to the plaintiffs unless it was established that the mortgagee was not aware that J had only a half share in the property which he purported to mortgage and that he was misled by some representation by conduct of A into believing that J had full title KAMAL KUMAR NANDI v KALI MEAH (1911)

15 C W N 572

2 ———— **Power of representatives of mortgagor to question validity of mortgage**—*Adverse possession—Possession adverse to mortgagor not necessarily adverse to mortgagee* *Held* that although the representatives of a mortgagor cannot as such question the validity of the mortgage it may be open to them as *mutawallis* to plead that the property was wakf and that the mortgage of it was void *Gulzar Ali* v *Fida Ali* *I L R 6 All 24* distinguished *Held* also that a simple mortgage being not merely a security for a debt but a transfer of an interest in the property mortgaged a trespasser who ousts the mortgagor and holds the property adversely to him may by prescription become the owner of the limited estate which the mortgagor had in the property but such adverse possession cannot extinguish the right of the mortgagee *Agency Company* v *Short L R 13 A C 793* *Smith* v *Lloyd 9 Ex 562* *Secretary of State for India* v *Krishnamoni Gupta I L R 29 Calc 518* and *Ismdar Khan* v *Ahmad Husain I L R 30 All 119* referred to *Ramaswami Chetty* v *Panna Padayachi 21 Mad L J 397* and *Pratap Bahadur Singh* v *Maheshwar Bakhsh Singh 12 O C 45* not approved *Amadar Mandal* v *Makhan Lal Day I L R 33 Calc 1015* and *Parthasarathi Naikan* v *Lakshmana Naikan 21 Mad L J 467* approved and followed *Karan Singh* v *Bakar Ali Khan I L R 5 All 1* discussed NANDAN SINGH v JUMMAN (1912)

I L R 34 All 640

3 ———— **Purchase of mortgaged property by mortgagee in execution of his decree for sale**—*Subsequent suit for sale by a prior mortgagee—Plea of incompetence of Mortgagor raised by mortgagee—Purchaser* *Held* that a mortgagee who in execution of a decree for sale in his favour has purchased the mortgaged property himself could not be permitted in another suit on a prior mortgage of the same property in which he was arrayed as defendant to set up the defence that the mortgagor was incompetent to execute the mortgage in suit *Bishumbhar Dayal* v *Parshadi Lal 10 All L J 112* *Bakhshi Ram* v *Laladhar I L R 35 All 3 ?* and *Prayag Raj* v *Sidhu Prasad* *Tiwari I L R 35 Calc 877* referred to *Radha Bai* v *Kamod Singh I L R 30 All 38* distinguished TOTA RAM v HAR GOBIND (1913)

I L R 36 All 141

EXECUTION OF MORTGAGE DECREE

1 ———— **Order in which properties to be sold discretion of Court as to**—*Execution of mortgage decree—Partial execution application for if may be entertained*—Two properties A and B were mortgaged by one deed by S Subsequently S sold the property A to one P The mortgagor brought a suit on the mortgage and got a decree against S and P The decree holder applied for execution against both the properties but the Court, in the exercise of its discretion ordered execution against the property B in the first instance Thereupon the decree holder had the petition for execution dismissed and made a fresh application for execution against the property A alone *Held* that the discretion as to the order in which the execution should issue is vested in the Court alone and the decree holder cannot be allowed to fetter the hands of the Court by petition for partial execution *Held* also that execution could not be ordered unless the decree holder included both the properties in his petition *Amir Chand* v *Bakshi Sheo Pershad I L R 34 Calc 13* distinguished MAHOMED SADDIK v SAUDAGAR MIAN LAHARI (1910) **15 C W N 80**

2 ———— **Mortgage by co-parcener**—*Hindu Law—Mitakshara—Decree directing property to be held in specific shares and charging mortgagor's share with the mortgagee's dues if enforcible in execution—Separate suit to enforce lien if necessary* A mortgage by a co parcener in a Mitakshara joint family was declared to be void in so far as it purported to affect the specific share of the mortgagor but the Court directed by its decree that the mortgagor and his co sharer do hold the properties in specified shares and that the share of the mortgagor be held subject to the lien of the mortgagee for the sum advanced with interest The mortgagor or his co sharers not having asked to redeem the share of the mortgagor by paying off the mortgage money with interest no decree for redemption was made *Held* that the mortgagee could bring the share to sale in execution of the decree and it was not incumbent on him to institute a separate suit to enforce the lien RAM SUNDAR DAS v NATHUNI SINGH (1911)

15 C W N 748

3 ———— **Interest**—*Transfer of Property Act (IV of 1882) ss 83 84—Mortgage interest on up to what date payable—Prior incumbrancers joined in suit by puisne mortgagee if may get interest at contract rate after date fixed in preliminary decree for repayment* A puisne mortgagee having joined the prior mortgagees in his suit a decree was passed fixing the period of redemption for the plaintiff but not in regard to the prior incumbrances The decree did not also determine the amounts payable to the latter In execution the property was sold and the purchase money deposited Subsequently the mortgagor brought a suit to set aside the sale which was ultimately dismissed and the sale was then confirmed. On the question up to what date the prior mortgagees would be entitled to get interest *Held* that interest would be payable on the principle of s 84 of the Trans

MORTGAGE—*Contd*

FORECLOSURE—*Contd*

that the defendants the ... can redeem the whole or one half ... the property within one year and ... the ... in part the execution of the d... *Held* that ... decree did not ... a fresh mortgage ... *D... Lal* (6 P R 1918) ... approved *Held also* that the possession obtained by the mortgagee under the decree on failure of payment by the mortgagor was that of a full owner and as such was adverse to the mortgagor and his ... in title KARORI MAL v LAKSHMI ... I L R 2 Lah 53

——— Service of notice of demand on minor mortgagor through his brother the other mortgagor as guardian ... *Demand made some time prior to application for foreclosure* The plaintiff mortgagee sued for possession by foreclosure of the mortgaged property The application for notice of foreclosure was dated 10th May 1911 Demand had been made by registered notice dated 30th August 1909 *which was served upon* H L for himself and as guardian of K C the other mortgagor a minor An application for guardianship had been dismissed on the ground that K C and H L formed members of a joint Hindu family and it was found that the minor lived with his relation *Held* that the service of the notice on K C through H L was under the circumstances sufficient *Ras Muni Dibiah* v *Pran Kishen Das* (4 *Moo I A* 392 403) and *Lal Singh* v *Gopal Das* (91 *P R* 189) referred to *Held also* that there is no authority for the contention that the demand must immediately precede the application for foreclosure and that the foreclosure proceedings were consequently not defective because the demand was made sometime previous to the application for foreclosure *Bhagirath* v *Natt Mal* (105 *P R* 1907) *Dalip Singh* v *Jaimal Singh* (134 *P L R* 1910) and *Barkat Ali* v *Ali* (91 *P R* 1913) referred to *Hazara Singh* v *Muhammad Khan* (131 *P L R* 1901) distinguished and in part dissented from GORDHAN DAS v MUSSAMMAT PURMAN I L R 1 Lah 292

8. ——— Final decree application for by transferee from defendants effect of —*Code of Civil Procedure* (*Act V of 1908*) *O XXXIV r 3* (2)—*decretal amount not paid in time whether defendant entitled to pay between expiry of time and passing of final decree* Although an application for a final decree in a foreclosure suit should be made by the plaintiff yet where such an application was made by a transferee from the defendants in the presence of the latter *Held* that the defendants were not entitled subsequently to challenge the final decree on the ground that it had not been applied for by the plaintiff The proviso to O XXXIV r 3 (2) gives the Court a discretionary power to extend the time for payment of the decretal amount but a mortgagor has no absolute right to pay the money after the expiry of the specified period even though no final decree has up to the time of such payment been made PATNAKAR GOUNTIA v CHAMRA SATPATHY 4 Pat L J 347

FRAUD

———*Suit to recover the amount due—Defendant s plea that the mortgage was effected to defraud his creditor—Attachment of the property by the creditor—Order for sale subject to the mortgage—Creditor paid off before sale—Decree for plaintiff on the ground that defendant cannot plead his own fraud—Fraud not carried out—Defendant s intention not punishable* The plaintiff sued to recover from the defendant the amount due under a mortgage The defendant pleaded that the mortgage deed was effected to protect his property from his creditor and that no consideration really passed under the deed Previous to the suit the defendant s creditor had attached the mortgaged property and the mortgagee (present plaintiff) had made a claim on the basis of the mortgage for the release of the property from attachment The mortgagor (present defendant) admitted the mortgage and the property was ordered to be sold subject to the mortgage But the property was however not sold because the mortgagor paid off his creditor before the order for sale was carried into effect Both the lower Courts decreed the claim on the ground that the defendant could not be allowed to defeat the plaintiff by pleading his own fraud On second appeal by the defendant *Held* setting aside the decree that as the defendant s creditor had not been defrauded there was no reason why the Court should punish his intention to defraud by passing a decree against him *Sidlingappa* v *Hirasa* *I L R 31 Bom 405* explained and distinguished *Ram Surun Singh* v *Pran Peary* *13 Moo I A 551* referred to GIRDHARLAL ISAYAGDATT v MANIKAMMA (1913) I L R 38 Bom 10

GUARDIAN MORTGAGE BY

———*Guardians and Wards Act* (*VIII of 1890*) *ss 29 30—Mortgage by guardian without Judge s authority—Ward benefited—Suit to enforce mortgage—Minor s remedy—Restitution of benefit—Equitable obligation of defendant* A mortgage of a minor s property executed by a certificated guardian without permission taken from the District Judge is voidable only But it is not necessary that the person affected should sue to set aside the transaction it is sufficient if he declares his will to rescind by way of defence in an action to enforce the mortgage against him Where it was found that the money raised by the mortgage was for the benefit of the minor the latter cannot avoid the mortgage without restoring the benefit which he had received under it this equitable doctrine being applicable as well to a defendant in an action on the mortgage as to a plaintiff seeking to avoid the mortgage *The Eastern Mortgage and Agency Co* v *Rebati Kumar Ray* 3 *C L J* 260 followed HEM CHANDRA SARKAR v LALIT MOHON KAR (1912) 16 C W N 715

———*By certificated guardian —Sanction to raise loan granted by District Judge but subsequently revoked—Money lent without notice of revocation and applied by guardian for minor's benefit—Effect of the revocation of sanction on the mortgage—Rate of interest* The certificated guardian of a minor obtained the leave of the District Judge to raise a loan for a certain amount from the plaintiff Subsequently the District Judge called upon the guardian to state whether the mortgage had been executed or not and on the guardian s failure to do so the Judge revoked the order No notice of revocation was given either to the plaintiff

MORTGAGE—*contd*

GUARDIAN MORTGAGE BY—*contd*

or the guardian and the plaintiff advanced the money on the mortgage which was executed by the guardian and the entire amount was applied to the benefit of the minor's estate The rate of interest was not placed before the District Judge and was not sanctioned by him but that stipulated in the mortgage bond was Rs 1 8 with annual rests *Held* that even assuming that the order of the District Judge revoking the leave was effective as against the plaintiff the transaction stood in the same position as if there was no sanction by the Judge to the certificated guardian The order was merely a voidable one under s 30 of the Guardians and Wards Act at the instance of the minor on coming of age after restoration of the benefit received by him under the order and the plaintiff was entitled to a decree for the amount advanced by him on the mortgage bond but only to interest at the rate of 12 per cent simple interest MANASHARAM DAS *v* AHMED HOSAIN PRODHAN (1916) 21 C W N 63

————————*Mortgage executed by purdanashin lady as guardian of minor son with sanction of District Judge—Lender if justified in relying on Court's sanction and making no further enquiry—Application of money borrowed lender if bound to see to* A *purdanashin* lady acting as guardian of her minor son applied to the District Judge for raising a loan by mortgage and the District Judge being satisfied as to the necessity of the loan sanctioned it In a suit on the mortgage it was pleaded *inter alia* that there was no necessity for a considerable portion of the loan *Held* that the lender was not bound to go behind the order of the District Judge sanctioning the loan and was entitled to rely upon it and if he acted *bonâ fide* he was not bound to see to the application of the money AKHIL CHANDRA SAHA *v* GIRISH CHANDRA SAHA (1917) 21 C W N 864

INTEREST

1 ————————*Preliminary decree appeal by mortgagee against dismissed—Mortgagee if may claim contract rate of interest up to date of payment fixed in final decree—Purchaser of equity of redemption if personally liable* Where the mortgagee plaintiff prefers an unsuccessful appeal against the preliminary decree made in his suit and the mortgagor does not ask for extension of time to enable him to redeem it is not open to the mortgagee to demand interest at the contract rate up to the date fixed for payment in the final decree A purchaser of the equity of redemption is not personally liable to repay the mortgage debt TARA CHAND MARWARI *v* BROJA GOPAL MOOKERJEE (1912) 17 C W N 457

2 ————————*Mortgage by conditional sale with no provision for* post diem *interest—Post diem interest not allowed* A mortgage executed in 1869 provided for the payment of the sum of Rs 300 with interest at Re 1 8 per cent per mensem in one lump sum upon a certain specified date four years from the date of the mortgage It further provided that if the money was not paid upon that date the property mortgaged should become the absolute property of the mortgagee There was no stipulation of any kind as to the payment of interest after the date fixed *Held* that the mortgagee was not entitled to *post diem* interest *Mathura Das v Raja Narindar Bahadur I L R 19 All 39* distinguished *Gudri Koer v Bhubaneswari Coomar Singh I L R 19 Calc 19* and *Moti Singh v Ramcharan Singh I L R 24 Calc 699* followed BALWANT SINGH *v* GAYAN SINGH (1913) I L R 35 All 534

3 ————————*Loss of part of security by acquisition of mortgaged land—Mortgagee applying to Land Acquisition Judge for return of mortgage money (out of the compensation money) within term whether entitled to interest for the whole term—Land Acquisition Act (I of 1894) ss 18 20* If the mortgagee makes a demand for payment within the term and the mortgagor complies the mortgagee cannot insist upon payment of interest for the whole of the term *Letts v Hutchins L R 13 Eq 176 In re Moss 31 Ch D 90 Smith v Smith [1891] 3 Ch 550* referred to Where the mortgagee has given notice requiring payment within the term he cannot withdraw it without the consent of the mortgagor *Santley v Wilde [1899] 1 Ch 747 2 Ch 474* followed Where the mortgagor agreed to keep the money for one year from 25th September 1912 on condition that the land should remain as security for the loan during the term but one of the properties given as security had been acquired (the mortgagee probably having no knowledge thereof) and on the 11th October 1912 the mortgagor applied to the Land Acquisition Deputy Collector that the money due under the mortgage (including one full year's interest) might be paid to him out of the compensation money and the mortgagor consented *Held* that as the contract between the parties could not be performed according to its letter by reason of circumstances beyond their control the mortgagor was not bound to pay interest beyond the period of one month (as admitted by him) *Bakhtawar Begam v Husaini Khanum I L R 36 All 195* explained PROKASH CHANDRA GHOSE *v* HASAN BANU BIBI (1914) I L R 42 Calc 1146

4 ————————*Covenant of possession by the mortgagee in lieu of interest—Mortgagee wrongfully kept out of possession of mortgaged property—Interest—Charge on mortgaged property—Limitation Act (IX of 1908) Sch I Arts 116 132—Transfer of Property Act (IV of 1882) s 7* A mortgage deed expressly covenanted that the mortgagee should have possession of the mortgaged property in lieu of interest and that if the mortgagors failed to pay the amount of the debt at the end of the period specified the mortgagee should be at liberty to foreclose according to law Except for one year the mortgagee in spite of his efforts was wrongfully kept out of possession by the mortgagor In a suit brought by the mortgagee on the mortgage deed —*Held* that the mortgagee was clearly entitled to some interest as a charge on the property and the interest claimed was not excessive *Raja Oodit Purkash Singh v Martindell 4 Moo I A 444 Pargan Pandey v Mahatam Mahto 6 C L J 143 Partab Bahadur Singh v Gajadhar Bakhsh I L R 24 All 521 L R 29 I A 148* and *Moti Singh v Ramohari Singh I L R 24 Calc 699* referred to *Mahadaji v Joti I L R 17 Bom 425* distinguished SITA NATH GHOSE *v* THAKURDAS CHAKRAVARTY (1918) I L R 46 Calc 448

MORTGAGE—*contd*

INTEREST—*contd*

5. ———— *Stipulation as to payment of interest if unreasonable and binding on pardanashin executant—Successful Appellant deprived of interest for period during which case was hung up through his persistence in urging an unsupportable claim of interest* Where by a mortgage deed it was stipulated that the mortgagee was to remain in possession and enjoy the rent and profits and that after the expiry of thirty years at the time of redemption interest shall be paid along with the principal at the rate of 1 percent per mensem *Held*—That the mortgage deed did not bind the mortgagor to pay interest from the date of the mortgage and the condition to pay interest only came into force on the expiry of the thirty years That so interpreted the contract was not one which the executant of the mortgage a *purdanashin* lady could not understand The Judicial Committee disallowed interest to the mortgagee from the date of the decree of the Subordinate Judge (which had been reduced by the Judicial Commissioners but on the mortgagee's appeal the Board restored) to the disposal of the appeal by the Privy Council, the case having in its view been hung up by his persistence in asserting an unwarrantable claim of interest from the date of the mortgage RAJA SIR MOHAMMAD ALI MOHAMMAD KHAN BAHADUR *v* QUAZI RAMZAN

24 C W N 977

LOST BOND

———— *Suit on lost bond—Admission of execution—Plea of payment—How far question of loss material* In a suit brought on a lost mortgage bond the defendant a son of the executant admitted execution but pleaded payment and denied the loss *Held* that since the defendant admitted execution it lay on him to prove that the mortgage had been discharged The question of the loss of the bond was only material for the purpose of determining whether the bond had been discharged and returned JHANDU MAL *v* KARAN SINGH (1915)

I L R 37 All 426

MARSHALLING

———— Mortgagee failing to pay a part of consideration as provided in the mortgage deed—*Failure of consideration—Subsequent payment cannot be taken as part of mortgage debt—Transfer of Property Act (IV of 1882) ss 56 81 88—Marshalling of securities* In 1896 *G* mortgaged some lands (Serial Nos 1—10) to *V* for Rs 400 of which Rs 200 were paid in cash and Rs 200 were to be paid to *N* a prior mortgagee *V* having failed to pay to *N* *G* sold to defendant No 5 some of the lands mortgaged (Serial Nos 6—10) and other property and redeemed *N*'s mortgage by paying Rs 200 to him Subsequently *V* paid Rs 200 to *G* Shortly afterwards *G* mortgaged some more lands (Serial Nos 1 3 4 and 5) to defendant No 4 for Rs 400 The defendant No 4 sued on his mortgage and obtained a decree against *G* In execution of the decree the lands Serial Nos 1 3 4 5 were sold and were purchased by defendant No 4 *V* then sued on his mortgage treating it as one for Rs 400 to recover the amount by sale of all the ten numbers The lower Courts recognized *V*'s mortgage only for Rs 200 and granted him a decree authorizing him to proceed against Serial No 2 alone and if the sale proceeds failed to satisfy his claim to proceed against the other serial numbers which were sold to defendants Nos 4 and 5 On appeal *Held* that *V* was not entitled to treat his mortgage as one for Rs 400 since *V* having failed to pay Rs 200 to *N* either at once or within a reasonable time there was partial failure of consideration for the mortgage and the subsequent payment of Rs 200 to *G* by *V* could not serve in law to undo the effect of that failure so as to prejudice the rights of defendant No 5 *Held* further that the Court had power under s 88 of the Transfer of Property Act (IV of 1882) to pass in such a suit a decree for sale ordering that in default of *G* paying the mortgaged property or a sufficient part thereof be sold *Per* Curiam The provisions of s 56 of the Transfer of Property Act 1882 apply only as between a seller and his buyer not as between a mortgagee of the seller and the buyer SUBRAYABIN VENKATESH *v* GANPA (1911)

I L R 35 Bom 395

MINOR

1 ———— Mortgage by—*Settlement of all property by mortgagor after majority—Fraud of creditors—No fraudulent misrepresentation as to age—Liability to refund—Mortgagee if a creditor—Transfer by mortgagee—Attestation by mortgagor—Endorsement of payments by mortgagor—Suit against mortgagor and his son—Estoppel of mortgagor—Suit not maintainable against the son—Transfer of Property Act (IV of 1882) s 53—Subsequent creditors if included* The plaintiff sued on a mortgage bond executed by the first defendant during his minority in favour of the third defendant who transferred it to the fourth defendant who again transferred it to the plaintiff After attaining majority the first defendant executed a settlement transferring all his property to his mother and his wife on behalf of his minor son the second defendant stipulating only for maintenance for himself The first defendant after attaining majority had endorsed payments on the mortgage deed and attested the transfer of the same by the third defendant to the fourth defendant It was found by the lower Appellate Court that the settlement was intended to be operative but that it was executed by the first defendant with intent to defeat and delay his creditors It was also found that there was no fraud or misrepresentation by the minor as to his age when he borrowed on the mortgage The plaintiff contended that the first defendant was bound to refund the amount advanced on the mortgage to the third defendant and that he was consequently a creditor entitled to set aside the settlement The first defendant admitted the plaintiff's claim The second defendant who contested the suit preferred the Second appeal *Held* where a minor has obtained money by misrepresenting his age that amounts to fraud and he may be made to refund it but in the absence of fraud a refund cannot be ordered As there was no fraud or misrepresentation by the minor as to his age when he borrowed money on the mortgage he could not have been ordered to refund and the third defendant was not one of his creditors at the date of the settlement consequently the plaintiff was not competent to sue under s

MORTGAGE—*contd*

MINOR—*contd*

53 of the Transfer of Property Act to set it aside The admission of the first defendant during the suit his endorsement of payments on the mortgage and his attestation of the transfer deed could not give the plaintiff the right to set aside the settlement as against the second defendant *Quære* —Whether subsequent creditors are included under s 53 of the Transfer of Property Act *Per* SADASIVA AYYAR J A person does not actually become a subsequent or prior creditor by reason of the estoppel of the debtor An estoppel cannot overrule a plain provision of law The statutory provision that a minor is incompetent to incur a contractual debt cannot be overruled by an estoppel VAIKUNTARAMA PILLAI *v* AUTHIMOOLAM CHETTIAR (1911) **I L R 38 Mad. 1071**

2 ———— In favour of—*Mortgage if void because executed in favour of minors* The plaintiffs executed a mortgage in favour of the defendants who were minors at the time The defendants sued on the mortgage had the property sold in execution of their decree and purchased it themselves They were of full age when the suit was brought The plaintiff sued to have it declared that the mortgage bond was void and to have the decree and the sale set aside *Held* that the defendants were entitled to enforce the mortgage which was not void simply because of their minority at the time of its execution That the case was not concluded by the decisions of the Judicial Committee in *Mohori Bibi* v *Dharmadas Ghosh I L R 30 Calc 539 7 C W N 441* and *Mir Sarwarjan* v *Fakhruddin Mahomed I L R 39 Calc 232 16 C W N 74* inasmuch as there was no covenant which it was for the minors to perform HARI MOHAN MONDAL *v* MOHINI MOHAN BANERJEE (1916) **22 C W N 130**

MOVEABLES

————*Mortgage equitable of loose chattels—Indian Contract Act (IX of 1872) s 172 if prohibits such hypothecation—Equitable mortgage of land—Fixtures if pass to mortgagee—Letter written by mortgagor stating purpose of deposit of title deed, if must be registered as a document of mortgage—Transfer of Property Act (IV of 1882) s 59* There is nothing in the Indian Contract Act which contains only a portion of the law of contract applicable in British India to prevent a person from hypothecating his goods to another person for security As between mortgagor and mortgagee the law is settled that fixtures pass with the land to the mortgagee A letter written by the mortgagor to the mortgagee stating the purpose for which the title deed has been deposited with the latter is not a document requiring registration under the provisions of the Indian Registration Act as being a mortgage HARIPADA SADHUKHAN *v* ANATH NATH DE (1918) **22 C W N 758**

————*Hypothecation of stock in trade left in possession of the debtor—subsequently sold to a purchaser with notice of the creditor's lien—whether the creditors can follow the property into the hands of the purchaser* *Held* that in India there is no rule of law by which a person having a mortgage on moveable property is debarred from following that property into the hands of a purchaser with notice of the mortgage *Deans* v *Richardson (3 N W P H C R 54)* *Ko Kyuetnee* v *Ko Kaung Bane (5 W R 189)* and *Tatham* v *Andree (1 Moo.*

MORTGAGE—*contd*

MOVEABLES—*contd*

P C 386) cited in Ghose's Law of Mortgage 4th Edition Volume 1 page 108 followed Addison's Law of Contract 10th Edition page 766 referred to and discussed ORIENT BANK *v* *Mst* GHULAM FATIMA **I L R 1 Lah 422**

PARTIES

————*Hindu law—Mortgagee holding an usufructuary and a simple mortgage over the same property—Suit by the mortgagee as Karta of joint Hindu family on later mortgage alone—Maintainability—Non joinder of necessary party—Transfer of Property Act (IV of 1882) ss 85 99—Civil Procedure Code (Act V of 1908) O XXXIV rr 1 11* Where the *karta* of a joint Hindu family who was the holder of an usufructuary and a simple mortgage brought a suit on the latter without joining as party one of the members of the family who had a joint interest with him in the usufructuary mortgage *Held* that under the terms of s 85 of the Transfer of Property Act and O XXXIV r 1 of the Civil Procedure Code the plaintiff was bound to make him a party *Hori Lal* v *Munman Kunwar I L R 34 All 549* and *Madan Lal* v *Kishan Singh I L R 34 All 572* not followed *Lala Surja Prosad* v *Golab Chand I L R 27 Calc 724 28 Calc 517* followed DEBI PROSAD SAHU *v* DHARAMJIT NARAYAN SINGH (1914) **I L R 41 Calc 727**

PARTITION EFFECT OF

———— Mortgagee of undivided share—*Effect of subsequent partition—Mortgage takes effect on substituted share* A mortgagee of an undivided share in common property or of one of the joint properties before partition from one of the sharers is only entitled to proceed against the substituted property which falls to the share of the mortgagor at the partition unless the partition has been unfair or in fraud of the mortgagee MUTHIA RAJA *v* APPALA RAJA (1910) **I L R 34 Mad 175**

————It is one of the incidents of a mortgage of an undivided share that the mortgagee cannot follow his security into the hands of the co-sharer of the mortgagor who has obtained the mortgage share upon a partition If the partition is planted with fraud or if in the making of the partition the incumbrance was taken into account and the partition was made subject to the incumbrance the result will be different but in the absence of such fraud the mortgagee remedy is against the share or property which the mortgagor has obtained under the partition Hence where execution of a decree for sale of a share is undivided property the subject of a mortgage was going on *pari passu* with proceedings for partition and the mortgaged share was sold two days after the final decree for partition (by which the mortgaged property fell to the share of a member of the family other than the mortgagor) was made it was *held* that the auction purchasers (in this case the decree holders them selves) took nothing by their purchase *Byjnath Lal* v *Ramoodeen Choudry L R I I A 103* *Amolak Ram* v *Chandan Singh I L R 24 All 483* *Hem Chunder Ghose* v *Thako Moni Debi I L R 20 Calc 533* *Venkatrama Iyer* v *Esumsa I L R 33 Mad 429* *Muthia Raja* v *Routhen I L R 33 Mad 4.9* *Muthia Raja* v *Appala Raja I L R 34 Mad 175* *Shaheb ada*

MORTGAGE—contd

PARTITION EFFECT OF—contd

Mahomed Ka im Shah v *P S Hill I L R 35 Calc 388* and *Halim Lal* v *Ram Lal 6 C L J 6* referred to BHUP SINGH v CHEDDA SINGH
I L R 42 All 596

PRIORITY

1 ———— Prior mortgagee right of — A second mortgagee brought a suit on his mortgage making the transferees of the prior mortgagee parties to the suit and obtained a decree and in execution thereof the transferees applied to be allowed to deposit in Court the full amount of the second mortgage debt in order to save the property from sale The Court of first instance allowed the application but, on appeal, the District Judge set aside the order of the first Court —*Held* that the transferees of the prior mortgagee were entitled to pay off the mortgage debt due on the subsequent mortgage to save the mortgaged property from sale BHAJAHARI MAITI v GAJENDRA NARAIN MAITI (1909)
I L R 37 Calc 282

2 ———— *Civil Procedure Code 1882 s 244* A prior mortgagee in an application under s 244 of the Code of Civil Procedure in execution is entitled to have his right settled without being put to the extra expense and unnecessary trouble of bringing a fresh suit GOVIND PROSAD MISSER v LACHMI CHARAN MARWARI (1909) 14 C W N 675 note

3 ———— *Limitation Act (XV of 1877) Sch II Arts 132 and 148—Suit by prior mortgagee without making puisne mortgagee party—Sale and purchase by himself—Subsequent suit by second mortgagee and purchase by himself—Interest acquired by latter—Suit by him to redeem prior mortgagee purchaser* Where a prior mortgagee sues on his mortgage without making the second mortgagee a party and in execution of the decree obtained by him purchases the property himself and subsequently the second mortgagee also sues on his mortgage without making the prior mortgagee a party and purchases the property in execution of his decree he acquires by his purchase only the interest he previously possessed as mortgagee He can seek to enforce his rights as such by suit as against the prior mortgagee purchaser only within the period of 12 years from the due date of his own mortgage as provided in Art 132 of Sch II of the Limitation Act (XV of 1877) and he cannot claim the benefit of a fresh period of limitation running in his favour from the date of his purchase A suit brought by him to redeem the prior mortgagee purchaser more than 12 years after the due date of his mortgage would be barred by Art 132 of Sch II of the Limitation Act (XV of 1877) NIDHIRAM BANDOPADHYA v SARBESSUR BISWAS (1909)
14 C W N 439

4 ———— *Decree obtained on a prior mortgage satisfied by execution of a fresh mortgage in favour of decree holder—Priority over an intermediate mortgage* A decree for sale upon a mortgage of 1895 was obtained in 1901 In 1903 the decree holder accepted in satisfaction of the decree a sale deed of a certain portion of the mortgaged property but this adjustment was never certified to the court Subsequently the decree was put into execution and a sale was ordered but before it was carried out the parties came to terms and the judgment debtor executed a fresh mortgage to secure the decretal amount This was in May 1904 Meanwhile in April 1904 another mortgage had been executed by the judgment debtor *Held* that the mortgage of May 1904 being in satisfaction of the earlier mortgage of 1895 had priority over that of April 1904 *Kanhaiya Lal* v *Chedda Singh 7 All L J 954* and *Shyam Lal* v *Fasiruddin I L R 28 All 718* followed RAHIMUNNISSA v BADRI DAS (1911) I L R 33 All 368

5 ———— *Sale of mortgage property in execution of prior mortgagee's decree—Subsequent mortgagee no party to suit—Price to be paid by subsequent mortgagee seeking to redeem* A subsequent mortgagee is not entitled to redeem the prior mortgage by simply paying the price for which the mortgaged property may have been purchased at an auction sale held in execution of a decree obtained by a prior mortgagee without joining the subsequent mortgagee as a party but such subsequent mortgagee must if he wishes to redeem pay to the prior mortgagee the full amount due on the prior mortgage *Dip Narain Singh* v *Hira Singh I L R 19 All 527* applied PHUL MANI CHAUDHRAIN v NAGESHAR PRASAD (1911)
I L R 33 All 370

6 ———— *Mortgage of chattel —Priority—Prior Mortgagee inducing subsequent encumbrancer to advance money as first charge* Where a first mortgagee was an assenting party to the mortgage or charge executed in favour of a subsequent incumbrancer and actually obtained a large portion of the mortgage money thus raised and the subsequent mortgage contained an express covenant that the property mortgaged was free from encumbrances *Held* that the prior mortgagee having thus concurred in inducing the subsequent incumbrancer to advance money as a first charge could not turn round and claim priority over that charge in favour of his own mortgage subsisting from an earlier date RAMAN CHETTY v STEEL BROTHERS AND COMPANY (1911)
15 C W N 813

7 ———— *Third mortgagee paying off first mortgag and claiming priority as against second mortgagee—Presumption as to intention of third mortgagee* Where a mortgagee pays off prior incumbrances on the mortgaged property it is to be presumed that he does so with the intention of keeping these incumbrances alive and using them as a shield should occasion arise and he can so use them as much when he is a plaintiff suing for sale as when he is a defendant to an intermediate or subsequent mortgagee's suit If the payment is made in the form of leaving part of the money with the mortgagee to be paid to the prior mortgagees the subsequent mortgagee does not thereby become the agent of the mortgagor for the purpose of paying off the prior mortgages *Gokaldas Gopaldas* v *Puranmal Premsukhdas I L R 10 Calc 1035 Dinobundhu Shaw Chowdhry* v *Jogmaya Dasi I L R 29 Calc 154* and *Jagatdhar Narain Prasad* v *A M Brown I L R 33 Calc 1133* followed *Tufail Fatma* v *Bitola I L R 27 All 400* and *Baij Nath* v *Murlidhar All W N 1907 85* dissented from GUR NARAIN v SHADI LAL (1911)
I L R 34 All. 102

MORTGAGE—*contd*

PRIORITY—*contd*

8 ——————— *Mortgage right of person paying of prior—Cannot claim rights of prior mortgagee unless prior debt is completely satisfied* Where there are two mortgages on a single property and a person advances money for the payment of the first mortgage the claim of such person to priority over the second mortgage cannot be sustained unless the first mortgage is entirely discharged HANUMANTHAIYAN v MEENATCHI NAIDU (1911) I. L. R 35 Mad. 183

9 ——————— *Sale of mortgaged property—Prior mortgage extinguishment of—Intention of parties—Effect of payment of prior mortgage by subsequent mortgagee—Res judicata—Omission to raise issue in former suit when party thereto—Civil Procedure Code (Act XIV of 1882) s 13 expl (2)—Transfer of Property Act (IV of 1882) s 85—Parties to mortgage suits—Limitation Act 1877 Sch II Art 132* In a suit brought on a simple mortgage deed dated 17th February 1888 to recover Rs 12 000 and interest and to have it declared that the properties covered by the mortgage in suit and by a *zarpeshgi* deed dated 20th November 1874 were liable for the decretal amount it appeared that by the deed of 1874 the properties in suit were hypothecated as security for Rs 12 000 the mortgagee to have possession until the amount was repaid in 1887 Subsequently on dates intermediate between 20th November 1874 and 17th February 1888 three of the properties in suit (the only properties concerned in this appeal) were further charged by simple mortgages some of them relating only to two of such properties and one of them relating only to the third of such properties and suits on them were brought on 6th September 1888 3rd May 1890 and 15th July 1890 and decrees for sale were obtained in them the mortgagee of the mortgage in suit of 17th February 1888 or her representatives being made parties only to those suits and decrees which related to two of the properties mortgaged The mortgage in suit was repayable in two years and was by agreement of the parties to it made for the express purpose of paying off the debt of Rs 12 000 on the *zarpeshgi* deed of 1874 and charged the same properties as were hypothecated by that deed The money then borrowed was on 15th July 1889 in accordance with the agreement applied in charging the debt in the *zarpeshgi* deed and that deed was then given up to the mortgagee of the mortgage in suit and her representatives on 16th June 1891 assigned the mortgage in suit to the plaintiffs who on 22nd September 1900 instituted the present suit making defendants the representatives of the mortgagors the representatives of the mortgagee and the persons whose titles as decree holders and purchasers arose under the intermediate mortgage made between 20th November 1874 and 17th February 1888 claiming priority over the last set of defendants *Held* that under the circumstances the mortgagee of the mortgage in suit intended to keep alive for her benefit the charge created by the *zarpeshgi* deed of 20th November 1874 notwithstanding that no formal assignment in writing of that deed was made and she thereby obtained priority over the mortgages of the intermediate further charges *Dinobandhu Shaw Choudhry* v *Jogmaya Dasi* I L R 29 Calc 154 L R 29 I A 9 followed *Held* also that in any case she was under s 85 of the Transfer of Property Act (IV of 1882) a necessary party to all the suits on the intermediate mortgages and consequently in the suits to which she or her representatives were made parties her rights under her mortgage were barred by explanation (2) of s 13 of the Civil Procedure Code (Act XIV of 1882) by her omission in those suits to put those rights in issue though such rights were not affected by the decree in the suit to which she or her representatives were not made parties But *held* further that the appellants rights of priority under the *zarpeshgi* deed of 1874 were barred by Art 132 of the Limitation Act (XV of 1877) the present suit to enforce them not having been instituted within 12 years from the date when the money under that deed became repayable in 1887 *Held* therefore that they were only entitled in the present suit to a decree for redemption of their interest in the third property the subject of the suit to which their assignors had not been made parties MAHOMED IBRAHIM HOSSAIN KHAN v AMBIKA PERSHAD SINGH (1912)

I. L. R 39 Calc. 527

10 ——————— *Prior and puisne mortgages—Sale to prior mortgagee after creation of a puisne mortgage—Prior mortgage kept alive to what extent—Prior mortgagee whether entitled to charge interest after date of sale—His claim for necessary repairs and municipal taxes whether allowable—Practice—Appeal—Transfer of Property Act (IV of 1882) ss 65 72 and 101—Madras District Municipalities Act (IV of 1884) s 10—Doors and windows not moveable property* When after the creation of puisne mortgage the mortgagor sells the property to the prior mortgagee with possession the prior mortgage is kept alive as against a puisne incumbrancer in the circumstance mentioned in s 101 of the Transfer of Property Act but not against the owner whose equity of redemption has been purchased by the prior incumbrancer The prior mortgagee is not entitled to claim interest on his mortgage after the date of his sale against the puisne mortgagee the effect of the sale is this that what was enjoyed by the prior mortgagee till sale as compensation for the amount of the usufructuary mortgage he agreed subsequently to enjoy in consideration of the whole price and he cannot therefore claim any further compensation from the date of sale for any portion of the price Where by the terms of the mortgage deed the mortgagor personally covenanted to pay the municipal taxes himself the mortgagee who pays the same cannot add it to the mortgage amount and recover it from the puisne mortgagee either under s 65 clause (c) or under s 72 Transfer of Property Act as money spent for preservation of the property as the doors and windows of a house are not moveable property and could not have been seized under s 103 of the District Municipalities Act before its amendment in 1899 The cost incurred by the prior mortgagee after the sale for necessary repairs to the property *viz* for restoring a room that had fallen are recoverable as all rights incidental to the mortgage must subsist with the mortgage right itself and the prior mortgagee is consequently entitled to add all moneys to the principal amount which he would be entitled to do under s 72 of the Transfer of Property Act if the sale had not taken place There is nothing to prevent the appellant from attacking only a portion of the decree by paying court fee only thereon although the reason for

MORTGAGE—contd

PRIORITY—contd

the attack might cover the whole decree SYED IBRAHIM SAHIB v ARUMUGATHAYEE (1919) I L R 38 Mad 18

11 ——————— Two mortgages executed by the same mortgagor—Mortgagor becoming by inheritance owner of decree for sale on prior mortgage—Effect of on rights of puisne mortgagee Held that a mortgagor who had become by inheritance the owner of a decree against himself on a prior mortgage was not entitled to hold up such prior mortgage as a shield against the decree of a subsequent mortgagee from himself Otter v Vaux 6 De G M & G 638 Platt v Mendel I P Ch D 246 and Biju Chowdhry v Chunni Lal 11 C W N 284 referred to BADAN v MURARI LAL (1915) I L R 37 All 309

12 ——————— Prior and subsequent mortgagee —Decree obtained on prior mortgage —Fresh mortgage executed in consideration of the balance due under the decree —Provision in deed that the decree shall be deemed discharged—Effect of decree of sale as regards extinction of the security A second mortgagee brought a suit upon his mortgage impleading the first mortgagee and obtained a decree for sale for the amount of both mortgages This decree was made absolute but the mortgaged property was not in fact brought to sale under it A third mortgagee then sued on his mortgage obtained a decree brought the mortgaged property to sale and purchased it himself. To this suit the second mortgagees were not made parties Subsequently to this the second mortgagees took another mortgage comprising the property originally mortgaged to them and some more for the balance remaining unpaid of their former decree and a small further advance In this deed it was expressly stated that the decree was to be deemed to be discharged thereby —Held in suit on this last mortgage that the plaintiffs were not entitled to go behind their deed and claim priority of the third mortgagees in virtue of their own second mortgage Ellis v Ellis 1 Ch D 619 Dhanuka Prasad Singh v Haridhar Prasad Narain Singh 21 C L J 104 Kanhaya Lal v Chhita Singh 7 A L J 584 and Het Ram v Shadi Ram I L R 40 All 407 referred to CHHAGAN LAL v MUHAMMAD HUSAIN KHAN (1919) I L R 41 All 456

13 ——————— Mortgage—Suit and decree by prior mortgagee without impleading puisne mortgagee—Purchase of mortgage property by prior mortgagee in execution—Receipt of rents and profits thereafter—Mode of accounting between the two mortgagees A mortgage decree obtained by a prior mortgagee without impleading a puisne mortgagee does not affect the latter and the amount therefore payable by the latter in discharge of the prior mortgage is not the amount of the decree but that which is due on the footing of the prior mortgage as if no suit had been brought and if the prior mortgagee buys the mortgage property in execution of his decree and gets possession of the same the rents and profits received by him cannot be set off as equivalent to the interest due for the period of possession but must be accounted for and deducted from the amount payable by the puisne mortgagee Umes Chunder Sircar v Zahur Fatima I L R 18 Calc 164 and Ganga Pershad Sahu v The Land Mortgage Bank of India I L R 21 Calc 366 applied. Syed Ibrahim Sahib v Arumugathayee I L R 38 Mad 18 considered MUTHAMMAL v RAZU PILLAI (1917) I L R 41 Mad 513

——————— Prior and subsequent mortgagees rights of inter se—Separate and independent decrees obtained by each set of mortgagees—Property sold by prior mortgagee and purchased by a third party leaving a surplus of sale proceeds—Rights of auction purchaser and puisne mortgagees A mortgaged the same property first to B and then by two separate mortgage deeds to C B and C both sued on their mortgages each party without impleading the other and obtained decrees B s decree was executed first The mortgaged property was sold and was purchased by K B s mortgage was paid up and a considerable surplus remained which was deposited in court C then endeavoured to execute his decree against the surplus sale proceeds but failed and the money was ultimately withdrawn by the mortgagor C next proceeded with the execution of his decree against the property in the hands of K the auction purchaser and K in order to retain possession paid up the amount of B s decree K then sued the representatives of A to recover the amount so paid Held that in the circumstances K was entitled to a decree Parhamdeo Prasad v Tara Chand I L R 41 Calc 654 referred to KARAN SINGH v ISHTIAQ HUSAIN I L R 43 All 268

REDEMPTION

See UNDER SUB HEADINGS CONSTRUCTION DISCHARGE CONSOLIDATION AND SALE

See BENGAL REGULATION XV OF 1793 I L R 34 All 261

See CIVIL PROCEDURE CODE 1908 O 34 R 1 I L R 44 Bom 698

See LIMITATION ACT 1877 ART 134 I L R 32 All 160

See LIMITATION ACT 1908 ART 126 I L R 41 Mad 650

ART 140 I L R 40 Bom 239

See MORTGAGOR AND MORTGAGEE

See REDEMPTION

See REDEMPTION OF MORTGAGE PUNJAB ACT 1913 I L R 2 Lah 234

See TRANSFER OF PROPERTY ACT 1882 s 83 I L R 43 All 424

See ss 1 to 103

——————— Acknowledgment of mortgagor s right to—Signature by mortgagee in the Register of Sanads—

See LIMITATION ACT (IX OF 1908) s 19 I L R 45 Bom 934

——————— Clog on—

See TRANSFER OF PROPERTY ACT 1882 60 I L R 45 Bom 117

——————— Suit by some of the heirs of mortgagor—

See CIVIL PROCEDURE CODE (ACT V OF 1908) O I R 10 (2) AND O XXXIV R 1 I L R 45 Bom 1009

——————— Lekha Bukhi—

Suit for redemption —limitation —

MORTGAGE—contd

REDEMPTION—contd

See INDIAN LIMITATION ACT 1908 (II)
I L R 1 Lah 69

——— appeal for decree for—
See COURT FEE I L R 1 Lah 234

——— Provision for mortgagee to remain in possession so long fruit bearing trees remain on land—Whether a clog—

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 60 I L R 45 Bom 117

1 ——— Clog on the equity of redemption—*Two mortgages—Covenant to discharge the second mortgage before the first — Consolidation* Under a covenant contained in a mortgage of the year 1867 the mortgagees took possession of the mortgaged property Subsequently the mortgagor took a further advance from the mortgagees and gave them a second mortgage on the same property in which they covenanted that they would pay off the amount due on the second mortgage before redeeming the first *Held* on suit by the mortgagors to redeem the mortgage of 1867 that this was an admissible covenant and not a clog on the equity of redemption *Bhartu v Dalip All Weekly Notes (1906) 2 8* distinguished *Muhammad Abdul Hamid v Jairaj Mal All Weekly Notes (1906) 267* referred to In second appeal the plaintiffs mortgagors were allowed to amend their plaint so as to include a prayer for redemption of both the mortgages BRIJ LAL SINGH *v* BHAWANI SINGH (1910)
I L R 32 All 651

2 ——— Redemption suit for—deposit of money in Court if terminates mesne profits —*Mortgagor s claim for mesne profits after such deposit and before getting possession—Provincial Small Cause Courts Act (IX of 1887) Sch II Art 32* The relation of mortgagor and mortgagee ceases as soon as the mortgagor deposits the money in Court in pursuance of the Court s order in a redemption suit and the possession of the mortgagee thereafter becomes wrongful possession *Bibijan Bibi v Sachi Bewah I L R 31 Calc 863 s c 8 C W N 681* referred to Where under orders of the Court in a suit for redemption a mortgagor deposited the amount due on the mortgage in Court but the mortgagee did not deliver possession of the mortgaged property till some time later *Held* that a suit by the mortgagor for mesne profits up to the date when possession was delivered was maintainable The test to be applied is whether the sum claimed in the suit could have been recovered in the previous suit for redemption *Vinayak v Duttatraya I L R 26 Bom 661* referred to *Pukhminibai v Venkatesh I L R 31 Bom 527 Satyabadi v Harabati I L R 34 Calc 223 s c 5 C L J 192* and *Ram Din v Bhup Singh I L R 30 All 225* distinguished A suit by a mortgagor against the mortgagee for mesne profits for the period during which he held wrongful possession of the property is maintainable in a Small Cause Court Art 31 of Sch II of the Provincial Small Cause Courts Act is no bar to such suit being instituted in a Small Cause Court SAHABI DUTT *v* SHEIKH AINUDDY (1910)
14 C W N 1001

3 ——— Purchase by mortgagee of equity of redemption—*Transfer of Property Act (IV of 1882) s 99—Sale voidable not void—Mortgagor if may redeem without setting aside sale—Mortgagee trustee for mortgagor—Indemnity right of mortgagee to and to credit for amount paid for purchase* It is a well established principle that a purchase by the mortgagee of the equity of redemption constitutes him a trustee for the mortgagor and that he does not (unless there has been a release of the equity of redemption or other circumstance which in law would bar his right to redeem) acquire an irredeemable title *Khairajmal v Daim I L R 32 Calc 296 312 s c 9 C W N 201* referred to The right to redeem which according to this principle would still subsist in the mortgagor has not been affected by the decision of the Full Bench in *Ashutosh Sikdar v Behari Lal I L R 35 Calc 61 s c 11 C W N 1011* where it was held that a sale in contravention of the terms of s 99 of the Transfer of Property Act is not a nullity but an irregular sale liable to be avoided merely on proof that the terms of the section have been contravened The mortgagor is under no necessity to have the sale set aside first in order to be entitled to redeem the property He may sue for redemption within the period of limitation allowed by law but in such a case the mortgagor would have to pay the mortgagee the amount given credit for by the latter in respect of the sale [*Mayan Pathuti v Pakuran I L R 22 Mad 347*] and the mortgagee would further be entitled to be reimbursed and to add to the mortgage-debt the amount which he has expended for the protection and preservation of the property PANCHAM LAL CHOWDHURY *v* KISHUN PERSHAD MISSER (1910)
14 C W N 579

4 ——— Mortgagor out of possession—*—Equity of redemption—Gift of a moiety of mortgaged property—Transfer of Property Act ss 68 74 and 91—English Conveyancing and Law of Property Act s 14* The discharge of a mortgage merely enlarges the security of a subsequent encumbrancer or adds to the interest of the owner of the equity of redemption Where *A* is the owner of the equity of redemption in a moiety of certain property under a gift though the right to possession was outstanding in the mortgagee at the date of the gift *A* is entitled to possession of the moiety on the discharge of the mortgage Transfer of Property Act ss 60 74 91 discussed and compared with the English Conveyancing and Law of Property Act s 15 PONNAMMAL *v* KALITHITHA MUDALI (1910)
I L R 34 Mad 115

5 ——— Bengal Regulation No XV of 1793 s 10—*Redeemed meaning of—Jurisdiction—Bengal N W P and Assam Civil Courts Act (XII of 1887) s 19—Competence of Court to pass a decree for an amount exceeding the pecuniary limits of its jurisdiction* *Held* that the word redeemed as used in s 10 of Regulation XV of 1793 was not used in the sense that the mortgage had been redeemed in the full sense of that word that is satisfied and possession given to the mortgagor So long therefore as the property remains in the hands of the mortgagee the mortgagor can bring a suit for redemption even if the mortgage had been satisfied over 12 years before suit *Held* also that where a suit as filed is within the pecuniary jurisdiction of a court the jurisdiction of the Court is not ousted by the subsequent discovery that a sum is in fact due to the plaintiff exceeding

MORTGAGE—*contd*

REDEMPTION—*contd*

the pecuniary limits of the jurisdiction *Wedlo Das v Ram ... I L R 16 All ...* followed *Gunp Singh v ... Coomar Hazra 13 C ... 493* dissented from SUBAR DAS DAS SHASTRI v RAM PRASAD (1910) I L R 33 All ...

6 ———— Right to redeem one of two properties separately mortgaged—Two persons mortgaged certain property in 18.0 In 1887 one of the mortgagors executed a mortgage comprising in part property subject to the mortgage of 1870 and in part other property in favour of the same mortgagee This latter mortgage contained a stipulation that the mortgagor would redeem it before redeeming the mortgage of 1870 Certain property comprised in the first mortgage but not in the second was sold and the purchasers sued for redemption of that mortgage alone *Held* that in the circumstances they were not precluded by the covenant in the second mortgage from redeeming the first. GANGA PAL v KIRTARATH RAI (1911) I L R 33 All 393

7 ———— Sale by the mortgagor of his rights—*Third person redeeming the mortgage at mortgagor's desire—Sale-deed unregistered—Sale deed could be looked at for evidence of payment of money—Suit by mortgagor to redeem ignoring sale—Lienor's right—Adverse possession by lienor—Registration Act (III of 1877) s 17—Evidence Act (I of 1872) s 91—Limitation Act (XV of 1877) Arts 1... 144* The plaintiff mortgaged certain property with possession with defendant No 1 for Rs 601 on the 4th April 1873 On the 20th November 1878 defendants Nos 2 to 4 at the request of the plaintiff paid off the mortgage to defendant No 1 and for the sum so paid and for a further payment of Rs ..0 the plaintiff sold the property to defendants Nos 2 to 4 The document as to the sale was not registered but ever since the purchase the defendants Nos 2 to 4 were in possession as owners In 1907 the plaintiff filed a suit to redeem the mortgage of 1873 The defendants Nos 2 to 4 set up in reply the sale of 1878 and contended that the suit was barred by limitation *Held* that the sale deed being unregistered could not be looked at for proving the sale but it could be looked at as evidence of payment of money *Maladnappa bin Darappa v Dari bin Bala (1875) P J 999* and *Waman Ramchandra v Dhondiba Krishnaji I L R 4 Bom 126* followed *Held* further that the redemption having been made by the defendants for the plaintiff with his knowledge and consent they became entitled to hold the property as lienors and the plaintiff could not recover it from them without paying the amount of Rs 601 *Mahomed Shumsool v Shewukram L R 2 I A 17* followed *Held* further that the defendants lien was alive for twelve years after 1878 that is up to the year 1890 (Art 1.. of the Limitation Act of 1877) that when that period expired the lien was gone and their possession after that was without any right and that their title by adverse possession was perfected in 1902 *Ramchandra Yashvant Sirpotdar v Sadashiv Abaji Sirpotdar I L R 11 Bom 422* explained SAMBHU BIN HANMANTA v NAMA BIN NARAYAN (1911)

I L R 35 Bom 438

8 ———— *Usufructuary mortgage—Defendants setting up title under sale of mortgagors interest—Title by adverse possession—Separation of member of joint Hindu family and purchase of property with self acquired funds—Possession adverse to mortgagors* These were cross appeals from the decision of the High Court in *Muzaffar Ali Khan v Parbati I L R 29 All 640* The plaintiff relied on a usufructuary mortgage of 1846 and sued for redemption of the property in suit two shares in a village called Lohari The case of the defendants was that they were in possession not under the mortgage but under sales of the 27th of May 1853 and the 20th of March 1854 respectively by which the equity of redemption in the shares mortgaged in 1846 had passed to those through whom they claimed title and they pleaded adverse possession Both the lower Courts had upheld the later sale and dismissed the suit as to that share in Lohari As to the earlier sale the Courts below had differed the first Court upholding it and the High Court deciding in favour of the plaintiffs On appeals by both parties it was immaterial in the view taken by their Lordships of the Judicial Committee of that sale (27th May 1853) by what title Ashraf-un-nissa one of the widows of the mortgagor obtained the share she took and whether or not she had a daughter who survived him *Her share was certainly* transferred by the sale to Baldeo Sahai who though he was the grandson of one of the mortgagees and the son of the other with both of whom he had lived as a member of a joint Hindu family had according to reliable evidence separated from *them and at the time of the sale was carrying on* with a nucleus of property derived from his grandmother a money lending business from profits of which he was enabled to purchase with self acquired funds the share in Lohari from Ashraf-un-nissa who purported to sell it to him as a person *who was not a mortgagee under the mortgage of* 1846 and he was therefore not precluded from setting up a title by adverse possession which it was conclusive in the evidence he had held for more than 50 years Their Lordships therefore while affirming the decision of the Courts below as to the latter sale reversed the decision of the High Court as to the earlier sale and upheld that transaction also PARBATI v MUZAFFAR ALI KHAN (1912) I L R 34 All 289

9 ———— Clog—Subsequent agreement qualifying right to redeem—*Loss of deed—Onus of proving terms of mortgage—Oudh Estates Act (I of 1869) s 6—Limitation—Compromise barring right to redemption* There is nothing in law to prevent the parties to a mortgage from coming to a subsequent arrangement qualifying the right to redeem In this case the mortgage which it was sought to redeem was dated in 1846 and in 1870 the mortgagors had in consideration of certain additional benefit reserved to them under a compromise agreed to subject their right of redemption to certain conditions The deed having been lost the onus was on the plaintiffs to prove the terms of the mortgage so as to show that the suit was not barred by s 6 of the Oudh Estates Act (I of 1869) see *Raja Kishen Dutt Ram Panday v Narendar Bahadoor Singh L R 3 I A 85*] which onus he was found unable to discharge *Held* (affirming the decision of the Judicial Commissioner of Oudh) *that the plaintiffs were not in any case entitled to* redeem as long as there was no breach by the defendants of the covenant contained in the

MORTGAGE—*contd*

REDEMPTION—*contd*

compromise SHANKAR DIN *v* GOKAL PRASAD (1912) I L R 34 All 620 17 C W N I

10 ———— Mortgagee allowed to redeem before expiry of term of mortgage—*Non payment of greater part of mortgage money* Certain property was mortgaged by way of conditional sale for Rs 9915 0 for ten years Of the mortgage money Rs 6015 0 only were paid and the balance was left with the mortgagees for payment to prior incumbrancers The mortgagees did not pay off the prior incumbrancers and the mortgagor having meanwhile sold the mortgaged property his assignees sued for redemption of the mortgage before the expiry of ten years *Held* that on equitable grounds the defendants not having performed what was a most essential part of the contract the plaintiffs ought to be allowed to redeem before the expiration of the period of ten years CHHOTKU LAL *v* BALDEO SHUKUL (1912) I L R 34 All 655

11 ———— Transfer by mortgagee—*Rights of the transferee—Redemption—Construction of statute—Legislative exposition—Limitation Acts (XV of 1877 and IX of 1908) Art 134* The plaintiffs sued in the year 1906 to redeem a mortgage effected prior to the year 1894 The representatives in title of the mortgagee claiming to be absolutely entitled mortgaged the land with possession to *A* in 1894 and he sold his rights to defendant 5 The suit having been brought more than 12 years after the alienation to *A* defendant 5 claimed as against the plaintiffs the interest of mortgagee by virtue of his adverse possession under Art 134 of the Limitation Act (XV of 1877) *Held* that it was obligatory on the plaintiffs to redeem defendant 5 before they could recover possession of the property *Vesu Ramji Kalnath* v *Balkrishna Lakshman I L R 15 Bom 583 Maluji* v *Fakirchand I L R 22 Bom 225* and *Ramchandra* v *Sheikh Mohidin I L R 23 Bom 614* followed *Abhiram Goswami* v *Shyama Charan Nandi L R 36 I A 148* and *Ishwar Shyam Chand Jiu* v *Ram Kanai Ghose I L R 38 Calc 526* explained The alteration in the language of Art 134 of the Limitation Act (IX of 1908) was a legislative recognition of the soundness of the view that the Article was intended to give protection to all transferees for value including mortgagees *Swift* v *Jewsbury L R 9 Q B 312* and *Morgan* v *London General Omnibus Company 12 Q B D 201* referred to BAGAS UMARJI *v* NATHABHAI UTAMRAM (1911) I L R 36 Bom 146

12 ———— Right of assignee of mortgagor *to redeem first mortgage after a decree for redemption obtained by a puisne mortgagee had become inoperative* *A* mortgaged certain properties to *B* and afterwards mortgaged the same with other properties to *C* *C* obtained a decree for redemption against *B* but the decree was allowed to become inoperative by not being executed *D* obtained an assignment of the right of *A* in the mortgaged properties and also the rights of *C* therein *A* sued to redeem the mortgage in favour of *B* *Held* that although the suit by *D* as the assignee of *C* was not maintainable still it was competent to him as assignee of *A* to bring the suit after the decree obtained by *C* had become inoperative KUTTISSARY RAMAN NAMBOODRI *v* ACHUTHA PISHURODI (1904) I L R 35 Mad 42

13 ———— Clog—Usufructuary mortgage—*Lease—Right to retain possession as lessee after satisfaction of mortgage* A provision in a mortgage deed whereby the mortgagee is to remain in possession after payment of the mortgage debt is unenforceable as it acts as a fetter upon the right to redeem When a mortgage deed is accompanied by a lease the effect of which is to keep the mortgagor out of possession notwithstanding the discharge by him of the mortgage debt there is a fetter on the equity of redemption which the Court ought not to enforce ANKINEDU *v* SUBBIAH (1912) I L R 35 Mad. 744

14 ———— Usufructuary mortgage—Accountability of mortgagee for illegal realisation of cess from tenants—*Transfer of Property Act (IV of 1882) s 76—Stipulation by mortgagee to pay a portion of profits to mortgagor—Subsequent arrangement regarding mode of payment if may be proved by parol evidence—Evidence Act (I of 1872) s 92* Under a usufructuary mortgage of 1877 the mortgagee undertook to pay to the mortgagor an annual sum of Rs 10 odd and apply the balance of the profits to payment of revenue charges and interest on the mortgage debt *Held* that oral evidence to prove a subsequent arrangement under which the mortgagee allowed the mortgagor to possess and enjoy a portion of the property in lieu of the payment was admissible in evidence inasmuch as it did not supersede or vary the stipulation regarding the payment but merely concerned the mode of payment *Held* further that in a suit for redemption by the mortgagor the mortgagee was bound to account for the amounts they realised from the tenants as cesses subsequently imposed by *the Cess* Act of 1880 and payable by the tenants to the mortgagor The mortgagee s accountability is not limited to items within the contemplation of the mortgage contract but may extend to amounts which the mortgagee was enabled to realise out of the mortgaged property by taking advantage of his position as mortgagee RAMAVATAR SINGH *v* TULSI PROSAD SINGH (1911) 16 C W N 137

15 ———— Practice —Redemption decree under appeal by mortgagee —Deposit of decretal amount—*Duty of mortgagee to withdraw under protest—Responsibility of mortgagee for loss of right in deposit by lapse of time although amount of decree increased by Appellate Court* In a suit for redemption the Court of the Judicial Commissioners in India passed a decree entitling the mortgagees to recover a certain sum on account of principal and interest from which decree the mortgagees appealed to the Privy Council who increased the amount Pending the appeal the mortgagors had deposited the amount of the decree of the Judicial Commissioners which however the mortgagees did not withdraw as they might have done without prejudice to their pending appeal either by arrangement or the sanction of the Court in India or the sanction of the Board which would have been given as a matter of course *Held* that if the amount deposited has lapsed to Government under the rules owing to the same not having been withdrawn in time the mortgagees must give credit for the amount CHAMPAT SINGH *v* JANGU SINGH (1912) 16 C W N 793

16 ———— Parties—Mortgage by Mitakshara co parceners—*Suit for foreclosure in*

MORTGAGE—*contd*

REDEMPTION—*contd*

which sons of a mortgagor not joined—Decree in earlier suit, if sons' right—Representation of sons' interest by father when debt not charged as immoral The plaintiffs' father amongst other co parceners of a joint Mitakshara Hindu family executed a mortgage by conditional sale the term of which expired in 188 whereupon the mortgagee instituted a suit for foreclosure against the mortgagors and obtained delivery of possession in 1889 in execution of the decree in that suit The plaintiffs were not made parties in that suit the mortgagee not having had notice of their interest at the time and they brought the present suit in 1907 for redemption *Held* that in the absence of allegation by the plaintiffs that the debt was an immoral debt the father of the plaintiff sufficiently represented the plaintiffs in the previous suit and with the extinction of the father's right to redeem the son's right of redemption was also extinguished. *Lunsee Das v Gena Lal Jha 14 C L J 530 Ram Taran Goswami v Ram suns Malia 11 C W N 1078* referred to BALKI MAHAPATRA *v* BROJOBASI PANDA (191)
16 C W N 1019

17 ——————Mortgage and lease to mortgagor contemporaneously granted—*Mortgage execut d before Tran fer of Property Act (IV of 188) cam into force—Mortgagee's security reduced by portion of property being withdrawn—S 6a(a) of Tran f r of Property Act—Right of mortgagee to comp nsation* The plaintiff (respondent) mortgaged to the defendant (appellant) certain property by a deed dated the 5th of August 1880 for Rs 70 000 for eight years On the 29th of August (and so practically contemporaneously with the mortgage) a lease of the mortgaged property was executed by the mortgagee in favour of the mortgagor at an annual rent of Rs 4 200 which represented interest on the mortgage debt at the rate of 6 per cent per annum The mortgage contained a clause that it is agreed by mutual consent of the parties that the profits of the property mortgaged shall belong to the mortgagee in lieu of the interest on the mortgage money and I the mortgagor shall have no claim for mesne profits The mortgagee also shall have no right to claim interest on the mortgage money advanced by him The lease after reciting the mortgage referred to a provision in the latter that the mortgagor should be entitled to sell a certain portion of the mortgaged property on condition that he handed over the whole of the proceeds of the sale to the mortgagee in payment of the mortgag debt and provided that under the condition whatever sum of money the mortgagor should pay to the mortgagee in a lump sum should be credited and set off against the rent payable under the lease with interest at 8 annas per cent per mensem Subsequently three further charges were tacked on to the mortgage the latest of which was dated the 13th of December 1889 In June 1881 the mortgagor was in arrear with his rent and the mortgagee brought a suit against him on which the mortgagor gave up possession of the property to the mortgagee In a suit for redemption (the right to redeem not being disputed) *Held* that the mortgagee was entitled under the terms of the mortgage to appropriate the profits of the mortgaged property in lieu of the interest on the mortgage money not paid by the mortgagor Evidence of preliminary negotiations and previous conversations were not admissible to contradict or vary the terms of the mortgage (Evidence Act s 92) *Held* also that the mortgage and the lease were both parts of one and the same transaction But there was no inconsistency between the two instruments nor would there have been any inconsistency if the mortgage itself had contained a provision for granting a lease on the terms upon which the lease was actually granted *Held* further that the original mortgage having been executed before the Transfer of Property Act came into operation that Act was not applicable notwithstanding that one of the further charges was executed subsequently to that date Whatever might be the construction of s 6a(a) of that Act (which was cited in support of the mortgagee's claim) he was not on the evidence and under the circumstances of the present case entitled to compensation for any loss or damage occasioned by his security being diminished owing to a portion of the mortgaged property being successfully claimed from the mortgagor ABDULLAH KHAN *v* BASHARAT HUSAIN (1912) I L R 35 All 48

18 —————— Redemption by reversioners after foreclosure decree—Subrogation—*Transfer of Property Act (IV of 188) s 91* While a sale in execution under a mortgage decree was in progress plaintiff (a stranger) paid the decree amount into Court on behalf of some of the reversioners to the property *Held* that though the mere payment of a mortgage debt by a stranger will not entitle him to the mortgagee's rights by subrogation yet here under s 91 Transfer of Property Act (IV of 1882) the reversioners became equally entitled to a charge over the property and they could validly assign this charge to the plaintiff by way of sub mortgage The English and Indian Law relating to the doctrine of subrogation compared and discussed *Per* SUNDARA AYYAR *J*—I am on the whole inclined to hold that a reversioner cannot voluntarily claim to redeem a mortgage made by the last male holder or institute a suit for that purpose But does it necessarily follow that when a suit is instituted by a mortgagee for sale the reversioner has not got a sufficient interest in the property to entitle him to discharge the mortgage to prevent the loss of the property to which he would be entitled to succeed on the death of the widow? I do not think I am bound to hold that his right stand on the same footing when he claims of his own accord to redeem and when he tries to save the property for the estate upon the mortgagee attempting to sell it The right of a person interested in the payment of money which another is bound by law to pay and who therefore pays it to be reimbursed by the other is recognised in s 69 of the Indian Contract Act There is no reason for holding that only those who have an interest in a mortgaged property within the meaning of ss 85 and 91 of the Transfer of Property Act can be held to be interested in the payment of money due on a mortgage created by the last male owner NARAYANA KUTTI GOUNDAN *v* PECHIAMMAL (1913)
I L R 36 Mad. 426

19 —————— Accounts—*Mortgagee obstructing and prolonging litigation to keep property in possession—Interest disallowance of for period during*

MORTGAGE—*contd*

REDEMPTION—*contd*

which defendant prosecuted appeals to higher Courts unsuccessfully—Liability of defendants to account for rents and profits received during the period—Expenses of management necessarily incurred—Costs of taking accounts and striking balance against redemption money—Costs of special leave application Where a suit for redemption of a mortgage in respect of property of which the mortgagee took and kept possession from 11th February 1864 was commenced on 30th May 1888 and a preliminary decree for accounts etc was passed by the Subordinate Judge on 29th June 1889 and the decree subject to certain modifications in favour of the plaintiffs was affirmed by the High Court on 10th September 1890 and the decree of the High Court was affirmed by the Privy Council on 27th July 1895 and the plaintiff having applied in the meanwhile for the taking of accounts in pursuance of the decree of the High Court the same was taken and a final decree for redemption was passed by the Subordinate Judge on the 29th July 1902 declaring that a sum of Rs 3 31 167 0 11 was due from the plaintiffs to the defendant at that date and decreeing that on payment into court within six months from that date of the said sum with interest at 12 per cent per annum on the sum of Rs 2 86 886 from the 29th July 1902 to the date of payment into Court within such six months plaintiffs should have a reconveyance free of incumbrances of the property under mortgage etc and the plaintiffs appealed to the High Court and the defendants also filed cross objections but both were dismissed by that Court and upon appeal and cross appeal by both parties to the Privy Council the decree of the Subordinate Judge of 29th July 1902 was maintained by the Board s judgment dated the 13th June 1912 but the Privy Council found that in the action the defendants had been obstructive and oppressive and they had unduly and intentionally prolonged the litigation to their own advantage and to the serious detriment of the plaintiffs *Held* by the Privy Council that no further sum as interest beyond the interest on the sum of Rs 2 86 886 decreed by the Subordinate Judge for the period from 29th July 1902 to the 28th January 1903 should be allowed to the defendants in the accounts which the High Court was directed to take of the rents and profits which the defendants had received since 29th July 1902 and it was ordered that the expenses of taking such account and all procedure incident thereto and to the striking of the balance upon payment of which redemption might be made was to be borne by the defendants that allowance should be made in taking the accounts for money if any necessarily spent by the defendants after the 29th July 1902 in the proper management and preservation of the mortgaged property but no interest should be allowed on the money so spent but that simple interest should be allowed to the plaintiffs on the balance or excess of each year's receipts over expenditure at a rate to be fixed by the High Court and that the sum of money found to be due to the plaintiffs should be deducted by the High Court from the amount which would have been payable by the plaintiff into Court on the 28th January 1903 if payment had been made under the decree of the Subordinate Judge of 29th July 1902 and that the plaintiff should be allowed to redeem on payment by them into the High Court within a time to be fixed by that Court of the balance to be ascertained in the manner indicated In the appeal and cross appeal the respective parties were directed to bear their own costs except those in connection with the application for special leave to cross appeal which in accordance with the order granting such leave was to be paid by the cross appellants GANGA BAHU DEBI *v* APURBA KRISHNA ROY (1912) 17 C W N 25

20 ——— Purchase by mortgagees of part of mortgaged property—*Tender of proportionate part of mortgage money by purchasers of the residue—Tender refused on ground of subsequent mortgages affecting the property—Suit for redemption—Form of decree* Tender of payment under s 83 of the Transfer of Property Act was made by the purchasers of part of the property comprised in a mortgage (the rest of the property having been purchased by the mortgagees themselves) who paid into Court what they believed to be the proportionate amount due on the share purchased by them and within the period limited by the mortgage deed This tender was however refused upon the ground that there were two subsidiary mortgages affecting the property under which further sums were due The mortgagors thereupon brought a suit for redemption expressing their readiness to pay what might be found by the Court to be the proper proportionate amount due by them in respect of the property which they have purchased *Held* on the finding that the plaintiffs when they made their original tender were unaware of the existence of the two subsidiary bonds that the Court below was right in giving a decree for redemption on payment of the amount due under the three mortgages in respect of the share purchased by the plaintiffs and for possession at the corresponding period of the following year NARSINGH SINGH *v* ACHCHAIBAR SINGH (1913) I L R 36 All 36

21 ——— Prior and puisne incumbrancers—Seeing in succession—*Suit for sale by prior incumbrancer without impleading puisne incumbrancer—Subsequent suit by puisne incumbrancer for sale—Form of decree* Where a prior incumbrancer sues for sale on his mortgage and brings the mortgaged property to sale without making a puisne incumbrancer party to his suit and thereafter the puisne incumbrancer brings a suit for sale on his mortgage the proper decree to be made in the second suit is to direct a calculation of what was due on foot of the prior incumbrancer up to the date of the taking over of possession upon sale or if that date cannot be ascertained the date of the sale and to declare the puisne incumbrancer entitled to redeem upon payment of the amount so ascertained *Dip Narain Singh* v *Hira Singh I L R 19 All 527 Ikhlaram Chaudhrain* v *Nageshar Prasad I L R 33 All 370* and *Manohar Lal* v *Ram Babu I L R 34 All 393* referred to RAGHUNATH KUNWAR *v* SHANKAR SINGH (1913) I L R 36 All 193

22 ——— Clog—Condition intended to defeat the right of redemption—*Condition held to be unenforceable* A Court of Equity will not permit any device or contrivance designed or calculated to prevent or impede redemption although it may be impossible to lay down any general rule as to what should not be regarded as an improper restraint or fetter on the right of

MORTGAGE—*contd*

REDEMPTION—*contd*

redemption Where a mortgage was made for forty years and a provision was inserted in the deed fixing a particular day on which it was to be redeemed failing which the mortgage was to be renewed for another term of forty years and it was further provided that the mortgage should not be redeemed with borrowed money it was *held* that these provisions were designed to make redemption very difficult if not impossible and should not be enforced *Bansi v Girdhar Lal 4 All Weekly Notes (1884) 143* and *Lambaran Singh v Pamler Singh 10 Indian Cases 843* referred to SARBDAWAN SINGH v BIJAI SINGH (1914)

I L R 36 All 551

23 ———— Subsequent mortgagee obtaining decree on his mortgage in absence of first mortgagee—*Sale of property subject to first mortgage—Subsequent mortgagee purchasing property with permission of Court—Execution of decree by first mortgagee—Subsequent mortgagee can ask the mortgage amount of first mortgage to be determined again—By purchase subsequent mortgagee does not lose his rights under his mortgage—Extinguishment of mortgage—Transfer of Property Act (IV of 1882) s 101* In 1886 certain property was mortgaged to I It was again mortgaged by the same mortgagors to *H* in 1887 In 1892 I obtained a decree on his mortgage *H* was not made a party to the suit I having sold his rights his assignee A obtained another decree in 1896 against the mortgagors on the mortgage and other debts To this suit also *H* was not a party In 1895 *H* sued on his own mortgage without making the first mortgagee a party A decree was passed in terms of an award The property was sold in execution of the decree subject to the first mortgage and was purchased by *H* with the permission of the Court In 1908 the decree holder applied to execute the decree of 1896 *H* was made a party to the execution proceedings It was contended by *H* that he was not bound by the decree under execution and was entitled to have the mortgage amount determined again in the execution proceedings The decree holder urged that *H's* mortgage had been extinguished by his purchase at the Court sale and as such purchaser he was bound by the decree by which the original mortgagors were bound at the date of the auction sale and that *H* did nothing to show that he intended to keep alive his mortgage *Held* that as a second mortgagee *H* was entitled to redeem the first mortgage and to have the amount of the first mortgage determined again as between himself and the first mortgagee *Held* further that as auction purchaser *H* became entitled to all the rights which the mortgagors and the mortgagee had at the date of the sale i e to all the rights of the mortgagors as they existed at the date of the mortgage upon which the decree was based *Held* also that *H* must be presumed to have intended to keep his mortgage alive as it was clearly for his benefit to do so SHANKAR VENKATESH v SADASHIV MAHADJI (1913)

I L R 38 Bom 24

24 ———— Valuation—*Jurisdiction—Malabar law—Mortgage by karnavan whether a junior member is bound to sue to set aside* The proper valuation of a suit to redeem a mortgage is the amount of the mortgage admitted by the plaintiff to be binding on him and not that of the mortgages set up by the defendant In such a suit the question of jurisdiction has to be decided in the averments in the plaint and not with reference to the pleas of the defendant *Clardu v Kenbi I L R 9 Mad 206* followed *Unni v Kunchi Amma I L R 14 Mad 26 28* referred to When a karnavan of a Malabar tarwad makes an alienation which is not binding on the other members the latter need not sue to set it aside but can recover possession on the strength of their title in the absence of proof of the validity of the alienation *Secus* where the plaintiff has himself executed the instrument under which the defendant claims The trustee of a Malabar *devasom* first executed an *otti* for Rs 0 and subsequently renewed the same in a consolidated *otti* for Rs 1 600 and further created a *purankadam* for Rs 1 600 on the same property His successor sued to redeem the *otti* for Rs 0 treating the other mortgages as invalid *Held* that the suit as framed was maintainable and the plaintiff was not bound to sue to set aside the later mortgages credited by his predecessor CHAITAN v RARU (1912)

I L R 37 Mad 420

25 ———— Extinguishment of equity of Redemption—*Mortgagor passing a rajinama to mortgagee for the land—Mortgagee executing kabulyat to pay Government assessment* In 1866 the plaintiff mortgaged the land in dispute to the defendant and in 1879 passed a *rajinama* relinquishing all his occupancy rights in the said land in favour of the defendants The latter at the same time gave a complementary *kabulyat* agreeing to pay Government assessment on the land The plaintiff having sued to redeem the mortgage *Held* dismissing the suit that the *rajinama* and *kabulyat* effectually extinguished the plaintiff's equity of redemption VENKAJI NARAYAN v GOPAL RAMCHANDRA (1914)

I L R 39 Bom 55

26 ———— Previous decree in mortgagee's favour for possession if bars redemption suit—*Civil Procedure Code (Act XIV of 1882) s 244—Order in execution of decree in suit for possession directing mortgagee to furnish account and permitting redemption effect of* Where in a suit by a mortgagee for recovery of possession by right of *ijara* of the immoveable properties mortgaged the Court passed a decree directing *inter alia* that the plaintiff do get possession of the same by right of *ijara* and be in possession thereof so long as the money for which the said *mehals* were mortgaged were not repaid out of the income arising therefrom *Held* that the decree was clearly a decree for ejectment and a suit by a person interested in the equity of redemption or redemption of the mortgage was not barred by s 244 of the Civil Procedure Code of 1882 That the fact that since the decree in the ejectment suit a predecessor in interest of the plaintiff had applied in the executing Court asking that the decree holder should file accounts showing what moneys had been realised by him since he took possession under the decree and if the decretal money was not fully paid to let the Court know how much still remains due by rendering a proper account thereof and the Court overruling the objection of the mortgagor that the matter could not be dealt with under s 244 *held* that the petitioner could redeem the mortgaged properties but the latter took no steps to do so *Held* that

MORTGAGE—*contd*

PFDEMPTION—*contd*

this order if binding at all in the suit for redemption was to be regarded merely as interpreting the mortgage and the fact that the plaintiff in his plaint made a prayer that in the taking of accounts the directions contained therein might be followed did not mean that he based his right of redemption on that judgment The passing of the final decree in a mortgage suit pending an appeal from the preliminary decree is no bar to the hearing of the appeal PEARY MOHUN MUKERJEE v CHANDRA SEKHAR SARKAR (1915)

[19 C W N 1132

27 ———— Adverse possession—Usufructuary mortgage—*Mortgagee in possession—Equity of redemption—Adverse of possession while period of redemption is running—Suit to redeem by a person whose name is recorded in revenue papers* Held that a person could not acquire a title by adverse possession to land which was the subject of a usufructuary mortgage and therefore in the possession of the mortgagees merely because he had managed to get his name recorded in the village papers for a series of years in respect of the mortgaged property *Lala Kanhoo Lal v Mani Bibi 6 C W N 601* not followed *Casborne v Scarfe 1 Atk 605* distinguished KUNWAR SEN v DARBARI LAL (1916)

I L R 38 All 411

28 ———— Tender of mortgage money a condition precedent to the institution of a suit for redemption—A usufructuary mortgage of agricultural land provided that the right to redeem should be exercised only in the month of *Jeth* of any year *Held* that before the mortgagor could sue for redemption it was necessary for him to prove that he had tendered to the mortgagee the mortgage debt or such amount as he considered due on the mortgage in the month of *Jeth* of some year after the mortgage money had become payable *Bansi v Girdhari Lal All W N (1894) 143* followed MUHAMMAD ALI v BALDEO PANDE (1915) I L R 38 All 148

29 ———— Limitation—*Application for execution—Time it runs from date of decree or date of ascertainment of exact amount* Where in a suit for redemption a certain degree was passed on 27th July 1909 and it was directed therein that it will be necessary to have fresh accounts taken to determine the amount due to the appellants and the amount was not definitely ascertained till the 23rd February 1910 and the application for execution was filed on 29th January 1913 *Held* that the judgment of the District Judge dated 27th July 1909 sets forth clearly the exact method of ascertaining the sum to be paid in redemption and the calculation of that sum was a matter purely of office routine and that the application for execution was barred by limitation *Golam Gaffer Mandal v Coljan Bibi I L R 25 Calc 109* followed SURAJDEO NARAYAN SINGH v MUSHAROO RAUT (1916) 20 C W N 950

30 ———— One mortgagor redeeming the entire mortgage—*Acknowledgment—Dakhalnama—Limitation Act (IX of 1908) s 19 Sch I Art 148* In a suit by the representatives of some of the co mortgagors for the redemption of their shares in certain property against the representatives of co mortgagor who had redeemed the mortgage the plaintiffs alleged that the mortgage had been made by one Sukhjit in favour of one Muhammad Husain in the year of 1913 Sambat The plaintiffs also relied on certain acknowledgments made by the defendant s predecessor in title One of these was a *dakhalnama* executed by Ram Lal in 1890 which contained a description of the property and was signed by Ram Lal The defendant contended that there was no mortgage that he was absolute owner that the acknowledgments had not been proved and that the suit was time barred It was held by the lower Appellate Court that the date of the mortgage had not been proved but the acknowledgments were in respect of some mortgage and that the plaintiffs were entitled to redeem *Held* that the rule of limitation governing a suit of this kind was that laid down in *Ashfaq Ahmad v Wazir Ali I L R 11 All 423* i e that Art 148 of Sch I to the Limitation Act applied that is the limitation extended for a period of 60 years from the date of execution of the mortgage or from the date when the mortgage money became due and the burden was upon the plaintiffs of proving the mortgage that they had set up and that it was for them to prove that the acknowledgment relied upon by them as contained in the *dakhalnama* had been made at a date within the period of limitation *Held* further that the acknowledgment contained in the *dakalnama* amounted to nothing more than a description of the property purchased and was not acknowledgment of liability within the meaning of s 19 of the Limitation Act *Dharma Vithal v Govind Sadvalkar I L R 8 Bom 99* referred to KHIALI RAM v TAIK RAM (1916)

I L R 38 All 540

31 ———— *Adverse possession—Mortgagee in proprietary possession under an agreement unregistered but acted upon for a very long period* The parties to a mortgage by conditional sale executed in 1869 entered into an agreement in 1876 whereby the mortgagor gave up all his equity of redemption in the property mortgaged The agreement was not registered but both the parties consented to the complete transfer of the equity of redemption and both parties acted on the agreement for very nearly forty years *Held* on a suit being brought in 1912 for redemption of the mortgage of 1869 that the mortgagees or their predecessors in title had been in adverse possession since the year 1876 and the suit was barred by limitation *Mahomed Musa v Aghore Kumar Ganguli I L R 42 Calc 801* and *Usman Khan v Dasanna I L R 37 Mad 545* referred to KHEDU RAI v SHEO PARSON RAI (1916)

I L R 39 All 42

32 ———— Major portion of mortgaged property purchased by mortgagee—*Suit by one only of the heirs of the mortgagor to redeem the whole of the remaining share in the mortgaged property* Out of the original 16 annas of a village which was the subject of a usufructuary mortgage the mortgagee acquired by purchase 13 annas and 4 pies After the death of the mortgagor one of his heirs sued to redeem the whole of the remaining 2 annas and 8 pies The other heirs were made parties the suit as *pro forma* defendants and consented to the plaintiff redeeming to the whole of the remaining share *Held* that notwithstanding this the plaintiff was only entitled to redeem her own personal share *Kuraj Mal v Puran*

MORTGAGE—*contd*

REDEMPTION—*contd*

Mal I L R 2 All 65 and *Munshi v Daulat I L R 29 All 96* followed *Sakharam Narayan v Gopal Lal Kumar I L R 10 Bom 6 6 (Note)* not followed ZAIB UN NISSA BIBI *v* MAHARAJA LAKSHMI NARAIN SINGH (1917)

I L R 39 All 618

33 ———— Annuity provided for by terms of deed—*Equity of redemption acquired by mortgagee—Suit by heirs of annuitant to recover arrears of annuity* By the terms of a mortgage deed an annuity or *malikana* charge was made payable to one Musammat Tural unnisa and her heirs by the mortgagee By a series of transactions the mortgagee ultimately became the owner of the equity of redemption in the whole of the mortgaged property *Held* that the mortgagee nevertheless still continued liable for the payment of the annuity secured by the mortgage LACHMI NARAIN *v* SAJJADI BEGAM (1917)

I L R 39 All 700

33 (a) ———— A *Zarpeshgi* deed executed in 1874 in favour of one C provided *inter alia* for payment by C to the executants of a Zarpeshgi rent of Rs 500 odd every year The principal amount was made payable in September 1887 In February 1888 Rs 12 000 was borrowed by the mortgagor from A and in accordance with the agreement between them was applied in paying the Zarpeshgi debt and the Zarpeshgi deed upon such payment was taken back and handed over to A in whose favour a simple mortgage was executed to secure the loan of Rs 12 000 given by her *Held* that so far as it operated as a lease the Zarpeshgi deed came to an end but the charge created by the Zarpeshgi was kept alive for the benefit of A *Mohesh Lal v Mohunt Bawan Das L R 10 I A 62* (1883) *Gokuldass v Rambux Seochand L R 11 I A 126* (1884) *Dinobondhu Shaw Chowdhry v Jogmaya Dassi L R 29 I A 9 s c 6 C W N 209* (1901) referred to That in suits for sale instituted after the date of A s mortgage of 1888 by persons who had obtained mortgages between the dates of the Zarpeshgi of G and the simple mortgage of A A as a puisne mortgagee was a necessary party under s 85 of the Transfer of Property Act Where in such suits was made a party but did not set up prior title under the Zarpeshgi of 1874 and some of the properties covered by the Zarpeshgi were sold *Held* that A s right to proceed against the said properties by a suit for sale on the basis of the Zarpeshgi deed was barred by Expl II of s 13 of the Civil Procedure Code of 1882 In one such suit instituted by M within 12 years of the due date of payment under the Zarpeshgi of 1874 A not having been joined as a party the sales held did not affect or take away A s right as puisne mortgagee under the mortgage of 1888 or her claim of priority under the Zarpeshgi of 1874 But A s claim to priority under the Zarpeshgi of 1874 became barred in 1900 when a suit was first instituted by A s assignee to enforce A s mortgage and the only decree plaintiff in this suit would get as against the purchasers in M s suit was to be allowed to redeem the mortgage of M on payment to the purchaser of the amount at principal and interest in respect of which the property purchased by him was sold in M s suit In a mortgage suit a puisne mortgagee of whose interest in the mortgaged property the plaintiffs have notice is a necessary party under s 85 of the Transfer of Property Act and a sale of the property had in such a suit does not take away the puisne mortgagee s right to redeem SYED MAHOMED IBRAHIM HOSSEIN KHAN AND ANOTHER *v* AMBIKA PERSHAD SINGH AND OTHERS (1911 12)

16 C W N 505

34 ———— Mortgage by conditional sale—Mortgagor in possession as tenant of mortgagee—Suit for rent in arrear—*Decree for rent barred by limitation—Suit for redemption—Mortgagee whether entitled to claim arrears of rent and rent decree as part of price of redemption—Abandonment of charge—Election of remedies* In a suit for redemption the mortgagee is not entitled to claim any arrears of rent with interest in respect of the mortgaged lands which were left in the possession of the mortgagor as tenant of the mortgagee under the terms of the mortgage deed when the mortgagee has already sued and obtained a decree for such rent with interest and has allowed the decree to become barred by limitation even though the arrear of rent is a charge under the deed English and Indian cases reviewed *Hewanchal Singh v Jawahir Singh I L R 16 Calc 307* distinguished *Imdad Hasan Khan v Badri Prasad I L R 20 All 401* referred to NARAINA RAO *v* SHIVU RAO (1918) I L R 41 Mad 1043

35 ———— Partial owner of equity of redemption if can redeem whole mortgage A partial owner of the equity of redemption is entitled to redeem the whole mortgage BAIKANTHA NATH DAS *v* MOHESH CHANDRA DEY (1916) 22 C W N 128

See also PROTAP CHANDRA DHAR *v* PEARY MOHAN DHAR (1918) 22 C W N 800

36 ———— Mortgage suit—Purchaser of mortgaged property applying to be made a party *not allowed on plaintiff s objection—Subsequent suit by purchaser at mortgagee s sale to recover possession—Right of previous purchaser to redeem* Where an application by a purchaser *A* of mortgaged property to be made a party in the mortgage suit was on the mortgagee s objection refused and he was thus prevented from exercising the right of redemption amongst other reliefs which he desired to claim *Held* that in a suit by the purchaser at the sale in execution of the mortgage decree *B* to recover the property from *A* who was in possession *A* was entitled to redeem *B* REBATI MOHAN DAS *v* NADIABASHI DE (1918)

22 C W N 543

37 ———— Decree passed under Dekkhan Agriculturists Relief Act (XVII of 1879) not governed by Transfer of Property Act—*Decree not executed—Second suit to redeem the mortgage not maintainable—Civil Procedure Code (Act V of 1908) s 47* The plaintiff obtained in 1888 a redemption decree under the provisions of the Dekkhan Agriculturists Relief Act 1879 which provided that on plaintiff s default to pay the decretal amount by the end of March 1893 his right to redeem should be for ever barred The decree was not executed In 1913 the plaintiff filed a second suit for redemption of the same mortgage —*Held* that no fresh suit could lie under the provisions of s 47 of the Civil Procedure Code 1908 inasmuch as the decree of 1888 to which the provisions of the Transfer of Property Act 188 did not apply was capable of execution and

MORTGAGE—*contd*

REDEMPTION—*contd*

this order if binding at all in the suit for redemption was to be regarded merely as interpreting the mortgage and the fact that the plaintiff in his plaint made a prayer that in the taking of accounts the directions contained therein might be followed did not mean that he based his right of redemption on that judgment The passing of the final decree in a mortgage suit pending an appeal from the preliminary decree is no bar to the hearing of the appeal PEARY MOHUN MUKERJEE v CHANDRA SEKHAR SARKAR (1915) 19 C W N 1132

27 ———— Adverse possession—Usufructuary mortgage—*Mortgagee in possession—Equity of redemption—Adverse of possession while period of redemption is running—Suit to redeem by a person whose name is recorded in revenue papers* *Held* that a person could not acquire a title by adverse possession to land which was the subject of a usufructuary mortgage and therefore in the possession of the mortgagee merely because he had managed to get his name recorded in the village papers for a series of years in respect of the mortgaged property *Lala Kanhoo Lal* v *Manki Bibi 6 C W N 601* not followed. *Casborne* v *Scarfe 1 Atk 605* distinguished KUNWAR SEN v DARBARI LAL (1916) I L R 38 All 411

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29 ———— Limitation—*Application for execution—Time if runs from date of decree or date of ascertainment of exact amount* Where in a suit for redemption a certain degree was passed on 27th July 1909 and it was directed therein that it will be necessary to have fresh accounts taken to determine the amount due to the appellants and the amount was not definitely ascertained till the 23rd February 1910 and the application for execution was filed on 29th January 1913 *Held* that the judgment of the District Judge dated 27th July 1909 sets forth clearly the exact method of ascertaining the sum to be paid in redemption and the calculation of that sum was a matter purely of office routine and that the application for execution was barred by limitation *Golam Gaffar Mandal* v *Goljan Bibi I L R 25 Calc 109* followed SURAJDEO NARAYAN SINGH v MUSHAROO RAUT (1916) 20 C W N 950

30 ———— One mortgagor redeeming the entire mortgage—*Acknowledgment—Dakhalnama—Limitation Act (IX of 1908) s 19 Sch I Art 148* In a suit by the representatives of some of the co mortgagors for the redemption of their shares in certain property against the representatives of co mortgagor who had redeemed the mortgage the plaintiffs alleged that the mortgage had been made by one Sukhjit in favour of one Muhammad Husain in the year of 1913 Sambat The plaintiffs also relied on certain acknowledgments made by the defendant s predecessor in title One of these was a *dakhalnama* executed by Ram Lal in 1890 which contained a description of the property and was signed by Ram Lal The defendant contended that there was no mortgage that he was absolute owner that the acknowledgments had not been proved and that the suit was time barred It was held by the lower Appellate Court that the date of the mortgage had not been proved but the acknowledgments were in respect of some mortgage and that the plaintiffs were entitled to redeem *Held* that the rule of limitation governing a suit of this kind was that laid down in *Ishfaq Ahmad* v *Wazir Ali I L R 11 All 173* i e that Art 148 of Sch I to the Limitation Act applied that is the limitation extended for a period of 60 years from the date of execution of the mortgage or from the date when the mortgage money became due and the burden was upon the plaintiffs of proving the mortgage that they had set up and that it was for them to prove that the acknowledgment relied upon by them as contained in the *dakhalnama* had been made at a date within the period of limitation *Held* further that the acknowledgment contained in the *dakalnama* amounted to nothing more than a description of the property purchased and was not acknowledgment of liability within the meaning of s 19 of the Limitation Act *Dharma Vithal* v *Govind Sadvalkar I L R 8 Bom 99* referred to KHIALI RAM v TAIK RAM (1916) I L R 38 All 540

31 ———— Adverse possession—*Mortgagee in proprietary possession under an agreement unregistered but acted upon for a very long period* The parties to a mortgage by conditional sale executed in 1869 entered into an agreement in 1876 whereby the mortgagor gave up all his equity of redemption in the property mortgaged The agreement was not registered, but both the parties consented to the complete transfer of the equity of redemption and both parties acted on the agreement for very nearly forty years *Held* on a suit being brought in 1912 for redemption of the mortgage of 1869 that the mortgagees or their predecessors in title had been in adverse possession since the year 1876 and the suit was barred by limitation *Mahomed Musa* v *Aghore Kumar Ganguli I L R 42 Calc 801* and *Lyman Khan* v *N Dasanna I L R 37 Mad 445* referred to KHEDU RAI v SHEO PARSON RAI (1917) I L R 39 All 42

32 ———— Major portion of mortgaged property purchased by mortgagee—*Suit by one only of the heirs of the mortgagor to redeem the whole of the remaining share in the mortgaged property* Out of the original 16 annas of a village which was the subject of a usufructuary mortgage the mortgagee acquired by purchase 13 annas and 4 pies After the death of the mortgagor one of his heirs sued to redeem the whole of the remaining 2 annas and 8 pies The other heirs were made parties the suit as *pro forma* defendants and consented to the plaintiff redeeming to the whole of the remaining share *Held* that notwithstanding this the plaintiff was only entitled to redeem her own personal share *Kuraj Mal* v *Puran*

MORTGAGE—*contd*

REDEMPTION—*contd*

Mal I I L ? All 63 and *Munshi v Daulat I L R 29 All 26* followed *Sakharam Narayan v Gopal Lal Juman I L R 10 Bom 606* (*Note*) not followed ZAIBUNNISSA BIBI *v* MAHARAJA JAFERUR NARAIN SINGH (1 1)

I L R 39 All 618

33 ——— Annuity provided for by terms of deed—*Equity of redemption acquired by mortgagee—Suit by heirs of annuitant to recover arrears of annuity* By the terms of a mortgage deed an annuity cr *Kharcha* charge was made payable to one Musammat Turab un nissa and her heirs by the mortgagee By a series of transactions the mortgagee ultimately became the owner of the equity of redemption in the whole of the mortgaged property *Held* that the mortgagee nevertheless still continued liable for the payment of the annuity secured by the mortgage LACHMI NARAIN *v* SAJJADI BEGAM (1917)

I L R 39 All 700

23 (a) ——— A *Zarpeshgi* deed executed in 1874 in favour of one C provided *inter alia* for payment by C to the executants of a *Zarpeshgi* rent of Rs 500 odd every year The principal amount was made payable in September 188 In February 1888 Rs 1 000 was borrowed by the mortgagor from A and in accordance with the agreement between them was applied in paying the Zarpeshgi debt and the Zarpeshgi deed upon such payment was taken back and handed over to A in whose favour a simple mortgage was executed to secure the loan of Rs 12 000 given by her *Held* that so far as it operated as a lease the Zarpeshgi deed came to an end but the charge created by the Zarpeshgi was kept alive for the benefit of A *Mohesh Lal v Mohant Bawan Das I R 10 I A 62* (1883) *Gokuldass v Rambux Seochand L R 11 I A 126* (1884) *Dinobondhu Shaw Chowdhry v Jogmaya Dassi L R 29 I A 9 s c 6 C W N 209* (1901) referred to That in suits for sale instituted after the date of A s mortgage of 1888 by persons who had obtained *mortgages between the dates of the Zarpeshgi of* G and the simple mortgage of A A as a puisne mortgagee was a necessary party under s 85 of the Transfer of Property Act Where in such suits was made a party but did not set up prior title under the Zarpeshgi of 1874 and some of the properties covered by the Zarpeshgi were sold *Held* that A s right to proceed against the said properties by a suit for sale on the basis of the Zarpeshgi deed was barred by Expl II of s 13 of the Civil Procedure Code of 1882 In one such suit instituted by M within 12 years of the due date of payment under the Zarpeshgi of 1874 A not having been joined as a party the sales held did not affect or take away A s right as puisne mortgagee under the mortgage of 1888 or her claim of priority under the Zarpeshgi of 1874 But A s claim to priority under the Zarpeshgi of 1874 became barred in 1900 when a suit was first instituted by A s assignee to enforce A s mortgage and the only decree plaintiff in this suit would get as against the purchasers in M s suit was to be allowed to redeem the mortgage of M on payment to the purchaser of the amount of principal and interest in respect of which the property purchased by him was sold in M s suit In a mortgage suit a puisne mortgagee of whose interest in the mortgaged property the plaintiffs have notice is a necessary party under s 85 of the Transfer of Property Act and a sale of the property had in such a suit does not take away the puisne mortgagee s right to redeem SYED MAHOMEDED IBRAHIM HOSSEIN KHAN AND ANOTHER *v* AMBIKA PROSAD SINGH AND OTHERS (1911 12)

16 C W N 505

34 ——— Mortgage by conditional sale —Mortgagor in possession as tenant of mortgagee—Suit for rent *in arrear—Decree for rent barred by limitation—Suit for redemption—Mortgagee whether entitled to claim arrears of rent and interest decreed as part of price of redemption—Abandonment of charge—Election of remedies* In a suit for redemption the mortgagee is not entitled to claim any arrears of rent with interest in respect of the mortgaged lands which were left in the possession of the mortgagor as tenant of the mortgagee under the terms of the mortgage deed when the mortgagee has already sued and obtained a decree for such rent with interest and has allowed the decree to become barred by limitation even though the arrear of rent is a charge under the deed English and Indian cases reviewed *Hevanchal Singh v Jawahir Singh I L R 16 Calc 307* distinguished *Imdad Hasan Khan v Badlu Prasad I L R 20 All 401* referred to NARAINA RAO *v* SHIVU RAO (1918) **I L R 41 Mad 1043**

35 ——— Partial owner of equity of redemption if can redeem whole mortgage A partial owner of the equity of redemption is entitled to redeem the whole mortgage BAIKANTHA NATH DAS *v* MOHESH CHANDRA DEY (1916) **22 C W N 128**

See also PROTAP CHANDRA DHAR *v* PEARY MOHAN DHAR (1918) **22 C W N 800**

36 ——— Mortgage suit—Purchaser of mortgaged property applying to be made a party *not allowed on plaintiff s objection—Subsequent suit by purchaser at mortgagee s sale to recover possession—Right of previous purchaser to redeem* Where an application by a purchaser A of mortgaged property to be made a party in the mortgage suit was on the mortgagee s objection refused and he was thus prevented from exercising the right of redemption amongst other reliefs which he desired to claim *Held* that in a suit by the purchaser at the sale in execution of the mortgage decree B to recover the property from A who was *in possession A was entitled to redeem B* PEBATI MOHAN DAS *v* NADIABASHI DE (1918)

22 C W N 543

37 ——— Decree passed under Dekkhan Agriculturists Relief Act (XVII of 1879) not governed by Transfer of Property Act—*Decree not executed—Second suit to redeem the mortgage not maintainable—Civil Procedure Code (Act V of 1908) s 47* The plaintiff obtained in 1888 a redemption decree under the provisions of the Dekkhan Agriculturists Relief Act 1879 which provided that on plaintiff's default to pay the decretal amount by the end of March 1893 his right to redeem should be for ever barred The decree was not executed In 1913 the plaintiff filed a second suit for redemption of the same mortgage —*Held* that no fresh suit could lie under the provisions of s 47 of the Civil Procedure Code 1908 inasmuch as the decree of 1888 to which the provisions of the Transfer of Property Act 188 did not apply was capable of execution and

MORTGAGE—*contd*

REDEMPTION—*contd*

its execution was time barred long before the date of the second suit *Ramji v Pandharinath I L R 43 Bom 334* distinguished *Lalu Chimaji v Bibaji Khanluji I L R 7 Bom 532* followed DINU BIN YESU *v* SHRIPAD (1919)

I L R 43 Bom 703

38 ——————— Decree nisi—Failure to apply to make absolute—*Execution time barred—Second suit for redemption maintainability of—Civil Procedure Code (Act V of 1908) ss 11 47 and O XXXIV rr 7 and 8—Transfer of Property Act (IV of 1882) s 60* A question having been referred whether a mortgagor who has brought a suit for redemption and obtained a decree nisi which neither the mortgagor nor the mortgagee has applied to be made absolute can after the execution of that decree is time barred bring a fresh suit for redemption *Held* (SHAH J dissenting) that the mortgagor could bring a second suit for redemption and the same would not be barred by s 11 or s 47 of the Civil Procedure Code 1908 RAMJI *v* PANDHARINATH (1918)

I L R 43 Bom 334

39 ——————— Decree for sale of mortgaged property—purchase by mortgagee—puisne mortgagee's right to redeem—A prior mortgagee obtained a decree on his bond on the 31st May 1897 brought the mortgaged property to sale and purchased himself on the 4th July 1900 and obtained delivery of possession A puisne mortgagee obtained a mortgage decree against the same property on the 8th April 1907 purchased the property in execution of his decree and obtained registration of his name in the Collectorate register In a suit by the prior mortgagee for a declaration of title and confirmation of possession or in the alternative for recovery of possession the Munsif decreed the suit but gave the puisne mortgagee permission to redeem The lower appellate Court held that the defendant was not entitled to redeem as he had not done so before the making of the order absolute for sale in the plaintiff's suit *Held* that the right of redemption continued until the confirmation of sale It appeared that the puisne mortgagee's name had been omitted from the execution proceeding *Held* that this was merely an irregularity and the sale could not be considered a nullity even though the prior mortgagee was himself the purchaser SYED MUHAMMAD RAFI *v* SYED MUHAMMAD ASKARI

1 Pat L J 261

40 ——————— Effect of sale in execution of decree and purchase by mortgagee—*Minors joined as defendants in mortgage suit but not represented by a guardian—Subsequent suit by them for redemption on ground that they were not properly parties to former suit—No claim to set aside decree or sale* The head of a joint Hindu family governed by Mitakshara law mortgaged in 1896 immovable property belonging to the family for purposes for which he was admittedly able to bind the other members The mortgage money was not repaid and in 1901 the mortgagee brought a suit on the mortgage against the mortgagor and his two brothers and joining also as defendants the two sons of the mortgagor now represented by the first respondent In that suit a decree was made on 9th January 190 in execution of which the mortgaged property was sold and purchased by the mortgagee In a suit in 1909 by the sons of the mortgagor in which they impeached neither the debt nor the mortgage but admitted that they were binding on them and did not in their plaint seek to set aside the decree or the sale under it but only claimed to be entitled to redeem the mortgaged property on the ground that they had been minors at the time of the suit on the mortgage and not having been represented by a guardian had not been properly parties to that suit It was found as a fact by the two Courts in India and upheld by the Judicial Committee that they had not been effectively joined in the mortgage suit —*Held* that the right of redemption had been extinguished by the decree and sale in execution of it and that until the sale had been set aside it could not be exercised CHHATPAT LAL *v* BINDBASINI PRASHAD NARAYAN SINGH (1920)

I L R 47 Calc 924

41 ——————— Transferee of part of equity of redemption—*Mortgagee in possession—Suit for foreclosure without making transferee from mortgagor a party—Right to redeem whole of the mortgaged property—Account* In 1893 the owner of sixteen fields in Berar mortgaged them to the appellant In 1896 the mortgagor conveyed one of the fields to the respondents In 1899 the mortgagee brought a suit to enforce the mortgage against the mortgagor alone without making the respondents parties and obtained a decree by consent which was afterwards made absolute The decree declared that in default of payment within a definite time nine of the mortgaged fields (including that conveyed to the respondents) were to be foreclosed and possession of them made over to the appellant and no payment having been made that was done under the decree In a suit for redemption by the respondents (who not being parties to it were not affected by the decree) the only question was whether they were entitled to redeem the whole of the nine fields or only the field conveyed to them subject to the mortgage over the whole *Held* that subject to the safeguarding of the equal title to redeem of any other person who had a right of redemption the respondents were entitled to redeem the entire mortgage unless something had happened to extinguish the mortgage in whole or in part or the conduct of the respondents had estopped them from asserting what would normally have been their rights It was not the law in India any more than in England that one of several mortgagors cannot redeem more than his own share unless the owners of the other shares consent or make no objection subject to the prosafeguarding of the rights which those owners might possess The respondents as owners of an interest on the equity of redemption as it originally stood were entitled to redeem the mortgage on the footing of paying the balance left of the mortgage debt after debiting the mortgagee with a fair occupation rent during the period of his possession and crediting him with simple interest on the debt due to him under the mortgage deed YADALLI BEG *v* TUKARAM (1920) I L R 48 Calc 22

42 ——————— Clog—subsequent lease of mortgaged property by mortgagor to mortgagee *effect of—A* who was a permanent tenure holder of 7 plots executed an usufructuary mortgage of all the plots in favour of *B* from whom he subsequently took a lease of 4 of the plots In 1908 *A* granted a permanent *mukarrari* of one of the

MORTGAGE—*contd*

REDEMPTION—*contd*

plots to *P* at a fixed rent [illegible] In 1913 *C* purchased several [illegible] the plots belonging [illegible] including the plot leased to *P* Subsequently *C* sought to redeem the mortgage [illegible] *B* and having paid off the mortgage [illegible] he claimed [illegible] [illegible] of the plot *B* resisted the claim relying upon the *mukararri* of 1908 It was held that the *mukararri* of 1908 was a lease [illegible] and did not operate as a valid lease [illegible] equity [illegible] tion In an appeal under the Letters Patent from that decision *held* that the appeal [illegible] be dismissed *Per* DAWSON MILLER [illegible] —If the *mukararri* of 1908 was a lease [illegible] it did not operate as a valid transfer of the [illegible] equity of redemption If the *mukararri* [illegible] [illegible] it was invalid as being a [illegible] the equity of redemption Once a mortgage transaction has been entered into it is not within the competency of the parties to clog the equity of redemption whereby even after redemption the mortgagee would retain an interest in the property as lessee upon payment of a comparatively trifling rent Such a transaction is invalid both as against the mortgagor and against a purchaser from the mortgagor of his interest *Per* DAS *J*—*Query* Whether a lease intended to operate *in futuro* is an invalid lease *Query* Whether a lease by a mortgagor to the mortgagee subsequent to the mortgage transaction may correctly be called a clog on the equity of redemption RAM NARAIN PATTACK *v* SURATHNATH PANDAPADHYA 5 Pat L J 423

43 ———— **Tender of mortgage money**—*Offer to pay not accompanied by the production of any actual money* The mortgagors of a usufructuary mortgage sent a notice to the mortgagees offering to pay a certain sum named therein and asking for redemption of the mortgage but no actual money was produced *Held* that this did not amount to a legal tender of the sum due under the mortgage *Chetan Das* v *Gobind Saran* *I L R 30 All 139* referred to MUHAMMAD MUSHTAQ ALI KHAN *v* BANKE LAL I L R 42 All 420

44 ———— **Limitation**—*Acknowledgment of mortgagor's title recorded in settlement papers—Inferences derivable from such acknowledgment—Burden of proof* The plaintiffs sued for redemption of an old mortgage which they alleged to have been executed by their predecessors in title some time between the years 1833 and 1839 That there had been at one time a mortgage corresponding to that set up by the plaintiffs was sufficiently proved by the records of the settlements of 1833 and 1863 both of which contained fairly definite statements as to the parties the land affected and the term of the mortgage There was however no evidence from which the date of the mortgage could be inferred with any certainty and the plaintiffs relied to bring their suit within limitation mainly upon the acknowledgments made by the mortgagees in the records of the settlement of 1863 as indicating that the mortgage must have been a subsisting mortgage in 1863 *Held* by PIGGOTT and WALSH *JJ* that no substantial inference could be drawn from the acknowledgment in question that the mortgage was in 1863 a subsisting mortgage not barred by limitation and it was on the plaintiff relying on the acknowledgment to show that it was made before the period of limitation had expired *Per* BANERJI *J* *contra* The acknowledgment of 1863 might be taken until rebutted as *primâ facie* evidence that the mortgage was a subsisting mortgage at its date It was improbable that the mortgagees would have agreed to its insertion in the settlement records had the title of the mortgagor been then in fact barred by limitation *Parmanand Misr* v *Sahib Ali I L R 11 All 438* *Data Chand* v *Sarfraz* I L R 1 All 117 *Kamala Devi* v *Gur Dayal I L R [illegible] 560* referred to AMIR SINGH *v* FATEH CHAND I L R 42 All 575

45 ———— **After sale of mortgaged property**—*Transfer of Property Act (IV of 1882) s 99* Where a mortgagee has in contravention of s 99 of the Transfer of Property Act attached the mortgaged property and brought it to sale and purchased it himself the mortgagor or his transferee cannot successfully maintain a suit for redemption of the property without first getting the sale set aside *Ashutosh Sikdar* v *Behari Lal Kirtania I L R 35 Calc 61* referred to UTTAM CHANDRA DAW *v* RAJKRISHANA DALAL (1919) I L R 47 Calc 377

46 ———— **Consolidation of several mortgages on different properties**—*agreement not to redeem one mortgage without the others must be clearly proved—Transfer of Property Act IV of 1882 s 61* The question arising in this appeal was whether plaintiff could redeem his mortgage of 18th August 1882 without redeeming also his two subsequent mortgages of 9th September 1882 and of 8th February 1889 The mortgages related to different properties In the mortgage of September 1882 it was stipulated that the mortgage would be redeemed along with the prior mortgage dated 8th August 1882 while in the 1889 mortgage it was agreed that should the mortgagor redeem the land mortgaged by the deeds of the 18th August 1882 and 9th September 1882 they will redeem the present charge at the same time *Held* that although the parties contemplated that the money due on all the mortgages should be paid at the same time that was not enough to establish the defendant's plea of consolidation but that it was incumbent upon the latter to show that plaintiffs expressly and unequivocally contracted themselves out of their right to redeem the first mortgage without redeeming at the same time the two later mortgages *Ganga Rai* v *Kirtarath Rai* (*I L R 33 All 393*) and *Gaya Din* v *Har Karan* (*22 Indian Cases 139*) referred also to—Transfer of Property Act s 61 *Parabh Dial* v *Kharku* (*9 P R 1890*) distinguished *Allu Khan* v *Roshan Khan* (*I L R 4 All 85*) referred to as having been dissented from in *Sheo Shankar* v *Parma Mahton* (*I L R 26 All 559*) JIWAN DAS *v* THARAJ I L R 1 Lah 105

47 ———— **Mortgage made to two mortgagees as tenants in common**—Where a mortgage is made by one mortgagor to two mortgagees as tenants in common the right of either mortgagee who desires to realise the mortgaged property and obtain payment of the debt if the consent of the co mortgagee cannot be obtained is to add the co-mortgagee as a defendant to the suit and to ask for the proper mortgage decree which would provide for all the necessary accounts and payments excepting that there could be no

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MORTGAGE —*contd*

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I L R 42 All 420

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45 ———— **After sale of mortgaged property**—*Transfer of Property Act (IV of 1882)* s 9 Where a mortgagee has in contravention of s 60 of the Transfer of Property Act attached the mortgaged property and brought it to sale and purchased it himself the mortgagor or his transferee cannot successfully maintain a suit for redemption of the property without first getting the sale set aside. *Lakhsh Sirdar* v *Laboo Lal Kurt* [illegible] I L R 35 Calc 61 referred to. UTTAM CHANDRA DAW *v* RAJKRISHANA DALAI (1919) I L R 47 Calc 377

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I L R 1 Lah 105

47 ———— **Mortgage made to two mortgagees as tenants in common**—Where a mortgage is made by one mortgagor to two mortgagees as tenants in common the right of either mortgagee who desires to realise the mortgaged property and obtain payment of the debt if the consent of the co mortgagee cannot be obtained is to add the co mortgagee as a defendant to the suit and to ask for the proper mortgage decree which would provide for all the necessary accounts and payments excepting that there could

MORTGAGE—*contd*

PEDEMPTION—*contd*

decree for money entered as between the mortgagee defendant and the mortgagor —*Held* that in this case the mortgage clearly effected the *conveyance of the real estate to the mortgagees as* tenants in-common and no redemption could be effected of part of the property by paying to one of the mortgagees her *separate debt It* was not a mortgage to each of a divided half but a conveyance to them of the whole property In this case the mortgage completing a compromise was executed by a Hindu *pardanashin* lady —*Held* that it was not necessary nor desirable in such a case to insist upon a clear understanding of each detail of a matter which may be much involved in legal technicalities It is sufficient that the general result of the compromise should be understood and that the lady should have had people disinterested and competent to give advice with a fair understanding of the whole matter who advised *her that she should execute the deed* SUNITIBALA DEBI *v* DHARA SUNDAR DEBI CHOWDHURANI (1919) I L R 47 Calc 175

48 ———— **By one of several co-mortgagors**—*When one of two co mortgagors redeems* the mortgage and obtains possession of the property a suit by the other mortgagor to recover possession of his share *of the mortgaged property is not a* suit for redemption but for possession as is governed by Art 144 and not Art 148 of the Limitation Act *and in such a suit Plaintiff is entitled to succeed unless the redeeming mortgagor establishes that* he has been in possession for 12 years on an *assertion of a hostile title to the knowledge of the* Plaintiff RAM NARAYAN RAI *v* RAM DENI RAI 6 Pat L J 680

49 ———— **Deed excluding right**—*Anomalous mortgage—Statutory right—Act No IV of* 1882 (*Transfer of Property Act*) *ss 60 98* Immovable property was mortgaged by deed for five years to secure a debt The deed provided *that the* years and that if he did not do so the mortgagee was to have the option of taking possession for a period of twelve years *If* the mortgagee took possession was provided that during the period of twelve years the mortgagor was not to be entitled to redeem but that at its conclusion he was to do so The mortgage debt not being repaid at the end of five years the mortgagee took possession in the same year the mortgagor *sued to redeem Held* that the mortgagor had by s 60 of the Transfer of Property Act 1882 a statutory right to redeem whether or not the *mortgage* was one in which by s 98 the rights and liabilities of the parties were to be determined by their contract MUHAMMAD SHER KHAN *v* RAJA SETH SWAMI DAYAL I L R 44 All 185

50 ———— **Previous redemption decree**—*—Right to redeem reserved— Second suit for redemption* In 1915 the plaintiff sued to redeem a mortgage of 1874 The defendant contended that the suit was barred in consequence of a previous redemption decree of 1881 the terms of which were as follows The plaintiff should pay to the defendant Rs *400 with interest* at the rate of eight annas per cent per mensem by annual instalments of Rs 50 each from 31st March 1884 If the plaintiff were to pay *more than Rs 50 the* defendant should not refuse to accept the same

MORTGAGE—*contd*

REDEMPTION—*concld*

In case the plaintiff fails to pay any instalment the defendant should take the land in his possession and receive the produce of the land in lieu of interest on the remaining amount and Government assessment and on the plaintiff paying the principal amount at the end of any Fasli year the land belonging to the plaintiff should be returned to him *Held* that on the construction of the decree the right *to redeem was reserved* and therefore the plaintiff was entitled to sue for redemption ABDUL RAJACK *v* VAMAN GANESH I L R 45 Bom 1335

REGISTRATION

1 ———— **Endorsements on mortgage bond**—*Registration—Registration Act (III of 1877) s 17 cl (n)—Endorsement on a mortgage bond of payment made in satisfaction of a previous mortgage-debt—Civil Procedure Code (Act XIV of 1882) s 43 —Payment by a subsequent mortgagee under s 74 of the Transfer of Property Act (IV of 1882) effect of* The endorsements on a mortgage bond of payments made in satisfaction of a mortgage which payments did not purport to extinguish the mortgage are covered by cl (n) of s 17 of the Registration Act and as such do not require registration *Jiwan Ali Beg* v *Basa Mal I L R 9 All 108* and *Uppalalandi Kunhi Kutti Ali Haji* v *Kunnam Mithal Kottaprath Abdul Rahiman I L R 19 Mad 288* followed A *subsequent mortgagee who makes a payment of a prior mortgage* debt under the provisions of s 74 of the Transfer of Property Act in a suit to *enforce his original mortgage against the security* which by his payment of the former mortgage he has protected and made more valuable for the realisation of his debt is bound under s 43 of the Code of Civil Procedure to join in that suit any further claim which he has *against that* property by reason of such payment made by him *Sunder Singh* v *Bholu I L R 20 All 322* distinguished HARI NARAIN BANERJEE *v* KUSUM KUMARI DASI (1910) I L R 37 Calc 589

2 ———— *Endorsement releasing mortgaged property for consideration in cash—Registration* An endorsement made by a mortgagee (on the back of the mortgage deed) releasing the mortgaged property in consideration *of a cash payment of Rs 300 is a document which* requires registration and not being registered was not admissible in evidence either of the redemption of the property or of the real nature of the original transaction between the parties PARASHARAMPANT *v* RAMA (1909) I L R 34 Bom 202

3 ———— **Registration of mortgage out of time by altering date**—*Lessee from executant if may question validity of mortgage registered out of time—Estoppel* Where a mortgage deed had been presented for registration more than *four months after the date of its execution* and its registration had been secured by the executant altering the date of the instrument *Held* that even assuming that the deed had been wrongly registered there being no fraud the mortgagor would be estopped from taking the objection *Held* further that lessees from the mortgagor who took their leases after the registration of the mortgage are in the absence of fraud *equally estopped* with the mortgagor from taking the objection

MORTGAGE—*contd*

REGISTRATION—*contd*

GOPAL CHANDRA CHUCKERBUTTY *v* SURENDRA KUMAR ROY CHOUDHURY (1918)

10 C W N 585

4 ———— Constructive notice ... *mortgage—Registration Act (III of 1877) s 49—Transfer of Property Act (IV of 1882) ss 3 (14) and 8* ... The registration ... under the Registration Act ... constructive notice of the mortgage ... Lordships of the Judicial Committee approved of the view on this question of the High Courts of Calcutta and Madras which differed ... from those of Bombay and Allahabad In *Mohendra Chandra ... Ind App ... Eunt 2 C W N* ... the ... Having regard to the statute applicable in this country the proposition involved is not one of law but of fact and ... each case and ... determined whether in that individual case the omission to search the register taken together with the other facts amounts to such gross negligence as to attract the consequence which results from notice In *Lunman Jha v Kumpe ...* C W N 11 in which the Court ... erred — Whether registration is or is not notice in itself depends upon the facts and circumstances of each case upon the degree of care and caution which an ordinarily prudent man would necessarily take for the protection of his own interest by search into the register and other cases in the High Court at Calcutta In *Shan Maun Mull v Madras Building Co I L R 15 Mad 268* in which the Madras High Court adopted the same view and pointed out that if the Legislature had wanted to make registration notice it might being aware of the conflict of opinion on the question have made it in express terms *Lakhmidas Sarupchand v Dasrat I L R 6 Bom 168* and other cases of the Bombay and Allahabad High Courts to the contrary disapproved *Mahomed Ibrahim Hossein Khan v Ambica Prosad Singh I L R 39 Calc 711 L R 39 I A 68* and *Hem Ram v Shadi Lal I L R 40 All 407 L R 45 I A 100* decisions of the Board with reference to s 85 of the Transfer of Property Act distinguished on the ground that under that section a duty was imposed on the mortgagee suing for foreclosure sale or redemption in discharge of which he was bound to search the register and his omission to do so would have been a wilful abstention from the search of gross negligence within the definition of notice in s 3 (*14*) of the Transfer of Property Act The object of registration is to protect against prior transactions but the argument for the appellants would extend the doctrine of notice to notice of subsequent transactions and it would not be reasonable to hold that registration was notice to the world of every deed which the register contained In the present case no circumstances are found excepting those drawn from the fact that the mortgagor was executing several mortgages on the property TILAKDHARI LAL *v* KHEDAN LAL (1920) I L R 48 Calc 1

5 ———— Fictitious inclusion of property *—Absence of title—Transfer of Property Act (IV of 1882) s 54—Registration Act (III of 1877) ss 17 28 49* S 28 of the Indian Registration Act 1877 provides that every document which by s 17 is required to be registered shall be presented for registration in the office of a Sub Registrar within whose sub district the whole or some portion of the property to which the document relates is situated A mortgage bond for Rs 8,000 which purported to mortgage a ... anna share in a village in the District ... and a ... kauri share in the M... district was registered only in the M... district The mortgagor had purchased the one kauri share shortly before the execution of the mortgage and in order that he might register in M... He paid Rs 10 for the ... but there was no registered instrument ... as required by ... of the Transfer of Property Act Held ... and that none of the parties intended that the one kauri share should vest in the mortgagee ... the mortgage and ... that the mortgage was invalid ... s 54 of the Transfer of Property Act 1882 under which a mortgage for over Rs 100 can be made only by a registered instrument *Harendra Lal Roy Chowdhury v Hari Dasi Debi I L R 41 Calc ... L R 41 I A 110* followed Judgment of the High Court affirmed BISWANATH PRASAD *v* CHANDRA NARAYAN CHOWDHURY (1921) I L R 48 Calc 509

6 ———— By deposit of title deeds—*Memorandum in relation thereto when must be registered* Defendant (who had already mortgaged a house to the Plaintiff to secure two previous loans and had delivered to him the title deeds thereof for the purpose of those mortgages) on 8th February 1914 executed a promissory note for Rs 1,500 in respect of a fresh advance in Plaintiff's favour and on the same date gave Plaintiff a letter in these terms For payment of the sum of Rs 1,500 with interest I have borrowed from you on a promissory note of date I hereby put on record that the title deeds re my premises already deposited with you shall be held as a collateral security The amount (Rs 1,500) was paid to Defendant after the execution of the promissory note and the passing of the letter: *Held*—That there was no completed contract of mortgage before the letter passed which in the circumstances of the case constituted the mortgage contract and was inadmissible for want of registration *Kedar Nath Dutt v Sham Lal Khettry 20 W R 150 11 B L R 405 (1873)* and *Dwarka Nath v Sarat Kumari 7 B L R O C J 55 (1871)* considered BHAIRAB CHANDRA BOSE *v* ANATH NATH DE 24 C W N 599

SALE OF MORTGAGED PROPERTY

See CIVIL PROCEDURE CODE 1908 s 11 I L R 34 All 599

O XXII r 10 I L R 37 All 226

See MORTGAGE (MARSHALLING) I L R 35 Bom 335

See MORTGAGE (REDEMPTION) 1 Pat L J 281

See MORTGAGE (MISCELLANEOUS) 14 C W N 1053

———— Conditional decree (Limitation for final decree)—

See CIVIL PROCEDURE CODE 1908 O XXXIV r 3 1 Pat L J 384

———— effect on redemption—

See MORTGAGE (REDEMPTION 45) I L R 47 Calc 377

MORTGAGE—*contd*

SALE OF MORTGAGED PROPERTY—*contd*

———— Several mortgages as part of the same transaction over the same property—

See CIVIL PROCEDURE CODE (ACT V OF 1908) O II R 2

I L R 45 Bom 55

1 ———— Practice—*First mortgagee s suit for sale—Surplus of sale proceeds—Second mortgagee s claim for sale in first mortgagee s suit of other property on which he has a mortgage—Civil Procedure Code (Act V of 1908) O XXXIV —Costs* B mortgaged property in Calcutta to A and afterwards mortgaged the same property and a further property in the mofussil to C A brought an ordinary mortgage suit against B for sale making C a party defendant A obtained a decree C thereupon claimed to be entitled to a decree for sale of the property mortgaged to A including the mofussil property not included in A s mortgage —*Held* that in A s suit C could only obtain the surplus of the sale proceeds of the property in that suit and could not get any relief against the other property in the mofussil *Kissory Mohan Roy* v *Kally Charan Ghose I L R 22 Calc 100 Kissory Mohan Roy* v *Kally Churn Ghose I L R 24 Calc 190 In re Kissory Mohan Roy* v *Kali Charan Ghose 1 C W N 106* and *Hatt* v *Mendel 27 Ch D 216* distinguished *Mackintosh* v *Watkins 1 C L J 31* followed The effect of the incorporation of the sections in the Transfer of Property Act into O XXXIV of the new Code of Civil Procedure is to put an end to any independent practice on the Original Side of the High Court based on the old procedure and the Original Side should now follow the provisions of O XXXIV of the Code Costs will be on Scale No 2 not Scale No 1 against the mortgagor who does not appear SARAT CHANDRA ROY CHOWDHRY v NAHAPIET (1910) I L R 37 Calc 907

2 ———— Execution of mortgage decree ——*Stay of sale in execution of mortgage decree—Jurisdiction of Court to stay sale—Waiver on behalf of minor of fresh sale proclamation—Guardian ad litem right of—Benefit to minors—Minors if entitled to impugn sale afterwards for want of fresh proclamation—Transfer of Property Act (IV of 1882) s 89—Civil Procedure Code (Act XIV of 1882) s 291* The Court has jurisdiction to order stay of a sale in execution of a mortgage decree under s 291 of the Civil procedure Code 1882 *Shyamkishen* v *Sundar Koer I L R 31 Calc 373* explained *Bibijan Bibi* v *Sachi Bewah I L R 31 Calc 863* referred to There is no conflict between s 89 of the Transfer of Property Act and s 291 of the Code of Civil Procedure 1882 The former section is concerned with the Court s order absolute for sale the latter with the adjournment of the sale The two sections relate to different matters Even if an order of the Court is erroneous it is *ordinarily* not open to a party who has obtained and enjoyed the benefit of an erroneous order to turn round afterward and ask that the order should be treated as a nullity and disregarded The guardian *ad litem* appointed by the Court and acting in good faith is entitled to make applications on behalf of the minors and has the power to waive the right of the minors to a fresh sale proclamation after postponement of the sale if the postponement enured to the benefit of the minors The minors are not entitled in such a case to [illegible] n the ground that a fresh sale proclamation was not made BIPIN BEHARI MITRA v JATINDRA NATH GHOSE (1910)

I L R 37 Calc 897

3 ———— Attachment of sale proceeds—*Mortgage decree —Sale for arrears of revenue pending suit* —Where the surplus sale proceeds in the hands of the Collector of a mortgaged property sold for arrears of revenue after the preliminary decree passed in the mortgage suit was attached in execution of that decree and subsequently the decree was made absolute *Held* that so soon as the decree was made absolute the sum attached became available to the decree holder and to that extent the decree was satisfied at that date *Magraj Marwari* v *Narsing Mohun Thakur I L R 33 Calc 846 Debendra Nath* v *Abdul Samed 10 C L J 150* distinguished GOPI KRISHNA MANDOL v RAM LAL MANDOL (1910)

14 C W N 484

4 ———— Preliminary mortgage decree —*Application for sale of mortgaged property—Limitation Act (IX of 1908) Sch I Arts 181 182 and 183—Transfer of Property Act (IV of 1882) ss 88 and 89—Civil Procedure Code (Act V of 1908) O XXXIV rr 4 and 5 O XLI r 20 —Party addition of* A preliminary mortgage decree under s 88 of the Transfer of Property Act 1882 does not require and is not followed by any supplemental decree but only if necessary by an application for an order absolute for sale under s 89 of the Transfer of Property Act Such an application is a petition for realization by the mortgagee of his decree and is an application to enforce a judgment or decree etc within the provisions of Art 183 of the Limitation Act 1908 *Harendra Lal Roy Chowdhri* v *Maharani Dasi I L R 28 Calc 557 L R 28 I A 89* referred to *Madhab Mani Dasi* v *Lambert I L R 37 Calc 796 15 C W N 537* discussed It is a question for the Court in its discretion to determine in each case whether or not it will make an order for the addition of a party as contemplated by O XLI r 20 of the Code of Civil Procedure 1908 AMLOOK CHAND PARRACK v SARAT CHUNDER MUKERJEE (1911) I L R 38 Calc 913

5 ———— Private sale of mortgaged property—*Consideration left with purchaser for discharge of two mortgages—First mortgage alone discharged—Suit for sale by second mortgagee—Purchaser not entitled to hold up first mortgage as a shield* Where a purchaser of mortgaged property undertook to discharge out of the purchase money two subsisting mortgages and in fact discharged only the earlier one *Held* that it was not competent to him to hold up this mortgage as a shield against the suit of the puisne mortgagee for sale *Gopal Das* v *Puran Mal I L R 10 Calc 1035 10 G* referred to MUHAMMAD SADIQ v GHAUS MUHAMMAD (1910) I L R 33 All 101

6 ———— Purchase of mortgaged property by mortgagee application of sale-proceeds to reduce—*the debt debt if pro tanto extinguished—Mortgagee if may proceed solely against other properties —Portion of security if may be released by mortgagee —Purchasers of equity of redemption position of* Where a mortgagee purchased portions of the mortgaged property for a fair price without fraud or undue influence and applied the purchase money to the reduction of the debt under an agreement to the effect and it appeared that the property was

MORTGAGE—contd

SALE OF MORTGAGED PROPERTY—contd

intended to be conveyed free of the mortgage — *Held* that as between the mortgagor and the mortgagee the mortgage was not pro tanto diminished and that the debt remaining due after deducting the purchase money was chargeable on the rest of the property The effect of the transaction must be judged by its nature i e whether the sale was of the equity of redemption only or of the property freed of the mortgage *Held* also that subsequent purchasers of the equity of redemption in the remaining portion of the mortgaged property stood in the shoes of the mortgagor and could not object to having the whole mortgage-debt realised by sale of the property in their hands Where there are no other persons having a lien on the same property it is settled that as between the parties to the mortgage the mortgagee is entitled to release a portion of the hypothecated property and impose the whole lien upon the residue A subsequent purchaser of the equity of redemption of the residue therefore cannot object to the release and require the property so released to contribute rateably to the satisfaction of the debt Eusuff Ali Haji v Panchanan Chatterjee (1910)

15 C W N 800

7 ———— Purchase by mortgagee—Subsequent purchase by landlord—*Mortgage encumbrance —Mortgage purchaser rights of to fall back on mortgage —Sale under Bengal Tenancy Act—Ordinary Court sale its effect—Decree for rent effect of—Bengal Tenancy Act (VIII of 1885) ss 164 165 and 16* Where the mortgagee of a tenure purchased the mortgaged property in execution of a decree of his own mortgage and the landlord subsequently purchased the same property in execution of a rent decree but did not annul the mortgage encumbrance *Held* that the mortgagee purchaser was entitled to fall back on his mortgage as a shield against the purchase by the landlord *Akhoy Kumar Soor* v *Bejoy Chand Mahatap I L R 29 Calc 813* followed and the *obiter dictum* in the case discussed *Bhawani Koer* v *Mathura Prasad 7 C L J 1* referred to *Held* further that the landlord could not oust the mortgagee from the tenure without annulling the encubrance under s 167 of the Bengal Tenancy Act and this would be so even if the mortgagee had not proceeded to sale before the purchase of the landlord Where the bidding for a tenure put up to auction under s 164 of the Bengal Tenancy Act did not reach the level of the decretal amount and a sale of the tenure subsequently followed but without a second proclamation as contemplated by s 16 of the same Act the sale must be held to have been an ordinary court sale and the purchaser to have acquired only right title and interest of the judgment debtor *Nazir Mahomed Sirkar* v *Girish Chunder Chowdhuri 2 C W N 251* and *Akhoy Kumar Soor* v *Bejoy Chand Mahatap I L R 29 Calc 813* distinguished The special provisions for the sale of tenures under the Bengal Tenancy Act are a part of the public policy intended for the benefit of all parties concerned and the results of such sales are generally destructive of various derivative rights belonging to third parties not before the Court The provisions of the Act are therefore very stringent and if the landlord wants the special results provided for by the Act he must proceed strictly in accordance with its provisions Where a suit for rent has been rightly brought against the real tenant and a decree has been obtained the decree is a good decree for rent whether the tenant was recognised as such or not *Lalun Monee* v *Sona Monee Dabee 22 W R 334* and *Surnomoyee* v *Denonath Cir Surma ee I L R 9 Calc 908* referred to Banshihari Kapur v Khettra Lal Singh Roy (1911)

I L R 38 Calc 923

8 ———— Limitation—An application made on the 3rd July 1909 for an order absolute for sale by a mortgagee who had obtained the preliminary decree on his mortgage in the High Court on the 10th December 1886 was barred by Art 183 of Sch I of the Limitation Act (IX of 1908) or the corresponding article of Act XV of 1877 The application was one to enforce a judgment within that article The meaning of the word enforce is not limited to realization by execution but may have a wider meaning *Horendra Lall Roy Choudhury* v *Maharani Dasi I L R 28 I A 89* referred to *Madhub Moni Dasi* v *Pamela Lambert 15 C W N 537* distinguished Amrook Chand Parak v Sarat Chandra Mukerjee (1911) I L R 38 Calc 913

16 C W N 49

9 ———— Mortgaged property sold subject to mortgage—*Transfer of Property Act (IV of 1882) s 55 sub s (5) cl (b)—Vendor and purchaser—Implied contract of indemnity—Seller damnified by reason of buyer not discharging mortgage debt—Suit for damages if lies—Limitation—Limitation Act (XV of 1877) Sch II Art 83—Measure of damages* Where one buys from another an equity of redemption subject to a mortgage and merely pays for the value of that equity of redemption he contracts to protect his vendor form the obligation of the mortgage the buyer s contract with the mortgagor being that the debt should not fall upon the latter It is a contract of indemnity and the buyer would be bound without any specific contract to indemnify the seller *Tweedale* v *Tweedale 2 Brown s Rep of Ch Cas 153 23 Beav 341* relied on Where a portion of the mortgaged property was sold subject to the mortgage but the buyer having failed to pay off the mortgagee the latter sued on his mortgage and the whole of the mortgaged property was sold and the seller was dispossessed of the lands which had been retained by him *Held* that a suit by the seller for damages against the buyer was governed by Art 83 of Sch II of the Limitation Act time running from the date when the seller was actually damnified i e the date of dispossession The word contract in Art 83 does not mean an express contract *Quære* Whether the deed of sale being registered the period of limitation was that provided by Art 116 *Quære* What under the circumstances would be the proper measure of damages Ram Parai Singh v Sheodeni Singh (1912) 16 C W N 1040

10 ———— Estoppel—*Decree on mortgage —Decree set aside as against one mortgagor—Second suit to recover proportionate share of the debt maintainable* A mortgagor died leaving him surviving a brother two daughters and an illegitimate son The four sons of the brother took an assignment of the mortgage from the mortgagee and subsequently brought a suit for sale

MORTGAGE—*contd*

SALE OF MORTGAGED PROPERTY—*contd*

of the mortgaged propert against the children of the mortgagor and inasmuch as they were themselves owners of part of the mortgaged property framed their suit as one for the recovery of specific shares of the mortgage money from the portions of the property in the possession of each of the defendants They obtained in this suit an *ex parte* decree which however was set aside as against one of the daughters upon the ground that she was a minor and not properly represented therein *Held* that the plaintiffs were not precluded from maintaining a fresh suit against this defendant for the recovery of a share in the mortgage debt proportionate to her share in the property RASHID UN NISSA *v* MUHAMMAD ISMAIL KHAN (1912) I L R 34 All 474

11 ———— Chota Nagpur Tenancy Act (*Beng VI of 1908*) *s 47—Decree for sale of property situate in Manbhum—Estoppel* After the preliminary decree on a mortgage was passed and before the final decree for sale was made the Chota Nagpur Tenancy Act 1908 was extended to Manbhum where the mortgaged property was situate The judgment debtor having objected to the application of the decree holder for sale of the said property both Courts set aside the objection and the sale to the decree holder was thereafter confirmed Upon appeal to the Hight Court *Held* that the sale was in direct contravention of the provisions of s 47 of the Chota Nagpur Tenancy Act *Held* further that the judgment debtor cannot be estopped from bringing to the notice of the Court what the Court must be taken to know of itself that there was a distinct provision of law which prevented the sale of the property LAKSHMI BIBI KUJRANI *v* ATAL BIHARY HALDAR (1913) I L R 40 Calc 534

12 ———— Parties—*Suit for entire mortgage money and sale of entire mortgaged property—Omission to implead certain persons interested—Decree to which plaintiffs entitled* Where a plaintiff mortgagee sued for the recovery of the whole of the mortgage money by the sale of the whole of the mortgaged property but by an oversight omitted to implead certain persons who had acquired a share in the property subsequent to the mortgage in suit it was *held* that so much of the claim should be decreed as was proportionate to the interests of the persons who were before the Court GANESHI LAL *v* CHARAN SINGH (1913) I L R 35 All 247

13 ———— Suit for sale against auction purchaser of mortgaged property—*Evidence admissibility of—Recital of receipt of consideration—Estoppel* *Held* that an admission made by a mortgagor in a mortgage deed and also before the registering officer as to the receipt of consideration is admissible in evidence against the purchaser of the mortgaged property at an auction sale in execution of a simple money decree *Bihari Lal* v *Makhdum Bakhsh I L R 35 All 194* followed *Manohar Singh* v *Sumitra Kuar I L R 17 All 428* not followed *Mahomed Mozaffer Hossein* v *Kishori Mohan Roy I L R 22 Calc 909* referred to *Held* also that a purchaser at auction of the right title and interest of the father alone in joint family property which had been mortgaged by the father was not entitled to raise the plea that the mortgage was made *without legal necessity so long as there was time yet for the sons to challenge the purchase Muhammad Muzammilullah Khan* v *Mithu Lal I L R 33 All 783* distinguished BANSHI RAM *v* LILADHAR (1913) I L R 35 All 353

14 ———— Sale of mortgaged property for any claim of mortgagee unconnected with mortgage—*Civil Procedure Code (Act V of 1908) O XXXIV—r 14—Transfer of Property Act (IV of 1882) s 99* A mortgagee is competent under the Civil Procedure Code of 1908 to have his mortgaged property sold in satisfaction of any claim which he may have against the mortgagor though *the claim may be unconnected with the mortgage* TARAK NATH ADHIKARI *v* PHUBANESHWAR MITRA (1914) I L R 42 Calc 780

15 ———— Suit by second mortgagee—*—Surplus sale proceeds taken out by fourth mortgagee in execution of his decree—Third mortgagee if may sue to recover amount realised by fourth mortgagee—Civil Procedure Code (Act V of 1908) s 73 (1) proviso cl (c)* A second mortgagee obtained a decree on his mortgage in execution of which the property was sold and purchased by the third mortgagee There was a surplus of sale proceeds left after satisfying the decree The fourth mortgagee thereafter sued on his mortgage without making the third mortgagee a party and in execution of the decree obtained by him withdrew a portion of the surplus sale proceed The third mortgagee threafter without seeking to put his mortgage in suit sued the fourth mortgagee to recover the amount of the surplus sale proceeds withdrawn by the latter *Held* that the plaintiff could not succeed on this footing *Berhamdeo Pershad* v *Tara Chand I L R 33 Calc 92* referred to Cl (c) of proviso to sub s (1) of s 73 of the Civil Procedure Code does not apply to this case as the Plaintiff was not the holder of any decree NATHAN SAO *v* ANNIE BESANT (1913) 19 C W N 535

16 ———— Purchase money "left with the purchaser for payment to the mortgagee"—*Nature of this transaction—Trust* Where a mortgagor sells the mortgaged property and as it is commonly expressed leaves part of the price with the purchaser for payment to the mortgagee the transaction is merely one of sale subject to the mortgage No trust is created in the purchaser for payment of the portion of the price left with him to the mortgagee JAMNA DAS *v* RAM AUTAR PANDE (1916) I L R 38 All 209

17 ———— Mortgage by two persons of two properties for a single debt—*Payment by one his portion—Suit against other for the balance—Transfer of Property Act (IV of 1882) s 67* There is nothing in the provisions of the Transfer of Property Act to support the view that as between a mortgagee and the holders of equity of redemption the mortgagee is bound to distribute his debt rateably on the mortgaged properties *Arunachala Ayyar* v *Muthukumara Sawmiya Pillai I L R 21 Mad 217* followed Where therefore the plaintiff sued the defendant one of the mortgagors for the recovery of the balance of mortgage money due under a deed of mortgage without joining the other mortgagor *Held* that the plaintiff was entitled to a decree for a sale of the plaint men

MORTGAGE—*contd*

SALE OF MORTGAGED PROPERTY—*contd*

tioned properties for the whole of the balance due on the mortgage VENKATA SUBBA PEDDI *v* BAGLAMMAL (1914) I L R 39 Mad 419

18 ———— Mortgage by two out of three brothers members of joint Hindu family—*Death of one executant—Suit against other executant and the non executing brother only as representing the deceased executant*—Ex parte *decree and sale in execution and purchase by mortgagee—Non executing brother s original share if passed by the sale—Decree for joint possession if can be made—Transfer of Property Act (IV of 1882) s 44* Delivery of symbolical possession is operative against the judgment debtor who from that date becomes a trespasser and the remedy of the decree holder who has failed to get actual possession is by suit Where A and B two out of three brothers A B and C members of a joint *mitakshara* family executed a mortgage of their whole property and the mortgagee on the death of A sued to enforce the mortgage against B as mortgagor and also as the legal representative of A and against C describing him only as A s legal representative *Held* that the decree and the sale could not affect C's original one third share in the mortgaged property since the question of the validity of the mortgage as against C who was not a party thereto could not be raised and decided in the mortgage suit That in a suit by the purchaser to recover the property C was not barred from raising the question by the doctrine of constructive *res judicata* That the plaintiff as purchaser of an undivided two thirds share in huts used as residence by a joint Hindu family could not be given a decree for joint possession regard being had to s 44 of the Transfer of Property Act That the proper course to follow is either to direct delivery of possession by partition in execution proceedings or to leave the purchaser to his remedy by a separate suit for partition GIRIJA KANTA CHAKRABARTY *v* MOHIM CHANDRA ACHARJYA (1915) 20 C W N 675

19 ———— Death of judgment debtor after decree nisi but before order absolute—*Order absolute made without bringing all the legal representatives on the record—Sale in execution of decree—Title of purchaser at such sale* A Hindu widow was in possession of a one sixth share of her husband s estate upon a partition made among her sons One of the sons lived jointly with her She made a mortgage of her share to raise money to pay off debt legally binding upon the estate The mortgagee brought a suit against her and obtained the decree nisi against her She then died and the son who was living jointly with her was alone brought on the record as her legal representative An order absolute was obtained and the shares of the widow and the son who was joint with her were sold and purchased by plaintiff When they applied for mutation of names they were opposed by the other sons They thereupon commenced the present action for recovery of possession *Held* that the order absolute having been obtained against one only out of several heirs there was not in existence any decree under which the interest of the other heirs could be sold and consequently the plaintiffs could not obtain possession *Mallayya v Narhari I L R 5 Bom 337* distinguished KUNDAN SINGH *v* SURJA KUNWAR (1916) I L R 39 All 67

MORTGAGE—*contd*

SALE OF MORTGAGED PROPERTY—*contd*

20 ———— Agra Tenancy Act—*Mortgage comprising both fixed rate and occupancy holdings executed before the passing of the Agra Tenancy Act 1901—Suit for sale of the fixed rate holdings only* A mortgage made prior to the passing of the Agra Tenancy Act 1901 comprised both occupancy and fixed rate holdings The mortgagee brought a suit for sale of the fixed rate holdings only *Held* that the mortgage so far as it related to the fixed rate holdings was not bad and these being distinct from the occupancy holdings the suit was maintainable *Kanhai v Tilak 16 Indian Cases 42* and *Badri Mallah v Sudama Mal 10 All L J 176 distinguished* RAJENDRA PRASAD *v* RAM JATAN RAI (1917) I L R 39 All 539

21 ———— Second mortgage debt secured by sureties—*Assignment of equity of redemption to sureties—Sub mortgage by sureties in favour of assignor—Sale of mortgaged property by prior mortgagee—Subsequent sale by sub mortgagee—Remainder of mortgaged property in existence and available for sale insufficient to satisfy sub mortgagee s debt—Application for personal decree against sub mortgagors—Civil Procedure Code (Act V of 1908) O XXXIV r 6* The plaintiffs who were the mortgagees of the equity of redemption in respect of certain properties further secured their mortgage debt by a promissory note executed in their favour by two sureties on behalf of the mortgagor They subsequently assigned their equity of redemption to the sureties who executed a sub mortgage thereof in favour of the plaintiffs Some time after the plaintiffs obtained a preliminary mortgage decree which was later followed by a final decree directing that the premises charged under the mortgage or a sufficient part thereof should be sold subject to the prior mortgage In the meantime between the dates of the preliminary and final decrees the mortgagor having been adjudicated an insolvent the prior mortgagee obtained an order of the Court exercising insolvency jurisdiction that the zemindari properties included in the prior mortgage should be sold free from all incumbrances and that the balance of the sale proceeds after payment of the costs of the sale and the claim of the prior mortgagee should be retained by the Official Assignee and be paid by him in discharge of other incumbrances in accordance with their respective priorities The sale was duly carried out by the Official Assignee in pursuance of this order The amount thus realised was not sufficient to meet the debt of the prior mortgagee Subsequently in pursuance of the mortgage decree the Registrar put up for sale the equity of redemption in certain properties specified in the plaintiffs mortgage and remaining unsold at the sale by the Official Assignee and as the amount realised at the Registrar s sale was not sufficient to meet the plaintiffs debt the plaintiffs applied for and obtained a personal decree against the sub mortgagors for the amount of their claim *Held* that the plaintiff s claim for a personal decree was not debarred *Per* SANDERSON *C J* ... regard to the fact that all the properties ... by the mortgage which were in existence ... were for sale at the date of the ... sold (by Registrar) and assuming ... plaintiffs not responsible for the ... of the perties included in the ... n

MORTGAGE—*contd*

SALE OF MORTGAGED PROPERTY—*contd*

available for sale though the sale purported to include them I think it should be taken that the provisions contained in the rules and the directions contained in the mortgage decrees as to the sale have been complied with and that the plaintiffs are entitled to the personal decree which the learned Judge has directed *Ram Ranjan Chakravarti* v *Indra Narain Dass I L R 33 Calc 890* and *Badri Das* v *Inayat Khan I L R 22 All 404* distinguished *Per* WOODROFFE J We must look at this matter rationally and with reference to the reason of the rule namely that the personal liability will only be enforced where there is a deficiency after the sale of all the mortgaged property available for sale at the date of sale In other words the personal liability must not be improperly increased SATISH RANJAN DAS v MERCANTILE BANK OF INDIA LD (1917)

I L R 45 Calc 702

22 ———— **Decree not in accordance with s 88 Transfer of Property Act**—(*IV of 1882*) —*Sale in execution of decree—Confirmation of sale—Purchase by mortgagee at auction sale with leave of the Court—Right of redemption by mortgagor—Suit to redeem against auction purchaser—Parties—Civil Procedure Code (Act XIV of 1882) s 244—Question in execution of decree* In a suit to enforce a mortgage and for sale of the mortgaged property the decree made was not in accordance with the provisions of s 88 of the Transfer of Property Act (IV of 1882) no day being fixed by the Court on which payment might be made within six months from the date of declaring in Court the amount due In execution of the decree the mortgaged property was attached sold and purchased with the leave of the Court by the mortgagee decree holder and the sale was duly confirmed In a suit by the mortgagor for redemption of the mortgage which was one of ancestral property made by the plaintiff's father before the birth of his sons *Held* that whether or not the decree was in accordance with the provisions of the Act the property and all the right title and interest of the defendant were in fact sold in execution of the decree of a Court which had jurisdiction to entertain the suit in which the decree was made and that decree was not appealed from and that consequently the mortgagor had no right of redemption *Held* further that the question now raised could have been raised before the sale was confirmed and if so raised would have been determined by the Court executing the decree and that the suit was therefore barred by s 244 of the Code of Civil Procedure (Act XIV of 1882) *Prosunno Kumar Sanyal* v *Kali Das Sanyal I L R 19 Calc 683 L R 19 I A 166* followed GANAPATHY MUDALIAR v KRISHNAMACHARIAR (1917)

I L R 41 Mad 403

23 ———— **Estoppel**—*Mortgaged property partly sold and partly mortgaged to persons induced by some of the mortgagees themselves to believe property to be free from encumbrance—Interests of co mortgagees if severable—Document creating transfer of simple mortgage if compulsorily registerable—Transfer of Property Act (IV of 1887) s 54—Registration Act (XVI of 1908) s 17 (b)* In a mortgage suit some of the defendants were purchasers of a portion of the mortgaged property and one had taken a puisne mortgage of the remainder It appeared that some of the plaintiff mortgagees led these defendants to believe that the whole property was unencumbered The lower Court dismissed the suit so far as these plaintiffs were concerned *Held* that as regards the defendants who were purchasers of a portion of the mortgaged property the claim of these plaintiffs was rightly dismissed under the rule of estoppel but as regards the other defendant who was a puisne mortgagee of the remainder of the mortgaged property the effect of the estoppel under s 78 of the Transfer of Property Act was to postpone these plaintiffs in respect of their share of the original debt to this defendant and the decree should declare that the property mortgaged to this defendant hypothecated to these plaintiffs for their share of the original mortgage debt and their rights as mortgagees were postponed to those of this defendant That co mortgagees are presumably tenants in common of the mortgage debt and their interests are severable or partible among themselves and it was open to the Court to sever the interests of those plaintiffs who had taken no part in the deceit practised upon the purchaser from those who did and to make a decree in their favour in proportion to their interest in the debt That a mortgage debt is immoveable property both for the purposes of s 54 of the Transfer of Property Act as also for the purposes of s 17 (*b*) of the Registration Act and where a mortgage including a simple mortgage is transferred by an instrument in writing and the value of the right title or interest transferred is one hundred rupees or more the writing requires registration and the absence of registration makes the document inadmissible SAKHIUDDIN SAHA v SONAULLAH SARKAR (1918)

22 C W N 641

24 ———— **Decree directing sale of other properties of judgment debtor if sale proceeds of mortgaged property insufficient**—*Limitation as to latter part of decree—Civil Procedure Code (Act V of 1908) s XX O 20 r 6—O XXXIV r 6* Where a mortgage decree after directing that the available proceeds of the sale to be held under the decree was to be paid in satisfaction of the decretal debt but that if the amount due to the plaintiff was not satisfied by the sale of the mortgaged property the balance would be realised from other properties and the persons of the defendants *Held* that limitation for execution of the latter part of the decree did not run from the date of the sale of the mortgaged property but from the date of the decree as fixed by O XX r 6 of the Civil Procedure Code KHULNA LOAN COMPANY v JNANENDRO NATH BOSE (1917)

22 C W N 14[illegible]

25 ———— **Rights of Puisne mortgagee**—*Decree for sale at the instance of prior mortgagee—Right of puisne mortgagee to apply for sale in execution for amount ascertained to be due to him—Subsequent suit by puisne mortgagee for sale—s 47 Civil Procedure Code whether a bar to suit* In a suit for sale by a prior mortgagee against the mortgagor and a puisne mortgagee the decree not only directed the sale of the mortgaged properties for the amount found due to the prior mortgagee but also ascertained the amount due to the puisne mortgagee and ordered the payment to him of this amount out of the surplus sale proceeds *Held* (*i*) that the puisne mortgagee was not entitled to execute the decree for the amount due to him

MORTGAGE—*contd*

SALE OF MORTGAGED PROPERTY—*contd*

when no sale was held for the realization of the amount due to the prior mortgagee (ii) that the remedy of the puisne mortgagee was a suit for sale (iii) that s 47 Civil Procedure Code was no bar to the suit and (iv) that the decree in the previous suit did not operate as *res judicata* VEDAVYASA AYYAR v THE MADURA HINDU LABHA NIDHI Co LTD (1918) I L R 42 Mad 90

26 ——— Preliminary decree containing direction as to personal liability of defendant in case mortgaged property be insufficient *to satisfy decree—No mention of personal liability in final decree—Preliminary decree whether composite—Application under O XXXIV r 6 of the Civil Procedure Code (Act V of 1908) whether maintainable* In a mortgage suit the decree for sale of the mortgaged property contained a direction that if the whole amount was not realized by the sale of the mortgaged properties for the rest of the claim if legally realizable the defendant No 1 would be liable In the final decree there was no provision for any personal decree Before the mortgaged properties could be sold a third party succeeded in having it declared that the mortgaged property could not be sold in execution of the decree Thereupon the plaintiff applied under O XXXIV r 6 It was contended that the preliminary decree was a composite decree and that therefore a fresh decree was not necessary *Held* that the preliminary decree was not a composite decree allowing the decree holder to proceed against the other properties of the judgment debtor It said that he might proceed if he were legally entitled to do so thus leaving it for future decision whether the decree holder was legally entitled to obtain such a decree SHANATH SHAH BANIK v MADAN MOHAN DAS (1919) 23 C W N 924

27 ——— Sale for arrears of revenue *—suit on the mortgage—purchase by mortgagee—Rights of mortgagee* In execution of a mortgage decree plaintiff the mortgagee himself purchased the mortgaged property and obtained formal possession Before that suit was brought the defendants had purchased the property at a sale for arrears of revenue That purchase was subject to the plaintiff's mortgage Plaintiffs sued for possession and the Lower Courts gave him a decree for possession in case the defendants failed to pay the amount due on the mortgage within 6 months *Held* that the plaintiff was not entitled to a decree for possession but was entitled to have the mortgaged property put up for sale if the defendants failed to redeem BALLI SINGH v BINDESWARI TEWARI 1 Pat L J 133

28 ——— Subsequent sale of part of the mortgaged property—*purchaser's liability to contribute to mortgage debt* Certain properties including a house were mortgaged Subsequently the defendant purchased half of the house from the mortgagor who then conveyed the equity of redemption in respect of all the mortgaged properties to the mortgagee In a suit by the latter to enforce his mortgage by sale of the mortgaged properties *Held* that having regard to the terms of s 82 of the Transfer of Property Act 1882 it was improper to order the property to be sold without fixing the proportion of the mortgage debt chargeable on the house purchased by the defendant MAHARAJAH RAMNARAIN SINGH v RAM KUMAR LAL BHAGAT 1 Pat L J 228

29 ——— Different persons becoming interested in fragments of equity of redemption *—Mortgagee not entitled to throw the burden of entire mortgage debt on a portion of the mortgaged property* The property in suit was mortgaged to plaintiff Subsequent to the date of the mortgage *M* and *K* purchased the equity of redemption in half shares Plaintiff sued to recover the entire mortgage debt by sale of half of the mortgaged property in the hands of *M* without adding *K* as a party to the suit *Held* that it was contrary to the principles of equity that the plaintiff who by his own negligence had lost his remedy against the owner of half of the equity of redemption should seek to throw the whole burden of the mortgage on the owner of the other half *Imam Ali v Baij Nath Ram Sahu (1906) 33 Calc 613 at p 621* followed BUDHMAL KEVALCHAND v RAMAVALAD YESU (1919) I L R 44 Bom 223

30 ———Double sale—Where plaintiff purchased a mortgaged property from the mortgagor in execution of a money decree and subsequently the mortgagee brought a suit against the original mortgagor without making the purchaser a party and in execution of the decree purchsed the mortgaged property and sold it to another from whom plaintiff sought to recover *Held* that plaintiff by virtue of his purchase acquired only a right to redeem and was not entitled to recover possession after the mortgage sale The fact that he was left out of the suit did not vitiate the decree SHEIKH PALA SHARIP v ABHOY CHARAN KIRMAKAR 25 C W N 253

31 ——— Suit for sale by second mortgagees making prior mortgagee a party but not attacking his title—*Decree for sale—Subsequent suit by assignee of prior mortgage to enforce his mortgage against second mortgagees—Civil Procedure Code (Act V of 1908) s 11 Explanation IV—Transfer of Property Act (IV of 1882) s 96—Res judicata* The respondents were second mortgagees of certain villages under a mortgage of April 1891 and the appellant was the assignee of the original mortgagee of the same property under a mortgage of May 189 The respondents brought a suit (100 of 1906) to enforce their mortgage to which they made the assignor of the appellant a party but did not attack or impugn the validity or priority of his mortgage and he did not appear to defend it In a suit by the appellant in 1907 to enforce his mortgage against the second mortgagees they contended that the mortgage deed of 18— might and ought to have been made a ground of defence in the former suit and by the omission to do so the present suit was barred as *res judicata* In this suit the appellant's mortgage was admittedly valid —*Held* that under these circumstances the case came within the terms of s 96 of the Transfer of Property Act and that the property could only be sold as therein provided with the consent of the prior mortgagee who had a paramount claim outside the controversy of the suit unless his mortgage was impugned and therefore to sustain the plea of *res judicata* it was incumbent on the respondents to show that they sought in the former suit to displace the title of the prior mortgagee and postpone it to their own and that had not been done The respondents, therefore had failed to establish the condi-

MORTGAGE—*contd*

SALE OF MORTGAGED PROPERTY—*contd*

tions es ential to their plea PADHA KISHUN v KHURSHED HOSSAIN (1919)
I L R 47 Calc 662

32 ——— Sale certificate—Conclusiveness of—in subsequent suit—*Code of Civil Procedure (V of 1908) s 47* Certificates of sale are documents of title which ought not to be lightly regarded or loosely construed Where upon a sale under a mortgage decree the purchaser has been given a sale certificate which plainly includes certain property and has been put into possession of that property it is not open to a Court in a subsequent suit by the mortgagor s representative to hold by reference back to the mortgage deed that the property in question was not sold under the decree The title of the purchaser can be questioned only by a petition in the execution proceedings under s 47 of the Code of Civil Procedure and not at all where that remedy is barred by limitation. *Judgment of the High Court reversed.* RAMABHADRA NAIDU v KADIRIYASAMI NAICKER (1921)
I L R 44 Mad (P C) 483

33 ——— Decree for sale and decree for balance can be made at the same time—*Portion of decree payable later when proceeds of sal found insufficient—Transfer of Property Act (IV of 1882) s 90* It is not necessary to put such a construction on s 90 of the Transfer of Property Act (IV of 1882) as would establish as a condition pr ced nt to the power of decreeing personal payment of the balance that the mortgaged property must firs be so'd and found insufficient to satisfy the debt The words of the section are satisfied in cases where the Court passes a decree that on the happening of the event wh n the net proceeds of the sale are found to be insufficient the balance should be paid JEUNA BAHU v PARMESWAR NARAYAN MAHTHA (1918)
I L R 47 Calc 370

34 ——————Holder of two independent mortgages—*If const tute separate suits* There is nothing in the Civil Procedure Code or Transfer of Property Act to prevent the holder of 2 independent mortgages over the same property who is not restrained by covenant in either from obtaining a decree for sale on each in a separate suit subje t to the reservation that he cannot sell the property twice over no under the se ond decree subject to the first NILA v ASIRBAD MANDAL
25 C W N 129

35 ——— Mortgage extinguished by sale—*Purchase by first mortgagee—Subsequent suit by second mortgagee who was not made a party to first mortgagee s suit—Act No IV of 1882 (Transfer of Property Act) s 89* An order made under s 89 of the Transfer of Property Act 1882 for the sale of mortgaged property has the effect of substituting the right of sale thereby conferred upon the mortgagee for his rights under the mortgage and the latter rights are extinguished Where *therefore* a first mortgagee brought a suit for sale under the Transf r of Property Act on his mortgage without making a second mortgagee of the same property a party to his suit and obtained a de ree for sale and purchased the property under that decree and the second mortgagee afterwards sued on h r mortgage *Held* the amount to be paid by the second mortgagee was to be calculated on the bas s of the decree and not with regard to the amount due on the prior mortgage *Het Ram v Shadi Ram I L R 40 All 407 L R 45 I A 130* followed *Umes Chunder Sircar v Zahur Fatima I L R 18 Calc 164 L R 17 I A 201* a case decided before the Transfer of Property Act 1882 was passed distinguished on that ground MATRU LAL v DURGA KUNWAR
I L R 42 All 364

36 ——— Prior and subsequent mortgage s rights of inter se—*Separate and independent decrees obtained by each set of mortgagees—Property sold by prior mortgagee and purchased by a third party leaving a surplus of sale proceeds—Rights of auction purchaser and puisne mortgagee* *A* mortgaged the same property first to *B* and then by two separate mortgage deeds to *C* *B* and *C* both sued on their mortgage each party without impleading the other and obtained decrees. B s decree was executed first The mortgaged property was sold and was purchased by *K* *B's* mortgage was paid up and a considerable surplus remained which was deposited in court *C* then endeavoured to execute his decree against the surplus sale proceeds but failed and the money was ultimately withdrawn by the mortgagor *C* next proceeded with the execution of his decree against the property in the hands of *K* the auction purchaser and *K* in order to retain possession paid up the amount of *B's* decree *K* then sued the representatives of *A* to recover the amount so paid *Held* that in the circumstances *K* was entitled to a decree *Barhamdeo Prasad v Tara Chand I L R 41 Calc 654* referred to KARAN SINGH v ISHTIAQ HUSAIN
I L R 43 All 268

37 ——— Sale by mortgagor of part of the mortgaged property—*Suit for sale on mortgage without impleading the vendee—Subsequent suit for redemption by auction purchaser against vendee—Decree to which plaintiff is entitled—Limitation* In 1901 *A* took a lease of certain property from *B* and as security for the due payment of the rent hypothecated two separate items of property *x* and *y* In 1905 *A* sold property *y* to *C* In 1906 the rent due to *B* having fallen into arrears *B* sued to recover it and obtained a decree from the Rent Court In 1908 *B* brought a suit in a Civil Court to enforce his lien again t both *x* and *y* but apparently being unaware that *y* had been sold did not make *C* a party In this suit *B* obtained a decree for Rs 6 059 9 9 In 1912 properties *x* and *y* were brought to sale in execution of B s decree and purchased by him for Rs 1 000 In 1916 *B* sold both properties to *D* In 1917 *D* sued *C* for the recovery of Rs 2 900 as representing the proportionate share of *B's* decree for Rs 6 059 9 9 which was attributable to property *y* *Held* that the suit was in time and that *D* was entitled to recover from *C* the proportionate part of *B* s decree for Rs 6 059 9 9 (not of the amount which *B* had paid for the two properties) for which property *y* was liable *Hajra Bibi v Sham Narain 11 A L J 362* referred to MAHADEO RAI v BALDEO RAI
I L R 43 All 539

38 ——————Suit for sale on —*Defence that no money was due on mortgage—Mortgagor shown to have been under influence of mortgagee an unscrupulous man who abused that influence*

MORTGAGE—*contd*

SALE OF MORTGAGE PROPERTY—*contd*

—*Mortgagee put in possession of all mortgagor's property never rendered accounts—Onus of proof—Indian Trusts Act (II of 1882) ss 3 6* B a very young man leading a most immoral life mortgaged the ancestral property of his family to N and gave N possession of practically all his property which included other villages not mortgaged to N who sold a considerable part of the property including some of the mortgaged villages and some of the mortgaged village were purchased by N Neither N nor the plaintiffs who claimed through N rendered accounts of what had been received by him from and in respect of any of the properties not even of the mortgaged properties B was completely under the influence of N an unscrupulous man who exercised that influence regardless of the interest of B and his infant son who was born subsequently to the two mortgages on which plaintiffs sued *Held* that this was not an ordinary case of a suit for sale based on a mortgage in which it would be for the defendant the mortgagor to prove that nothing remained due under the mortgage if that was his defence and the onus lay on the plaintiffs to prove that the mortgages had not been satisfied and what if any was due under each mortgage before they could get a decree for sale The plaintiffs having failed to prove that anything was due the suit should be dismissed. Shortly after the first of the mortgage B executed an agreement by which he appointed N manager and receiver of all his property movable and immovable for 10 years and put N in possession under that agreement N was to keep accounts and explain them to D in July of each year and was to receive certain remuneration for his work *Held* that the agreement did not constitute N a trustee within the meaning of the Indian Trusts Act B. L. PAI v BHAIYALAL 24 C W N 769

———————— *Mortgage—Equity of redemption sale of—Purchaser retaining portion of purchase money to pay off mortgage if personally liable for the mortgage debt* A purchaser of mortgaged property who retains a portion of the purchase money in order to enable him to pay off the mortgage does not thereby become personally liable to discharge the mortgage debt NANKU SINGH v KAMTA PRASAD 26 C W N 771

SEVERANCE OF MORTGAGEE'S INTEREST

See UNDER SUB-HEADING SALE OF MORTGAGED PROPERTY

———————— *Mortgage—Decree of Court splitting up mortgagee's rights—Transfer of Property Act (IV of 1882) s 67 cl (d) analogy of* The principle of the rule embodied in s 67 cl. (*d*) of the Transfer of Property Act enabling one of several mortgagees to enforce by suit the payment of his portion of the mortgage money when the mortgagees sever their interests with the consent of the mortgagor is applicable to a case where the severance effected by a decree of Court binding on the mortgagor VIJAYABHUSHANAMMAL v EVALAPPA MUDALIAR (1914)

I. L. R 39 Mad 17

SIMPLE MORTGAGE.

———————— *Simple mortgage—Mortgagor's power to create lease [illegible] on mortgage* A simple mortgage in India unlike a legal mortgage in England does not arrest the mortgagor's power of leasing in the ordinary course of management and the mortgagor acts within his powers in creating a temporary lease which does not impair the value or impede the operation of the mortgage *Banee Pershad v Beet Bhunjun Singh 10 W R 325* referred to *Keech v Hall 1 Douglas 21* not applied BALMUKUND RUIYA v MOTI LAL BARMAN (1915) 20 C W N 350

MORTGAGE—*contd*

SIMPLE MORTGAGE—*contd*

SUBROGATION

See SUBROGATION

———————— One of the mortgagees paying off the mortgage—

See LIMITATION ACT (IX OF 1908) SCH I ART 120 I L R 45 Bom 597

1 ———————— *Presumption of intention—Interest—Costs of part of decree* Where the kobala by which mortgaged properties were sold recited certain mortgages which were paid off out of the purchase money and the mortgage bonds were preserved by the purchaser *Held* that there was a presumption of subrogation of the purchaser to the rights of the mortgagees *Held* further that in order to establish right by subrogation it was not necessary for the purchaser to prove any intention or agreement to subrogate and the presumption from the circumstances would be in his favour Where the contract rate of interest is not proved to be a penalty or unconscionable the Court should not disturb it Costs form a part of the entire decree and carry Court rate of interest PRAYAG NARAIN KAYEI v CHEDI PAI (1910) 14 C W N 1093 note

2 ———————— —*Presumption of intention—Legal and equitable claim of both may be urged together* The principle of subrogation is one based on a presumption of intention which may be supported by circumstances or evidence of assignment or agreement or both Where a debt on a mortgage decree obtained by N was paid off by money paid by plaintiff for which the defendant executed a fresh mortgage bond at an increased rate of interest which recited the necessity for paying off the decretal debt and without actually mentioning one of the three mesne mortgages falsely stated that the property was otherwise free from encumbrance *Held* that the plaintiff stepped into the shoes of N on the principle of subrogation and had priority over the [illegible] mortgagee Subrogation by intention [illegible] an equitable right and subrogation by [illegible] legal claim It is therefore open to a party [illegible] his claim on both intention and agreement [illegible] *Singh v Chandr lah Singh 5 C L J 411* [illegible] guished. *Bisseswar Prosad v Lala* [illegible] *6 C L J 131* referred to TARA [illegible] v KHEDAN LAL SAHU (1910) 14 C W N 1[illegible]

3 ———————— *Transfer of Property Act (IV of 1882) s 9*[illegible] *of mortgage—Charge—S*[illegible] *Interest Court decree* [illegible] *cent amount* [illegible] *and capable of execution—*[illegible] *of decree* [illegible] *when perm*[illegible] of the High Court which was [illegible] did not specify the period [illegible] on the principal [illegible] decree as regards [illegible] was not capable of execution [illegible] did not give effect to the [illegible] it was [illegible]

MORTGAGE—*contd*

SUBROGATION—*contd*

ceded that an application for a review of the decree if made would be heard by the Bench hearing the present appeal which arose in execution proceeding and proceeded to ascertain the rights of the parties as upon such application If one of several joint mortgagors in order to protect his interest pays the joint debt he is placed in the position of the mortgagee in relation to his co mortgagors to the extent of their shares of the debt But the substitution of the new creditor in place of the original one does not place the former precisely in the position of the latter for all purposes The extent to which subrogation would be carried in any particular case must be governed by equitable considerations In so far as any question of priority is concerned he no doubt enjoys the same advantages as the original mortgagee and is entitled to priority over subsequent mortgagees from his co mortgagors In so far however as the amount of money which he is entitled to recover from his co mortgagors is concerned he can claim contribution only with reference to the amount actually and properly paid to effect redemption to which sum he can and his legitimate expenses. In so far as interest on these sums is concerned he cannot claim it for any period antecedent to the redemption. In regard to these matters the Court has a discretion which it will exercise with a view to secure substantial justice regardless of form *In re Hewitt 125 N & Eq 210 Surjiram* v *Barhamdeo 2 C L J 288 Gurdeo* v *Chandrikah I L R 36 Calc 193 s c 5 C L J 611* referred to. The doctrine that a mortgagee is not bound to accept any sum in part satisfaction of his decree and is entitled to an order absolute unless the entire amount is brought into Court for payment to him is applicable only where there is no dispute as to what amount is due An unconditional tender of a sum which turns out in the end to be less than what is really due may be valid *pro tanto* if there is a dispute as to the amount due though a tender to a part of what was admittedly due is of no avail. *Ganga Das* v *Jogendra Nath 11 C W N 403 s c 5 C L J 315 Ram Kamaleswari* v *Sukhun Singh 7 C W N 172 Dixon* v *Clark 5 C B 365 75 R R 747* referred to Though a tender of a smaller amount than that of which an indivisible and entire claim consists may be invalid as a tender there is nothing to prevent the creditor from accepting the amount tendered in part payment and his doing so will not preclude him from afterwards claiming the residue of his account always provided that the debtor did not make it a condition of his tender that it be accepted in discharge of the whole *Bowen* v *Owen 11 Q Q B 130 75 R R 306* relied on DIGAMBAR DAS *v* HARENDRA NARAYAN PANDEY (1910) **14 C W N 617**

4 ———————— *Mortgage subrogation of—Undertaking to pay subsequent incumbrance rebuts presumption of intention to keep alive prior mortgage* Where property subject to two mortgages is sold and the purchaser who undertook to pay off both the mortgages with the purchase money discharges the prior mortgage only he cannot as against the subsequent mortgagee claim to stand in the shoes of the prior mortgagee His right to use the prior mortgage as a shield is based on a presumed intention to keep alive the prior mortgage for his own benefit and such presumption is rebutted when he undertakes to discharge both the mortgages GOVINDASAMI TEVAN *v* DORASAMI PILLAI (1910) **I L R 34 Mad 119**

5 ———————— *Mortgage sale advance of money to set aside—Mortgage in favour of lender—Sale in execution of money decree after sale set aside but before mortgage executed* Plaintiff advanced small sums of money to the mortgagor for payment to the mortgagee pending execution of a mortgage decree and the balance due to the mortgagee after sale in execution of the decree with the result that the sale was set aside One month after the mortgagors executed a mortgage in favour of the plaintiff to secure the amounts paid by him but during this interval a portion of the property had been sold in execution of a money decree obtained against the mortgagor by the defendant and purchased by him The sale was however not confirmed till after the plaintiff's mortgage *Held* that the plaintiff cannot claim to be placed in the position of the mortgagee whose dues he discharged with respect to the property purchased by defendant No 1 which was free from encumbrances at the time he purchased it *Shyam Lal* v *Bashiruddin I L R 28 All 778* and *Vanmikalinga* v *Chidambara I L R 29 Mad. 37* distinguished The defendant No 1's title to the property accrued on the sale and not for the first time on confirmation thereof *Bhawani Koer* v *Mathura Prasad 7 C L J 1* and *Adhur Chunder* v *Aghore Nath 2 C W N 589* relied on *Prem Chand* v *Purnima I L R 15 Calc 546* and *Amir Kazim* v *Darbari Mal I L R 24 All 475* distinguished. RAM SARAN SINGH *v* KHAKHAN SINGH (1910) **15 C W N 312**

6 ———————— *Third mortgagee advancing money for discharge of first mortgage—Priority Application of part only towards discharge—Priority over mesne mortgagee to that extent* A mortgagee who advances money towards the discharge of a first mortgage on a property is entitled to priority over an intermediate mortgagee to the extent to which the money advanced by him went towards discharging the first mortgage *Pupabai* v *Audimulam I L R 11 Mad 345* followed *Hanumanthaiyan* v *Meenatchi Naidu I L R 35 Mad 183* referred to SAMINATHA PILLAI *v* KRISHNA IYER (1913) **I L R 38 Mad 548**

7 ———————— *Partial discharge of prior incumbrance—Purchaser of equity of redemption entitled to stand in the shoes of prior incumbrancer to the extent that the incumbrance has been discharged* A purchaser of the equity of redemption is entitled to stand in the shoes of a prior incumbrancer where the purchaser has with the consent of that incumbrancer partially discharged the liability *Gurdeo Singh* v *Chandrika Singh I L R 36 Calc 193* dissented from *Baro-Chetwynd* v *Allen 1 Ch D 853* followed *Baroness Wenlock* v *The River Dee Company L P 19 Q B D 155* referred to UDIT NARAIN MISIR *v* ASHARFI LAL (1916) **I L R 38 All 502**

8 ———————— *Suit for recovery of mortgage money—Payment of prior mortgage debts—Subrogation—Circumstances in which intention to keep prior mortgage alive is to be inferred* On the 22nd of March 1911 one A A executed two ar i peshgi leases in favour of G L comprising a zamindari share in the village of Kura Mai and a house in the town of Marehra. Upon this A

MORTGAGE—*contd*

SUBROGATION—*contd*

F brought a suit against *A A* and *G L* for *specific performance of an agreement entered into* by *A A* to mortgage to her the zamindari in Kura Mai and for a declaration that the *ar i peshgi* leases entered into with *G L* were ineffective as against her The plaintiff obtained a decree which was upheld in appeal by the High Court and as the result a *ar i peshgi* lease was executed by *A A* in favour of *A F* under the order of the Court and *G L s* leases were declared to be void as against *A F* Immediately after the execution of the *ar i peshgi* leases of the 22nd of March 1911 *G L* paid off two prior mortgages of 1907 and 1908 No reference however was made to these in the deeds of 1911 nor was there any contract between the parties to the e deeds that the mortgagee was to be subrogated to the benefits of the earlier securities which were to be paid off Moreover the mortgages of 1907 and 1908 comprised other property besides that included in the deeds of 1911 *Held* that it was not competent to *G L* in a suit on his *ar i peshgi* leases of 1911 to set up a title under the mortgages of 1907 and 1908 and claim to recover from *A F* the money which he had expended in their redemption GULZARI LAL v AZIZ FATIMA (1919)

I L R 41 All 372

9 ———————— *Prior and subsequent mortgagees—Priority over intermediate mortgage—Mortgage pending execution proceedings——Estoppel—Civil Procedure Code (Act V of 1908) O XXI rr 13 62 66—Decision in course of execution proceedings effect of—Order by consent how far binding* As to whether a subsequent mortgage is not entitled to be subrogated to the rights of the first depends upon the question whether the property has been sold subject to the mortgage or whether mere notice of the alleged mortgage has been given in the proclamation of sale *Inayat Singh* v *Izzat un nissa Begam I L R 27 All 97 Ramchandra Joshi* v *Haji Kassim I L R 16 Mad 207 Shantappa Chedambaraya* v *Subrao Ramchandra Yellapur I L R 18 Bom 145 Shib Kunwar Singh* v *Sheo Prasad Singh I L R 28 All 418 Ganesh Moreshwar Joshi* v *Purushottam Balkrishna Pode I L R 33 Bom 311* and *Jairaj Mal* v *Radha Kishan I L R 35 All 257* referred to KALIDAS CHAUDHURI v PRASANNA KUMAR DAS (1919) **I L R 47 Calc 446**

TRANSFEREE MORTGAGEE

———————— *Transferee from benamidar—Right of suit* A transferee mortgagee can maintain a suit on the mortgage though the mortgagee named in the bond is only a benamidar and though the beneficial owner is not added as a party *Kritibas Das* v *Gopal Jiu 19 C L J 193* and *Parameshwar Dut* v *Ananda Dat I L R 37 All 113* followed. SINGA PILLAY v GOVINDA REDDY (1917) **I L R 41 Mad. 435**

USUFRUCTUARY MORTGAGE

1 ———————— *Bombay Regulation V of 1827 s XV cl 3—Usufructuary mortgage of 1869—Agreement to pay the debt after fixed period—Suit by mortgagee after the expiration of the period for the recovery of the debt by sale of mortgaged property* A usufructuary mortgage executed in the year 1869 contained the following agreement — The amount of Rs. 1 750 is borrowed on the said premises. We three of us shall, after paying off the said amount of debt after fifteen years *from this day redeem our premises Perhaps* any one of us three might within the period pay off at one time the amount of rupees according to his share you should allow redemption of the premises proportionately after receiving the amount and you should pass a receipt for the moneys received. In the year 1905 the mortgagee having brought a suit for the recovery of the mortgage debt by sale of mortgaged property the first Court allowed the claim but the Appellate Court reversed the decree and dismissed the suit on the ground that where in the case of a usufructuary mortgage the mortgagor agrees to redeem by payment of the principal after a stated period the mortgagee has no higher or better right than he has under *a simple usufructuary mortgage Held* on second appeal by the plaintiffs that the mortgage in suit was governed by cl (3) s XV of Regulation V of 1827 and there being nothing in the terms of the agreement between the parties which either expressly or by implication indicated that the property should not by means of a suit be applied in liquidation of the debt the suit would lie The decree of the Appellate Court reversed and that of the first Court restored *Mahadaji* v *Joti I L R 17 Bom 425* and *Ramchandra* v *Tripurabai (1898) P J 43* followed *Shaik Idrus* v *Abdul Rahiman I L R 16 Bom 303 Sadashiv* v *Vyankatrao I L R 20 Bom 296* and *Krishna* v *Hari 10 Bom L R 615* explained PARASHARAM v PUTLAJIRAO (1909)

I L R 34 Bom 128

2 ———————— *Civil Procedure Code (Act XIV of 1882) s 268 274—Debt—Immovable property—Execution of money-decree—Attachment* Where a deed of mortgage with possession provided that the mortgagee was to enjoy the profits in lieu of interest for ten years and was to be redeemed on the expiration of the term by payment of the mortgage money *Held* that the document created a purely usufructuary mortgage *Held* further that in the case of a usufructuary mortgage there was no debt payable by the mortgagor to the mortgagee which could be attached in execution of a money decree against the assignee of the mortgagee and that s. 268 of the Civil Procedure Code (Act XIV of 1882) was not applicable to such a case The procedure should be by attachment under s 274 of the Civil Procedure Code of the interest in immovable property and its sale according to the provisions of the Code *Tarwadi Bholanath* v *Bai Kashi I L R 26 Bom 305* explained MANILAL RANCHOD v MOTIBHAI HEMABHAI (1911)

I L R 35 Bom 253

3 ———————— *Usufructuary if implies personal covenant to pay—Suit against debtor personally on usufructuary mortgage—Limitation Act 1S Sch II Art 116* Every loan implies a promise to repay and an unqualified admission of indebtedness is equivalent to an express covenant and creates a personal obligation. *Keer* v *Purton 4 C L J 510* referred to. A usufructuary mortgage providing for the repayment of the mortgage-debt with interest from the rents and profits of the mortgaged property within a specified period on the expiry of which the mortgagor is to be put in possession while prescribing a mode of payment, does not neces-

MORTGAGE—contd

USUFRUCTUARY MORTGAGE—*contd*

sarily imply that the creditor is limited to that mode alone if it is found insufficient to satisfy the debt There was clearly a personal obligation to pay where the document expressly provided that the debtor would be responsible for the deficiency *Marotam v Sheo Pargash L P 11 I A 83 I L P 10 Calc 740* and *Kalla Singh v Paras Ram L P 22 I 1 68 I L R 22 Calc 434* distinguished *Parbati Charan v Govinda Chandra 4 C L J 246* referred to A suit to recover from the debtor personally money due on a registered mortgage bond is a suit for compensation for the breach of a contract in writing registered within the meaning of Art 116 of Sch II of the Limitation Act *Kerr v Ruxton 4 C L J 510* relied on *Nobo Coomar v Siru Mullick I L P 6 Calc 94* and *Husain Ali v Hafiz Ali I L P 3 All 600* referred to *Held* on a construction of the document that the present case fell within the second division of Art 116 of Sch II of the Limitation Act Where the mortgage bond provided that a specified sum would be paid out of the income of certain properties at prescribed times towards the satisfaction of the debt but the document gave the debtor seven years time altogether for the re payment of his loan *Held* that it could not be held upon a construction of the document as a whole that whenever the mortgagee found it impossible to collect the sums mentioned at the appointed time there was a breach of contract and that time ran from the date of each successive breach The intention was that the liabilities of the parties should be adjusted on the expiry of the term and time ran from that date RAM NARAIN SINGH v ODINDRA NATH MUKERJEE **(1911) 17 C W N 369**

4 ——————*Covenant to pay money due on simple mortgage before redemption of the usufructuary mortgage—Suit on simple mortgage barred by limitation—Redemption of usufructuary mortgage* Plaintiff executed a usufructuary mortgage and later executed a simple mortgage in favour of the defendant In the latter bond he covenanted not to redeem the usufructuary mortgage till he had paid the money due on the second bond The present suit was brought to redeem the usufructuary mortgage at a time when if the defendant had to sue on the simple mortgage it would have been barred by limitation *Held* that the plaintiff was entitled to redeem the first mortgage without paying money due on the second bond KESAR KUNWAR v KASHI RAM (1915) **I L R 37 All 634**

5 ——————*Construction of—Balance remaining due to mortgagee at end of term of mortgage—Allegation in plaint of wrongful acts by mortgagor by which mortgagee was deprived of part of his security—Transfer of Property Act (IV of 1882) ss 58 59 and 68—Mortgage deed unattested and not enforceable as a mortgage—Privy Council practice of—Reinstatement and rehearing after decision of case ex parte* The question for determination on this appeal was whether the respondents (mortgagees) were entitled to recover from the appellant (mortgagor) the balance due on a usufructuary mortgage dated 14th April 1896 where it was alleged that they had been deprived of part of the security by the wrongful acts of the mortgagor It had been calculated that the amount borrowed with interest would be paid off by the rents of the properties mortgaged on 14th January 1903 when they were to be returned to the mortgagor Both parties acted on the deed but on the date mentioned it was found that the mortgagee in possession had not by the collection of the rents received sufficient to discharge the principal of the loan with interest as mentioned in the deed In a suit brought by the mortgagee on 13th January 1909 the deficiency was attributed in paragraphs 6 and 7 of the plaint to the facts that the defendant (mortgagor) had taken rents which should have gone to the mortgagee but which had not been paid over to him by the mortgagor and that the rents in some cases were less than those mentioned in the deed and those were wrongful acts complained of The claim was for a mortgage decree under O XXXIV r 4 of the Civil Procedure Code 1908 or in the alternative for a decree for the amount due on the footing of the personal liability of the mortgagor In the course of the suit it appeared that the mortgage deed had not been attested and the Subordinate Judge held that it could not having regard to s 59 of the Transfer of Property Act (IV of 1882) be enforced as a mortgage which decision as it was not appealed from became final The sole question therefore was whether the mortgagor was personally liable The facts on which the allegations of wrongful acts by the mortgagor were based were not investigated but both Courts in India held that on the construction of the deed it imposed a personal liability on the mortgagor and they made decrees in his favour *Held* (reversing those decisions) that the nature and terms of the deed were such as to show that it was not originally intended that the mortgagor should be personally liable The respondent ought to be given an opportunity of proving the allegations in paragraphs 6 and 7 of the plaint and of establishing that those facts were sufficient to bring s 68 of the Transfer of Property Act *into operation* The position of the mortgagor under that section could not however by reason of the deed be better than it would have been if the mortgage had been duly attested The case was for that purpose remitted to India for further trial After the appeal had been heard *ex parte* and judgment had been given in favour of the appellant the respondents were allowed to have it reinstated and reheard on the ground that the person with whom they came to an agreement to defend the appeal on their behalf and to whom they advanced funds to pay the expenses of entering appearance and taking other necessary steps in the conduct of the appeal defrauded them misappropriated the money without doing anything in the matter of the appeal and left them in complete ignorance of its progress until they discovered that there was not a word of truth in his misrepresentations and that the appeal had been decided *ex parte* against them They had to pay the costs of the first hearing as the appellant was in no way to blame RAM NARAIN SINGH v ADHINDRA NATH MUKHERJI (1916) **I L R 44 Calc 388**

MISCELLANEOUS

1 ——————**Suit to enforce earlier mortgages without joining the claim under the latest mortgage—***Maintainability* There is nothing in law to

MORTGAGE—*contd*

MISCELLANEOUS—*contd*

prevent a person who has several mortgages over the same property from bringing a suit on the earlier mortgages without joining in that suit his claim under the latest if he does not in such a suit pray for the sale of the property subject to the latest mortgage *Keshavram Dulatram* v *Panchhod Fakira I L R 30 Bom 156 Dorasami* v *Venkata Seshayyar 4 C W N 814 Bhaguan Das* v *Bhawani I L R 26 All 14 Nattu Krishnama Chariar* v *Annangara Chariar I L R 30 Mad 353* referred to GOBINDA PROSAD v LALA HARIHAR CHARAN (1910) **I L R 38 Calc 60 14 C W N 1053**

2 ———— **Two mortgagees advancing money in equal shares—Discharge of debtor by one not binding on the other** One of two mortgagees who have advanced the mortgage money equally cannot give a good discharge for the entire mortgage debt without the consent of or reference to his co mortgagee *Man ur Ali* v *Mahmud un nisa I L R 25 All 155* followed *Bhup Singh* v *Zain ul Abdin I L R 9 All 205* and *Barber Maran* v *Ramana Goundan I L R 20 Mad 461* distinguished RAM CHANDRA v GOSWAMI RAJJAN LAL (1909) **I L R 32 All 164**

3 ———— **Gross and culpable negligence of vendor (first mortgagee) in leaving title deeds with vendee (mortgagor)**—*Whether prior mortgage postponed thereby in favour of subsequent mortgage by deposit of title deeds—Search in Registration office—Constructive notice—Priority—Transfer of Property Act (IV of 1882) ss 3 78* S 78 of the Transfer of Property Act makes its three ingredients fraud misrepresentation or gross negligence disjunctive and one cannot be defined in terms of the other or others They are three different kinds of conduct and are in no way co extensive *Monindra Chandra Nandy* v *Troylucko Nath Burat 2 C W N 750* discussed and distinguished *Walker* v *Linom [1907] 2 Ch 104* followed Neglect to recover the title deeds by a vendor from a vendee who has secured the greater part of the purchase money to the vendor by giving him a mortgage on the property itself when the vendor has full notice that the vendee is impecunious and a bad paymaster and thereby the vendee is enabled to obtain a second mortgage on the property by deposit of the title deeds is gross and culpable negligence (which postpones the prior mortgagee) and is rendered more so by a deliberate suppression of the existence of the mortgage in the sale deed and a suggestion that the purchase money was required in cash and paid accordingly *Colyer* v *Finch 5 H L 905* followed Registration not being itself notice a search made by the clerk to the solicitor to the vendee (mortgagor) who has an interest to conceal the encumbrance from the second mortgagee cannot saddle the latter with notice of the encumbrance *Madura Building Company* v *Ponda deo I L R 13 Mad 353 I L R 15 Mad 36* and *Maja Karimbhai* v *Hoorbai I L R 35 Bom 34* followed NANDA LAL ROY v ABDUL AZIZ (1916) **I L R 43 Calc. 1052**

4 ———— **Framing suit**—A suit brought to enforce a mortgage against a person as the legal representative of the mortgagor cannot be thrown out as improperly framed because the defendant sets up a title paramount to that of the mortgagor in the mortgaged premises. *Jogeswar Dutt* v *Bhuban Mohan Mitter I L R 33 Calc 425 s c 3 C L J 205* distinguished *Biraja Chaudhuri* v *Chuni Lal Maruari 5 C L J 9 s c 11 C W N 284* relied on NAFAR CHANDRA KOONDOO v RATAN MALA (1910) **15 C W N 66**

5 ———— **Mortgage of sir land—Purchase of proprietary rights by mortgagee—** *Suit for redemption—Amount payable by mortgagor* After a usufructuary mortgage of certain sir lands the mortgagee at an auction sale in execution of a simple money decree purchased the proprietary rights in the mortgaged property the mortgagor becoming an ex proprietary tenant On a suit for redemption being brought *Held* that the mortgagee having himself broken up the integrity of his security could not be permitted to cast the whole burden of the debt upon the ex proprietary rights *Bisheshur Dial* v *Ram Sarup I L R 22 All 284* referred to CHUNNI LAL v SIKISHAN SINGH (1911) **I L R 33 All 434**

6 ———— **Mortgage of math properties** —Math *Mahant of dispute between rival chellas to succeed to—Mortgage of math properties by chellas who established will but never got possession—Compromise chellas agreeing to manage math properties jointly —Mortgage if valid—Onus* On the death of the Mahant of a *math* disputes arose between two *chellas* one of whom succeeded in establishing a will in his favour purporting to be that of the deceased Mahant but could not get possession and the other who alleged that he had been installed by the deceased as his successor managed to obtain and keep possession of the properties of the *math* Pending these disputes the former executed the mortgage in suit hypothecating *math* properties Soon after there was a compromise between the claimants under which the survivor of the two was to be the Mahant and till the death of one of them neither was to take the place of the deceased but both should jointly manage the properties and the survivor would be bound to repay loans jointly raised by the claimants No provision was made in the compromise regarding the discharge of the mortgage in suit *Held* that the mortgagee was aware that the property mortgaged was property of the *math* and that the mortgagor had not succeeded in establishing his title as Mahant and that this suit to enforce the mortgage should fail MADHO PRASAD v MAHANT RAMRATTAN GIR (1911) **15 C W N 838**

7 ———— **Suit upon a mortgage executed by Hindu widow and reversioner**—*Investigation of mortgagor's title not permissible in mortgage suit* In a suit upon a mortgage where it was proved that the mortgage deed had been duly executed by a Hindu widow and her reversioner it is not open to the Judge to investigate the mortgagor's title nor is it permissible to the mortgagors to deny their title and judgment should be given for the plaintiffs with costs GOPAL CHUNDER SHAW v JADUMONEY DASSEE (1911) **15 C. W N 915**

8. ———— **Mistake of fact in**—*Evidence of mistake by second mortgagee—Notice—Specific Relief Act (I of 1877) s 31* A second mortgagee who has advanced money with the knowledge of mutual mistake of fact between the mor

MORTGAGE—*contd*

MISCELLANEOUS—*contd*

L R 37 Calc 907 and *Harendra Lal Roy Chowdhuri v Hari Dasi Debi I L R 41 Calc 372 L R 51 I A 110* referred to Where the decision of the Court is void for want of jurisdiction over the subject matter of a suit it cannot operate as *res judicata* in order that a judgment may be conclusive between the parties the essential prerequisite is that it should be the judgment of a Court of competent jurisdiction under s 11 of the Civil Procedure Code Where a Court judicially considers and adjudicates the question of its jurisdiction and decides that facts exist which are necessary to give it jurisdiction over the case the decision is conclusive till it is set aside in an appropriate proceeding But where there has been no such adjudication the decree remains a decree without jurisdiction and cannot operate as *res judicata* KRISHNA KISHORE DE v AMARNATH KSHETTRI *(1920)* **I L R 47 Calc 770**

17 ———— non joinder of all heirs of mortgagor—*Decree fo proportionate amount against defendants on record All heirs of mortgagor not made parties—Suit if liable to be dismissed for non joinder of partie* A mortgage suit in which all the heirs of the mortgagor were not made parties had been dismissed by the lower Courts for non joinder of parties *Held* that the plaintiffs were at the least entitled to a decree for a proportionate share of the mortgage money as against the defendants who were on the record Even if it be assumed that the persons who had been left out could if joined have successfully urged the plea of limitation that would not afford a defence in favour of the persons who had been joined as parties within the prescribed time *Imam Ali v Bajinath Ram Sahi I L R 33 Calc 613 s c 10 C W N 551* (1906) followed HAR CHANDRA ROY v MAHUMED HUSEIN **25 C W N 594**

18 ———— Of land comprising sir land by U P—*Proprietor Decree for sale of property with all actual and reputed rights as detailed in the mortgage —Sale if passed sir land—Act IX of 1883 s 42* A person whose proprietary rights in land comprised *sir land* mortgaged his entire interest therein including the rights in the *sir* land In the decree for sale upon the mortgage the parties agreed that the properties scheduled in the decree for sale instead of including the cultivating rights in *sir* should comprise the property with all actual and reputed rights as detailed in the mortgage *Held* that in the face of the decree it was not open to the mortgagor to urge that the rights of the mortgagee to sell the *sir* lands were taken away by the decree GULABSINGH v DIWAN BAHADUR BALLABHDAS (P C) **25 C W N 938**

19 ———————— Successive mortgages—*Suit by first mortgagee without impleading puisne mortgagee—Purchaser at mortgage sale may set up first mortgage as shield in puisne mortgagee s suit—Puisne mortgagee s right to be placed in the same position in which he would be if he had been impleaded* Under r 9 of Or XXXIV of the Civil Procedure Code (which has repealed s 89 of the Transfer of Property Act) an owner of a property who is in the right of a first mortgagee and of the original mortgagor as acquired at a sale under the first mortgage is entitled at the suit of a subsequent mortgagee who (not having been made a party in the first mortgagee s suit) is not bound by the sale or the decree on which it proceeded, to set up the first mortgage as a shield *Het Ram v Shadi Lal* (1) *Matru Mal v Durga Kunwar* (2) and *Vanmikalinga Mudali v Chidambara Chetty* (3) referred to But in such a case the puisne mortgagee (plaintiff) also is entitled to be put in the position which he would have occupied had he been made a party to the first mortgagee s suit After two mortgages had been effected by the owner of certain properties the first mortgagee sued on his mortgage and purchased the property without impleading the second mortgagee Later on his successor in interest executed another mortgage in favour of the plaintiff Subsequently the second mortgagee sued on his mortgage without impleading the plaintiff and in that suit the then owners recovered from the second mortgagee *the amount of the first mortgage (which they set up as a shield)* but as they failed to redeem the second mortgagee the property was sold and purchased by the latter In plaintiff s suit to enforce plaintiff s mortgage against the property in the hands of the second mortgagee *Held* that the amount of the first mortgage had been wrongly taken away by the owners the same being then subject to the mortgage of the plaintiff and that therefore in this suit unless the defendant paid to the plaintiff that amount with interest plaintiff was entitled to get a decree for sale of so much of the estate as would realise that sum and for the rest on condition the plaintiff paid defendants the amount of the decree on the second MUSAMMAT SUKHI v MUNSHI GHULAM SAFDAR KHAN **26 C W N 283**

MORTGAGE BOND

See ATTESTING WITNESS **I L R 48 Calc 61**

See EXECUTION OF DECREE **I L R 45 Calc 530**

See LIMITATION ACT (IX of 1908) SCH I ARTS 132 75 **I L R 39 Mad 981**

See MORTGAGE

See RECEIPT **I L R 42 Calc 546**

———————— *Attestation—Scribe signature and attestation by validity of—Transfer of Property Act (IV of 1882) s 59* Where no mark seal or thumb impression of the mortgagor appears on a mortgage deed the scribe who executes the document for and on behalf of the mortgagor is not competent to attest his own signature as an attesting witness *Shamu Patter v Abdul Kadir Ravuthan I L R 35 Mad 607 L R 39 I A 218* referred to UPENDRA CHANDRA BHADRA v HUKUM CHAND DE (1918) **I L R 46 Calc 522**

———————— *Transfer—Absence of notice to mortgagor—Payment to mortgagee by mortgagor after transfer without notice thereof—Payment in full settlement of debt—Effect of payment—Receipt by mortgagee necessity for registration—Registration Act (XVI of 1908) s 17 (b)—Civil Procedure Code O XLI r 33—Memorandum of objections whether necessary—Transfer of Property Act (IV of 1882) s 130 principle of* Payment by the mortgagor to the mortgagee after but without notice of a transfer of the mortgage must in the absence of collusion be allowed to the mortgagor as against the transferee Where such payment was accepted by the mortgagee in

MORTGAGE BOND—*contd*

full settlement of the debt due the mortgagor is entitled to get credit as against the transferee not only for what he actually paid but for the whole mortgage debt Where a receipt by the mortgagee in terms only discharges a mortgage debt it does not fall under s 17 (*b*) of the Registration Act and is admissible in evidence though it was not registered Where in a suit for sale instituted by the transferee of a mortgage bond against the mortgagee and mortgagor a decree was passed against the latter but on appeal by him the decree against him was reversed the Appellate Court had power under O XLI r 33 Civil Procedure Code to pass a decree against the mortgagee who was a respondent in the appeal even though the plaintiff had not filed an appeal or memorandum of objections NEELMANI PATNAIK MUSSADI *v* SUKADUVU BEHARU (1920) I L R 43 Mad 803

MORTGAGE BY KARNAVAN

See MORTGAGE I L R 37 Mad 420

MORTGAGE DEBT

See CIVIL PROCEDURE CODE (ACT V OF 1908) ss 11 47 I L R 37 Bom 41
See TRANSFER OF PROPERTY ACT (IV OF 1882) s 90 I L R 34 Bom 540

———— *Mortgage debt if movable or immovable property* Under the Hindu as under English law a mortgage is treated as personal or movable property the land being considered as merely a pledge or security for the money lent SURESSUR MISSER *v* MOHESH RANI MESRAIN (1915) 20 C W N 142

MORTGAGE DECREE

See APPEAL I L R 41 Calc 418
See CIVIL PROCEDURE CODE (ACT V OF 1908) ss 47 73 104 I L R 39 Mad 570
s 48 I L R 40 Mad 989
O XXXIV
See COURT FEES 4 Pat L J 191
See DAMDUPAT RULE OF I L R 40 Calc 710
See DECREE 3 Pat L J 478
See EQUITABLE MORTGAGE I L R 38 Calc 824
See EXECUTION OF DECREE I L R 40 Calc 704
See INSOLVENCY I L R 42 Calc 72
See MORTGAGE.
See SALE I L R 48 Calc 69
See SALE IN EXECUTION OF DECREE. I L R 44 Calc 524
See SPECIFIC RELIEF ACT s 12 3 Pat L J 182

———— decree nisi—

See DEKKHAN AGRICULTURISTS RELIEF ACT (XVII OF 1879) s 15B I L R 43 Bom 4—

———— When personal decree will be given as well—

See CIVIL PROCEDURE CODE 1908 O XXXIV r 6 6 Pat. L. J 106

———— *Held* upon a construction of the mortgage decree sought to be executed that the direction as to payment of interest at the rate stipulated in the bond up to the date of payment referred not to the date fixed by the preliminary decree for payment but to the date of actual realisation of the money PADHIKA MOHAN GHOSE *v* BROJENDRA KUMAR SAHA 14 C W N 125

1 (a) ———— Mortgage decree if also money decree *and if decree holder may be allowed to execute against other property before exhausting security—Civil Procedure Code 1908 s 73 O XXXIV rr 5 6 and O XXI rr 10 17 13—Transfer of Property Act (IV of 1882) s 90* Where the holder of a mortgage decree applied to Court for an order to be allowed to execute the mortgage decree as a money decree by attachment of some other property or for the passing of a supplemental decree for the purpose but at the same time *reserving his rights under the mortgage decree* on his giving an undertaking not to take any steps as against the mortgaged property till he has exhausted the other property *Held* that such an order could not be made having regard to O XXXIV rr 5 and 6 of the Code of Civil Procedure *Hari v Tara Prasanna Mukerjee I L R 11 Calc 718* commented on A decree passed in a mortgage suit and directing the realization of the decretal amount from the mortgaged property and if insufficient from the defendant personally is a mortgage decree and not a money decree *Fasil Houladar v Krishna Bandhoo Roy I L R 25 Calc 580 Lal Behary Singha v Habibur Rahman I L R 26 Calc 166 Kartick Nath Pandey v Juggernath Ram Marwari I L R 27 Calc 285* referred to A person who has taken a mortgage decree should not be allowed to treat it as a money decree and to execute the decree against other properties without exhausting his remedies in respect of the security under his decree It is only after sale of the mortgage security that a decree for the balance due on the mortgage may be given if it was recoverable from the mortgagor personally and his other property and the decree may be executed as an ordinary money decree *Gopal Das v Ali Mohammed I L R 10 All 6 Ram Ranjan Chakrabutty v Indra Narain Das 10 C W N 867 I L R 33 Calc 890* referred to SURJA KUMAR KAPFORMA *v* PRAMADA SUNDAREE DEBI (1913) 17 C W N 1029

2 ———— Application for order absolute *—Transfer of Property Act (IV of 1882) ss 88 and 89—Successive applications within three years of each preceding application—Last application within twelve years of decree if barred—Indian Limitation Act (IX of 1908) Art 181 182 183—Preliminary decree executability of—Civil Procedure Code (Act V of 1908) s 48* A decree for sale was passed in a mortgage suit on the 7th October 1891 and an application for order absolute was made on the 6th April 1904 subsequent applications were made in 190- 1910 and 1912 all within three years of the immediately preceding application notices were sent to the judgment-debtor in most of the applications but the latter were all dismissed without the relief prayed for being granted; the last application was made on the 1-th April 191- the judgment-debtor objected that the application was barred by limitation as more than

MORTGAGE SALE

See CONTRIBUTION 14 C W N 361

MORTGAGE SUIT

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XXXIV R 1
I L R 43 Bom 575
O XXXIV R 6 2 Pat L J 538

See COMPROMISE I L R 42 Calc 801

See JURISDICTION I L R 42 Calc 116

See RES JUDICATA 2 Pat L J 313

See MORTGAGE

See MORTGAGE DECREE
2 Pat L J 118

——— decree in—

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 47 O XXII R 10
I L R 39 Mad 488

——— failure of to deliver possession—

See TRANSFER OF PROPERTY ACT (IV OF 1882) ss 58 (*a*) AND (*d*) 67 68 (*c*)
I L R 41 Mad 259

——— Parties—

See CIVIL PROCEDURE CODE 1908 O XXXIV R 1 6 Pat L J 640

1 ———————— *Preliminary decree —Payment out of Court if may be proved though not certified to oppose passing of a decree absolute—Civil Procedure Code (Act V of 1908) O XXI r 2 O XXXIV r 5* Payment in pursuance of a preliminary decree in a mortgage suit if not made in Court must be certified under O XXI r 2 failing which the Court has no discretion except to follow the statutory form of the decree when no payment has been made into Court as mentioned in O XXXIV r 5 unless there has been adjustment made under O XXI r 2 of the Civil Procedure Code PIRAN BIBI *v* JITENDRA MOHUN MUKHERJI (1917) 21 C W N 920

2 ———————— *Plea of payment—Onus nature of—Evidence Act (I of 1872) s 114—Shifting of onus—Trial Judge s estimate of testimony value of in doubtful cases* In a suit to enforce a mortgage bond in which the defence sought to prove that the debt had been discharged by payments endorsed on the bond, the trial Court on a review of the evidence held that the endorsements were fictitious and decided in favour of the plaintiff but the High Court on appeal was of opinion that the plaintiffs had failed to discharge the burden which rested on him to prove his case and dismissed the suit *Held* by the Judicial Committee that though the initial burden of proof rests on the appellant in such a case as this both on general grounds and by reason of the provisions of s 114 of the Evidence Act this burden is one which shifts easily as the evidence is developed and their Lordships did not attach much importance in this case to the question on whom the initial onus lay That the evidence in this litigation taken as a whole was of such a character and so full of doubtful statements that it could only be weighed adequately by the Judge who had seen the witnesses and the balance of probabilities in this case also being in their Lordships opinion on the side of the conclusion reached by the trial Judge the judgment of the High Court was reversed and that of the trial Judge was restored KUNDAL LAL *v* BEGAM UNNISSA (1918)
22 C W N 937

MORTGAGE SUIT—*contd*

3 ———————— *Mortgagee related to mortgagor—Bond executed in consequence of mortgagee becoming aware of the demand by another creditor of mortgagor for repayment of his dues—Mortgage bond whether fraudulent* Where the defendants Nos 1 to 3 executed a mortgage bond in favour of the plaintiff for Rs 16 000 due to the latter in consequence of the latter having come to know that defendant No 4 another creditor of the defendants Nos 1 to 3 was pressing for payment and thereafter defendant No 4 obtaining a decree against defendants Nos 1 to 3 purchased the mortgage properties and then the plaintiff brought the present suit to enforce the security whereupon the defendant No 4 contended that the mortgage was fraudulent *Held* that because the plaintiff was related to defendant No 2 and was aware of the fact that defendant No 4 was demanding his dues from defendants Nos 1 to 3 and was bringing pressure to bear upon them was no reason why the plaintiff should not require the defendants No 1 to 3 to secure the repayment of the money due to him RASH MOHAN SHAHA *v* KRISTODAS RAY (1918) 22 C W N 982

4 ———————— *On bond executed by defendants Nos 1 and 2 for selves as executors and as certificated guardians of defendants Nos 3 to 6—No permission obtained from Court to mortgage—Intention of testator to pay off his debts by sale of his properties and not by another mortgage—Defendants Nos 1 and 2 whether bound by the mortgage bond—Power of the Karta of a joint Hindu family as guardian of minors appointed under Guardians and Wards Act (VIII of 1890)—Whether the adult male member of a joint Hindu family entitled to borrow what he thinks necessary for the joint family* In a suit upon a mortgage bond executed by defendants Nos 1 and 2 for selves as executors to the estate of their father and as certificated guardians of their four minor brothers defendants Nos 3 to 6 it was contended on behalf of defendants Nos 3 to 6 that they were minors at the date of the mortgage bond that the defendants Nos. 1 and 2 did not obtain sanction of the Court for the mortgage and that therefore the mortgage was not binding upon them *Held* that the intention of the testator being that his debts should be paid off by sale of the two mahals and not by another mortgage there was an implied restriction on the power of the defendants Nos 1 and 2 to mortgage the property There being no permission of the Court the defendants Nos 1 and 2 had no power to mortgage as executors under the will That if the *karta* of a joint Hindu family chooses to apply under Act VIII of 1890 for being appointed as guardian of a minor and has been appointed as such guardian he comes under the control of the Court and cannot exercise the power of a *karta* to mortgage without previous sanction of the Court *Held* that the defendants Nos. 1 and 2 as adult male members of a joint Hindu family were entitled to borrow what they considered necessary for joint family expenses provided the minors had been actually benefited by money borrowed. UPENDRO NATH BISWAS *v* SHIB KUMARI DEBI (1918) 23 C W N 634

5 ———————— *Suit by purchaser of redemption not a party to the mortgage suit against purchaser at the Mortgage sale —mortgage—Suit for declaration of title and recovery of possession by the purchaser of equity of redemption against the*

MORTGAGE SUIT—*contd*

purchaser at the mortgage sale if maintainable when plaintiff not a party to the mortgage suit—Such suit allowed to be framed a a uit for redemption Where the plaintiff purcha ed a mortgaged property from the mortgagor in execution of a money decree and sul equently the mortgagee brought a suit again t the ori inal mortgagor without making the purcha er a party and in execution of the mortgage decree purcha ed the mortgaged property and then sold it to another from whom the plaintiff sought to recover po es sion of the mortgaged property on declaration of his title *Held* that the plaintiff by virtue of his purcha e acquired nly the ri ht to redeem the mortgage and was not entitled to recover po e ion of the mortgaged property after the mortgage sale had taken place The fact that he was left out of the mortgage suit di l not nullify the mortgage decree but left unaffected his right to redeem and he was entitled to posse ion upon redemption It was not necessary for the mortgagee to sue again on his mortgage and he was not bound to deliver up pos e sion to the plaintiff till the redemption of the mortgage The ca e was remanded to the Di trict Judge so that a decree might be made in favour of the plaintiff as if th is was framed as a suit for redemption SHEIKH KALI SHARIF *v* ABHOY CHARAN KARMOKAR **25 C W N 253**

6. ———————— *All heirs of mortgagor not mad partie effect of* A mortgage suit in which all the heirs of the mortgagor were not made parties had been di mis ed by the Lower Court for non joinder of partie *Held* that the plaintiffs were at the least entitled to a decree for proportionate share of the mortgage money as against the defendants who were on the record Even if it had been assumed that the per ons who had been left out could if joined have successfully urged the plea of limitation that would not afford a defence in favour of the persons who had been joined as parties within the prescribed time HARCHANDRA ROY *v* MAHAMED HUSEIN **25 C W N 594**

7 ———————— *Second mortgagee not made party to suit by first mortgagee—First mortgag e purchaser if may cla m to be paid on foot of mortgag contract or amount decreed* An order under s 89 of the Transfer of Property Act 1882 for the sale of the mortgaged property has the effect of substituting the right of sale thereby conferred upon the mortgagee for the right under the mortgage and the latter rights are extingui hed Where a first mortgagee obtained a decree for sale upon his mortgage in a suit in which he did not make the second mortgagee a party and purchased the property at such sale *Held* in a uit by the second mortgagee upon his mortgage that the first mortgagee purchaser had no greater rights than any stranger would have had who had purchased the property under the mortgage decree and paid cash for it and the latter was entitled to set up only the amount of the decree made in his suit LALA MATHU MAL *v* MUSAMMAT DURGA KUNWAR **25 C W N 397**

8 ———————— *Claim of title adverse to mortgagor by repre entative of deceased mortgagor Substituted on record*—If should be entertained *Held* that such a plea could not be entertained without altering the scope of the suit and should be tried by separate suit KALIDAS ROY *v* GIRINDRA MOHAN BAK HI **25 C W N 192**

MORTGAGE SUIT—*contd*

9 ———————— *Separate suits by holder of independent mortgages over same property to obtain separate decree for sale on each—Mortgage—Holder of two independent mortgag s over same property if can institute separate suits to obtain a separate decree for sale on each of them—Civil Procedure Code (Act V of 1908) Or II r 2 (1)—s 11 Exp 4—Transfer of Property Act (IV of 1882) s 61—Decrees made in such suit how to be given effect to* There is nothing in the Code of Civil Procedure or in the Transfer of Property Act to prevent the holder of two independent mortgages over the ame property who is not restrained by any covenant in either of them from obtaining a decree for sale on each of them in a eparate suit subject however to the reservation that he cannot sell the property twic over nor sell it under the second decree subject to the first The right course to follow in such circum stances is to direct that the property be sold free of both charge whether in execution of the decree on the first mortgage or of the decree on the second mortgage and that the balance of the sale proceeds after payment of incidental expen e be applied in di charge of the d ies on the first mortgage and the second mortgage one after the other the residue if any to stand to the credit of the holder of the equity of redemption NILU *v* ASIRBAD MANDAL **25 C W N 129**

10 ———————— After the hypothecated property was sold in execution of a decree for money the mortgagee instituted a suit for the reali ation of his dues against the mortgagors as al o the purchasers of the equity of redemption The latter contested the claim on the ground that the mortgage bond was not a *bona fide* document and was not properly executed *Held* that if an action to enforce a mortgage security is contested by the mortgagor and execution is admitted by or proved against him the onus lies upon him to prove that the recital as to the payment of consideration for the deed which he executed is untrue KRISHNA KI OR DE *v* SREEMATI NAGENDRABALA CHOWDHURANI **25 C W N 942**

11 ———————— *Mortgage suit—Mortgagor s estate tal en over by Court of Wards after preliminary d cree—Decree absolute for ale pass d against Court of Wards r presenting the mortg gor—Release of estate thereafter—Release not shown to have had retrospective operation—Refusal of Government to produce correspondence leading to relea e—Decree absolute if bind mor gagor* A preliminary decree was made in a suit for sale of mortgaged properties on 1 th June 1915 On 21st July 1915 the Court of Wards declared the mortgagor a di qualified proprietor and as umed superintendence of his estate under United Provinces Act IV of 1912 On 21st February 1916 a decree ab olute for sale was passed again t the Court of Wards repre enting the mortgagor on the application of the mortgagee On 1?th September 1917 the e tate of the mortgagor was released from the superintendence of the Court of Wards und r an order of the Local Government which was made unde the direction of the Central Government for reasons of State The correspondence which pa ed between the wo Governments upon the matter wa not produced and its produ ti n could not be compelled by Court *Held* that *prima f c e* the Local Government acted within its powers in putting the Court of Wards in charge of the mort

MORTGAGE SUIT—*contd*

gagor's estate and it could not be presumed until the contrary was shown that the order of release operated retrospectively That the Court in India was therefore right in holding that the decree absolute bound the mortgagor NARINDRA BAHADUR SINGH v THE OUDH COMMERCIAL BANK FYZABAD (P C) 26 C W N 326

MORTGAGED PROPERTY

See MORTGAGE
See SALE IN EXECUTION OF DECREE.

——— sale of—

See CIVIL PROCEDURE CODE (ACT V OF 1908) ss 47 73 104
I L R 39 Mad 570

See MORTGAGE I L R 38 Calc 913

MORTGAGEE

See ADVERSE POSSESSION
I L R 44 Calc 425

See CIVIL PROCEDURE CODES 1882 s 317 1908 s 66
I L R 35 Bom. 342

See COMPANY I L R 47 Calc 901

See DECREE I L R 34 Bom 260

See DEKKAN AGRICULTURISTS RELIEF ACT (XVII OF 1879)
I L R 40 Bom 483

See LIMITATION ACT (IX OF 1908) SCH. I ARTS 132 75 I L R 39 Mad 981

See MORTGAGE I L R 38 Mad 548

See NORTH WESTERN PROVINCES RENT ACT (XII OF 1881)
I L R 37 All 444

See PUISNE MORTGAGEE
I L R 40 Mad 77

See RECEIVER I L R 47 Calc 418

See TRANSFER OF PROPERTY ACT (IV OF 1882)—

ss 60 AND 98 I L R 38 Mad 667
s 67 I L R 40 Mad. 77
s 73 14 C W N 186
s 83 I L R 39 Mad 579
s 101 I L R 38 Bom 369

——— dispossession of—

See USUFRUCTUARY MORTGAGE.
I L R 36 Mad 903

——— in possession—

See MORTGAGE I L R 38 All. 411
See SALE FOR ARREARS OF REVENUE.
I L R 44 Calc 573

See TRANSFER OF PROPERTY ACT (IV OF 1882) ss 60 AND 91
I L R 38 Mad 310

——— Position of when different persons become entitled to different positions of equity of redemption—

See MORTGAGE I L R 47 Calc 223

MORTGAGEE—*contd*

——— holding two mortgages—
See TRANSFER OF PROPERTY ACT (IV OF 1882) ss 61 85 AND 99
I L R 38 Mad 927

——— if a creditor—
See MORTGAGE BY MINOR
I L R 38 Mad. 1071

——— prior and subsequent—
See CIVIL PROCEDURE CODE 1882 s 317
I L R 33 All 382

See MORTGAGE
I L R 33 All 368 370

——— purchase by—
See MORTGAGE
See SALE FOR ARREARS OF REVENUE.
I L R 40 Calc 89

——— right of to redeem property—
See MORTGAGE I L R 41 Mad 403

——— right of to sue for sale—
See TRANSFER OF PROPERTY ACT (IV OF 1882) ss 58 (*a*) AND (*d*) 67 68 (*c*)
I L R 41 Mad 259

——— right of, to an order for sale—
See TRANSFER OF PROPERTY ACT s 67
I L R 34 Bom 462

——— right of to exonerate—
See MORTGAGE I L R 40 Mad. 968

——— right of to pay rent—
See MORTGAGE I L R 44 Calc 448

——— suit for possession by—
See DEKKHAN AGRICULTURISTS RELIEF ACT (XVII OF 1879)
I L R 35 Bom 204

——— title of—
See REGISTRATION
I L R 41 Calc 972

——— to remain in possession as long as fruit trees on the land—whether a clog on redemption—
See TRANSFER OF PROPERTY ACT 1882 s 60 I L R 45 Bom 117

——— whether can dispute validity of gift by a Hindu widow—

See HINDU LAW I L R 45 Bom 105

——— with possession right of, to recover rent—

See MADRAS LOCAL BOARDS ACT (V OF 1884) s 73 I L R 39 Mad. 269

1 ———*Leasehold property—Mortgagee if entitled to pay rent to preserve property from being lost* The mortgagee is entitled to preserve mortgaged property from being lost for non payment of rent Where rent is thus paid after the preliminary decree and before the final decree the money paid for rent should in the final decree be added to the mortgage money found due in the preliminary decree. ALLAHABAD BANK LD v MATI LAL BARMAN (1916)
I L R 44 Calc 448

2. ———*Right of mortgagee to sue trespasser—Transfer of Property Act (IV of 1882) s 68* The provision of s 68 of the Transfer of Property Act 1882 are designed for the purpose of indemnifying a mortgagee against any disturbance of his enjoyment of the property They are provisions of an enabling nature but they do not

MORTGAGEE—*contd*

preclude a mortgagee who has been disturbed by a person claiming without title from suing the trespasser according to the general law and claiming as against him a declaration of title and recovery of possession. There is nothing in the law to debar a mortgagee from asserting his right against a trespasser alone without claiming the indemnity which s 68 empowers him to claim from the mortgagor BECHU SAHU v ARJUN SAHU
3 Pat L J 162

3 ——————A prior mortgagee has a paramount claim outside the controversy of a suit on a subsequent mortgage unless his mortgage is impugned RADHA KISHUN v KHURSHED HOSSEIN 25 C W N 417

MORTGAGOR

See ADVERSE POSSESSION
I L R 44 Calc 425

See MORTGAGE

———— dispossession o after mortgage—
See ADVERSE POSSESSION
I L R 39 Mad 811

———— In possession duty of, to pay public charges—
See TRANSFER OF PROPERTY ACT (IV OF 1882) s 65 (c)
I L R 39 Mad 959

———— personal execution against—
See CIVIL PROCEDURE CODE (ACT V OF 1908) ss 47 73 100
I L R 39 Mad 570

———— redemption suit by—
See CIVIL PROCEDURE CODE (ACT XIV OF 1882) ss 366 371
I L R 40 Bom 248

MORTGAGOR AND MORTGAGEE

See ADVERSE POSSESSION
I L R 37 Mad 545

See CIVIL PROCEDURE CODE (ACT V OF 1908) ss 11 47
I L R 39 Bom 41

See LIMITATION I L R 46 Calc 111

See LIMITATION ACT 1908 s 19
I L R 45 Bom 934

See MORTGAGE

See TITLE I L R 37 Calc 239

———— Mortgagee retaining possession of mortgaged property under a rent note executed to mortgagee—
See CIVIL PROCEDURE CODE (ACT V OF 1908) s 47 O XXXIV R 14
I L R 45 Bom 174

———— Tenant under a mortgagee—Adverse possession against mortgagee—
See ADVERSE POSSESSION
I L R 45 Bom. 661

———— Subsequent mortgagee redeeming prior mortgagee—
See TRANSFER OF PROPERTY ACT (IV OF 1882) s 74 I L R 45 Bom. 1112

1 ——————*Suit to redeem—Decree obtained by mortgagee for a claim independent of*

MORTGAGOR AND MORTGAGEE—*contd*

the mortgage—Mortgagee purchasing the equity of redemption in execution of the decree—Leave to bid not obtained—Irregularity of practice—Sale not a nullity In 1888 plaintiffs mortgaged the property in suit with possession to defendant No 1 In 1897 the defendant brought a suit against the mortgagor for a claim independent of the mortgage and in execution of the decree obtained therein the equity of redemption was sold and purchased *benami* by the defendant In 1913 the plaintiffs sued to redeem and recover the property The trial Court held that the purchase by the defendant mortgagee was valid until it was set aside and not having been set aside in execution proceedings was binding upon the plaintiffs The lower Appellate Court reversed the decree holding that the mortgagee purchased the property without leave to bid and therefore the mortgagor could disregard the sale and redeem On appeal to the High Court *Held* reversing the decree that the disregard of the statutory provision that leave to bid should be obtained by a judgment creditor was a mere irregularity of practice and was not a fundamental breach of trust which nullified the apparent effect of the Court sale GANESH NARAIN v GOPAL VISHNU (1916)
I L R 41 Bom 357

2 ——————*Redemption—Lasting improvements made by mortgagee—Right to recover costs of improvements—Transfer of Property Act (IV of 1882) ss 63 72 and 76* In a redemption suit a mortgagee is entitled to recover from his mortgagor the reasonable and proper costs incurred in making lasting improvements *Henderson v Astwood [1894] A C 150* approved *Per* MARTEN J —In allowing costs of improvements the Court must naturally be on its guard against extravagant or unfounded claims It should inquire strictly into the *bonâ fides* and fairness of the claim in each particular case NIJALINGAPPA v CHANBASAWA (1918)
I L R 43 Bom 69

3 ——————*Mortgage with possession—Profits to be enjoyed in lieu of interest—Amount to be realised by sale of property—Suit to recover amount with interest by sale of property—Interest cannot be allowed—Transfer of Property Act (IV of 1882) ss 58 67 and 68* The property in suit was mortgaged with possession to the plaintiff Under the terms of the mortgage the profits were to be enjoyed in lieu of interest and if after the stipulated period the principal amount was not paid it was to be recovered without interest by sale of the mortgaged property The plaintiff never got possession of the property After the stipulated period he sued to recover the principal amount and interest from the date of the mortgage to the date of suit by sale of the mortgaged property *Held* that the plaintiff was entitled only to recover the principal amount by sale of the mortgaged property as under the terms of the mortgage bond the property was a security only for the amount borrowed and not for interest There is nothing in ss. 58 67 and 68 of the Transfer of Property Act which enables a mortgagee to make a claim to interest which is not given to him by the mortgage bond. MANIKCHAND MAGANCHAND v RANGAPPA KONDAPPA (1920)
I L R 45 Bom 523

MORTGAGOR AND MORTGAGEE—*concld*

4 ———————— *Discharge of debt—Oral arrangement—Mortgagee in possession as full owner for more than twelve years after arrangement for discharge of debt—Suit by mortgagor after twelve years to redeem—Bar—Adverse possession of mortgagee—Proof of nature of possession* Where under an oral arrangement between the mortgagor and the usufructuary mortgagee the latter retained possession of a portion of the mortgaged property in full ownership in satisfaction of the mortgage debt and enjoyed it as full owner for more than twelve years after the arrangement on a suit being instituted by the mortgagor to redeem the property more than twelve years after the arrangement *Held* that the mortgagee had acquired by adverse possession an absolute title to the property and that the mortgagor s right to redeem the property was barred by limitation *Usman Khan v Dasanna (1914) I L R 37 Mad 545 Covindu v Mallayya L P A No 206 of 1915 (unreported)* and *Varada Pillai v Jeevarathnammal (1920) I L R 43 Mad 244 (P C)* followed *Ariya puthira v Muthukomaraswami (1914) I L R 37 Mad 423* dissented from KANDASAMI PILLAI v CHINNABBA (1921) I L R 44 Mad 253

MOSQUE

See MAHOMEDAN LAW—ENDOWMENT
I L R 43 Calc 1085

See MAHOMEDAN LAW—MUTAWALLI
I L R 38 Mad 491

See MAHOMEDAN LAW—RELIGIOUS OFFICE

See SUMMARY SETTLEMENT ACT (BOM ACT VII OF 1863)
I L R 43 Bom 583

———— Mosque property suit for—*Leave of Court—Civil Procedure Code (Act V of 1908) O I r 8—Failure to obtain permission before institution of the suit—Its effect—Objection for want of such permission if fatal to the suit* There is no doubt that the proper course is to obtain permission under O I r 8 before the suit is instituted but there is nothing in the rule to show that if it is not so done it cannot be granted afterwards The mere fact that the leave of the Court was not obtained before the institution of the suit should not result in the dismissal of the suit Permission under O I r 8 can be granted subsequent to the filing of the suit The objection under s 30 of the old Civil Procedure Code which corresponds with O I r 8 of the present Code is not one affecting the jurisdiction of the Court *Fernandez v Rodrigues I L R 21 Bom 784 Chennu Menon v Krishnan I L R 25 Mad 399 Srinivasa Chariar v Raghava Chariar I L R 23 Mad 28 Baldeo Bharthi v Bir Gir I L R 22 All 269* followed *Jan Ali v Ram Nath Mundul I L R 8 Calc 32 Lutifunnissa Bibi v Nazirun Bibi I L R 11 Calc 33* referred to *Oriental Bank Corporation v Gobind Lall I L R 9 Calc 604* dissented from *Dhunput Singh v Paresh Nath Singh I L R 21 Calc 180* distinguished AHMED ALI v ABDUL MAJID (1916)
I L R 44 Calc 258

MOTHER

———— power of to alienate minor s property—

See MAHOMEDAN LAW—MARRIAGE
I L R 45 Calc 878

MOTHER—*contd*

———— power of to refer dispute to arbitration—

See MAHOMEDAN LAW—GUARDIAN
I L R 47 Calc 713

———— removal by—

See KIDNAPPING I L R 41 Calc 714

MOTOR VEHICLES

See CONTRACT FOR SALE
I L R 45 Calc 481

See MOTOR VEHICLES ACT

See NEGLIGENCE I L R 38 Bom 552

———— in Madras—

See MADRAS MOTOR VEHICLES ACT 1907

———— liability of owner of—

See LICENSEE I L R 38 Bom 552

———— Liability of owner for the acts of his driver—*Bengal Motor and Cycle Act (III of 1903) ss 3 and 4—Use of motor car with permission of the owner to convey his friends in his absence—Rules 4 20* The owner of a motor car who expressly or impliedly permits his car to be used or driven by his servant is if it is so used or driven as to contravene rule 20 of the rules framed under the Bengal Motor Car and Cycle Act (III of 1903) himself liable therefor under r 4 and s 4 of the Act though he was not in the car at the time and had given his servant general directions to observe the regulation speed unless the latter has used it improperly for his own purposes *Somerset v Wade [1894] 1 Q B 574 Somerset v Hart 12 Q B D 360 Collman v Mills 66 L J Q B 170* and *Commissioner of Police v Cartman [1896] 1 Q B 655* referred to THORNTON v EMPEROR (1911) I L R 38 Calc 415

2 ———————— *Motor Vehicles Act (VIII of 1914)—Rules framed thereunder by Governor in Council—rr 3 and 19—Liability of owner of taxi-cab for rash and negligent driving by his servant* The owner of a motor vehicle is liable under Part II r 3 of the rules framed by the Governor in Council under s 11 of the Indian Motor Vehicles Act (VIII of 1914) for breach of r 19 by his licensed driver Where the driver of a taxi cab negligently drove the same into a drain causing injury to the passenger in the car *Held* that the owner of the taxi cab was liable to prosecution and punishment under s 16 of the Act read with the aforesaid rr 3 and 19 for the act of his driver *Thornton v Emperor I L R 38 Calc 415* followed BAIDYA NATH BOSE v EMPEROR (1917)
I L R 45 Calc 430

3 ————————*Motor car if a carriage within the meaning of the bye law—Bye law if repealed by implication by r 24 framed under s 11 sub s 2 cls (f) and (i) of the Indian Motor Vehicles Act* The petitioner was convicted under Bye law No 10 framed under cl (18) of s 559 of the Calcutta Municipal Act on the finding that a motor car belonging to him was left in a public street unattended *Held* that carriage as defined in cl 8 of s 3 of the Calcutta Municipal Act means any wheeled vehicle with springs or other appliances acting as spring and a motor car is clearly such a conveyance and is therefore a carriage within the meaning of Bye law No 10 That there is no repugnancy between the bye law in question and r 24 framed under s 11 sub sec 2 cls (f) and (i) of the Indian Motor Vehicles Act 1914

MOTOR VEHICLES—*con d*

and the former has not been repealed by implication by the latter *Held* as to the contention that the Rule mu t be taken to have repealed the bye law because the puni hment which may be inflicted for contravention of the two provisions are not identical—That the princip'e recogni ed in *Henderson v Sherborne M t B o* (183) and *Attorney General v Lockwood 9 M d I 6* (184) namely that where the punishment or penalty is altere l in degre but not in kind the later provi sion is con idered as superseding the earlier one has no appli ation becau e the offences are not identical THE MANAGER INDIAN MOTOR TAXI CAB CO LD v CORPORATION OF CALCUTTA 25 C W N 21

MOTOR VEHICLES ACT (VIII OF 1914

———— Ss 3 19—
See MOTOR VEHICLES
I L R 45 Calc 430

———— ss 8 and 11—*Driving licen e—Obligation on owner of license to carry it about with him* *Held* on a construction of s 8 of the Indian Motor Vehicles Act 1914 that the implication of the section is that the driver of a motor vehicle must carry his driving licence about with him so as to be able to produce it there and then when its production is demanded by a police officer EMPEROR v MADAN MOHAN NATH RAINA
I L R 43 All 128

———— s 11—

———— *Held* that there was no repugnancy between bye law 10 framed under s 559 (8) of the Calcutta Municipal Act r 24 under this section and the former has not been repealed by the latter THE MANAGER INDIAN MOTOR TAXI CAB CO LTD v CORPORATION OF CALCUTTA 25 C W N 21

MOURASI MOKURARI KABULIYAT

———— Stipulation in for payment of rent partly in cash and partly in kind with statement of the money value of the portion payable in kind and declaring the total rent as the amount made up by the two—Rent if to be taken and fixed in perpetuity at such amount *See* Rent ASHUTOSH MUKHOPADHYA v HARAN CHANDRA MUKHERJEE (1919) 23 C W N 1021

———— Mourasimokurari *Lase creating a heritable and transferable tenancy at a fixed rate of rent—Agreement by successors in interest to pay an enhanced rat of rent if destroys th character of the original tenancy or creates a new tenan y—Novation of co tract* Where a mourasi mok urari lea e created a tran ferable permanent and heritable tenancy at a rate of rent fixed in perpetuity and the succe sors in interest of the tenant by an agreement con ented to pay rent at an enhanced rate and a decree for rent was obtained by consent on this basi *Held* that the circum stance that one of the terms of tl e lea e was altered by agreement of parties na nely that the rent originally fixed was incre ed did not d stroy the tenancy It cannot be said that there was a super session of the original tenancy or that there was a novation of contract The consent decree for rent at an enhanced rate di l not give the tenancy a fresh start in all re pects nor did the alteration of rent nece sarily de troy the transferable charac ter of the tenancy *Semil* —Though the enhance ment was made by consent of the parties the

MOURASI MOKURARI KABULIYAT—*contd*

enhancement should be deemed to have been made subject to the original agreement that the rent was not enhanceable I RINATH GHOSE v SUPE IRA NATH DAS 26 C W N 657

MOVEABLE PROPERTY

See ATTACHMENT BEFORE JUDGMENT
I L R 46 Calc 717
See HINDU LAW—WIDOW
I L R 48 Calc 100
See MORTGAGE I L R 38 Mad 18

———— attachment of—
See JURISDICTION I L R 46 Calc 520
See SANCTION FOR PROSECUTION
I L R 47 Calc 741

———— hypothecation of—
See ADMINISTRATION
I L R 45 Calc 653
See MORTGAGE (MOVEABLE)
I L R 1 Lah 422

———— suit to recover—
See PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882) s 19 CL (5)
I L R 37 Mad 219

———— transfer of—
See DECREE ASSIGNMENT OF
I L R 37 Mad 227

———— wrongful seizure of—
See LIMITATION ACT (IX OF 1908) SCH. I ARTS 29 62 AND 120
I L R 38 Mad 972

MUAFI

See AGRA TENANCY ACT (II OF 1901)
s 150 I L R 40 All. 656
ss 154 158 I L R 40 All 60
ss 154 177 I L R 41 All 318
s 158 I L R 39 All. 689
ss 158 167 I L R 41 All 37
See PRE EMPTION I L R 38 All. 260

MUAFIDAR

———— mortgage by—
See N W P AND OUDH LAND REVENUE ACT (XIX OF 1873) ss 146 148 167
I L R 35 All 190

MUKHTEAR

See LEGAL PRACTITIONERS ACT 1879
ss 12 14 14 C W N 1073
s 13 I L R 42 All 86
s 14 15 C W N 269
See LIMITATION ACT 1908 s Sch I Art 44 I L R 38 Bom 94
See PLEADER

1 ———— Application for re instatement after a lapse of years—*Dismissal from the roll on conviction of an offence implying moral turpitude—Deliberate omission to disclose the facts of enhancement of sentence and of an order directing his prosecution for making a false affidavit—Power of the High Court to re instate a legal practitioner after disbarment—Grounds of re instatement* The High Court has power when a legal practitioner has been dismissed for misconduct of any description in the widest sense of the term to re-admit him after a lapse of time if he satisfies the Court that he has in the interval conducted

MUKHTEAR—*contd*

himself honourably and that no objection remains as to his character and capacity *King* v *Greenwood 1 W Black 222 Anonymous Case 17 Beav 475 In re Smith* unreported cited in 17 Beav 477 *In re Robins 34 L J Q B 121 In re Pyke 1 New Pra t Ca 330 In re Pyke 6 B & S 703 40 L J Q B 121 In re Pyke 34 L J Q B 220 6 B & S 707 In re Brandreth 60 L J Q B 501 In re Barber 19 Beav 378* followed *Ex parte Frost 1 Chitty 558 note In re Hawdane, 9 Dowl Pr Ca 970 In re Garbett 18 C B 403 In re Poole L R 4 C P 350 In re Abinash Chandra Moitra I L R 37 Calc 173 In re Chanda Singh 11 C L J 438 14 C W N 521* and *Smith* v *Justices of Sierra Leone 7 Moo P C 174* referred to *In re Lamb 23 Q B D 477* distinguished Where a mukhtear was struck of the roll on conviction of kidnapping a minor girl under s 363 of the Penal Code under circumstances of an aggravated character implying moral turpitude and applied after seven years for resp ctively but deliberately omitted to disclose the facts that the High Court had enhanced his sentence and had also directed his prosecution under s 193 of the Penal Code for making a false affidavit in the course of a proceeding in revision the application for re instatement was rejected *In re* ABIRUDDIN AHMED (1910)

I L R 38 Calc 309
15 C W N 357

2 ——— Authority to practise in the Cour s of Magistrates and Sessions Judges—*—Limitation of authority —Necessity of permission of the Court in each particular case—Grounds of permission—Criminal Procedure Code (Act V of 1898) ss 4 (r) 340—Practice* Under ss 4 (r) and 340 of the Criminal Procedure Code a mukhtear is subject to the permis ion of the Court in each particular case authorised to practise both before Magistrates and Sessions Judges There is no general rule that mukhtears should be allowed to appear in every case in the Courts of Magistrates and that they should not be permitted to appear in any case in the Courts of Session The Magistrate and the Judge must d cide in each case whether he will permit a mukhtear to appear Though it is not desirable that mukhtears should be permitted to appear in Sessions Courts where their appearance is unnecessary or where there is no reason for their appearance the question is one which must be decided independently in each case and no general rule can be laid down It depends largely on whether the accused is in a position to employ a vakil or pleader and whether he ele ts to do so But the defence of an accused should not be shut out merely by the fact that he is represented by a mukhtear ISHAN CHANDRA BHUTT *v* EMPEROR (1911) I L R 38 Calc 48g

3 ——— It is incumbent on a mukhtear to take his instructions direct from his client If therefore he takes them from an agent he must ascertain that the agent is duly empowered A mukhtear is liable to be punished when he has acted in violation of his duty in circumstances which show gross negligence on his part even though he may not be guilty of fraud *In re* LEAKUT HUSSAIN MUKHTEAR 2 Pat L J 36

MUKTESAR

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 92 I L R 42 Bom 742

MULGENI LEASE

——— *Death of mulgeni tenant without heirs—No escheat of tenant s rights to Government—Lapse of tenant s right to lessor* The rights of a *mulgenidar* do not escheat to Government on the death of the last owner dying without heirs but revert to *mulgar* from whom the *mulgeni* was acquired A *mulgeni* tenure differs in its incidents from an ordinary permanent lease *Sonet Kooer* v *Himmut Bahadur I L R 1 Calc 391* distinguished SECRETARY OF STATE FOR INDIA *v* SHITARAMAPPA (1918)

I L R 42 Mad 327

——— *Covenant against alienation—Breach—Assignment validity of* In the case of mulgeni leases in Kanara executed prior to the Transfer of Property Act an assignment of the lease by the lessee in breach of his covenant not to assign is perfectly valid *Parameshri* v *Vittappa Shanbaga (1903) I L R 26 Mad. 157* explained *Tamaya* v *Timapa Ganpaya (1883) I L R 7 Bom 261 Basarat Ali Khan* v *Maniralla (1909) I L R 36 Calc 745* and *Promode Ranjan Ghose* v *Aswini Kumar Nag (1914) 18 C W N 1138* followed *Per* SESHAGIRI AYYAR *J*—The same principle would apply even in the case of a mulgeni lease executed subsequent to the Transfer of Property Act Udipi SHESHAGIRI *v* SESHAMMA (1920) I L R 43 Mad 503

MULGENI TENURE

See LANDLORD AND TENANT
I L R 34 Mad 231

MULTIFARIOUSNESS

See CIVIL PROCEDURE CODE (1908) O I R 3 I L R 33 All 406

MULTIFARIOUS DOCUMENT

See STAMP DUTY I L R 37 Calc 629

MUNICIPAL ACTS

See UNDER THE VARIOUS PROVINCES

MUNICIPAL AFFAIRS AT ADEN

See ADEN SETTLEMENT REGULATION VII (1900) s 13 I L R 40 Bom 446

MUNICIPAL ASSESSMENT

——— *Held* that in assessing tax upon persons under cl (a) of s 85 of the Bengal Municipal Act both the circumstances and the property referred to in the section must be within the Municipality in que tion DEB NARAIN DUTT *v* CHAIRMAN OF THE BARUIPUR MUNICIPALITY I L R 39 Calc 141

MUNICIPAL BOARD

See CRIMINAL PROCEDURE CODE s 528
I L R 36 All 513

See LIMITATION ACT (XV OF 1877) SCH II ARTS 2 61 62 AND 120
I L R 39 All 491

See N W P AND OUDH MUNICIPALITIES ACT (XV OF 1883) s 10
I L R 35 All 308

See REGULATION (V OF 1836) ss 85 AND 141 I L R 37 All 220

See UNITED PROVINCES MUNICIPALITIES ACT (I OF 1900) s 147
I L R 32 All 620
I L R 36 All 185

MUNICIPAL BOARD—*contd.*

ss 87 152 I L R 36 All 329
s 128 (4) (i) I L R 35 All 24
ss 147 152 I L R 36 All 227
See UNITED PROVINCES MUNICIPALITIES ACT (U P ACT II OF 1916) s 90
I L R 43 All 644
ss 264 AND 263 I L R 42 All 485
ss 293 AND 318 I L R 42 All 234

——— powers of—

See UNITED PROVINCES MUNICIPALITIES ACT (I OF 1900) s 83
I L R 35 All 375

——— suit against—

See UNITED PROVINCES MUNICIPALITIES ACT (II OF 1916) s 326 (4)
I L R 41 All. 162

——— suit against member of—

See UNITED PROVINCES MUNICIPALITIES ACT 1900 s 49
I L R 33 All 540

MUNICIPAL BYE-LAWS

See UNITED PROVINCES MUNICIPALITIES ACT (II OF 1916) ss 209 210
I L R 39 All 386

——— must be in accord with the Act—

See PUNJAB MUNICIPAL ACT 1911
I L R 2 Lah 239

MUNICIPAL COMMISSIONER

See BOMBAY CITY MUNICIPAL ACT (BOM III OF 1888) s 297
I L R 36 Bom 405
s 305 I L R 34 Bom 593
s 377 I L R 34 Bom 346
s 390 I L R 34 Bom 344

——— powers of—

See LAND ACQUISITION
I L R 44 Bom 797

MUNICIPAL CONTRACTOR

See UNITED PROVINCES MUNICIPALITIES ACT 1916 s 324
I L R 43 All 614

MUNICIPAL CORPORATION

——— *Chairman—General Committee—Building plans refusal of sanction of—Calcutta Municipal Act (Beng III of 1899) ss 375 377—Action for mandamus or damages whether maintainable—Specific Relief Act (I of 1877) s 45* Where plans for building have been rejected by the Chairman and the General Committee of the Calcutta Municipal Corporation no suit is maintainable to have the plans approved or for damages If the Chairman and General Committee have acted honestly and within their authority their decision cannot be reviewed by any Court If the plans have been rejected *mala fide* the only remedy is by an application under s 45 of the Specific Relief Act for an order to compel the Chairman and the General Committee to hear the matter in the manner provided by law *Davis v Bromley Corporation (1908) 1 K B 170* and *Smith v Chorley Rural Council (1897) 1 Q B 678* followed *London and North Western Railway v Westminster Corporation (1904) 1 Ch 759* referred to PROSAD CHUNDER DE *v* CORPORATION OF CALCUTTA (1913)
I L R 40 Calc 836

MUNICIPAL COUNCIL

——— *adverse possession against—Nature of Adverse possession—Right to a pial—Pial over a drain—Right of Municipality to street drains etc—Nature of the right—Right of Government—Adverse possession against Government—Length of possession—Pial an encroachment or obstruction to drain street etc—Right of municipality to remove encroachment even when right to site of pial barred—No injunction against Municipal Council—Against right to remove obstruction—The Madras District Municipalities Act (IV of 1884)—Indian Limitation Act (XV of 1877) Art 146 A—Amending Act (XI of 1900)—Declaration* A person can acquire a title to the site of a pial over a drain in a street vested in a municipality by adverse possession against the municipality for the prescriptive period which was 12 years before the art 146 A of the Indian Limitation Act (XV of 1877) was passed in 1900 under Act XI of 1900 The right of a Municipal Council to the street and the drains is not a mere right of easement but is a special right of property in the site previously unknown to law but created by statute Although it is not open to the municipality to give up the rights of the public by any act of their own that would not affect the capacity of a person in adverse possession to acquire rights which would affect the public The question whether possession has been adverse or not does depend upon the needs or requirements of the owner but on the character of the occupation of the person in possession Fugitive or unimportant act of possession would not be sufficiently effective to make the possession adverse Even if the Municipal Council had no right to the possession of the space above the drain but only a right of user for the discharge of its functions with respect to the drains still the plaintiff as the person in possession of the pial would have a right to it against all but the true owner which was the Government in this case but as against the Government the plaintiff had not established a title as he had not been in adverse possession for sixty years Although the plaintiff had acquired a title to the site of the pial by adverse possession as against the Municipal Council the right of the latter to the drain under the pial had not been affected and the Council was entitled to remove the pial as an encroachment or obstruction under s 168 of the Madras District Municipalities Act The prayer of the plaintiff for an injunction against the Municipal Council could not therefore be granted nor could the prayer for declaration of title be granted as it was only incidental to the substantial relief asked for namely an injunction which was refused. *Suncaram Ayyar v The Municipal Council of Madura, I L R 25 Mad 635* followed. *Rolls v Vestry of St George the Martyr Southwark 14 Ch D 785 at pp 795 and 796 Municipal Council of Sydney v Young (1898) A C 457* and *Midland Railway v Wright (1901) 1 Ch 738* referred to BASAWESWARA SWAMI *v* THE BELLARY MUNICIPAL COUNCIL (1915)
I L R 38 Mad. 6

MUNICIPAL COUNCILLORS

——— election of—

See BOMBAY CITY MUNICIPAL ACT (III OF 1888 AS AMENDED BY BOMBAY ACT V OF 1905) ss 33 AND 34
I L R 34 Bom. 659

MUNICIPAL COURTS

——— jurisdiction of—

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 86 I L R 38 Mad 635

MUNICIPAL ELECTION

See BOMBAY MUNICIPAL ACT 1888 ss 33 34 I L R 34 Bom 659

See MUNICIPALITY I L R 24 All 649

See UNITED PROVINCES MUNICIPALITIES ACT (I OF 1900) s 187 I L R 35 All 450

See UNITED PROVINCES MUNICIPALITIES ACT (II OF 1916) ss 19 TO 26 I L R 41 All 646

——— invalidity of—

See RIGHT OF SUIT I L R 36 Mad 120

——— rules for regulation of—

See UNITED PROVINCES MUNICIPALITIES ACT (I OF 1900) s 187 I L R 35 All 578

1 ——— *Bengal Municipal Act (III of 1884) ss 6 15 103 and 105—Voter qualification of—Illegal levy of Income tax and payment of Municipal rate effect of— Owner meaning of—Property acquired by father with contribution from son* A person whose income is below the taxable minimum but who submits to the levy of the tax does not thereby acquire the statutory qualification contemplated by s 15 of the Bengal Municipal Act Similarly a person who is not legally liable to pay Municipal rate but pays it does not become entitled to become a voter by the mere fact of such payment unless it is proved to have been made by him as a person legally liable to satisfy the Municipal demand. An owner for the purposes of the Municipal Act includes not only an owner in the actual occupation of the holding but also an owner entitled to receive rent from the occupier or otherwise It also includes a manager or agent or a trustee for any such person Where a house was purchased in the name of the father and the major portion of the consideration money was paid by the son out of joint funds belonging to himself and his brothers and further the expenditure on subsequent extensive alterations and additions were similarly defrayed by the son out of the said funds and the son was occupying the house while the father was living abroad *Held* that the son having a substantial interest in the property should be treated as owner in the ordinary acceptation of that term and he being the manager or agent of the father could also be treated as owner and he was therefore liable under s 103 of the Municipal Act to pay the rates assessed on the holding *Held* further that where the son being in possession of the house paid the municipal demands with his own money it could not be said that such a payment was made by a person neither liable nor competent to make it under the provisions of the law he being an occupier was as such liable to pay the rates under s 105 of the Bengal Municipal Act NARENDRA NATH SINHA v NAGENDRA NATH BISWAS (1911) I L R 38 Calc 501

2 ——— Claims applications and objections of voters notice of—*List of Voters Calcutta Municipal Act (Beng III of 1899) Sch IV rr 8 and 9—Extension of time by Chairman power of for giving such notice—Specific Relief Act (I of 1877) s 45 sub s (c)—Mandamus* Under rr 8 and 9 of Sch IV of the Calcutta Municipal Act 1899 written notice of all claims objections and applications referred to therein must be given to the Chairman on or before the 1st January immediately preceding each general election and the Chairman has no power to extend the time beyond such date Such notices must be lodged with the Chairman of the Election Department and a lodging of such notices with the Secretary is not a proper lodging as required by the terms of the Act even though the Secretary resides in the same building as the Corporation has its office unless it can be shown that the Chairman had authorised the private residence of the Secretary to be used as a place where such notices could be lodged The omission of a statutory officer to perform his public duties as to settlement of the election roll in the manner provided by the Act is a forbearance to do something that is not consonant to right and justice within the meaning of s 45 of the Specific Relief Act 1877 and therefore if the Chairman has not performed his statutory duties the Court will issue an order in the form of a *mandamus* *In the matter of* R C SEN (1912) I L R 39 Calc 598

3 ——— Representation of associations for voting power—*Calcutta Municipal Act (Beng III of 1899) ss 37 38 and Sch IV rr 9 and 10— Any one individual person meaning of—Specific Relief Act (I of 1877) s 45—Practice—Appeal right of* In r 9 of Sch IV of the Calcutta Municipal Act of 1899 the expression any one individual person is controlled by the expression association of individuals immediately preceding and the selection for the representation of the several associations indicated in the rule is limited to the individuals composing the associations A rule was obtained by a candidate for election as Commissioner of a certain ward calling upon the Chairman of the Corporation of Calcutta to show cause why he should not prepare and publish the revised list of voters for the ward under r 10 of Sch IV of the Calcutta Municipal Act by rejecting applications filed by a second candidate to have his name entered in the list as the representative of certain associations and a copy of the rules was served on the second candidate who together with the Chairman appealed and shewed cause The Rule was made absolute NISTH C SEN I L R 39 Calc 754

4 ——— *Election Roll—Qualifications of voters—Sitting Commissioner as candidate for election—Objections to voter s claims to be on Election Roll—Chairman s decision refusing to expunge names of voters from the Roll—Jurisdiction of the High Court to interfere— Occupier —Specific Relief Act (I of 1877) s 45—Calcutta Municipal Act (Beng III of 1899) ss 3 (30) 47 47 and Sch IV rr 3 8 (1)* The sitting Commissioner for one of the wards in the Calcutta Municipality who was one of the candidates for election as a Commissioner for that same ward at the forthcoming Municipal election and who was also a voter on the list of voters in respect of another ward objected that the names of various persons should not be entered and retained on the Municipal

MUNICIPAL ELECTION—*contd*

Election Roll for the ward for which he was a candidate The Chairman of the Corporation having heard the objections refused to expunge those names from the Election Roll *Held* that the High Court had jurisdiction under s 45 of the Specific Relief Act to interfere in the matter *In re Nisith C Sen I L R 39 Calc 754* and *In re Romesh Chandra Sen 16 C W N 47* followed *Held* also that to make a person who occupied certain premises and who was entitled to the owner s vote in respect thereof entitled to a vote as occupied in respect of the same premises he must either pay rent to the owner or be liable to pay rent *Held* also that voters must give written notice of their claims whether they sign the notice or not to the Chairman of the Corporation under the provisions of r 8 (1) of Sch IV of the Calcutta Municipal Act prior to 1st January immediately preceding each general election It was upon the persons objecting to the votes to *prove that the voters had not complied with the* provisions of the Act or the rules *Held* also that the only persons to whom r 3 of Sch IV of the Calcutta Municipal Act applied were persons who were actually liable for the rates in respect of the six months specified therein *Held* also that persons occupying flats or portions of houses used as flats which were not separately assessed as such in the records of the Corporation were not associations of individuals within the meaning of s 37 of Calcutta Municipal Act *Held* also that the word occupier in s 37 (2) (i) (c) and in s 37 (2) (i) (a) of the Calcutta Municipal Act meant an occupier in the ordinary sense and not as defined in s 3 (39) of that Act and the only person who fell within s 37 (2) (i) (c) was a person who occupied a building separately numbered and valued for assessment *In re* SURENDRA CHANDRA GHOSE (1918) **I L R 45 Calc 920**

5 ——————— *Calcutta Municipal Act s 56 Sch 5 r 2—Specific Relief Act (I of 1877) ss 45 50—Public officer failure of to exercise a discretion—Nomination paper—Description of the candidate—Rai Bahadur if sufficient description —Delay in presenting the petition effect of—Infructuous order whether ought to be passed* The appellant sent in his nomination paper on the 4th March 1918 in which he was described as Rai Bahadur and it was also stated that he was Voter No 679 On the 16th March a list of nominated candidates was published. On the 18th March judgment was delivered by the Appeal Court in the election case of Narendra Nath Mitter On the afternoon of the same day the applicant (respondent in this case) applied to the Chairman of the Corporation to reject the nomination paper *of the appellant on the* ground that the nomination paper did not contain the description of the appellant The Chairman declined to entertain the application on the ground that it was too late On the morning of the 19th March a petition was presented by the applicant before Chaudhuri J and a rule was issued on the appellant returnable at 4 P M on the same day to show cause why his name should not be expunged from the list of nominated candidates and the rule was made absolute In pursuance of this the appellant s name was taken out of the list On the 20th which was the day fixed for election the respondent being the only nominated candidate was elected commissioner This appeal was filed on the 20th March and came on for hearing on the 21st after the election had taken place *Held* that an order overruling the decision of Chaudhuri J would be infructuous for the appellant s name had been expunged from the list of nominated candidates the election had taken without the inclusion of the appellant s name in the list of candidates and the Appeal Court had in this appeal no power to set that right and so the appeal must be dismissed The Court s order ought to have been limited to a direction to the Chairman of the Corporation to exercise his jurisdiction and to hear and determine the application which had been made to him and which he had refused to entertain on the ground that it was too late The Court will in all cases regard its exercise of the extraordinary jurisdiction as discretional and subject to considerations of the importance of the particular case or of the principle involved in it of delay on the part of the *applicant and of his merits with respect to the* case in which the interference of the Court is sought Should other special causes appear for or against the Court s intervention due weight is to be given to them regard being always had to the principles already enumerated MANI LAL NAHAR *v* MOWDAD RAHAMAN (1918)

22 C W N 951

6 ——————— *Nomination paper —Description of candidate—Approvers—Calcutta Municipal Act (Beng III of 1899) Sch V r 2 (a) (d)—Practice—Affidavits—Civil Procedure Code (Act V of 1908) O XXI r 27—Specific Relief Act (I of 1877) s 45* A candidate for election as Municipal Commissioner sent to the Chairman by way of his nomination paper three nomination forms gummed together under cover of and attached to a letter by a clip The letter contained *a description of the candidate The first* form contained the name of the candidate and his number on the electoral roll as also the names of his proposer his seconder and eighteen approvers one of whom was the seconder and another the name of a firm The second and third forms contained some names of approvers but did not contain the names of the candidates his proposer or seconder *Held* that the four documents could not be taken together as one nomination paper and that the nomination was invalid A nomination paper should be self contained and complete The first form did not contain a description of the candidate and reference could not be made to the covering letter for the purpose Out of the list of approvers on the first form the names of the firm and of the person who was also the seconder should be excluded and the deficiency could not be made up by reference to the second and third forms which were not complete by themselves owing to the absence therefrom of the names of the candidate his proposer and seconder Certain affidavits prepared for but not used at the hearing before the Court of first instance on objection held to be inadmissible on appeal NARENDRA NATH MITTER *v* RADHA CHARAN LAL (1918)

I L R 46 Calc 119

7 ——————— *Preparation revision and publication of list of voters—Election Roll finality of—Nomination paper—Sitting Commissioner as candidate for election—Objection to rival candidate s nomination—Qualifications of voters—Application to declare nomination paper inoperative—Power of High Court to interfere—Calcutta*

MUNICIPAL ELECTION—*contd*

Municipal Act (*Beng III of 1899*) *ss 56 57* (*?*) (*e*) *47 54 Sch IV 1* Persons objecting to the final publication of the Election Roll should take *steps to prevent the publication before the* Election Roll is finally published according to the rules In an application to have it declared that the nomination paper of a rival candidate for election as Commissioner be rejected and declared inoperative on the ground that some of the approvers to the nomination were not entitled to vote *Held* that the Court could not alter the Election Roll at that stage *The Queen* v *Tugwell L R 3 Q B 704* relied upon *Nundo Lal Bose* v *The Corporation for the Town of Calcutta I L R 11 Calc 275* and *Chairman of Giridih Municipality* v *Suresh Chandra Mazumdar 12 C W N 709* referred to AMULYADHAN ADDY *In the matter of* (1918)

I L R 46 Calc 132

8 ———————— *Infringement of Rules effect of—Onus of proof—Estoppel—Bengal Municipal Act* (*Beng III of 1884*) *ss 15 69* The infringement of a rule of election framed by the Local Government under ss 15 and 69 of the Bengal Municipal Act of 1884 does not necessarily invalidate the election unless the rule is mandatory in character R 17 of the election rules framed by Local Government under s 15 and 69 of the Bengal Municipal Act of 1884 for the Dacca Municipality is not mandatory The party who maintains the validity of an election notwithstanding the infringement of the rule must satisfy the Court that the result of the election was not affected by the error or irregularity The Court will uphold an election if it is satisfied that the result has not been affected by infringement which actually took place But an election will be avoided even if the tribunal be *satisfied* that there is reasonable ground to believe that a majority of electors may have been prevented from electing the candidate they preferred. Decisions in England and the United States of America on election are not binding upon Indian Courts English and American decisions referred to as illustrative *R S Ramanujlu* v *Parthasarathy Aiyengar* (*1915*) *M W N 290 17 M L T 331* approved Estoppel cannot be pleaded where statutory requirements are disobeyed with full knowledge by the officers entrusted with the discharge of public duties SYAM CHAND BASAK v CHAIRMAN DACCA MUNICIPALITY (1919)

I L R 47 Calc 524

9 ———————— *Bengal Municipal Act* (*Beng III of 1884*) *s 15—R 6 and 11 framed by Local Government of ultra vires—Civil Courts jurisdiction of* The provisions of s 15 of the Bengal Municipal Act (Beng III of 1884) authorise the Local Government to frame rules in all matters necessary to the proper conduct of elections Rr 6 and 11 made by the Government are *intra vires* The Government by rule may require the preparation of a register of voters and entry in the register in the case of persons duly qualified to vote under s 15 of the Act or the rules framed thereunder is to be regarded not so much as in it of a qualification but as the evidence upon which the polling officer must proceed and the register is conclusive for this purpose R 6 read with rr 5 7 9 and 10 in effect allows 15 days for inspection by residents of the published register and 30 days for the adjudication on claims and objections in the first instance by the Chairman and on appeal by the Magistrate and within the said 30 days and not less than 15 days before the election the register as amended by the revising authorities must be republished The periods allowed by r 6 for inspection and for adjudication on claims and objections appear to be reasonable and should be sufficient in the generality of cases The interval of 15 days between the republication and election is intended to give electors a further opportunity for the rectification of possibly accidental errors R 11 read with r 9 has the effect of closing the register 15 days before the date of election The proviso to r 11 give qualified electors a further opportunity of substantiating their claims There is no basis for the contention that the proviso to r 11 applies only to the rectification of the register for the purpose of by election In view of the finding that the Chairman acted in contravention of the rules the provisions of s 9 of the Civil Procedure Code (Act V of 1908) of s 42 of the Specific Relief Act (I of 1877) and of the 2nd proviso to 15 of the Act under consideration the Civil Courts have jurisdiction to entertain this suit ATAUL HUQ v THE CHAIRMAN MANICKTALA MUNICIPALITY (1920)

I L R 48 Calc 378

MUNICIPAL LAW

See BOMBAY DISTRICT MUNICIPALITIES ACT (BOM III OF 1901) s 42

I L R 40 Bom 166

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 115 I L R 40 Bom 509

1 ———————— *Removal of structures—Compensation—Declaration—Specific Relief Act* (*I of 1877*) *s 42—Calcutta Municipal Act* (*Beng III of 1899*) *ss 341 617* Upon the Corporation of Calcutta giving notice under the Calcutta Municipal Act 1899 s 341 to the owner of a building requiring him to remove a fixture attached thereto so as to project over encroach on or obstruct any public street or land the payment of compensation provided for in the case of a fixture erected before June 1st 1863 is not a condition precedent to its removal or its demolition under s 450 sub s (3) the compensation is assessable by the Court of Small Causes under s 617 and not in a suit If however the Corporation declines to admit the owner's right to compensation a Subordinate Judge has a discretionary power under the Specific Relief Act 1877 s 42 to make a declaration that the *fixture was erected before June 1st 1863* and that the owner was entitled to compensation JOSEPH v CALCUTTA CORPORATION

L R 43 I A 243

2 ———————— *Roads which vest in the Municipality—Public when they have a right to go over private pathway—Difference between roads vested in the Municipality and others as regards Municipality's rights—Bengal Municipal Act* (*Beng III of 1884*) *ss 30 31* Under s 30 of the Bengal Municipal Act as amended by recent legislation private pathways do not vest in the Municipality *Chairman of the Howrah Municipality* v *Khetra Krishna Mitter I L R 33 Calc 1290* followed Asmid Bandhu Das Gupta v

MUNICIPAL LAW—*contd*

Kishori Lal Goswami (1911) S A Nos 458 and 838 of 1909 (unrep.) and *Kamal Kamini Debi v Chairman Howrah Municipality (1909) S A No 2134 of 1907 (unrep)* dissented from The Municipality may however have control over such a pathway if the public have a right to go over it as provided for in s 31 of the Bengal Municipal Act The difference between roads vested in the Municipality and other roads is that in the former case the Municipality is responsible for lighting watering s wering and clearing the roads and in the other case the Municipality has only the power of control to prevent the road from becoming a nuisance or the rights of the public from being interfered with CHAIRMAN HOWRAH MUNICIPALITY v HARIDAS DATTA (191) I L R 43 Calc 1 0

MUNICIPAL OFFENCE

See UNITED PROVINCES MUNICIPALITIES ACT (II OF 1916) s 307
I L R 40 All 569

———— prosecution for—

See UNITED PROVINCES MUNICIPALITIES ACT (II OF 1916) ss 185 186
I L R 39 All 482

MUNICIPAL OFFICER

———— dismissal of—

See DISTRICT MUNICIPAL ACT (BOM III OF 1901) ss 2 46 AND 16,
I L R 39 Bom 600

MUNICIPAL RULES

See GENERAL CLAUSES ACT (I OF 1904) s 23 I L R 34 All 391

MUNICIPAL TAXES

See MORTGAGE I L R 38 Mad 18

MUNICIPALITY

See BOMBAY BENGAL CALCUTTA AND MADRAS MUNICIPAL ACTS

See MUNICIPAL BOARD

See MUNICIPAL COMMISSIONERS

See MUNICIPAL ELECTION

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 195
I L R 37 Bom 365

See PUBLIC DRAIN
I L R 44 Calc 669

See RAILWAYS ACT (IX OF 1890 AS AMENDED BY ACT IX OF 1896) s 7
I L R 41 Bom 291

———— adverse possession against—

See MADRAS DISTRICT MUNICIPALITIES ACT (IV OF 1884) s 168
I L R 38 Mad 456

———— sale by—

See RIGHT OF SUIT
I L R 36 Mad 373

———— *Election—Practice—Petition against elected member on ground of personation of voters—Limitation—Fresh instances of personation allowed to be pleaded after expiry of time for filing petition* An elector on the roll of a municipality filed a petition under the rules framed in that behalf by the Local Government against a successful candidate in a municipal election alleging various instances of personation of voters for which the opposite party was stated to be legally responsible The petition was filed within the time limited by law *Held* that it competent to the Court in which such petition was presented to allow the petition to be amended by the addition of fresh instances of personation NAWAB KHAN v MUHAMMAD ZAMIN (1912) I L R 34 All 649

———— *Assessment principle of — Circumstances meaning of—Onus of proving value of circumstances and property —Bengal Municipal Act (Beng III of 1884) ss 85 116 —Evidence Act (I of 187) s 106* The word circumstances in s 85 of the Bengal Municipal Act is equivalent to *means* Assessment according to that section must be made according to the means and property within the municipality The burden of proving the value of the circumstances and property within the municipality is on the municipality *Chairman of the Giridih Municipality v Srish Chandra Mozumdar I L R 35 Calc 859* referred to DEB NARAIN DUTT v CHAIRMAN BARUIPORE MUNICIPALITY (1913) I L R 41 Calc 168

———— *Roads which vest in*—Under 30 of the Bengal Municipal Act private footpaths do not rest in the Municipality CHAIRMAN HOWRAH MUNICIPALITY v HARIDAS DUTTA
I L R 43 Calc 130

———— *Parties—Bengal Municipal Act (Beng III of 1884), ss 6 (3) 29 108—Holding splitting of—Valuation—Assessment* Where in a suit the claim is directed against the Municipality as such and no damages are claimed against the chairman and vice chairman and other officers of the Municipality for any wrong done by them personally the only proper defendant in the suit is the chairman of the Municipality in whose name only the Municipality can properly be sued and the addition of the vice chairman and other officers of the Municipality as parties defendants to the suit is not in order The splitting of a holding held under one title and surrounded by one set of boundaries into two separate holdings and separate valuation and assessment thereof is not justified under the Bengal Municipal Act Where after the general quinquennial assessment of such a holding lands included in the premises became for the first time liable to the imposition of rates and taxes *Held* that the Municipality could not revise the valuation and assessment of the holding under s 108 of the Bengal Municipal Act *Held* further that in the circumstances of the case the plaintiff was liable to taxation in respect of the portion of the premises which was found by the Civil Court to fall within the municipal limits and that the fact that subsequently the rest the remaining portion of the premises became liable to taxation by reason of the extension of the municipal limits made no difference as regards the liability of the plaintiff TARAPADA MAJUMDAR v SATISH CHANDRA SHAHA (1919)
I L R 46 Calc 784

MUNICIPALITY —*contd*

——— *Rules framed by Local Government under s 290 of the Bengal Municipal Act if ultra vires—Water connection if municipality can cut off for non payment of costs of water meter—Bengal Municipal Act (Beng III of 1884) ss 290 291 292 293 295 297* Rr 4 9 and 24 (e) framed by the Local Government for the Chittagong Municipality under s 290 of the Bengal Municipal Act 1884 are *intra vires* and do not conflict with ss 295 and 297 of the same Act The Municipality is therefore entitled to compel the occupier or owner of a house to pay for cost of water meter to measure the amount of water consumed in the house or to cut off water supply for non payment of the same NAGENDRA LAL DAS v THE CHAIRMAN CHITTAGONG MUNICIPALITY (1919) *I L R 47 Calc 428*

MUNIM

See PAKKI ADAT SYSTEM.
I L R 39 Bom 1

MUNSIF

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887) s 35
I L R 37 All 450
I L R 39 All 357

See SANCTION FOR PROSECUTION
I L R 39 Calc 774

——— Jurisdiction of—

See ADOPTION I L R 37 Calc 860

See EXECUTION OF DECREE
I L R 47 Calc 1100

——— sale by—

See RATEABLE DISTRIBUTION
I L R 46 Calc 64

MUSSALMAN WAKF VALIDATING ACT (VI OF 1913)

See MAHAMMADAN LAW (WAKF)
I L R 40 Mad 116
I L R 41 All 1

See WAKF *I L R 43 Calc 158*

——— s 3—

See WAKF VALIDITY OF
I L R 43 Calc 158

——— *Construction of Statute—whether effect retrospective—Wakf—Mahomedan Law* The Mussalman Wakf Validatin Act 1913 has no retrospective effect and consequently the old law applies to *wakfs* created before the passing of that Act AMIRBIBI v AZIZABIBI (1914)
I L R 39 Bom 563

——— Preamble and s 3 4—

See MAHOMEDAN LAW—WAKF
I L R 41 All 1

MURDER

See AUTREFOIS ACQUIT
I L R 41 Calc 1072

See PENAL CODE (ACT XLV OF 1860) ss 37 302 304
I L R 35 All 506 560

ss 299 301 I L R 39 All 161

ss 300 3_5 I L R 35 All 329

MURDER—*contd*

s 300 cl (3) I L R 41 Bom 27

s 302 I L R 40 All 360

——— Committed during a dacoity—

See PENAL CODE ss 390 396
I L R 2 Lah 472

——— *Violent and determined attack by a number of persons regardless of the consequences on another causing other injuries and severe ruptures of a healthy spleen—Intent to cause death or such bodily injury as the offender knows to be likely to cause death—Penal Code (Act XLV of 1860) ss 300 (1) (2) and 302* A body of six persons attacked another with cattle goads in a violent and determined manner inflicting sixteen wounds on his body and causing several and severe ruptures of his spleen and so caused his death. The person attacked was a strongly built man of 35 years of age and his spleen was in a healthy state —*Held* that such acts committed by several persons on one in such a manner apparently regardless of the consequences and with such results warranted the interference that the acts were done by those persons with the intention either of causing the death of the person attacked or such injuries as the offenders knew to be likely to cause his death and that the offence amounted to murder ELEM MOLLA v EMPEROR (1907)
I L R 37 Calc 315

——— *Information of to police —Disposal by Magistrate without examination of complainant or witnesses* An information of murder was lodged with the police and the Sub Divisional Magistrate before whom the police report was placed on a persual of the police papers but without any examination of the complainant or any of his witnesses refused process on the ground that the case was one in which no jury would convict *Held* that it was the duty of the Magistrate to examine the complainant and the witnesses he wished to produce and the order made was liable to be set aside as improper FAZLAR RAHAMAN v ABDAR RAHMAN (1918) 23 C W N 392

——— *Circumstantial evidence —No ground for imposing lesser sentence* If the Court is satisfied beyond reasonable doubt that the accused is guilty of murder and the circumstances require the imposition of the death penalty the fact that the conviction is based on circumstantial evidence is not a reason for passing the lesser sentence allowed by law PUBLIC PROSECUTOR v PARAMANDI (1921)
I L R 44 Mad 443

MUSCOORAT AND NANKAR RIGHT

See NAVIGABLE RIVER
I L R 46 Calc 390

MUSHAA

See MAHOMEDAN LAW—GIFT
I L R 38 Calc 518
15 C W N 328

MUTALIK DESAI VATAN

See BOMBAY HEREDITARY OFFICES ACT 1874 s 15 *I L R 44 Bom 237*

MUTATION OF NAMES

See ARBITRATION I L R 43 All 389

MUTATION PROCEEDINGS
See FALSE EVIDENCE
I L R 33 Calc 368

MUTAWALLI
See CIVIL PROCEDURE CODE (1908) s 92 I L R 37 All 86
See MAHOMEDAN LAW—MUTAWALLI
See MAHOMEDAN LAW—WAKF
See WAKF

——— appointment of—
See MAHOMEDAN LAW—WAKF
I L R 48 Calc 13
See MAHOMEDAN LAW—ENDOWMENT
I L R 47 Calc 866

——— appointment of a minor as—
See ELECTION I L R 40 Mad 941

——— lease by—
See MAHOMEDAN LAW—WAKF
I L R 47 Calc. 592

——— suit by for possession—
See MAHOMEDAN LAW—ENDOWMENT
I L R 47 Calc. 866

——— mortgage executed by—
See MAHOMEDAN LAW—ENDOWMENT
I L R 34 Calc 179

——— suit for the office of—
See MAHOMEDAN LAW—ENDOWMENT
I L R 37 Calc 263

MUTH

——— nature object and custom of—
See HINDU LAW—ENDOWMENT
I L R 43 Calc 707

MUTT
See HINDU LAW—ENDOWMENT
See MUTH

——— appointment of successor—
See ISSUE 25 C W N 145

1 ——— *Head of a mutt whether trustee or life tenant of mutt properties* It cannot be predicated of the head of a mutt as such, that he holds the mutt properties as a life tenant or trustee The question must be determined in each case upon the conditions on which they were given or which may be inferred from the long established usage and custom of the institution *Giyana Sambandha Pandara Sannadhi v Kandasami Tambiran I L R 10 Mad 375* referred to *Vidyapurna Tirthaswami v Vidyanidhi Tirthaswami I L R 27 Mad 435* referred to KAILASAM PILLAI v NATARAJA THAMBIRAN (1909) I L R 33 Mad 265

2 ——— *Improper alienation of mutt properties by the head of the mutt—Suit by disciples under O I r 8 Civil Procedure Code (Act V of 1908) to set aside the alienation and for possession to be given to the head of the mutt for the time being whether maintainable—Limitation—Limitation Act (IX of 1908) Arts 120 134 and 144 applicability of* The disciples of a mutt have sufficient interest within O I r 8 of the Civil Procedure Code to maintain a representative suit not only for a declaration of the invalidity of an improper alienation of the mutt properties by the head of the mutt but also for a decree directing possession to be given to the head of the mutt for the time being It is immaterial whether the head of the mutt be a trustee or only a life tenant The suit being one for possession the article of the Limitation Act applicable is not 120 but Art 134 or 144 according as the head of the mutt is a trustee or only a life tenant and the right to sue for possession arises from the date of the alienation or when possession begins to be adverse Possession which is adverse to the institution is equally adverse to the plaintiffs who sue on its behalf CHIDAMBARANATHA THAMBIRAN v NALLASIVA MUDALIAR (1917) I L R 41 Mad 124

MUTT—*contd*

3 ——— *Lease in perpetuity of mutt properties validity of—Right of successors to dispute whether void or voidable—Confirmation by immediate successor—Right of the latter's successor to repudiate the same—Suit to set aside if necessary—Limitation Act (XV of 1877) Arts 142 and 144—Nature of the estate of a matathipathi (head of a mutt) if an absolute estate or estate for life—Local Boards Act (V of 1884) ss 63 66 and 73—The Madras Revenue Recovery Act (II of 1864) ss 32 and 42—Sale for arrears of road cess—No notice to inamdar but to tenant—Sale irregular not without jurisdiction—Suit to set aside sale—Limitation Act (XV of 1877) Art 12—Revenue Recovery Act (II of 1864) s 59* The head of a mutt made an alienation by way of a lease in perpetuity in 1872 of some lands which had been granted as inam for the support of the mutt and died in 1890 his immediate successor in the office received the rent reserved by the old lease from the lessee's transferees from 1893 and treated the occupants under the old lease as the tenants until his death in 1906 the latter's successor in office brought the present suit in 1908 to set aside the lease and recover possession of the inam lands from the defendants who were sub lessees or assignees from the original lessee and from the fifth defendant who was a purchaser in a revenue sale of some of the inam lands which were soled in May 1902 for arrears of road cess due under the Local Boards Act (V of 1884) *Held* that the suit was not barred by limitation except as regards the lands which were sold in revenue sale A permanent lease is in excess of the powers of the head of a mutt An alienation by the head of a mutt is not necessarily void and of no effect but is good for the life time of the alienor A matathipathi (head of a mutt) is not a tenant for life but is in the position of one who though in a certain sense owner in fee simple yet in many respects has only the powers of a tenant for life An alienation by the head of a mutt is voidable by the alienor's successors in very much the same way that an alienation by a Hindu widow in excess of her powers is voidable by her successors The successors of a matathipathi cannot validate a case of his predecessor so as to bind his successors he validates the lease only for the period during which he holds the office or avoid it altogether *Abhiram Goswami v Shyama Charan Nandi I L R 36 Calc 1003 Narsaya Upada v Venkataramana Bhatta 23 Mad L J 260 Vidyapurna Tirthaswami v Vidyanidhi Tirthaswami I L R 27 Mad 435* and *Kailasam Pillai v Nataraja Thambiran I L R 33 Mad 265* followed The corpus of the mutt property is inalienable except in special circumstances but the income subject to the upkeep of the mutt is at the absolute disposal of the matathipathi (see *Vidyapurna Tirthaswami v Vidyanidhi Tirthaswami I L R 27 Mad 435*) Where owing to the failure of the holders of a portion of the inam lands to pay the local cess due under the Local Boards Act (V of 1884) the Revenue officers sold some of the inam lands without giving notice of the proceedings

MUTT—*contd*

to the head of the mutt as the defaulter but notice was given to the tenant in occupation of the lands the sale was irregular but not one held without jurisdiction and was consequently liable to be set aside but the suit to set aside the same was barred as not brought within the time allowed by s 59 of the Madras Revenue Recovery Act (II of 1864) or Art 12 of the second Schedule of the Limitation Act (XV of 1877) *Ramachandra* v *Pitchaikanni I L R 7 Mad 434 Chinnasami Mudali* v *Tirumalai Pillai and the Secretary of State for India I L R 25 Mad 572 Malkarjun* v *Narhari I L R 25 Bom 337* and *Bijoy Gopal Mukerji* v *Krishna Mahishi Debi I L R 34 Calc 329* referred to *Per* SADASIVA AYYAR J —The position of a matathipathi is not analogous to that of a Corporation sole under the English Law because there is this fundamental distinction namely whereas the properties belonging to an English Bishop (a Corporation sole under the English Law) including his savings from the revenues of the benefice devolve upon his legal representatives or heirs the savings of matathipathi devolve upon the succeeding matathipathi The procedure laid down by the Revenue Recovery Act (II of 1864) has been incorporated into the Local Boards Act by s 76 of the latter Act but the substantive provisions in the Revenue Recovery Act (ss 32 and 33) that the sale for the recovery of arrears of land revenue frees the land from all incumbrances and from all favourably rented leases do not apply to a sale under the Local Boards Act See *Ramchandra* v *Pitchaikanni I L R 7 Mad 434* and *Chinnasami Mudali* v *Tirumalai Pillai and the Secretary of State for India I L R 25 Mad 572* MUTHUSAMIER *v* SREE SREEMETHANITHI SWAMIYAR (1913)

I L R 38 Mad 356

4 ——————— *Dharmapuram Adhinam Pandarasannadhi of—Junior Pandarasannadhi—Mode of appointment of—Nomination by will—Ordination—Abishegam effect of—Nature of the office—Removal of junior from office grounds of—Power of Pandarasannadhi to remove junior if at pleasure or for good cause—Notice of charges necessity for—Dismissal without notice or opportunity for defence validity of—Compromise decree nature and effect of—Suit for setting aside necessity for—Limitation for such suit—Compromise-decree partly illegal effect of—Decree if void altogether* The Pandarasannadhi or the head of the Dharmapuram mutt has no power to dismiss at his pleasure the junior Pandarasannadhi of the mutt from his office though he can do so for good cause but a *dismissal directed by the former without* giving the latter any notice of the charges alleged against him (or an opportunity for making his defence thereto) is wholly void and inoperative in law The *nomination* and *ordination of a junior* Pandarasannadhi is the customary mode of providing for the line of succession in mutts The position of a junior Pandarasannadhi during the lifetime of the senior is analogous to that of a co adjutor with the right of succession under the Canon law a right of which he cannot be deprived except for grave cause Where an office is held at pleasure the incumbent may be removed even on charges of misconduct without any opportunity of being heard in his defence because he is removable at pleasure without any misconduct at all but in all other cases the objection of want of notice can never be got over *Rex* v *Chancellor and Master of the University to Cambridge 1 Str 557* followed A consent decree is binding on the parties and their representatives until it is set aside just as musch as if it had been passed after contest *Fateh Chand* v *Narsing Das 22 C L J 583* and *In re South American and Mexican Company Ex parte Bank of England (1895) 1 Ch 37* followed A suit to set aside a compromise decree will be barred after three years from the date of the decree An illegality in a compromise decree in so far as it restrains the Pandarasannadhi from removing the junior in case of any future misconduct is not a ground for setting aside the decree altogether in a suit instituted for that purpose *Kearney* v *Whitehaven Colliery Co (1893) 1 Q B 700* referred to *Per* SESHAGIRI AYYAR J Where a suit is brought in a representative capacity the legal representative must show that the estate devolved on him the estate in this connection is not the estate which the deceased had but the estate *which he represented that is* the estate which he laid claim to Mutts are not voluntary associations or brotherhoods or proprietary clubs A person who has been appointed as a junior Pandarasannadhi *to whom abishegam* has been duly performed acquires a status which is not lost unless he is removed from his office for good cause An ascetic who holds an office like that *of a head of a mutt or a junior* Pandarasanadhi does not incur forfeiture of his office by reason of his immorality but is liable to be removed from his office on proof of his immoral conduct In a suit by a junior Pandarasannadhi against the head of a mutt disputing the validity of his dismissal from his office it is competent to the head of the mutt to enter into a compromise which does not affect the usage of the institution whereby the senior Pandarasannadhi recognizes the title of the junior under his original appointment as subsisting and admits that his removal was invalid as the grounds of dismissal were not justifiable a decree in accordance therewith is not illegal TIRUVAMBALA DESIKAR v MANIKKA VACHAKA DESIKAR (1915) **I L R 40 Mad 177**

5 ——————— *Sanyasi—Simple money debts incurred by head for necessities of the Mutt—Suit against successor—Liability of mutt properties—Personal liability of the debtor—Lay trustee executor or administrator analogy of* In a suit to recover a simple money debt incurred by the sanyasi head of a mutt for the necessary purposes of the mutt the properties of the mutt can be made liable whether the suit is brought during the lifetime of the incumbent who incurred the debt or his successor Cases of debts incurred by lay trustees of religious or charitable institutions executors or administrators distinguished *Shankar Bharati Swami* v *Venkapa Naik (1885) I L R 9 Bom 422* followed LAKSHMINDRA THIRTHA SWAMIAR v RAGHAVENDRA RAO (1920)

I L R 43 Mad 795

MUTUAL CONSENT

See PRIVATE LAW—MARRIAGE

I L R 38 Calc 492

MUTUALITY

——————— want of —

See SPECIFIC PERFORMANCE

I L R 39 Calc 2

N

NAIKINS

——————— *Adopt on—Adoption of daughter by a Naikin—Adoption invalid—Will—Construction—Gift to the adopted daughter as persona designata* One Sundra a naikin (a professional prostitute) adopted her near relative Hira as her daughter She next made a will whereby she bequeathed the bulk of her property to Hira In the will Hira was referred to at some places by her name and as others as adopted daughter" On Sundra's death Hira claimed Sundra's property as her adopted daughter and also as persona designata under Sundra's will *Held* that Hira could not succeed as an adopted daughter because Sundra being a naikin could not validly adopt a daughter to herself *Mathura Naikin v Esu Naikin I L R 4 Bom 545* followed *Venku v Mahalinga I L R 11 Mad 393* dissented from *Held* further on construction of the will that Hira was entitled to succeed as persona designata under Sundra's will for Hira was not to take the property as being the adopted daughter but she was the adopted daughter and was to take the property because she was the special object of Sundra's bounty HIRA NAIKIN v RADHA NAIKIN (1917) I L R 37 Bom 116

NARVA TENURE

——— mortgage of—

See BHAGDARI AND NARVADARI ACT (BOM V OF 1862) 3
I L R 35 Bom 42

NATIVE INDIAN SUBJECT OF HIS MAJESTY

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 188
I L R 41 Bom 667

NATIVE STATE

See LIMITATION ACT (IX OF 1908) SCH I ART 182 CL s (5) AND (6)
I L R 42 Bom 420

NATTUKOTTAI CHETTIES

See LIMITATION ACT 1908 SCH I ARTS 60 [illegible] I L R 43 Mad 629

See PRESIDENCY TOWNS INSOLVENCY ACT 1909 s 115 I L R 43 Mad 747

NATURAL SON

See HINDU LAW—STRIDHAN
I L R 43 Calc 944

NAVIGABLE RIVER

See FISHERY I L R 42 Calc 489

——— dry lands formed through recession—whether can be assessed for revenue

See PUBLIC NAVIGABLE RIVER
24 C W N 639

——— test for determining whether a river is a public Navigable River

See RIVER BEDS 24 C W N 809

——————— The Law of the Madras Presidency as to Rivers and Streams certainly differs from the English law and it is quite possible that it recognises some proprietary right on the part of government in the water

NAVIGABLE RIVER—*contd*

——— test for determining whether a river is a public Navigable River—*contd*

flowing in rivers and stream PRASAD ROW v THE SECRETARY OF STATE FOR INDIA
I L R 40 Mad 886

——————— *Rennell's Map of inland navigation—Zemindars status of whether proprietors under Moghul Rule—Cession of Burdwan Midnapore and Chittagong effect of on zemindar's right —Fifth Report of Select Committee of House of Commons —Muccorat and Naikar Zemindar's chartered rights—Permanent Settlement whether bed of river Damodar included in—Bengal Regulation XIX of 1816 s 9—Fishery exclusive right of presumption from—Bengal Alluvion and Diluvion Regulation XI of 1825—Churs principle of resumption of—Public domain gain from— Middle thread principle of as to right to bed of river—Rules as to construction of boundaries—Revenue whether Government entitled to assess on churs forming within the Burdwan zemindari—Water duties—Dowl bardobast*—At the date of the Permanent Settlement of Bengal (1791) the river Damodar was not a navigable river i e one in which boats could ply throughout the year Rennell's Map of inland navigation appearing in his Atlas which was published by authority of the East India Company does not require to be proved Prior to 1760 A D the zemindari or chakla of Burdwan was settled with the Maharaja's ancestors not by parganas but as a whole They were not mere revenue agents of the Ruling Power for the principal zemindars of Bengal had clearly a title to their estates Under the treaty of 1760 Burdwan Midnapore and Chittagong were ceded to the East India Company subject to the rights of the zemindars which were expressly reserved by the Sanad executed to give effect to the treaty and accepted by the East India Company The farming out of the revenues of Burdwan by public auction for three years in 1762 did not put an end to the rights of the Maharaja's predecessors for a scrupulous regard seems to have been paid to the then Maharaja's chartered rights of *Muccorat* and *Naikar* etc At the time of the Permanent Settlement the bed of the River Damodar in so far as it flowed through the chakla or zemindari of Burdwan formed a part of the estate permanently settled with the Maharaja's predecessor Regulation XIX of 1816 s 9 provides only for compensation being paid not for a reduction of the land revenue Although an exclusive right of fishery does not of itself pass the right to the soil in the bed of the river still when the terms of a grant are unknown or uncertain it is a matter of [illegible] ance that the plaintiff has a several right [illegible] in the river the bed of which [illegible] the Bengal Alluvion and Diluvion [illegible] of 1825 churs in non navigable riv[illegible] of the permanently settled [illegible] resumed for before the[illegible] ment of Government [illegible] gain from the publi[illegible] v *Foham* [illegible] and *Prasad Row* v [illegible] I L R 40 Mad 886 [illegible] law of the country [illegible] when flowing [illegible] prietors [illegible] middle thread [illegible] *Chunder* [illegible]

NAVIGABLE RIVER—*concld*

——— test for determining whether a river is a public Navigable River—*concld*

Tagore v *Jado Lal Mullick 5 C L R 97* referred to Where property is bounded by a road or river the boundary even if given as the road or river is the middle of the road or river as the case may be *Commissioners for Land Tax for the City of London* v *Central London Railway Company* [1913] *A C 364* and *Attorney General for British Columbia* v *Attorney General for Canada* 1914] *A C 153* referred to The assessment of the Government revenue on the riparian mouzahs of the Burdwan zemindari was imposed not only in the mouzahs but also on the adjoining half of the bed of the river and Government is not entitled to assess further revenue on *churs* forming therein SECRETARY OF STATE FOR INDIA v BIJOY CHAND MAHATAP (1918) I L R 46 Calc 390
24 C W N 872

NAZARANA

See MORTGAGE I L R 35 Bom 371

NAZIR

——— appointment of, as guardian—
See GUARDIAN I L R 38 Calc 783

NECESSARIES

See CONTRACT ACT (IX OF 1872) s 68
I L R 32 All 325

NECESSITY FOR ALIENATION

See HINDU LAW—ALIENATION
See HINDU LAW—LEGAL NECESSITY

NEGLIGENCE

See BANKER AND CUSTOMER
I L R 36 Bom. 455

See BOMBAY DISTRICT MUNICIPAL ACT (BOM III OF 1901) ss 50 54
I L R 35 Bom 492

See CARRIERS I L R 40 Calc 716
I L R 41 Calc 80
I L R 47 Calc 1027

See CONTRIBUTORY NEGLIGENCE
I L R 37 Bom 575

See GAS COMPANY 14 C W N 158

See HORSE 19 C W N 916

See MORTGAGE I L R 43 Calc 1052

See PENAL CODE (ACT XLV OF 1860)—
s 304 I L R 42 All. 272
ss 337 338 I L R 39 Bom 523

See RAILWAY COMPANY
I L R 37 Bom. 1
I L R 39 Bom 191

See STEAMSHIP COMPANY
I L R 47 Calc 6

See TORT

See VENDOR AND PURCHASER,
I L R 35 Bom 269

NEGLIGENCE—*contd*

——— Causing death—
See PENAL CODE s 304
I L R 42 All 272

——— indemnity against—
See COMMON CARRIER
I L R 38 Calc 28

——— liability of lambardar for—
See AGRA TENANCY ACT (II OF 1901) ss 164 166 I L R 40 All 246

——— of agent damages for—
See TRANSFER OF PROPERTY ACT (IV OF 1882) s 6 (e) I L R 38 Mad 138

——— of Government Servant—
See TORT I L R 39 Mad 351

——— of municipality—
See BOMBAY IRRIGATION ACT 1879
I L R 38 Bom 116
See TORT I L R 41 Mad 538

——— of servants—
See JUDICIAL DESCRETION
4 Pat L J 381

——— of servants of Public Works Department—
See TORT *I L R 39 Mad 351*

——— Railway accident—*Railway Company—Breach of statutory duty—Injury to passengers with arm outside carriage window—Contributory negligence—Contractual obligations* The fact that the door on a moving train is open is evidence but not conclusive proof of negligence on the part of the Railway Company Where there is a statutory obligation any breach of it which causes an accident is conclusive against the defendant apart from special proof of negligence But the breach must in itself be the cause of the accident and the rule does not extend so far as to exclude the defence of contributory negligence In view of the contractual relations between the parties a Railway Company is not liable for injuries caused to any part of a passenger which is outside the carriage in which he is travelling provided that such injuries could not have been received had the passenger remained inside the carriage The application of the rule that where *there is negligence on both sides the negligence of* the person who had the last chance of averting accident is the efficient cause thereof must be restricted to cases where the danger was apparent to both or at least one of the parties before the accident actually happened DULLABHJI SAKHIDAS v G I P RAILWAY Co (1909)
I L R 34 Bom 427

BUT *see* CONTRIBUTORY NEGLIGENCE
I L R 37 Bom 575

——— Suit against Tramway Company —*Passenger entering car while in motion—Contributory negligence* *T* brought an action against the Tramway Company claiming damages for injuries sustained by him by reason of the Company's negligence *T* alleged that while attempting to board a stationary tramcar the car was suddenly started at a signal given by the conductor and the footboard tilted and slipped sideways from beneath *T*'s foot in consequence of which *T* lost his balance was thrown to the ground and his

NEGLIGENCE—*contd*

right foot was injured *Held* dismissing the suit that the footboard was not loose and that T s fall was due to his attempting to enter a car while in motion and was not due to any fault or defect in the fixity of the board *Per Curiam* —Whether there is a bye law or there is not a bye law to that effect the fact remains that if a passenger chooses to attempt to enter or leave a moving car he does so at his own risk It is not what a prudent or a reasonable man should or would do and if he does it and sustains injury while in the act of so doing it would be an accident or a misfortune for which the defendant Company would in no way be liable TEMULJI JAMSETJI *v* BOMBAY ELECTRIC SUPPLY AND TRAMWAYS COMPANY LTD (1911)
I L R 35 Bom 478

———— **Driving motor car at excessive speed** —*Injury to bare licensee being driven in car—Liability of car owner—Quantum of damages* The defendant was driving a party of relatives and friends (including the plaintiff) in his motor car from Deolali to Igarpuri The road at one point turned somewhat abruptly to the left and crossed the lines of the Great Indian Peninsula Railway by means of a level crossing after the level crossing the road turned abruptly to the right The defendant who was driving his car at an excessive speed drove over the crossing at the time that a train was there due Though it got over the crossing safely the car failed to take the abrupt turning to the right and jumping an embankment rushed into a paddy field below The occupants of the car with the exception of the defendant were thrown out with much violence and the plaintiff received such grave injuries as would render him a cripple for the rest of his life The plaintiff sued to recover damages caused to him by the defendant s negligence *Held* that putting the skill and caution exigible from the defendant at the very lowest he was grossly and culpably negligent that he was liable in damages to the plaintiff and that in assessing damages the same principles should be applied whether the person who had incurred the liability was a private individual or a wealthy company SORABJI HORMUSJI *v* JAMSHEDJI MERWANJI (1914)
I L R 38 Bom 552

———— **Public authority breach of statutory duty by causing injury**—*when cause of action arises—Bengal Local Self Government Act (III of 1885) ss 20 and 146—Bengal Municipal Act (III of 1884) ss 29 and 363—Bihar and Orissa General Clauses Act of 1917 s 4 (2)—Suit against District Board or Municipality—Limitation* The words anything done under this Act in s 146 of the Bengal Local Self Government Act 1885 and in s 363 of the Bengal Municipal Act 1884 include omissions Where personal injuries are caused by a negligent act or omission of defendant a fresh cause of action does not arise whenever the damage suffered becomes aggravated without any fresh act or omission in the part of the defendant In such a case the plaintiff is entitled to compensation not only for the damage actually visible at the time when the suit is instituted or at the time of the trial but also for such consequential damage as may reasonably be expected to arise in the future from the wrongful act or omission complained of But if a suit for damages for the wrongful act or omission has been decided or has become barred no fresh cause of action accrues to the plaintiff on the development of the consequential damage S 146 of the Bengal Local Self Government Act does not include a suit against a District Board as a body corporate as distinct from a suit against the members of such Board and therefore a suit against a District Board may be instituted more than three months after the cause of action arises But a suit against a Municipality must be brought within the period of limitation prescribed in s 363 of the Bengal Municipal Act 1884 ALLAN MATHEWSON *v* CHAIRMAN OF THE DISTRICT BOARD OF MANBHUM
5 Pat L J 359

———— **Railway Company**—*Derailment of train—Removal of rail—Onus of proof—Discharge of onus* The respondent was injured by reason of a train of the appellants in which he was a passenger leaving the line and being wrecked and he sued the appellants for damages for negligence The immediate cause of the accident was the removal of a rail which the appellants pleaded had been effected maliciously by some person for whom they were not responsible *Held* that the onus of proof that the respondents injuries were not due to the appellants negligence was upon the appellants but that upon the evidence they had discharged that onus Judgment of the High Court (SANDERSON *C J* dissenting) reversed EAST INDIAN RAILWAY COMPANY *v* KIRKWOOD (1919) **I L R 48 Calc 757**

NEGOTIABLE INSTRUMENT

See BILLS OF EXCHANGE

See HUNDI

See NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881)

See NOTE OF HAND **14 C W N 414**

See PROMISSORY NOTE

See SHARES **I L R 46 Calc 331 342**

———— **Party to suit on**—*Limitation Act s 22—Amendment by adding party cannot relate back to date anterior to application to add party* A suit on a negotiable instrument must be instituted in the name of the person who on the face of the instrument is entitled thereto or by a holder deriving title from him Where the suit is instituted in the name of a wrong person the Court has power under O I r 10 (1) to amend the plaint by bringing the proper party as plaintiff Such person cannot be brought on the record as from the day the suit was instituted The amendment will relate back at the most to the date on which the application to be added as plaintiff was made and if such application was made after the right to sue was barred by limitation such amendment should not be allowed In suits of this kind a mistake to be corrected under O I r 10 (1) must be corrected before the limitation period of the suit expires *Seshamma v Chennappa I L R 20 Mad 467* referred to SUBBARAYA IYER *v* VAITHINATHA IYER (1909)
I L R 33 Mad 115

———— **It may be transferred by registered deed of gift**—*XXVI of 1881 s 46 47 48 50—Transfer of Property Act (IV of 1882) s 123—Mode in which transferee may enforce his rights—Evidence Act (I of 18) s 9 —Oral evidence to prove deed of gift to be donatio mortis causa* When the holder of a Government Promissory note

NEGOTIABLE INSTRUMENT—*concld*

purported to transfer it to another by a registered deed of gift *Held* that though there was no endorsement and delivery as contemplated by the Negotiable Instruments Act there was a valid transfer of the document as a chattel and the transferee was entitled to it and to the property referred to in it [How such a voluntary transferee is to enforce recognition of his title and payment of the note not decided] Delivery of the property is not necessary where the gift is by a registered instrument Oral evidence is not admissible to prove that a document which in terms is an out and out gift was really meant to be a *donatio mortis causa* BENODE KISHORE GOSWAMI *v* ASHUTOSH MUKHOPADHYA (1912)

16 C W N 666

———— **In favour of Agent**—*In favour of A as agent of B—Endorsement by A simpliciter in C—No prima facie title to C* If a negotiable instrument executed in favour of *A* as the agent of *B* is endorsed by *A* *simpliciter* (*i e* without describing himself as the agent of *B*) to *C* the endorsement cannot in the absence of any evidence to show that *A* was intended to be the beneficial owner of the note convey in this country any title to *C* so as to enable *C* to sue the person or persons liable on the note *Muthar Sahib Maraikar* v *Kadir Sahib Maraikar I L R 28 Mad 244* referred to VEERAIYAN CHETTIAR *v* PONNUSWAMI CHETTIAR (1913) **I L R 36 Mad 362**

———— **In favour of several—Discharge by one**—*of several payees validity of* *Held* by the Full Bench (THE CHIEF JUSTICE dissenting) that one of several payees of a negotiable instrument could give a valid discharge of the entire debt without the concurrence of the other payees ANNAPURNAMMA *v* AKKAYYA (1913)

I L R 36 Mad. 544

———— **Hundi**—*Whether by mercantile usage at Delhi oral acceptance is binding—What constitutes a mercantile usage* *Held* that by mercantile usage at Delhi a drawee who has accepted a *hundi* orally is liable on the instrument *Held* also that to establish a mercantile usage it is enough if the usage appears to be so well known and acquiesced in that it may be reasonably presumed to have been an ingredient tacitly imported by the parties into their contract *Juggomohn* v *Manickchand 7 Moo I A 263 282 P C* referred to PANNA LAL LACHMAN DAS *v* HARGOPAL KHUBI RAM **I L R 1 Lah 80**

———— **Accompanied deposit of title-deeds**—*Endorsement of negotiable instrument without transfer of equitable mortgage by registered instrument—Right of endorsee to enforce the mortgage* The endorsee for value of a negotiable instrument the amount of which had been secured by a mortgage by deposit of title deeds cannot claim to enforce the mortgage in the absence of a registered instrument conveying the mortgage right to him *Perumal Ammal* v *Perumal Naicker (1921) I L R 44 Mad 196* dissented from ELUMALAI CHETTY *v* BALAKRISHNA MUDALIAR (1921) **I L R 44 Mad 985**

NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881)

———— **ss. 4 and 28**—

See NOTE OF HAND **14 C W N 414**

NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881)—*contd*

———— **ss 4 and 80**—*Certain person whether manager of a bank is—Interest whether enlargement of time is good consideration for promise to pay—Promissory note where suit on should be instituted* A promissory note payable to the manager of a bank is payable to a certain person within the meaning of the Negotiable Instruments Act 1885 s 4 S 80 being an enabling section is no bar to the recovery of interest which the debtor subsequently to the execution of a promissory note agrees to pay in consideration of the creditor not pressing his demand immediately A suit on a promissory note is properly instituted at the place where payment is to be made MAHANTH DAMODAR DAS *v* BENARES BANK LTD

5 Pat L J 636

———— **ss 5 and 6**—*Cheque Bill of Exchange—Banker—Local Boards Act (V of 1884) ss 54 144 to 147—Government Treasury whether a banker—Power of Local Board to make or issue negotiable instruments—Implied power—Rules and Forms under the Act—Local Fund Code r 549—Indorsee of an order of District Board whether holder in due course* A Local Board is impliedly empowered under the Local Boards Act (V of 1884) to make endorse or accept negotiable instruments as such a power can be inferred from the rules and forms made by the Governor in Council under s 144 cl (16) of the Act and contained in the Local Fund Code which have the force of law under s 147 of the Act A Government Treasury in which a District Board deposits its money under s 54 of the Act and issues orders for payment out which are respected by the former is not a Bank *Foley* v *Hill (1848) 2 H L Cas 28 at p 43* and *Halifax Union* v *Wheelwright (1875) L R 10 Exch 183* followed An unconditional order in writing for payment of money to or to the order of a person issued by a District Board on the Government Treasury is not a cheque under s 6 but is a bill of exchange under s 5 of the Negotiable Instruments Act and a *bona fide* endorsee for value of such an order is entitled to payment as a holder in due course RAMASWAMI PILLAI *v* SANKARALINGAM AYYAR (1920)

I L R 43 Mad. 816

———— **s 13**—

S SHARES **I L R 46 Calc 331 342**

———— **s 16**—*Endorsement what constitutes—Holder in due course—Bill payable on demand when overdue* S 16 of the Negotiable Instruments Act does not lay down any specific form of words for an indorsement A promissory note payable on demand was executed on 18th December 1901 On the 12th September 1904 the payee received the amount due on the note from one *S* and the following was indorsed on the note by the payee

I have this day received from you S the sum of due for principal and interest and assigned this note to you with power to recover the amount due under it by showing the same No demand for payment was made before the 12th September 1904 *Held* that S was an indorsee of the promissory note that the promissory note was not overdue on the date of indorsement and that *S* was entitled as holder in due course to sue on the note SIVARAMAKRISHNA PATTAR *v* MANGALASERI KUNHU MOIDEEN (1909)

I L R 33 Mad 34

NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881)—*contd*

——— s. 22—*Hundi payable after sixty one days—Due of maturity—Liability of endorser* *Held* (i) that a bill of exchange which is not expressed to be payable on demand at sight or on presentment is at maturity on the third day after the day on which it is expressed to be payable and (ii) that a *hundi* drawn in the customary form that is expressed to be payable after so many days does not require to be presented for acceptance in order to render liable thereon the payees who had endorsed it in favour of a third party GANGA PRASAD v HIRA LAL (1916)
I L R 39 All 86

——— ss 26 27 28—

See HUNDI SUIT ON
I L R 46 Calc. 663

——— *Agent meaning of—Hundi or promissory note drawn or made by a trustee of a charity—Personal liability of trustee—Liability of charity property and other members of the family—Signature of trustee with vilasam of charity prefixed effect of—Liability of non executants* A person drawing a hundi or bill of exchange or making a promissory note as trustee of a temple or of a charity is *personally* liable on such bill or note Rule of English Law as to bills drawn or notes made by church wardens overseers and others who describe themselves in their official capacities applied English and Indian cases reviewed Agent referred to in ss 27 and 28 of the Indian Negotiable Instruments Act means the agent of a person capable of contracting within the meaning of s 26 and when the agent is not liable the principle is A person drawing a bill or making a note as trustee of a temple or charity is not acting on behalf of such a principal and cannot claim the benefit of s 28 When the agent of a Chetti firm is executing a negotiable instrument prefixes the firm s vilasam that is a well understood indication that he is acting only as an agent and has been so recognized by the Courts but when a man signs as trustee prefixing the charity vilasam there is on the face of the document no clear indication that he contracts for any one else but himself PALANIAPPA CHETTIAR v SHANMUGAM CHETTIAR (1918)
I L R 41 Mad 815

——— s 27—*Promissory note executed under the authority of a marksman but not marked by him validity of—Contract Act (IX of 1872) s 226 applicability of* The law of Agency as stated in s 226 of the Indian Contract Act is applicable to Negotiable Instruments and a promissory note executed by a person under the authority of a marksman is valid though the marksman has not affixed his mark thereto BALAYYA v SUBBAYYA (1917)
I L R 40 Mad 1171

——— s 28—*Promissory note by agent without any indication of execution as agent—Personal liability of executant* Unless an executant of a promissory note clearly indicates therein either by an addition to his signature or otherwise that he executes it as agent of another or that he does not intend thereby to incur personal responsibility he is liable personally on the promissory note according to s 28 of the Negotiable Instruments Act Merely describing one elf in the note as the holder of a power of attorney from another does not show that the power included a power to

NEGOTIABLE INSTRUMENTS (ACT XXVI OF 1881)—*contd*

——— s 28—*contd*

sign promissory notes or that the note was signed in pursuance of the power Applicability of English Law on the subject considered KONETI NAICKER v GOPALA AYYAR (1913)
I L R 38 Mad 482

——— ss 28 30—

See PROMISSORY NOTE BY GUARDIAN OF MINOR **I L R 39 Mad 915**

——— ss 30 47 59 74 94—*Hundi payable to bearer—Surety—Contract of suretyship only between surety and creditor—Right of surety against principal debtor—Indian Contract Act (IX of 1872) ss 140 141 145 69 and 70—Right of holder not being holder in due course—Delivery of hundi payable to bearer effect of—Holder right of* A person who becomes a surety without the concurrence thereto of the principal debtor gets as against the latter only the rights given by ss 140 and 141 of the Indian Contract Act (IX of 1872) and not those given by s 145 Such a person cannot invoke in his favour the aid of ss 69 and 70 of the Act *Hodgson v Shaw 3 My K 183* referred to A person obtaining by payment after dishonour by the drawee delivery of a negotiable instrument payable to bearer acquires the rights of a holder thereof and can under s 59 of the Negotiable Instruments Act (XXVI of 1881) recover from the drawer the amount due thereon on proof of presentment and notice of dishonour as required by ss 74 30 and 94 of the Act *Gajapathy Kistna Chandra Deo v Srinivasa Charlu Appeal No 25 of 1909* referred to *Nanak Ram v Mehin Lal I L R 1 All 487* distinguished MUTHU RAMAN v CHINNA VELAYAM (1916) **I L R 39 Mad 965**

——— ss 32 43—

See ARBITRATION **I L R 2 Lah 335**

See BILL OF EXCHANGE
I L R 41 Bom 566

——— s 43—

See C I F CONTRACTS
I L R 42 Bom 473

——— s 47—

See s 30 **I L R 39 Mad 965**

——— s 48—*Promissory note making over of without endorsement if constitutes valid transfer of gift—Chose in action transfer of—Negotiable Instruments Act scope of—Transfer of Property Act (IV of 1882) ss 123 130 137* The defendant executed a promissory note in favour of one N who handed over this note without any endorsement to an idol through its *pujari* and having done so died The plaintiff the *shebait* of the idol thereupon sued the petitioner for the amount due on the note *Held* that although a promissory note to order may be transferred otherwise than by endorsement and delivery as contemplated by s 48 of the Negotiable Instruments Act there was no legal transfer of the promissory note to the plaintiff or the Deity whom the plaintiff represented either as a negotiable instrument or as a chose in action under s 130 of the Transfer of Property Act nor was there a valid gift of the promissory note under s 123 of the Transfer of Property Act That even assuming that there was a valid transfer the plaintiff was not entitled to sue in his

NEGOTIABLE INSTRUMENTS (ACT XXVI OF 1881)—*contd*

———— s 48—*contd*

own nam It may be generally true that a valid assignment of a negotiable instrument as an actionable claim gives the assignee the rights of the holder subject to equities but this broad proposition must be subject at any rate to the qualification that it is true only so far as it is not inconsistent with the special provisions of the Negotiable Instruments Act *Per* RICHARDSON J The object and purpose of the Negotiable Instruments Act is to legalise a system under which claims arising upon certain instruments of a mercantile character can be treated like ordinary goods which pass by delivery from hand to hand But except within the prescribed limits such claims cannot be so treated AKHOY KUMAR PAL v HARIDAS BYSACK (1913) **18 C W N 494**

———— s 57—

See PROMISSORY NOTE **I L R 41 Mad. 353**

———— s 59—

See s 30 **I L R 39 Mad 965**

———— ss 64 76—*Hundi—Presentation—Liability of drawer—Burden of proof* Where it is sought with reference to s 76 (*d*) of the Negotiable Instruments Act 1881 to render liable the drawer of a *hundi* which has not been presented for payment the *onus* of proving that the drawer could not suffer damage from the want of presentment is on the party who wants to excuse himself for the non presentation of the *hundi* *Madho Ram* v *Durga Prasad I L R 33 All 4* followed *Phul Chand* v *Ganga Ghulam I L R 21 All 450* distinguished GAYA DIN v SRI RAM (1917) **I L R 39 All. 384**

———— *Hundi — Non presentment by holder—Liability of drawer—Burden of proof* Where a *hundi* has not been presented for payment and the holder is seeking to recover from the drawer it lies on the plaintiff to show that the drawer could not have suffered any loss by reason of the hundi not having been presented NANHE MAL v CHET RAM (1918) **I L R 41 All 40**

———— ss 76 (a) 87 93 and 98—*Altering period of paym n of a hundi without consent of all the drawers—Material alteration—Consequence—Hundi payable at a sp cified place—Presentment—Necessity of notice of dishonour* In this ca e the Diamond Jubilee Mills Delhi (the 4th defendant) being in need of money in 1913 the Directors decided to borrow money Consequently three persons *namely* Sundar Singh (defendant No 1) Manager of the Company and Ram Singh (defendant No 2) and Chhajju Ram (defendant No 3) two of the Directors drew five *hundis* including the *hundi* which is the subject matter of this appeal on the Company (defendant No 4) in favour of the plaintiff firm Gulab Rai Mehr Chand The *hundis* were drawn on 1st October 1913 and were accepted by the drawee Company on the 4th October who noted it as payable at the Alliance Bank of Simla Limited Delhi Originally it was payable after 93 days but this was sub equently altered t 63 days under the initials of the Sundar Singh alone The plaintiff firm en lorsed the *hundi* to the All n o Bank of Simla Limited which paid the mon y to the a ceptor Company On the

NEGOTIABLE INSTRUMENTS (ACT XXVI OF 1881)—*contd*

———— s 76 (a) 87 93 and 98—*contd*

due date the *hundi* was di honoured by the Company and the Bank recovered the money from the plaintiff firm The plaintiff firm in its turn then brought the present suit to recover the money not only from the acceptor Company but also from the three drawer It was pleaded *inter alia* that the due dates of the *hundis* as executed were altered without the knowledge of Ram Singh and Chhajju Ram that the *hundis* were never presented for payment and that no notice of dishonour was given to them The District Judge decreed the claim against all the defendants except Chhajju Ram Ram Singh then appealed to the High Court claiming exemption from liability and the plaintiff appealed to have Chhajju Ram also rendered liable *Held* that the alteration in the *hundi* reducing the period of payment was a material alteration within the meaning of s 87 of the Negotiable In truments Act, and plaintiff having failed to prove that this was done with the consent of Ram Singh and Chhajju Ram or in order to carry out the common intention of the original parties the *hundi* was thereby rendered void as against them and plaintiff could not be allowed to fall back upon the contract as it existed prior to the alteration *Suffel* v *Bank of England 9 Q B D 555* and *Wood* v *Steel 6 Wallis 80* followed *Held*, also that the fact that the *hundi* had not been presented for payment on due date did not in this case have the effect of non suiting the plaintiff as the *hundi* was expressly payable at the Alliance Bank of Simla and Delhi and neither the acceptor nor any person authorised to pay had attended there during the usual business hours presentment was therefore not necessary—*vide* s 76 (*a*) of the Act *Held* further that the law embodied in s 93 of the Act requires the holder to give notice of dishonour to the person or persons other than the drawee or acceptor whom he seeks to make liable on a bill and this rule does not admit of any departure except in the cases enumerated in s 98 and as the plaintiff in this case had failed to prove the only exemption relied upon by him *viz* that the party charged could not suffer damage for want of notice his suit against the drawers must also fail on the ground of want of notice of dishonour RAM SINGH v GULAB RAI MEHR CHAND **I L R 1 Lah 262**

———— s 80—

See s 4 **5 Pat L J 536**

See EVIDENCE ACT 18 2 s 92 **1 Pat L J 71**

See HAND NOTE **2 Pat L J 451**

———— *Promissory note silent about interest oral agreement as to it provable—Evidence Act (I of 1872) s 92 (2)* Where there was no mention of interest in a promissory note and it was sought by the plaintiff to prove that by a contemporaneous oral agreement it was settled between the plaintiff and the defendant that interest would run at the rate of 5 per cent per mensem *Held* that under s 9_ ( ) of the Indian Evidence Act the plaintiff was not entitled to prove any such oral agreement as to the rate of interest Where the defendant admitted in his written statement that he had verbally agreed to pay interest on the promissory note at the rate

NEGOTIABLE INSTRUMENTS (ACT XXVI OF 1881)—*contd*

——— s 80—*contd*

of 12 per cent per annum s. 80 of the Negotiable Instruments Act (XXVI of 1881) was no bar to the interest being decreed at that rate LACHMI CHAND JHAWAR *v* HEMENDRA PROSAD GHOSH (1914) 18 C W N 1260

——— s. 87—

See s 76 I L R 1 Lah 261

See DEED I L R 38 Mad 746

——— ss 93 98—

See s. 76 I L R 1 Lah 261

——— s. 94—

See s 30 I L R. 39 Mad. 965

——— s. 98—Want of notice of dishonour —*Whether damage caused by reason of such want of notice—Burden of proof* In a suit by intermediate endorsers of a *hundi* against earlier endorsers the court found that the *hundi* had not been presented for payment within a reasonable time and that notice of dishonour was not given *Held* that it lay upon the plaintiffs to prove that the defendants could not suffer damage by reason of want of notice of dishonour not upon the defendants to prove that they had suffered damages *Moti Lal* v *Moti Lal I L R 6 All 78* followed MADHO RAM *v* DURGA PRASAD I L R 33 All. 4

——— s 118—

See PROMISSORY NOTE I L R 47 Calc 861

——— *Shah Jog hundi—consideration—Onus probandi—Second appeal—Where lower appellate Court has placed onus on the wrong party* The respondent *N M* drew upon himself two *Shah Jog hundis* in favour of the appellant *M R* one on 5th November 1914 payable after 31 days and the other on 9th November 1914 payable after 61 days On 15th December 1914 *N M* brought an action for cancellation of the *hundis* on the ground that they were without consideration A week later *M R* brought a counter action claiming principal and interest on the earlier *hundi* the period for payment on the second *hundi* had not then expired Both actions were tried together and the first Court held that the *onus* of want of consideration was on *N M* the drawer and that he had failed to discharge this *onus* On appeal the Additional District Judge placing apparently the *onus* of proving consideration on *M R* the drawee held that he had proved consideration on the second *hundi* but not on the first *M R* then presented a second appeal to this Court *Held* that the *hundis* in dispute is what is called *Shah Jog hundi* i e a bill payable to a *Shah* or banker which is similar to some extent to a cheque crossed generally which is payable only to or through some banker and that such a *hundi* satisfies the requirements of a negotiable instrument *Held* also that under s 118 of the Negotiable Instruments Act there is a statutory presumption in favour of the passing of consideration and that the *onus* of proving want of consideration was therefore upon the drawer *Held*, further that in cases of this character in which the question of allocation of *onus*

NEGOTIABLE INSTRUMENTS (ACT XXVI OF 1881)—*concld*

——— s 118—*contd*

is the most vital question between the parties it is the duty of the Court in Second appeal to rectify a mistake made by the lower Appellate Court in this respect MADHO RAM *v* NANDU MAL I L R 1 Lah 429

——— s. 135—

See BILLS OF EXCHANGE I L R 46 Calc 584

NEPAL

——— whether a "Foreign State"—

See EXTRADITION WARRANT I L R 42 Calc 793

NEW CASE

See PROCEDURE I L R 48 Calc 832

See REMAND I L R 42 Calc 898

NEW CHANNEL

See FISHERY L R 41 I A 221

NEW TRIAL

See EVIDENCE I L R 47 Calc 671

See PRESIDENCY SMALL CAUSE COURT I L R 38 Calc 425

See PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882) s 38 16 C W N 25

——— application for—

See PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882) ss 9 38 I L R 38 Mad 823

——— *Presidency Small Cause Courts Act 1882 1895 ss 9 38—Notice returnable before Full Bench—Practice in the Small Cause Court of Calcutta—High Court power of to frame rules—Matters of procedure and practice—Calcutta Small Cause Court Rules 92 93 94 and 95* By a notification dated the 9th July 1919 and published in the *Calcutta Gazette of the 16th July 1919* Part I page 1128 the following rule framed by the High Court under s 9 of the Presidency Small Cause Courts Act 1882 1895 was added to rule 92 of the Rules of Practice of the Court of Small Causes of Calcutta Provided that the Court may if in its opinion no sufficient grounds are shown for the application dismiss it without directing service on the party against whom the application is made *Held* that the addition to r 92 was not *ultra vires* but that the rule did not contemplate the exercise by one Judge of the Small Cause Court of the powers conferred on the Court by s 38 of the Presidency Small Causes Courts Act 1882 1895 *Madurai Pillay* v *J Muthu Chetty I L R 38 Mad 823* referred to RAM CHANDRA SAGOREMULL *v* AMARCHAND MURALIDHAR *In re* (1920) I L R 47 Calc 763

NEWSPAPER

See FORFEITURE I L R 47 Calc 190

See PRESS ACT (I OF 1900) ss 3 (1) 4 (1) 17 19 20 22 I L R 39 Mad. 1085

NEWSPAPER COMMENT

———— on party under cross-examination—
See CONTEMPT OF COURT
15 C W N 771

NEWSPAPER CORRESPONDENT

———— statement of—
See LIBEL I L R 37 Calc 760

NEWSPAPERS (INCITEMENT TO OFFENCES) ACT (VII OF 1908)

———— *ss* 2 3—
See PRINTING PRESS
I L R 38 Calc 202

———— s 3—

———————— *Order—Forfeiture of press* S 3 of the Newspaper (Incitements to Offences) Act 1908 provides for the making of a conditional order declaring the printing press used for the purpose of printing or publishing the offending newspap r to be forfeited The section refers to the whole of the press and no order could be made und r it limited only to such portions of the press as were employed in printing the offending newspaper DHOND KASHINATH PHADKE *In re* (1909) I L R 34 Bom 327

———————— *Nature of offences under the Act—Incitement to assassination— Incite m nt —meaning of direct or indirect incitement—General incitem nt not addressed to particular person—Construction of offensive article* The question of the intention or knowledge of an individual may determine his criminal liability under the o dinary law of abetment by incitement by means of words written or spoken but under the News pap rs (In item nt to Offences) Act no question of the intention of the writer printer or publisher arises and no p rsonal liability is imputed to any par icular person The order thereunder is not one a ainst any p rson but is purely restrictive and dire ted against the us or intended u e of a p ss fo the purpose of printing or publishing a n wspaper containing any in itement to murder o to any offen e und r the Explosives Substances A t (VI of 1908) or to any a t of violence The wo ds any in item nt *in s 3 (1) of the Newspapers* Act include direct and indirect incitement and need not be addressed to any particular person nor expressed in violent and outrageous terms To incite means to move to action to stir up to stimulate to instigate or to encourage and a newspaper article comes within the scope of s 3 *if it is as a matter of fact calculated directly or* indirectly to produce that effect *Per* PYNES J There can be no hard and fast cannon as to what words or given set of words constitute incite ment It is a question of fact in each case and must usually depend largely on concomitant circumstances The article must be read as a whole and as far as possible in the sense in which it was read by the section of the public to which it was primarily addres ed and also considered with regard to the occasion and place of publication and the class or status of persons likely to be affected by it I L R 36 Calc 405

NEXT FRIEND

See CIVIL PROCEDURE CODE (1908) O XXXII r 7
I L R 41 All. 553

See COSTS. I L R 43 Calc. 676

NIJ CHAS

See ORISSA TENANCY ACT 1913
3 Pat L J 475

NOMINATION PAPER

See MUNICIPAL ELECTION
I L R 46 Calc 132

NIBANDHA

See HINDU LAW—HEREDITARY PRIESTS
I L R 36 Bom. 94

See LIMITATION ACT 1877 SCH II ARTS 131 62 I L R 34 Bom. 349

See TRANSFER OF PROPERTY ACT ss 55 (6) (b) 123
I L R 34 Bom 287

NIMAK SAYAR MEHAL.

———————— *Permanent Settlement—Separate grants of zamindari and Nimak Sayar over the same village right which pass under —Right of grantee of Nimak Sayar to enter on land of zemindari for working saltpetre—Right of lessees and licensees of grantee—Reasonable exercise of right—Cujus est solum ejus est usque ad cœlum et ad inferos doctrine of application in India—Plaint amendment of—exclusive right to dig saltpetre misunderstood and wrongly described in plaint as a monopoly* The zemindari in village Manpura was settled on the predecessors in title of the defendant at the Permanent Settlement and at the same Settlement the *Nimak Sayar Mehal* in the said and other villages (*i e* an exclusive right to collect nitrous earth from the lands in those villages with a view to extracting saltpetre therefrom) was settled by Government on the plaintiff s predecessor The plaintiff urged that the grant of the *Nimak Sayar Mehal* entitled her to enter on the land comprised in defendant s zemindari and exercise therein in a reasonable manner the rights vested in her under the grant whilst the defendant a recent purchaser of the zemindari right contended that the grant in question conferred on the plaintiff the right to collect the revenue only if and when saltpetre happened to be manufactured and that she had no right to come on the land except by the leave and license of the defendant *and much less to authorise others to* utilize the nitrous soil for the collection of saltpetre *Held* that what passed under the grant of the *Nimak Sayar Mehal* were not rights of this precarious character That the *Nimak Sayar Mehal* was no part of the assets of the zemindari and that the zemindari and the *Nimak Sayar Mehal* were separately settled by the Government as it was open to it to do in disregard of the doctrine of English real property *cujus est solum ejus est usque ad cœlum et ad inferos* *Gooroo Pershad Bose* v *Bishnu Charan Heyra 1 Sel Rep 337 (Old Ed) 1811* and *Bujnauth* v *Deen Dyal 2 Sel Rep 133* referred to *The Bengal Government* v *Nawab Zafar Husain Khan 5 Moo I A 467* distinguished That the grant of the *Nimak Sayar Mehal* carried with it the means reasonably necessary for its enjoyment *Prerogative of Saltpetre 12 Coke Rep 12* referred to That by virtue of plaintiff's rights as owner of the *Nimak Sayar Mehal* she her agents, servants and workmen lessees and licensees were entitled to enter on the land of the village and to exercise an exclusive right to dig for saltpetre but so that this be done with as little inconvenience and prejudice as possible

NIMAK SAYAR MEHAL—*contd*

to th d f ndant as the owner of the village and that the ground be ma le and left as commodious to the defendant as it was before Plaintiff whose claim of ex lusive right to work saltpetre was erroneously d scribed in the plaint as a monopoly was allowed in Second Appeal to amend her plaint and formulate her claim in happier and more precise language. As the plaint in its original form occasioned the prolongation of the suit the plaintiff though successful was ordered to pay co ts throughout GOLAP CHAND v JANKI KUAR (1913) I L R 41 Calc 286
17 C W N 1195

NOABAD

See LAND ACQUISITION ACT 1894
18 C W N 531

———— *Khas Mehal—Taluk a t nure—Non permanent taluk—Sale for arrears of re nue—Purchaser s title—Beng Act VII of 1868 s 12—Cause of action* A Noabad taluk is a tenure th land being *khas* mehal land of Government Wh re it was found that the tenure in question was not a permanent tenure the purchaser thereof at sale under Act XI of 1859 acquired it in the same estate in which it was held at the time of the last settlem nt as provided by s 12 of Bengal Act VII of 1868 GANGADAS SEAL v THE SECRETARY OF STATE FOR INDIA (1916) 20 C W N 636

———— *Whether a permanently settled taluq* A Noabad *taluq* may or may not be a permanently settled *taluq* ASHRAF ALI v KARAM ALI (1918) 22 C W N 1025

———— *Noabad lands settle m nt of—Right of Government in respec of such lands Sem le* Government stands in the same position as an ordinary zemindar in respect of Noabad lands which it has a right to settle with whomsoever it likes NAZIR AHAMAD CHOWDHURY v SECRETARY OF STATE 26 C W N 913

NOLLE PROSEQUI

See CRIMINAL PROCEDURE CODE s 437
16 C W N 983

See JURISDICTION OF CRIMINAL COURT—
I L R 40 Calc 71

NOMINATION OF JUNIOR OR SENIOR

See BARRISTER I L R 44 Calc 741

NON AGRICULTURAL LAND

See RECORD OF RIGHTS
I L R 46 Calc 441

NON AGRICULTURAL TENANCY

———— *Held* that non agricultural tenancies created by the Dowls befo e the Transfer of Property Act are not heritable or transferable MAHOMED AYEJUDDIN MEA v PRODYOT KUMAR TAGORE 25 C W N 13

NON APPEALABLE CASE

See SUMMARY TRIAL
I L R 48 Calc 280

NON APPEARANCE.

———— *Plaintiff—Non appearance of one of the plaintiffs effect of—Civil Proce dure Code (Act V of 1908) O IX rr 8 10 1°*

NON APPEARANCE—*contd*

Reading together rr 8 and 10 of O IX Civil Pro cedure Code it seems that r 8 provides for the case where a single plaintiff or all the plaintiffs if there are more than one do not appear and r 10 provides for a case when there are more plaintiffs than one and one or more of them appear and others do not appear In a suit on a mortgage bond for sale where one of the two plaintiffs did not appear in person in spite of Court s order nor showed cause but the Court proceeded with the trial of the suit and decreed the claim in favour of both the plaintiffs *Held* that there was nothing illegal in the decree KULENDRA KISHORE ROY v RAI KISHORI SHAHA (1920)
I L R 48 Calc 57

NON COMPOUNDABLE OFFENCE

———— *Conveyance executed in consideration of complainant withdrawing prosecu tion* Suit to set aside ame after prosecution withdrawn if lies BINDESHARI PRASAD v LEKH RAJ SAHU (1916) 20 C W N 760

NON CONFESSIONAL STATEMENTS

See MISDIRECTION I L R 45 Calc 557

NON FEUDATORY ZAMINDARS OF CENTRAL PROVINCES

See ACT OF STATE
I L R 39 Calc 615

NON JOINDER

See CIVIL PROCEDURE CODE 09 O I rr 9 and 13

See MORTGAGE I L R 35 All 247

See MORTGAGE SUIT 25 C W N 594

See PARTIES I L R 33 All 272

See RIGHT OF WAY 25 C W N 249

———— of causes of action—

See CIVIL PROCEDURE CODE (1908) O II r 2 I L R 41 All 583

———— of parties—

See CIVIL PROCEDURE CODE 1908 O XXXIV r 1 I L R 35 All 484

———— *Suit for rent—Heirs of the original tenant not in possession of the holding if necessary parties* Where after the death of the original tenant a suit was brought against some of his men who were in possession of the holding and against whom a previous decree was obtained for arrears of rent accrued due during the period of latter s occupation *Held* that the suit was not defective by reason of the non joinder of the other heirs MEAJAN MANDAL v JOGENDRA NATH DE (1920) I L R 48 Calc 518

NON-JUDICIAL STAMP

See STAMP ACT (II OF 1899) s 52
14 C W N 1101

NON OCCUPANCY HOLDING

See NON OCCUPANCY RAIYAT

———— *Non-occupancy raiyati holding sale of in execution of money decree—Raiyat s right to raise question of non transfer ability* A non occupancy raiyati holding was sold in execution of a money decree whereupon the judgment debtors objected on the ground of non

NON-OCCUPANCY HOLDING—*contd*

transferability The *pattah* of the land prohibited any kind of transfer without the consent of the landlord and gave the landlord the right of *khas* possession in case any such transfer took place *Held* that if the terms of the lease gives the land lord a right of re entry in the case of a transfer without his consent that may raise a question between the purchaser if any at the Court sale and the landlord but does not clothe the raiyat with a right to object to the sale LELONG JUMIA v PAJANI KANTA CHOWDHURY (1918)

22 C W N 792

———— heritability of—In the absence of a custom to the contrary a non occupancy raiyat s interest is heritable KALEU GARHI v JADOLI CHOUDHARI 1 Pat L. J 273

NON-OCCUPANCY RAIYAT

See CHOTA NAGPUR LANDLORD AND TENANT PROCEDURE ACT s 6
14 C W N 297

See EJECTMENT I L. R 40 Calc 858

See LANDLORD AND TENANT
I L R 37 Calc 709

See NON OCCUPANCY HOLDING

See NON OCCUPANCY RIGHT

———— *Holding over after term of holds on from year to year—Ejectment* Under the Bengal Tenancy Act there is no raiyat who holds from year to year and if the tenant is a non occupancy raiyat who does not hold under a lease for a term he cannot be ejected under the provisions of cl. (c) of s 44 JOTIRAM KHAN v JONAKI NATH GHOSE (1914) 20 C W N 258

———— *Khamar land—Statute—Headings of Chapters—Bengal Tenancy Act (VIII of 1885) Ch XI s 45 and Sch III cl I (a)* A tenant of a *khamar* land is not a non occupancy *raiyat* The heading of a chapter in a statute may be looked at for the purpose of interpreting a section in the statute DWARKANATH CHAUDHURI v TAFAZAR RAHAMAN SARKAR (1916)

I L. R 44 Calc 267

———— *Under registered lease eviction of— Jote meaning of— Mahal meaning of* That a non occupancy *raiyat* who has been admitted to occupation of the land under a registered lease is liable to be ejected on the expiry of the term of his lease but it being found that the defendants were not admitted into occupation of the land by the *kabuliyats* it was necessary to determine whether the defendant in each case was in occupation as tenant of the particular lands in respect of which he subsequently executed his *kabuliyat* That the description in the *kabuliyat* without right *jote mahal* was not clear to show that the defendants admitted that the plaintiffs were *raiyats* That the words without right standing alone might mean that the plaintiffs were owners of a non occupancy *jote* but the word *jote* does not necessarily mean the interest of a cultivator and the word *mahal* is not used in connection with the interest of a *raiyat* That the statement in the lease as to the purpose of the tenancy and the fact that the tenancy was treated all along by Government as non occupancy *jote* were in favour of the plaintiffs but not conclusive against the defendants RAJANI KANTHA MUKHERJEE v YUSUF ALI (1916) 21 C W N 188

NON OCCUPANCY RIGHT

———— *Heritability—Bengal Tenancy Act (VIII of 1885) ss 5 cl (2) 20 cl (3) 44 82* The holding of a non occupancy *raiyat* is heritable *Karim Chowkidar v Sundar Bera I L R 24 Calc 207* overruled *Lakhan Narain Das v Jainath Panday I L R 34 Calc 516* referred to MIDNAPORE ZEMINDARY COMPANY LD v HRISHIKESH GHOSH (1912)

I L R 41 Calc 1108

———— *Acquisition of in zirat land—Ejectment of tenant of zirat land limitation for—Bengal Tenancy Act (VIII of 1885)—Ss 4 5 20 44 45 and 116 180 and Sch III Art 1 (a)—Construction of Statutes reference to heading of Chapter Held* (CHAPMAN and JWALA PRASAD JJ dissenting) that a suit by a landlord to eject a tenant of *zirat* lands on the ground of the expiration of the term of his lease is governed by Art 1 (a) of Sch. III to the Bengal Tenancy Act 1885 and the operation of Art 1 (a) is not excluded in such a case by s 116 *Per* CHAMIER, *C J*—Chapter VI of the Bengal Tenancy Act 1885 applies to tenants of proprietors private lands except where such land is held under a lease for a term of years or where it is held under a lease from year to year and such tenants may acquire non occupancy rights in the land within the meaning of the Act *Per* CHAPMAN *J*—The classification of tenants in ss 4 and 5 is not intended to be scientific and precise These sections should be applied with a reasonable amount of elasticity A tenant of *zirat* land may possibly be classified as a tenure holder but he is not a non-occupancy *raiyat* *Zirat* land is not *raiyati* land although the zamindar may loose his right in it by treating it as if it was *raiyati* But if he lets it for a term or from year to year it remains his own and the tenant of it is not a *raiyat* *Per* MULLICK *J*—Although the definition of *raiyat* in the Act is not exhaustive yet the classification of the various classes of *raiyats* in s 6 is exhaustive Both occupancy and non occupancy right can under certain circumstances be acquired in *zirat* lands A cultivator may be a settled *raiyat* of *zirat* lands but as such he has no rights The position of a tenant of proprietors private lands under the present law is as follows —The landlord can make successive enhancements of rent but the tenant can no longer take advantage of s 13 of the Bengal Rent Act 1859 or s 14 of the Bengal Tenancy Act 1869 on the tenant s failure to pay an arrear of rent he can only be ejected after a decree although it was otherwise before the passing of the Bengal Tenancy Act 1885 and a suit for ejectment of the tenant on the expiry of his lease must now be brought within six months instead of twelve years as formerly A non occupancy *raiyat* whose lease has expired is liable to ejectment under the general law as a trespasser Art 1 (a) of Sch III is applicable to every suit in which it is sought to eject a non occupancy *raiyat* and is not confined to suits under s 44 *Per* JWALA PRASAD *J*—The classification of tenants in s 4 is not exhaustive The provisions of the Act barring the acquisition of non occupancy rights in proprietors private lands do not cease to apply when a tenant of such lands holds over after the expiry of his lease S 51 lays down that where a tenant holds over the conditions under which he held the land in the last preceding agricultural year shall be presumed to continue *Per* CHAPMAN and JWALA PRASAD *JJ* (MULLICK *J contra*)—The

NON OCCUPANCY RIGHT—*contd*

heading of a chapter of an Act may be used to extend the meaning of a section which follows it JANKI SINGH v MAHANATH JAGANNATH DAS
3 Pat L J 1

NON PERFORMANCE OF WORK.

See BARRISTER **I L R 44 Calc 741**

NON RIPARIAN OWNER

———— right of, to the flow of river water—
See EASEMENTS ACT (V OF 1882) ss 2 (c) AND 17 (c) **I L R 42 Bom 288**

NON TRANSFERABLE HOLDING

See LANDLORD AND TENANT
I L R 43 Calc 878

See OCCUPANCY HOLDING

1 ———— *Question of transferability if arises between vendor and vendee and between vendee and co sharer landlords* Plaintiffs who had purchased certain shares in an alleged non transferable holding partly in execution of a mortgage decree against one tenant and the rest by private alienation from another having sued for partition the sons of one of the former opposed the suit on the ground that they had been recognised as tenants of the whole holding by some of the co sharer landlords whilst the plaintiffs also were found to have obtained recognition from some of the co sharer landlords The District Judge gave the plaintiffs a decree for an interest proportionate to that of the co sharer landlords who had recognised them *Held* that no question of transferability of the holding arose in the case and the plaintiffs in this suit were entitled to get all the interest they purchased from their vendors RAJAB ALI v DINA NATH SHAHA (1915)
19 C W N 1305

2 ———— *Mortgage of—Purchase of holding by co sharer landlord in execution of decree for his share of rent—Money decree—Question of transferability if arises* In a suit to enforce his mortgage by the mortgagee of an occupancy holding against co sharer landlords who since the date of the mortgage purchased the holding in execution of a decree for their share of the rent the question of transferability does not arise CHANDI PRASANNO SEN v GOUR CHANDRA DEY (1915) **19 C W N 1307**

3 ———— *Non transferable raiyati holding—Sale in execution of money decree—Purchaser allowed by raiyat to take a portion of the holding—Surrender by raiyat of whole holding—Raiyat continuing in occupation—Purchaser if may be ejected* Where a purchaser (in execution of a money decree) of a non transferable raiyati holding being resisted by the raiyat by arrangement with the latter was given a portion of the holding the raiyat retaining the rest and subsequently the raiyat expressly surrendered the whole holding to his landlord though it appeared that even after such surrender he went on occupying the portion retained by him under the arrangement That the surrender being obviously illusory the original tenancy subsisted and protected the purchaser from ejectment by the landlord. NOBO KISHORE SAHA v DHANANJOY SAHA (1916)
20 C W N 610

NORTHERN INDIA CANAL AND DRAINAGE ACT (VIII OF 1873)

———— ss 7, 70—*Penal Code (Act XLV of 1860) s 426—Cutting walls of canal—Mischief—Penal Provisions of the Canal Act not exclusive of the Indian Penal Code* *Held* (i) that s 70 of the Northern India Canal and Drainage Act 1873 does not bar the prosecution of an accused person under any other law for any offence punishable under the Canal Act (ii) that it is an act of wilful mischief punishable under the Indian Penal Code for any person to make a breach in the wall of a canal EMPEROR v BANSI (1912)
I L R 34 All 210

———— s 70—
See PENAL CODE (ACT XLV OF 1860) s 430 **I L R 41 All 599**

———— s 70 (4)— *Authorised distribution—Whether it includes the internal distribution made by a village community* One P S mortgaged 14 bighas of his land to B S According to arrangement in the village every man was allowed to use the water from the canal for a period of one *ghari* (24 minutes) for every seven bighas of land B S wanted to take his turn but P S prevented him The former then presented a complaint and P S was convicted by a magistrate of an offence under s 70 (4) of the Canal and Drainage Act On appeal the District Magistrate acquitted P S holding that the distribution of water with which P S interfered was not an authorised distribution within the meaning of s 70 (1) of the Act The Government appealed to the High Court from the order of acquittal It was admitted that that Canal authorities distribute the water between the different village but that the internal distribution in any village was left to the proprietary body of that village and was accepted by the authorities *Held* that the internal distribution in the village was not an authorized distribution within the meaning of s 70 (4) of the Canal and Drainage Act as it had never been formally approved or sanctioned by any Canal authority the latter having merely accepted the distribution made by the villagers CROWN v PARHAR SINGH
I L R 1 Lah 604

NORTHERN INDIA FERRIES ACT (XVII OF 1878)

———— s 22—*Ferry—Illegal toll taken by servants of lessee—Lessee himself not responsible* *Held* that the lessees of a ferry could not be held responsible under s 29 of the Northern India Ferries Act 1878 for the taking of unauthorised tolls by their servants when they were not present and took no part in the extortion *Queen Empress v Tyab Ali I L R 24 Bom 423* distinguished. EMPEROR v BEHARY LAL (1911)
I L R 34 All 146

NORTH WESTERN PROVINCES AND OUDH ACTS

See OUDH ACTS

See UNITED PROVINCES ACTS

———— 1867—III—
See PUBLIC GAMBLING ACT

———— 1869—I—
See OUDH ESTATES ACT

NORTH-WESTERN PROVINCES AND OUDH ACTS—*contd*

———— 1873—VIII—

See NORTHERN INDIA CANAL AND DRAINAGE ACT XIX—

See NORTH WESTERN PROVINCES AND OUDH LAND REVENUE ACT

———— 1876—XVII—

See OUDH LAND REVENUE ACT

———— 1876—XVIII—

See OUDH LAWS ACT

———— 1878—XVII—

See NORTHERN INDIA FERRIES ACT

———— 1881—XII—

See NORTH WESTERN PROVINCES RENT ACT

———— 1883—XV—

See NORTH WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT

———— 1899—III—

See UNITED PROVINCES COURT OF WARDS ACT

———— 1900—I—

See UNITED PROVINCES MUNICIPALITIES ACT

———— 1901—II—

See AGRA TENANCY ACT

———— 1901—III—

See UNITED PROVINCES LAND REVENUE ACT

———— 1903—I—

See BUNDELKHAND ENCUMBERED ESTATES ACT

———— 1904—I—

See GENERAL CLAUSES ACT

———— 1910—IV—

See UNITED PROVINCES EXCISE ACT

NORTH-WESTERN PROVINCES AND OUDH LAND REVENUE ACT (XIX OF 1873)

———— ss. 146 148 167— *Proprietor — Mortgage by muafidar—Sale of mahal for default in payment of Government Revenue—Rights of purchaser and mortagagees of muafi* Where certain *muafidars* whose rights as such accrued before the year 1870 and were not shown to have been created by the zamindars of the *mahal* in which the *muafi* land in question was situate executed a usufructuary mortgage of such land thereafter the *mahal* was sold for default in payment of Government revenue it was *Held* that the rights of the mortgagees were not extinguished in favour of the purchaser KUNWAR SEN v JWALA PRASAD (1913) I L. R 35 All 190

———— s. 194 (g)—*Act (Local) No III of 1899 (U P Court of Wards Act) ss 2 (2) 8 9 and 34—Act (Local) No. IV of 1912 (U P Court of Wards Act) ss 10 and 57 (c) proviso ( )— Disqualified proprietor —Competence of disqualified proprietor to make a will* A person who has been declared to be a disqualified proprietor on his own application under the provisions of s 194 (g) of the North Western Provinces Land Revenue Act, 1873 is not disqualified thereby at any rate after the passing of the United Provinces Court of Wards Act 1899 from making a will MUHAMMAD ISMAIL KHAN v HAMIDA KHATUN I L R 42 All 509

———— s 205B—

See OUDH LAND REVENUE ACT (XVII OF 1876) ss 173 174 I L R 38 All 271

NORTH WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT (XV OF 1883)

———— s 10—*United Provinces Municipalities Act (I of 1900) s 187—Municipal Board—Election —Suit to set aside election—Jurisdiction of Civil Court—Limitation Act (IX of 1908) Sch 1 Art 120* *Held* that an order of the Government directing that a particular municipal election held in the year 1911 should be conducted according to certain rules passed in 1884 and not according to the rules passed *in pari materia* in 1910 which superseded those of 1884 was *ultra vires* and that inasmuch as the rules of 1884 did not apply and the election was not held under the rules of 1910 a suit would lie in a civil Court to contest the election irrespective of anything contained in either set of rules the period of limitation applicable to which was that prescribed by Art 120 of the first Schedule to the Indian Limitation Act 1908 *Gur Charan Das v Har Sarup I L R 34 All 391* referred to RAGHUNANDAN PRASAD v SHEO PRASAD (1913) I L. R 35 All 308

———— s 130—*Breach of rule made under cl (e) of s 130—Notice* In order to render a person liable to punishment for breach of a rule made under cl (e) of s 130 of the Municipalities Act (Local I of 1900) by reason of the continuance of sale or exposure for sale of certain specified article upon any premises which were at the time of the making of such rules used for such purpose it is necessary that six months notice in writing should have been served upon him in the manner provided by law and conviction in the absence of such notice is bad in law EMPEROR v GHAMMAN (1916) I L R 38 All 455

NORTH WESTERN PROVINCES RENT ACT (XVIII OF 1873)

———— *Held* that this Act and the succeeding Act XII of 1881 rendered void the terms of any will in existence on the date on which they were passed if contrary to the act MAHADEO MISER v DIROPAL PANDE I. L R 41 All. 356

NORTH WESTERN PROVINCES RENT ACT (XII OF 1881)

———— *Mortgage of occupancy holding—Relinquishment—Rights of mortgagee* An occupancy tenant mortgaged his occupancy holding at a time when the Rent Act of 1850 was in force In the year 1911 he entered into an agreement with his zamindars to relinquish his rights with the object of defeating the rights of the mortgagee *Held* that the relinquishment was

NORTH-WESTEN PROVINCES RENT ACT (XII OF 1881)—*contd*

ineffectual as against the mortgagee *Jaigopal Narain Singh v Uman Dat 8 All L J P 695* approved BRIJ KUMAR LAL v SHEO KUMAR MISRA (1915) I L R 37 All 444

——— *Sale of zamindari— Agreement to relinquish ex proprietary right in sir land —Void contract* In 1899 one *R D* the widow of a Hindu who had died heavily in debt sold most of her husband s property to his principal creditor *D S* By the terms of the sale deed the vendor agreed to file a relinquishment of her ex proprietary rights in the sir lands and the vendee agreed to certify to the Civil Court full satisfaction of the claim under his decree Nothing however was done to carry out this agreement until 1901 when *D S* executed a document in favour of P D in which was stated that the parties had come to an agreement that *P D* was to file her relinquishment and in consideration thereof *D S* would file his certificate of satisfaction of his Civil Court decree and further bound himself to pay to *R D* a monthly allowance of R 5 for the rest of her life which was to be a charge on the property transferred by the sale deed of 1899 *Held* on suit by *P D* to recover arrears of her maintenance allowance from the transferees of the property which purported to have been charged with its payment and from *D S* personally that the arrangement between the parties was merely a device to get round the provisions of the Rent Law and that the suit would not lie *Moti Chand v Ikraam ullah Khan I L R 39 All 173* referred to PATAN DEI v DURGA SHANKAR BAJPAI (191) I L R 39 All 645

——— *Occupancy holding— Will—Attempt to dispose of occupancy holding by will* Held that the North Western Province Rent Act No XVIII of 18 3 and the succeeding Act No XII of 1881 rendered void the terms of any will in existence on the date on which they were passed if those terms contravened the prohibition against transfer by will which was thereby enacted MAHADEO MISIR v DIPGPAL PANDE (1910) I L R 41 All 356

——— *Occupancy tenant— Usufructuary mortgage of holding—Relinquishment by mortgagor in favour of zamindar* Where a mortgage with possession of an occupancy holding had been made by the tenant before the coming into force of the Agra Tenancy Act 1901 *Held* that the tenant mortgagor could not defeat the rights of the mortgagees by surrendering the holding to the zamindar CHHIDDU v SHEO MANGAL SINGH (1916) I L R 39 All 186

NOTE OF EVIDENCE

See SUMMARY TRIAL I L R 48 Calc 280

NOTE OF HAND

——— Where a hand note recited a loan and the liability of the executant to repay it but there was no covenant that the re payment would be made to the plaintiff or to his order *Held* that it was not a negotiable instrument under the Negotiable Instruments Act s 4 or s 85 of the Negotiable Instruments Act would not therefore apply to such a hand note Illustrations cannot control the plain

NOTE OF HAND—*contd*

meaning of the words of a statute Illustration (*b*) of s 4 of the Negotiable Instruments Act not relied on SATYA PRIYA GHOSAL v GOBINDO MOHON RAY CHOWDRY (1909) 14 C W N 414

NOTICE

See AGREEMENT I L R 41 All 417

See ARBITRATION I L R 47 Calc 29 951

See ARREST OF SHIP I L R 42 Calc 85

See BOMBAY CITY MUNICIPAL ACT (1888) ss 379 3/9A I L R 36 Bom 81

See BOMBAY COURT OF WARDS ACT 1905 s 14 I L R 44 Bom 493

See BOMBAY LAND REVENUE CODE 1879 s 83 I L R 45 Bom 303

See CIVIL PROCEDURE CODE 1908 s 80 I L R 40 Bom. 541
s 437 I L R 40 All 416
O VII r 22 I L R 43 All 411
O XXI r 16 I L R 36 Bom 58
O XXI r 89 I L R 37 Bom 387
O XXXIII r 1 I L R 42 Bom 155

See COMPANY I L R 36 Bom 564

See CONSTRUCTIVE NOTICE

See CRIMINAL PROCEDURE CODE s 03 43 I L R 35 All 78
437 I L R 40 All 416

See DEKKAN AGRICULTURISTS RELIEF ACT 1879 s 10 I L R 45 Bom 87

See EJECTMENT I L R 44 Calc 272

See EXECUTION OF DECREE I L R 38 Calc 482

See HUNDI SHAH JOG I L R 39 Bom 513

See INSOLVENCY I L R 42 Calc 72

See INSOLVENT I L R 47 Calc 254

See LAND ACQUISITION ACT (I OF 1894) s 9 I L R 39 All 534

See LIMITATION ACT (IX OF 1908)—
s 28 SCH I ART 47 I L R 38 Mad 432
SCH I ART 12 A I L R 45 Bom 45
SCH I ART 182 CL. (6) I L R 42 Bom. 553

See MUNICIPAL ELECTION I L R 39 Calc 598

See NOTICE OF DISHONOUR

See NOTICE TO QUIT

See NOTICE OF SUIT

See N W P AND OUDH MUNICIPALITIES ACT (X OF 1900) s 132 I L R 38 All. 455

See PROSECUTION I L R 37 Calc. 545

See PUBLIC DEMANDS RECOVERY ACT 10 31 I L R 45 Calc. 496

NOTICE—*contd*

tendered to him the Court could not treat the presumption of regularity of official business as conclusive against him GOBINDA CHANDRA SHAHA v DWARKA NATH PATITA (1914)
19 C W N 489

5 ———— **Notice of lease**—*If notice of terms of lease* A party having notice of a lease must be taken to have notice of the terms of the lease SARAT CHANDRA MUKHOPADHYAY v RAJENDRA LAL MITRA (1913) **18 C W N 420**

6 ———— **Constructive notice—Possession** —*Mortgage with possession—Sale effected in favour of mortgagee who continued in possession—Subsequent sale to a stranger—Second vendee having knowledge of first vendee's possession—No enquiry made as to the nature of possession—Suit by first vendee to get a sale deed executed—Second vendee must be held to have constructive notice of first vendee's title as purchaser* The plaintiff was in possession of the property as a mortgagee from defendant No 1 On the 4th March 1917 defendant No 1 agreed to sell the property to the plaintiff but subsequently refused to execute a sale deed in plaintiff's favour and sold the property to defendant No 2 by a deed dated the 19th January 1918 The plaintiff therefore sued to get a sale deed executed by the defendants The defendant No 2 relied upon the sale deed in his favour though he admitted that he knew that the plaintiff was in possession and that he made no inquiry as to the nature of plaintiff's possession Both the lower Courts dismissed the suit on the ground that the second defendant had no notice actual or constructive of the contract of sale between the first defendant and the plaintiff although defendant No 2 might be fixed with notice of the plaintiff's possession as mortgagee In second appeal *Held* decreeing the suit that the second defendant having had knowledge of the plaintiff being in possession and having made no inquiry why the plaintiff was in possession must be taken to have had constructive notice of all the equities in favour of the plaintiff *Daniels* v *Davison (1809) 16 Ves (Jun) 249 s c (1811) 17 Ves (Jun) 433* relied on *Sharfudin* v *Govind (1902) 27 Bom 452* referred to FAKI IBRAHIM v FAKI GULAM (1920)
I L R 45 Bom 910

7 ———— **Registration**—*Whether by itself amounts to notice* *Held* that whether registration is or is not notice in itself depends upon the facts and circumstances of each case upon the degree of care and caution which an ordinarily prudent man would necessarily take for the protection of his own interest by search into the registers kept under the Registration Act TILAKDHARI LAL AND ANOTHER v KHEDAN LAL AND OTHERS
25 C W N 49

8 ———— **Bengal Municipal Act**—(*Beng III of 1884) s 363—Anything done under this Act* In a suit for damages against the Vice Chairman of a municipality for having issued a warrant wrongfully *Held* that the action of the Vice Chairman was in pursuance of the Act and a notice under s 363 of the Bengal Municipal Act (Beng III of 1884) was necessary *Waterhouse* v *Keen 4 B and C 200 Selmes* v *Judge L R 6 Q B 724 Midland Railway Co* v *Withington Local Board 11 Q B D 788 Cree* v *St Pancras Vestry [1899] 1 Q B 693 Hazeldine* v [illegible] *3 Q B 997 Lea* v *Facey 19 Q B D 35* [illegible] *4 L J M C 6 Heath* v

NOTICE—*concld*

Brewer 9 L T 653, Burling v *Harley 3 H and N 271 Booth* v *Clive 20 L J C P 151 Richard Spooner* v *Juddow 4 Moo I A 353 6 Moo P C 257 Chunder Sikhur* v *Obhoy Churn I L R 6 Calc 8 Shudangshu Bhusan* v *Bejoy Kali 3 C L J 376 Shama Bibee* v *Baranagore Municipality 12 C L J 410 Soonder Lall* v *Baillie 24 W R 287 Gopee Kishen Gossain* v *Ryland 9 W R 279* referred to SASANKA SEKHAR BANERJEE v SUDHANGSU MOHAN GANGULI (1920)
I L R 48 Calc 45

NOTICE OF ARRIVAL

See CARRIERS **I L R 41 Calc 703**

NOTICE OF DISHONOUR

See BILLS OF EXCHANGE
I L R 46 Calc 534

See NEGOTIABLE INSTRUMENTS ACT 1881
s 98 **I L R 33 All 4**

NOTICE OF EXECUTION

See EXECUTION OF DECREE
I L R 40 Calc 45

NOTICE OF LOSS

See COMMON CARRIERS
I L R 38 Calc. 50

NOTICE OF SUIT

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 80 **I L R 40 Bom 392**

See MADRAS COURT OF WARDS ACT 1902
s 29 **I L R 37 Mad 283**

See NOTICE

See SECRETARY OF STATE FOR INDIA
I L R 36 Calc 797
I L R 35 Bom 362

See UNITED PROVINCES COURT OF WARDS ACT (III OF 1899) s 48
I L R 36 All 331
I L R 37 All 13

NOTICE TO QUIT

See EVIDENCE ACT s 114
23 C W N 319

See LANDLORD AND TENANT

———— *Bengal Tenancy Act (VIII of 1885) ss 49 167 —Annulment of sub tenancies when necessary—Case of an invalid sub lease—Purchaser at a sale for arrears of rent and a purchaser under a conveyance distinction between* —The provisions of s 167 of the Bengal Tenancy Act for annulment of sub tenancies and the provisions of s 49 of the Act which require notice to quit to be served on the under raiyat have reference to cases where there is a subsisting tenancy which stands good against the landlord unless put an end to in the manner provided in those sections They have no application to a case where the sub lease is invalid from the beginning as against the landlord *Peary Mohun Mookerjee* v *Badul Chandra Bagdi I L R 33 Calc 203* and *Gangadhar Mondal* v *Rajendra Nath Ghosh 17 C W N 860* followed *Amirullah Mahomed* v *Nazir Mahomed I L R 31 Calc 932* and *Lal Mahomed Sarkar* v *Jamir Sheikh 13 C W N 913* distinguished There is a distinction between a purchaser at a sale for arrears of rent and a purchaser under a con

NOTICE TO QUIT—*contd*

revance *Lal Mahomed Sarkar* v *Jagir Sheikh* *13 C W N 913* referred to BHUBAN MOHAN GUHA v SHEIKH BADAN (1919)
I L R 46 Calc 766

NOTIFICATION

See FORFEITURE **I L R 41 Calc. 466**

See REVENUE SALE **L R 45 I A 205**

———— **defect in—**

See SALE FOR ARREARS OF REVENUE.
I L R 42 Calc 897

———— **publication of—**

See REVENUE SALE
I L R 41 Calc. 276

See SALE FOR ARREARS OF REVENUE
I L R 46 Calc 255

———— **By decree holder to the Court of payment—**

See EXECUTION OF DECREE
I L R 43 Calc 207

NOTIFIED AREA

———— **Leases of government land in—**

See REGISTRATION ACT (XVI OF 1908) ss 17 90 **I L R 36 All. 176**

NOVATION

See CONTRACT ACT 1872 s 62
I L R 2 Lah 323

See LIMITATION ACT 1908 ART 95
I L R 37 Bom 158

NOVELTY

See DESIGN **I L R 45 Calc 606**

NUISANCE

See BOMBAY CITY MUNICIPAL ACT 1888—

s 377 **I L R 34 Bom 346**

ss 379 AND 379A
I L R 36 Bom 81

See BOMBAY DISTRICT MUNICIPALITIES ACT 1901 s 151
I L R 44 Bom 738

See CALCUTTA MUNICIPAL ACT s 3
15 C W N 100

See EASEMENT **I L R 39 Calc 59**
I L R 42 Calc 46

See PENAL CODE ss 114 283
I L R 35 Bom 368

See RAILWAYS ACT s 120
25 C W N 603

———— **Hindus making noises to interfere with worship of Muhammadans—**

See SPECIFIC RELIEF ACT 1877 s 55
I L R 1 Lah 140

———— **Calcutta Municipal Act, s 632—**
Nuisance building sanctioned by Municipality if may be—Nuisance if must be public—Building in contravention of regulations if to be proceeded against only under s 449—Partition decree effect of

NUISANCE—*contd*

The term nuisance in s 632 of the Calcutta Municipal Act does not refer only to nuisance affecting the public generally It applies as well to nuisances affecting an individual The mere fact that the Municipality could have proceeded against a building erected contrary to the building regulations under s 449 of the Act does not preclude the Municipal Magistrate from interfering with it under s 632 at the instance of the person whose house has been deprived of light and air by the building If a building is a nuisance it is no answer in a proceeding under s 632 to say that the Corporation had sanctioned it Whether erected with or without sanction or in contravention of the building regulations or not any person residing in Calcutta affected by it can move the Magistrate and it is within the jurisdiction of the Magistrate to pass an order under s 632 if in his discretion he is so advised A partition decree previously passed which purported to specify the easements reserved to the portion which fell to the complainant cannot be held to override the provisions of the Calcutta Municipal Act which is directed to provide for public sanitation among other public conservations BHAGWAN DAS v RASH BEHARI MULLICK (1909)
14 C W N 637

———— **Public and private nuisance—** *Erection of a high wall on ones own land very close to another's dwelling house—Likelihood of injury to the health of the inmates of the adjoining tenements and of the public inhabiting the neighbourhood by the propagation of disease—Propriety of order of partial demolition—Feasibility of other remedial measures—Calcutta Municipal Act (Beng III of 1899) s 632* The words any nuisance in s 632 of the Calcutta Municipal Act mean any nuisance as defined in s 3 (29) thereof The definition though wider than that of a public nuisance at the common law does not extend to the inclusion of all private nuisances *Bhagwan Das* v *Rash Behari Mullick 14 C W N 637* explained The erection of a wall however high on ones own land very close to the dwelling house of a neighbour in order to prevent him from acquiring a right of easement is not in itself a nuisance under the Calcutta Municipal Act but where the evidence shows that it is or is likely to be injurious to the health of the resident of the adjoining tenements and of the public inhabiting the neighbourhood by propagating the seeds of consumption and typhoid it becomes a nuisance under the Act Where however the only matter which causes a wall to be a nuisance is not its height but the accumulation of filth at the bottom and want of space to clear the drainage between it and the adjacent house the Magistrate instead of ordering its reduction in height should consider whether the nuisance cannot be abated by the adoption of other remedial measures The use of the Act for the purpose of interfering in any way with the rights of private ownership beyond the limited powers given to the Corporation by it for the necessary protection of the public and the enforcement of proper sanitation is much to be deprecated KHAGENDRA NATH MITTER v BIRENDRA NARAIN DUTT (1910)
I L R 38 Calc. 296

———— **Legal nuisance—***Erection of horse stable when a nuisance—Easements Act (V of 1882) s 1—Degrees of nuisance—Value of expert*

NUISANCE—*contd*

medical evidence in a case of nuisance—Consideration of policy or abstract public rights outside the scope of inquiry—License from the Municipal Sanitary authorities for erection of stables no defence in an action for nuisance—Specific Relief Act (I of 1877)—Relief by injunction as well as damages—Plaintiffs suing as trustees interested in reversion and as residents—Civil Procedure Code (Act V of 1908) O I r 1 Prior to the year 1903, the first plaintiff was absolutely entitled to and possessed of a piece of land with a house standing thereon situate at Thakurdwar Road Bombay By an Indenture of Settlement dated the 12th of January 1903 the first plaintiff conveyed the said property to herself and her husband the second plaintiff upon trusts for the benefit of herself and her husband and their issue The defendant was the lessee for a period of 21 years commencing from 1st of January 1911 of an open piece of land adjoining the property of the plaintiffs and situate on the eastern side thereof The said piece of land was formerly used for many years and as the defendant alleged for nearly a century for tethering bullocks and keeping bullock carts up to the year 1908 when such user terminated In October 1913 the defendant erected a block of stables parallel to the length of the plaintiffs house and at a distance of about 20 to 35 feet therefrom for the accommodation of 75 horses to which was added another block for the accommodation of 35 hack carriages The plaintiffs complained that the stables erected by the defendant rendered their house uncomfortable and unhealthy and constituted a serious nuisance They also alleged that in consequence of the nuisance the tenant on the first floor vacated the same and that the plaintiffs and their family suffered in health and were obliged to remove to another house The plaintiffs sued in their double capacity as trustees interested in the reversion and as actual residents praying for a perpetual injunction to restrain the defendant from the continuance or repetition of the said nuisance and for damages in the sum of Rs 1 221 for nuisance caused up to the date of the suit or in the alternative for a sum of Rs 15 000 as damages for the depreciation in value of the plaintiffs property by reason of the said nuisance The defendant denied that the stables were a nuisance in law and pleaded without prejudice to his aforesaid contention—(a) that the nuisance complained of had been acquired by him as an easement (b) that the stables were erected in accordance with the Bye laws of the Bombay Municipality and the license of using them as stables was granted to him after the said premises were inspected and due inquiries made by the Municipal Commissioner and the Health Officer of Bombay and (c) that the plaintiffs were not entitled to sue in their double capacity *Held* (i) that under the Indian Easements Act whatever easement may have been acquired by the owners of the land to cause a nuisance to the adjacent servient tenement by the tethering of bullocks on the vacant land admittedly came to an end in the year 1908 i e considerably more than two years before the nuisance complained of came into existence and before the date of the suit (ii) that the nuisance complained of by the plaintiffs was totally different from the nuisance which previously existed and on general principle the defence of easement could not be sustained (iii) that if the nuisance existed it was no answer to say that the defendant had conformed to the latest requirements of the Municipal Sanitary authorities and had done everything in his power and taken all reasonable precautions to prevent its existence (iv) that the stables erected by the defendant, having regard to their size and their distance from their dwelling house of the plaintiffs constituted a nuisance (v) that having regard to the comprehensive language of O I r 1 of the Civil Procedure Code of 1908 there could not be any objection to the plaintiffs suing in their double capacity and that the plaintiffs were entitled to obtain relief by way of injunction and damages A legal nuisance is rather an evasive shifting and intangible thing hard to be pinned down by a verbal definition It must always be conditioned by time and place and circumstances and the Court shall have regard to the station in life of the plaintiff and his family and the locality and the nature of the nuisance complained of *Walter* v *Selfe 4 De G & Sm 315 322* and *Sturges* v *Bridgman 11 Ch D 852* referred to Where the nuisance was of the kind to injure the health or seriously imperil the life of those complaining of it the Court would not hesitate to prevent it by way of injunction but where the nuisance went no further than to diminish the comforts of human life there would always be a question whether the Court would proceed against him who causes that nuisance by injunction or compensate the sufferer in damages In the absence of statutory enactments no general considerations of mere policy or rather abstract public rights can be allowed to prevail against what the law recognises and always has recognised as the legal rights of the individual *The Attorney General* v *The Town Council of the Borough of Birmingham 6 W R 811* referred to BAI BHICAJI v PEROJSHAW JIVANJI (1915) **I L R 40 Bom 401**

———— **Sale of fish in railway shed**—*and its precincts in prohibited quantities resulting in attraction of crowds impeding of business and rendering the place offensive—Railways Act (IX of 1890) s 120 (b)* Where the Railway authorities prohibited the sale in their special delivery shed and its precincts of fish below certain quantities but the unauthorized sales went on and attracted large crowds obstructed the transaction of business for which the shed was intended impeded the removal of fish therefrom and more particularly rendered the place offensive *Held* that such sales amounted to a nuisance and that the petitioners having persisted in contributing to it were guilty under s 120 (b) of the Railways Act (IX of 1890) DROKI SEN v EMPEROR (1921)
I L R 48 Calc 1042

NULLITY OF DECREE

See DECREE I **I L R 39 Bom 34**

NULLITY OF MARRIAGE

See DIVORCE **I L R 48 Calc 283**

NUMBERS

See TRADE NAME INFRINGEMENT OF **I L R 41 Bom 49**

NUNC PRO TUNC

See ARBITRATION **14 C W N 759**

O

OATH

See OATHS ACT

——— Prescription as to due administration—

See UNITED PROVINCES EXCISE ACT (IV OF 1910) 60
I L R 35 All. 575

OATHS ACT (V OF 1840)

See CURATORS ACT (XIX OF 1841) ss 3 4 14 I L R 34 Bom 115

OATHS ACT (X OF 1873)

See RES JUDICATA
I L R 36 Mad. 287

——— s. 4—

See CURATORS ACT XIX OF 1841
I L R 34 Bom 115

See JUDICIAL PROCEEDING
I L R 37 Calc 52

——— s 5—

See WITNESS I L R 45 Calc 720

——— ss 5, 6 13—

See APPEAL I L R 41 Calc 406

——— *Evidence Act (I of 1872) s 118—Evidence—Statement of witness not recorded on oath—Capacity of child of tender years to testify* The fact that a Court has advisedly refrained from administering an oath to a witness is not sufficient by itself to render the statement of such witness inadmissible But a Court should only examine a child of tender years as a witness after it has satisfied itself that the child is sufficiently developed intellectually to understand what it has seen and to afterwards inform the Court thereof and if the Court is so satisfied it is best that the Court should comply with the provisions of s 6 of the Indian Oaths Act in the case of a child just as in the case of any other witness *Queen Empress* v *Maru I L R 16 All 207* dissented from EMPEROR v DHANI RAM (1915)
I L R 38 All 49

——— When in a trial for murder the Sessions Judge deliberately abstained from administering an oath or affirmation to the only eye witness to the murder on the ground that she was only 6 or 7 years of age held that the evidence was admissible *Queen Empress* v *Maru I L R 10 All 207 Queen Empress* v *Lal Sahai I L R 11 All 183* and *Queen Empress* v *Viraperumal I L R 16 Mad 105* dissented from In every case where a witness is competent within the meaning of s 118 of the Evidence Act 1872 the provisions of ss 5 and 6 of the Oaths Act 1873 should be complied with The omission of the Judge to examine accused under s 342 of the Criminal Procedure Code after the witnesses for the prosecution have been examined and before he is called on vitiates the trial FATU SANTAL v THE KING EMPEROR 6 Pat L J 148

——— ss. 5 and 13—*Evidence admissibility of where witness not sworn* The evidence of two children aged eight and six years was admitted against an accused person without the children having been sworn or affirmed *Held* that in view of s. 13 Indian Oaths Act the failure to administer oath or affirmation did not render the evidence inadmissible *Queen Empress* v *Viraperumal I L R 16 Mad 105* (PARKER J) followed *Queen Empress* v *Maru I L R 10 All 207* dissented from *Per* CURIAM S 5 of the Oaths Act is imperative and if a Court holds that a person may lawfully give evidence it is the duty of the Court to administer oath or affirmation to that witness PE CHINA VENKADU (1913)
I L R 38 Mad. 550

——— ss 8 9 10—*Principal and agent—Agent holding power of attorney to conduct suit for principal—Power of agent to agree to suit being decided according to statement on oath of defendant* A lady who was plaintiff in a suit gave to her husband a special power of attorney to conduct the case in her behalf as he should deem fit He was authorized to compromise or withdraw the suit to refer it to arbitration and to nominate arbitrators and finally the plaintiff said that every step that he might take in the conduct of the case was to be considered as having been taken by herself *Held* that the husband had power to take action under ss 8 9 and 10 of the Oaths Act 1873 *Sadashiv Rayaji* v *Maruthi Vithal I L R 14 Bom 455* dissented from WASI UZ ZAMAN KHAN v FAIZA BIBI (1915)
I L R 38 All 131

——— ss 9 11—*Special oath—Inadmissibility of special oath in proceedings under ss 14 and 15 of the Village Police Act (Bombay Act VIII of 1867)* Ss 9 to 11 of the Indian Oaths Act 1873 are not applicable to proceedings before a Village Police Patil under ss 14 and 15 of the Bombay Village Police Act 1867 *Queen Empress* v *Murarji Gokuldas (1888) 13 Bom. 389* followed *Per* SHAH J The proceedings before the Police Patil under ss 14 and 15 of the Village Police Act (VIII of 186) are essentially criminal proceedings and the same rule which applies to criminal proceedings ought to apply on general grounds to proceedings before the Village Patil so far as the effect of any special oath is concerned EMPEROR v CHIMAN (1920) I L R 45 Bom 96

——— s 13—

See APPEAL I L R 41 Calc 406

See UNITED PROVINCES EXCISE ACT (IV OF 1910) s 60
I L R 35 All 575

——— *Omission to administer oath or affirmation* Where in a case under s 304 Indian Penal Code a girl was examined as a witness without oath or affirmation the trial Judge being of opinion that she was too young to take oath or give affirmation *Held* that on the authority of the Full Bench in *Queen* v *Sewa Bhogta 14 B L R 294 (F B) (1874)* the omission to administer an oath or affirmation even if intentional would be cured by s 13 of the Oaths Act and the evidence of the child was admissible KING EMPEROR v SASHI BHUSAN MAITY
24 C W N 767

OBJECTION

See ATTACHMENT BEFORE JUDGMENT
I L R 38 Calc 448

See CIVIL P 1908 O XLI
R. 2 34 All 1

See CROSS O

OBLIGATION

See GIFT WITH OBLIGATION I L. R 42 Bom 93

OBSCENE PUBLICATION

——— *Religious poem of spiritual and allegorical character based on an incident narrated in a sacred book of great antiquity and dealing with the acts of divine beings—Work not calculated to deprave or corrupt morals—Penal Code (Act XLV of 1860) s 292—Finding of facts* The test of obscenity is whether the tendency of the matter charged as obscene is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands such a publication might fall. If in fact the work is one which would certainly suggest to the minds of the young of either sex or even to persons of more advanced years thoughts of a most impure and libidinous character its publication is an offence though the accused has in view an ulterior object which is innocent or even laudable *Reg* v *Hicklin L R 3 Q B 360* *Steele* v *Brannan L R 7 C P 261* *Queen Empress* v *Parashram Yeshwant I L R 20 Bom 193* *Emperor* v *Hari Singh I L R 28 All 100* *Empress* v *Indarman I L R 3 All 837* followed A religious or classical work does not become obscene within s 292 of the Penal Code simply on account of its containing some objectionable passage because the tendency of such publications is not to deprave or corrupt morals. If objectionable passages in a religious book are extracted and printed separately and they deal with matters which are to be judged by the standard of human conduct as where they relate to immoral acts of human beings and the tendency of such publication is to deprave and corrupt those whose minds are open to immoral influences the publication may not be justified though the passages form part of a religious book. Where however a story which appears objectionable is taken from a religious book and printed separately but it relates to beings whose conduct is not to be judged by the standard of human beings it is not an obscene publication as it would not on account of its religious character raise immoral thoughts in the minds of persons who believe in the divinity of beings whose acts and conduct are described in the story Where a poem was published in the Uriya language containing a story complete in itself so far as it goes of the dalliances of Radha and Krishna who were described as divine personages and their acts as supernatural the latter being represented to be a boy of five taken from the Uriya *Haribans* a very sacred book of the Uriyas the incidents and sentiments being the same as and the language not more objectionable than that of the original and it was in itself an old religious book of a spiritual and allegorical character which had often been published and registered without exception taken and which was apparently intended for Hindus who form the vast majority of the Uriyas and believe in the divinity of Radha and Krishna and do not consider their doings as immoral *Held* that the publication was not obscene within the meaning of s 292 of the Penal Code KHERODE CHANDRA ROY CHOWDHURY v EMPEROR (1911) I L. R 39 Calc 377

OBSTRUCTION

See CALCUTTA POLICE ACT (BENG IV OF 1866) s 66 (4) 22 C. W N 455

OBSTRUCTION—*contd*

See FIXTURE I L. R 48 Calc. 602

See MUNICIPAL COUNCIL I L R 38 Mad 6

See PENAL CODE—

Ss 114 283 I L. R 35 Bom. 368

S 283 I L. R 38 Mad 305

——— of Pathway—

See CRIMINAL PROCEDURE CODE ss 133 138 139 14 C W N 544

See PUBLIC PATHWAY I L. R 44 Calc 61

OCCUPANCY

See LAND REVENUE CODE BOMBAY—

Ss 56 214 I L. R 36 Bom 91

S 74 I L. R 41 Bom. 170

OCCUPANCY HOLDING

See ABANDONMENT 2 Pat. L. J 225

See AGRA TENANCY ACT (II OF 1901)—

Ss 11 *et seq* I L R 35 All. 474

S 20 I L. R 32 All. 623
I L. R 35 All. 405
I L R 40 All. 314
I L R 43 All. 547

S 20 (2) I L. R. 33 All. 136
I L. R 37 All. 278
I L. R 43 All. 547

S 21 I L R 33 All. 799

S 22 I. L. R 32 All. 314
I L R. 34 All. 419
I L R 37 All. 7 658
I L. R. 38 All. 325
I L. R 42 All. 668

S 34 I L R 40 All. 300

Ss 79 AND 95 I L. R 35 All. 299

Ss 95 167 I L. R 36 All. 48

See CIVIL AND REVENUE COURTS. I L. R 35 All. 464

See CIVIL PROCEDURE CODE O XX R 18 I L. R. 36 All. 461

See ESTOPPEL I L R 34 All. 533
I L. R 39 Calc 513

See JURISDICTION (CIVIL AND REVENUE COURTS) I L. R 42 All. 64

See LANDLORD AND TENANT I L R 43 Calc 164

See MANDADARI TENURE I. L. R 34 All. 155

See MORTGAGE I L. R. 39 All. 539

See N W P RENT ACT (XVIII OF 1873). I. L. R. 41 All. 356

See N W P RENT ACT (XII OF 1881) I L. R. 37 All. 444

S 9 I L. R. 39 All. 186

See ORISSA TENANCY ACT 1898 ss 31 250 3 Pat. L. J 351

See PROVINCIAL INSOLVENCY ACT (III OF 1907) ss 16 36 43 I. L. R 39 All. 120

ss. 16 AND 18 I. L. R 43 Calc. 510

OCCUPANCY HOLDING—*contd*

See RIGHT OF OCCUPANCY

See SUIT FOR CANCELLATION OF DOCUMENTS I L R 38 All 232

——— Occupant s right to cut trees

See FOREST ACT 1878

s. 75 I L R 45 Bom 111

——— transfer what amounts to recognition of—

See BENGAL TENANCY ACT 1885 s 86
1 Pat L J 414

——— transfer of a portion of—

See ENCUMBRANCE.
I L R 46 Calc 891

See LANDLORD AND TENANT
I L R 43 Calc 878

——— transfer of whole—

See BENGAL TENANCY ACT 1885 s 161
1 Pat L J 403

——— transfer of a portion without landlord's consent and subsequent surrender—

See BENGAL TENANCY ACT 1885 s 23
25 C W N 717

——— position of insolvent tenant—

See PROVINCIAL INSOLVENCY ACT 1907 s 16 & 56 I L R 43 All. 510

1 ——— **Mortgage**—*Suit by mortgagee—Co sharer landlord who has purchased in execution of money decree if may question transferability of holding* A co sharer landlord who has purchased an occupancy holding in execution of a decree of his own cannot resist a mortgagee s suit to enforce his mortgage on the holding on the ground that the holding was non transferable he himself being a purchaser without the landlord s consent taking the word landlord in its proper signification of the whole body of landlords *Ayenuddin Nasya* v *Srish Chandra Banerji 11 C W N 76* followed *Achanulla Sarkar* v *Salemonessa Bibi 9 C W N xxii* not followed HARO CHANDRA PODDER v UJESH CHANDRA BHATTACHARJEE (1909)
14 C W N 71

2 ——— **Transfer**—*Recognition by landlord—Receipt of rent from transferee as agent of transferor—Acquisition of occupancy right by adverse possession* The receipt by the landlord of rent from a transferee of a holding not on his own account but as an agent of the transferor is not a recognition of the transfer *Nobakumari Debi* v *Behari Lal Sen 11 C W N 865 s c I L R 34 Calc 902* distinguished *Khoodeeram Chatterjee* v *Rookhinee Boistobee 15 W R 197* and *Rasamoy Purkait* v *Srinath Moyra 7 C W N 132* referred to Case remanded for trial of the question whether the transferee had acquired the right to hold the land as an occupancy raiyat by possession as a raiyat for a period of 12 years and by assertion of his title as such DEBNARAIN DUTT v BAIDYA NATH (MADAK) NAPIT (1909)
14 C W N 68

3 ——— **Non transferability** *Question of if may be raised by assignee of holding pending mortgage suit—Consent of landlord obtained subsequently to filing written statement* A purchaser of an occupancy holding from the raiyat after a decree for sale has been passed in favour of a mortgagee of the holding but before sale there of is bound by the sale both becau e a mortgagor and consequently an assignee from him cannot be allowed to deny the mortgagee s title and also by reason of the operation of the rule of *lis pendens* The rule of *lis pendens* is applicable to proceedings to realise the mortgage after the decree for sale The purchaser cannot be allowed to raise the question of non transferability of the holding when in his written statement he stated that his purcha e had not been recognised by the landlord by showing that such recognition on the part of the landlord has been subsequently obtained. An occupancy raiyat is estopped from setting up as between himself and a mortgagee of the holding the invalidity of the mortgage SHAYAMA CHARAN BHATTACHARYA v MOKHUDA SUNDARI DEBI (1911)
15 C W N 703

4 ——— **Transferability**—*Usage of how established—Usage should be grown up and not growing—Usage after it has grown up may apply to pre existing tenancies—Bengal Tenancy Act (VIII of 1885) s 50—Presumption if applies to suit to eject transferee of holding—Misconstruction of written evidence—Second appeal—Civil Procedure Code (Act V of 1908) s 100* In order to prove a custom or usage of transferability of occupancy holdings what is necessary to prove is that such transfers have been made to the knowledge and without the consent of the landlord and that they have been recognised by him either without the payment of *nazar* or upon payment of a *nazar* also fixed by custom. It is not necessary to prove that the landlord has actually made an objection to a transfer and has been unsuccessful. The usage to be effective must not be a growing usage but one which has already grown up A usage of transferability after it has grown up affects not merely tenancies created thereafter but also existing tenancies *S 50 of* the Bengal Tenancy Act has no application in a suit for ejectment by the landlord on the allegation that the tenant of a non transferable holding has sold it to the defendant and has abandoned the land as such a suit is obviously not a suit or proceeding under the Bengal Tenancy Act But even in cases where the section is not directly applicable the Court may act on a similar presumption if the facts justify the necessary inference Although the misconstruction of a document which is the foundation of the suit or which is in the nature of a contract or a document of title is a ground for second appeal such appeal does not lie because some portion of the evidence is in writing and the Judge in the Court below makes a mistake as to the meaning of it BUZLUL KARIM v SATIS CHANDRA GIRI (1911) 15 C W N 752

5 ——— **Usufructuary mortgage by tenant**— *Tenant remaining on land as sub-lessee of portion of holding and paying rent—Abandonment—Ejectment* The execution by a tenant of a mortgage of his non transferable occupancy holding does not by itself amount to an abandonment of the holding becau e it is only on the assumption that the tenancy continues in operation that the mortgagee can have any subsisting interest in the land. *Krishna Chundra Dutta* v *Miran Bayania, 10 C W N 499* and *Rasik Lall Dutt* v *Bidhumukhi Dasi 10 C W N 719 4 C L J 306* referred to Where an occupancy raiyat executed a usufructuary mortgage of his holding but continued to pay rent to the landlord and remained in possession of a portion of the holding as a sub

OCCUPANCY HOLDING—*contd*

under the mortgagor *Held* that the landlord was not entitled to treat the raiyat as a trespasser and sue him in ejectment CHOWDHURY MAHADEO PERSHAD v SHEIKH PACHKAPI (1911)
16 C W N 322

6 ———— **Dispossession by landlord of raiyat for two years**—*If extinguishes tenant s title—Limitation Act 1877 (XV of 1877) s 28—Bengal Tenancy Act (VIII of 1885) Sch III Art 3—Mortgage of holding to Government for agricultural loan—Sale under Public Demands Recovery Act (Beng I of 1895)—Interest which passes—Adverse possession against mortgagor if adverse to mortgagee* An occupancy raiyat borrowed money from Government for agricultural purposes on the security of his holding but having failed to pay up a certificate under the provisions of the Public Demands Recovery Act was issued for the realization of his debt and the holding was sold *Held* that only the right title and interest of the raiyat passed under the sale as the Secretary of State for India in Council in adopting the procedure of the Public Demands Recovery Act which does not contemplate the realization of a security must be taken to have abandoned the security That the Secretary of State for India in Council could enforce the security only by a regular suit NANDA KULAB DEY v AJODHYA SAHU (1911)
16 C W N 351

7 ———— **Sale in execution of decree—Consent of fractional landlord**—*Sale if legal.* Where a decree holder s application for sale of an occupancy holding was granted to the extent of a 15 annas share upon the finding that co sharer landlords to that extent had consented to the sale *Held* that in the present state of authorities the order should be maintained the purchaser purchasing at his peril SHAKARUDDIN CHOUDRY v RANI HEMANGINI DASI (1911)
16 C W N 420

But see POST **19 C W N 814**
2 Pat L J 530

8 ———— **Mortgage by raiyat**—*Subsequent transfer to stranger—Collusive suit by landlord for ejectment and recovery of possession—Landlord if in possession under paramount title—Suit on mortgage—Landlord if necessary party—Transfer of Property Act (IV of 1882) s 85* When it is found that a landlord obtained possession of an occupancy holding alleged to be non transferable by bringing a collusive suit for ejectment against a transferee from the raiyat. *Held* that in a suit by a mortgagee of the holding on his mortgage the landlord would be a proper party his possession of the holding resting on acquisition from the transferee and not on a paramount title *Jogeswar Dutt v Bhuban Mohan Mitra I L R 33 Calc 425* distinguished PANCHANAN GHOSE v MIR ABDUL MOLIK (1912)
16 C W N 920

9 ———— **Transferability—Bengal Tenancy Act—(VIII of 1885)**—*Custom and usage proof of—Sale in execution of decree—Landlord's consent on receipt of nazarana* Where *na ara* were as a rule paid to the zemindar and on payment of the *nazar* the purchaser was usually recognised by the landlord. *Held* that it was not evidence of any custom or usage by which an unwilling landlord was bound or evidence that the landlord was compelled to recognise the purchaser on payment of nara whether he wished to do so or not

OCCUPANCY HOLDING—*contd*

BHOGIRATH CHANDRA MANDAL v SITAL CHANDRA SIRKAR (1912)
16 C W N 955

10 ———— **Mortgage taken by landlord if evidence of transferability**—*Assignment of mortgage by landlord to another effect of—Assignment to purchaser of holding if recognition of the purchaser s tenancy* The fact of a landlord himself taking a mortgage of a non transferable holding is by itself no evidence of its transferability Where however the landlord allowed a purchaser of the holding to take an assignment of his mortgage from him *Held* that he was stopped from denying that the purchaser had acquired a valid title by his purchase A mere assignment of the mortgage by the landlord to a third person by itself would not amount to anything more than a representation that the mortgage was valid and could be enforced against the *jote* MAHESH NARAIN ROY v MAHARAJA BAHADUR SINGH (1912)
17 C W N 70

11 ———— **Transfer—Acceptance of rent from transferee—if evidence of validity of transfer**—*Pleader scope of authority of* The acceptance of rent from the transferee of a non transferable occupancy holding not as transferee but as the agent or representative of the original tenant does not amount to a recognition of the validity of the transfer *Khoodeeram Chatterjee v Rukhinee Boistobee 15 W R 197 Gour Lal v Rameshwar 6 B I R App 92 Wilson v Radhadulari 2 C W N 63 Rasamoy Purkait v Srinath Moyra 7 C W N 132* relied on *Kurani Dasi v Sajoni Kant 12 C W N 539* referred to *Baroda Churn Dutt v Hemlata Dasi 13 C W N 833 Thomas Barslay v Hossein Ali Khan 6 C L J 601 Naba Kumari v Behary Lal 11 C W N 865 I L R 34 Calc 902* distinguished DIGBIJOY ROY v ATA RAHMAN (1911) **17 C W N 156**

12 ———— **Transfer contrary to local usage of portion of holding,** *if constitutes forfeiture of tenancy—Surrender of portion of holding—Landlord's right to re enter that portion—Encumbrance created prior to surrender effect of* Where the entire holding of an occupancy raiyat has not been transferred contrary to local usage and custom it cannot be said that there has been a forfeiture of the tenancy *Rai Kamaleswari Persad Singh Bahadur v Maharaja Harbullabh Narain Singh Bahadur 2 C L J 369* followed Where a raiyat surrenders a portions of his holding to the landlord the landlord in entitled to re enter the portion notwithstanding any subordinate rights which the raiyat may have created upon the particular portion and the mere fact that the landlord was aware of the encumbrance created by the raiyat can not take away his right of re entry *Badan Chandra Das v Rajeswari Debya 2 C L J 570* and *Rajendra Kishore Adhikari v Chandra Nath Dutta 12 C W N 878* referred to GAGAN CHANDRA CHOUDRY v ALAK CHAND SAHA (1913) **17 C W N 698**

13 ———— **Abandonment**—*If question of fact—Usufructuary mortgage—Raiyat if necessary party in suit to recover from transferee* Where an occupancy raiyat mortgaged his non transferable occupancy holding by way of an usufructuary mortgage for a certain number of years and the mortgagees continued in possession of the land through their *burgadar* even after the expiry of the term and the lower Appellate Court found that the raiyat did not live in the village and had cut

OCCUPANCY HOLDING—*contd*

off connection with the holding *Held* that the finding amounted to holding that the raiyat had abandoned the jama The mere execution of an usufructuary mortgage might not be sufficient to establish abandonment whether there has been abandonment of a holding or not is principally a question of fact The conditions prescribed by s 87 of the Bengal Tenancy Act do not preclude a landlord from entering upon a land abandoned by tenant The raiyat was not a necessary party to a suit to recover a non transferable holding from the transferees thereof nor would he be bound by the decree in the suit MONOHAR LAL *v* ANANTA MOYEE DASEE (1913) 17 C W N 802

14 ———— **Transfer of portion without landlord's consent**—*Surrender by original raiyat to landlord—Landlord if may eject transferee—Abandonment* After the sale by an occupancy raiyat of a portion of his holding the raiyat may surrender that portion or the whole of the holding to his landlord and s 87 cl (7) of the Bengal Tenancy Act is no bar to the landlord accepting the surrender as the interest if any of the transferee which the landlord is not bound to recognise is not an incumbrance Upon such surrender the landlord may sue to eject the transferee as a trespasser *Kabil Sardar v Chandra Nath I L R 20 Calc 590* distinguished The remedy of the transferee if any is against his vendor RAMONI MOHAN RAY *v* SHEIKH KALIMUDDI (1912) 17 C W N 1101

15 ———— **Transfer by tenant of whole—Landlord s right to eject transferee**—*Disclaimer by original tenant if must be proved—Original tenant if necessary party—Custom of transferability—Nazar payment of* In order to entitle a landlord to eject a transferee of the whole of a non transferable raiyati holding it is not necessary for him to prove as a fact that the raiyat has left the holding and disclaims any interest in it It is a direct inference from the fact that he has sold the entire holding and given possession of it to the purchaser and distinct repudiation or refusal to pay rent need not be proved Unless the *nazar* is fixed by custom the landlord is not bound to recognise a transfer upon payment of *nazar* *Badal Karim v Satish Chandra Giri 15 C W N 752 756* referred to In a suit by the landlord to eject a transferee of a non transferable holding the transferor is not a necessary party CHAND PRAMANIK *v* POMONY MOHAN RAY (1912) 17 C W N 1105

16 ———— **Non transferable occupancy holding whether devisable by will**—*Bengal Tenancy Act (VIII of 1885) ss 26 178 sub s (3) cl (d)—Heir if estopped by testator s act from claiming inheritance under the statute* A non transferable occupancy holding cannot be the subject of a valid testamentary disposition In the case of a testamentary devise of such a holding the heir at law is not debarred by the doctrine of estoppel from questioning its validity *Hari Das Bairagi v Udoy Chandra Das 12 C W N 1056 8 C L J 261* not followed AMULYA RATAN SIRCAR *v* TARINI NATH DEY (1914) I L R 42 Calc 254 18 C W N 1290

17 ———— *Not transferable by custom* **or local usage if can be sold wholly or partially in execution by co sharer landlord**—*When raiyat objects to sale* A co sharer landlord is not entitled to sell the whole or part of an occupancy holding not transferable by custom or local usage in execution of a decree obtained for his share of rent when the raiyat objects to the sale The Full Bench decision in *Dayamoyi Dasi v Annada Mohan Roy 18 C W N 971* by implication holds that the raiyat is entitled to have a sale of the holding in execution of a money decree set aside after it takes place and that the holding cannot be sold in execution of such a decree when the raiyat objects to the sale before it takes place This view is in accord with the cases of *Durga Churn Mondul v Kali Prosanna Sircar I L R 26 Calc 727 s c 3 C W N 586 Sadagar Sirkar v Krishna Chandra Nath 3 C W N 742* and *Sheikh Jarip v Ram Kumar De 3 C W N 747* The principle deducible from the Full Bench decision is applicable to an involuntary transfer of the whole as well as of a part of the holding BADRANNESSA CHOUDHRANI *v* ALAM GAZI (1915) 19 C W N 814

18 ———— **Revenue Sale Law 1859 s 37—Occupancy raiyats at fixed rates**—*Purchaser—Doctrine of Protection—Its extension* The protection of occupancy raiyats at fixed rates referred to in s 37 of the Revenue Sale Law (Act XI of 1859) is not one of the ordinary exceptions in that section It is a proviso expressing the determination of the Legislature that no purchaser shall disturb any of the permanent tenants on the land who are in actual occupation of the soil and are cultivating it This doctrine of protection has recently been extended to ordinary occupancy raiyats *Sarat Chandra Roy v Asiman Bibi I L R 31 Calc 725* referred to *Bhut Nath Naskar v Surendra Nath Dutt 13 C W N 1025* distinguished ABDUL GANI CHOWDHURY *v* MAKBUL ALI (1914) I L R 42 Calc 745

19 ———— **Transferability of part or whole**—*Consent of landlord—Operation of transfer as against raiyat landlord and other persons—Civil Procedure Code (Act XIV of 1882) s 244—Bengal Tenancy Act (VIII of 1885) s 87* In transfers for value of occupancy holdings *apart from custom or local usage* (i) The transfer of the whole or a part is operative against the raiyat —(*a*) Where it *is made voluntarily* (*b*) *where it is made involuntarily* and the raiyat with knowledge fails or omits to have the sale set aside A sale is made involuntarily where it is in execution of a money decree but not of a decree founded on a mortgage or charge voluntarily made (ii) The transfer is operative as against the landlord in all cases in which it is operative against the raiyat provided the landlord has given his previous or subsequent consent Where the transfer is a sale of the whole holding the landlord in the absence of his consent is ordinarily entitled to enter on the holding but where the transfer is of a part only of the holding or not by way of sale the landlord though he has not consented is not ordinarily entitled to recover possession of the holding unless there has been (*a*) an abandonment within the meaning of s 87 of the Bengal Tenancy Act or (*b*) a relinquishment of the holding or (*c*) a repudiation of the tenancy Whether there has been a relinquishment or repudiation or not depends on the substantial effect of what has been done in each case (iii) The transfer *of the whole or a part is operative as against all* other persons where it is operative against the raiyat DAYAMAYI *v* ANANDA MOHAN ROY CHOWDHURY (1914) I. L. R 42 Calc. 172 18 C W N 971

OCCUPANCY HOLDING—*contd*

19 (*a*) ———— Ejectment—*Notice to quit* —The raiyats of certain lands in dispute executed a mortgage of their lands and put the mortgagee in possession Subsequently the mortgagee settled the land with the under raiyats The superior land lord then brought a suit for rent against his raiyats and purchased the holding at a sale for arrears of rent Thereafter the landlord sold permanent raiyati to one Meajan who after having taken a lease from the landlord and redeemed the mortgage sold the same to the present Plaintiffs who brought a suit to eject the under raiyats *Held* that the occupancy still continued to exist after the sale but there had been due notice to quit given YAKUB ALI v MEAJAN

I L R 43 Calc 164

20 ———— Receipt of rent by landlord from mortgagee of—*Effect of—Recognition* Receipt by the landlord of an occupancy holding with or without protest of rent deposited by the mortgagee as such is a recognition of the rights of *the mortgagee and the landlord cannot evict the* mortgagee as a trespasser MATOOKDHARI SHUKUL v JUGDIP NARAIN SINGH (1914)

19 C W N 1319

21 ———— Non transferable—Purchaser of share—*Rights of as to possession against land lord* Plaintiffs Nos 2 and 3 were tenants in respect of one half only of an occupancy holding which was not transferable and the plaintiff No 1 purchased their interest *Held that the plaintiff as* purchaser of a share of an occupancy holding was entitled to possession even as against the landlord who had no right to take possession of the property PURNA CHANDRA TRIVEDI v CHANDRA MOHINI DASSI (1916) 20 C W N 588

22 ———— Non transferable—Sale [illegible] by landlord in execution of rent decree—*Under Civil Procedure Code presented by deposit by purchaser from registered tenant—Withdrawal of deposit by landlord if amounts to recognition of purchaser as tenant* Prior to the passing of the Bengal Tenancy (Amending) Act of 1907 a co sharer landlord obtained a decree for rent against the registered tenant of a non transferable occupancy holding in favour of himself and his other co sharer He took out execution under the Civil Procedure Code and not under the provisions of the Bengal Tenancy Act The plaintiff who had purchased the holding in execution of a money decree against the registered tenant deposited the decretal amount in Court for payment to the decree holder landlord alleging in his petition that he had acquired a right to the holding by purchase and that he made the deposit to protect his right and reserved his right to realise the amount deposited by him from the former tenant or his heir as the tenants of the holding The decree was thereupon treated as satisfied and the attachment was withdrawn and the amount deposited was withdrawn by the landlord *Held that upon such deposit the land lord* could not as in a case under the Bengal Tenancy Act contest the right of the purchaser to make the deposit and the withdrawal of the deposit did not amount to a recognition of the purchaser by the landlord *Thomas Barclay v Syed Hossein Ali Khan 6 C L J 601* and *Nalini B h ry Raj v Fulmani Dasi 14 C L J 338 391* distinguished SURENDRA NARAIN MAHATA v JUGAL KISHORE GHOSH (1916) 20 C W N 849

23. ———— Non transferable—Whether fresh settlement holder required to serve notice on under-raiyat after ejectment of transferee—*By landlord—Notice—Bengal Tenancy Act (VIII of 1885) s 49 cl (b)* Where a person has obtained settlement of a holding from the superior landlord after the latter had ejected the transferee of the occupancy raiyat from the said holding as it was not transferable he is not required to serve a notice to quit on the under raiyat under s 49 of the Bengal Tenancy Act in his suit for ejectment *Nilkanta Chal v Ghatoo Sheikh 4 C W N 667* and *Badan v Rajeswari 2 C L J 570* followed *Lal Mahomed Sarkar v Jagir Sheikh 13 C W N 913 Amirullah Mahomed v Nazir Mahomed I L R 31 Calc 932 Amirullah Mahomed v Nazir Mahomed I L R 34 Calc 104* and *Raghunath Singh v William Cox 19 C W N 268* distinguished JADAB SARDAR v GOBINDA CHANDRA MANDAL (1916)

I L R 44 Calc 272

24 ———— Hindu Joint Family—*Occupancy holding held under joint family not transferable without landlord s consent—Power of karta to recognise transfer* The *karta* of a joint Hindu family has authority to consent on behalf of the *joint family to the transfer of an occupancy hold* ing held by the tenants under the joint family as landlords and not transferable without their consent duly given by themselves or on their behalf GOLAPDI MEAH v PURNO CHANDRA DUTTA (1917)

21 C W N 774

25 ———— Attachment—*Objection of raiyats—Consent of landlords* A non transferable occupancy holding or a part of it cannot be sold in execution of a decree for money obtained against the raiyat when the raiyat objects to the sale on the ground of non transferability even if the land lords give their consent to the sale The above rule does not as expressly laid down by the Full Bench in *Dayamayi v Ananda Mohan Roy Chaudhuri I L R 42 Calc 172 18 C W N 971* apply to a sale held in execution of a decree founded on a mortgage or charge voluntarily made by the raiyat *Bairannessa Choudhrani v Ilam Gazi 19 C W N 814* referred to *Ananda Das v Putna lar Panda 7 C W N 572 Shakaruddin Choudhry v Rani Hemangini Dasi 16 C W N 490* commented on NARAYANI v NABIN CHANDRA CHAUDHURI (1916) I L R 44 Calc 720

26 ———— Gift validity of—*Revocation of gift—Transfer of Property Act (IV of 188) ss 122 123 126* In cases of transfer by gift of occupancy holdings the question of transferability cannot be raised by the heir of the donor to the prejudice of the donee or his representative in interest *Rahim Jan Bibi v Imam Jan 17 C L J 173* referred to Where a gift duly registered and executed is not suspended or made revocable on the happening of any specified event or in any of *the cases (save want or failure of consideration)* in which, if it were a contract it might be rescinded as provided for in s 126 of the Transfer of Property Act it cannot be maintained that the property comprised in such gift continued to form part of *the estate of the donor The property ceased to* be part of the donor s estate and the heir did not succeed thereto by right of inheritance In cases of transfers for value the title passes from the transferor to the transferee although the validity

OCCUPANCY HOLDING—*contd*

of the transfer is liable to be questioned by the landlord who is not a party to the transaction and may possibly refuse to recognise the transfer *Dwarmnath v Ananda Mohan Roy Chowdhury I L R 4? Cal 152* followed *Villers v Beaumont 1 Vern 101* referred to *Milroy v Lord 4 D G F & J 264 Richards v Delbridge L R 18 Eq 11 Amulya Ratan Sircar v Tarini Nath Dey I L R 42 Calc 254* distinguished. BEHARI LAL GHOSE v SINDHUBALA DASI (1917)

I L R 45 Calc 434

27 ———— **Part of holding bequest of**—*—If valid—Principle of estoppel and waiver or acquiescence if applies* The testamentary disposition of a part of a non transferable occupancy holding like that of the whole holding is invalid and it was so held in a suit by the devisee against the raiyat s heir at law UMESH CHANDRA DUTTA v JOY NATH DAS (1917) **22 C. W N 474**

28 ———— **Custom of payment of nazar**—In order to establish a custom of transferability subject to the payment of a customary nazar the evidence must show that the landlord is bound to recognise when *nazar* of the amount or at the rate determined by custom is tendered to him A practice or course of business in a zemindary office according to which a transferee is recognised provided that the amount of the nazar is satisfactory to the landlord is not sufficient The payment of nazar without more is an indication that the *notes* are not transferable without the landlord s consent given on receipt of the nazar A custom which leaves the amount or rate of nazar indefinite must be void for uncertainty MINA KUMARI v ICCHHAMOYEE CHAUDHURANI (1918) **22 C W N 929**

29 ———— **Gomasta s power to sanction transfer**—In order to rely on a receipt granted by a landlord s Gomasta as evidence of recognition by the landlord of a transfer of a holding it is necessary for the transferee to show that the Gomasta s duties actually or ostensibly included at least some of the duties of management JANKI SAHU v THAKUR RAM BAHADUR SINGH

2 Pat L. J 231

30 ———— **Purchaser of non transferable occupancy holding whether entitled to object to sale of holding**—*Code of Civil Procedure (Act V of 1908) s 47 and O XXI r 100* The purchaser of the whole or part of an occupancy holding not transferable by custom is a representative of the judgment debtor and entitled to object under s 47 of the Code of Civil Procedure 1908 to a sale of the holding in execution of a decree for rent He is therefore not entitled to maintain proceedings under O XXI r 100 PANCHABATAN KOERI v RAM SAHAY SINGH

3 Pat L J 579

31 ———— **Transferability**—A 16 anna landlord cannot sell his raiyat s occupancy holding in execution of a money decree unless the raiyat s occupancy holding is transferable by usage MACPHERSON v DEBIBHUSAN LAL

2 Pat. L J 530

32. ———— **Transferability of, in execution of money decree**—*Orissa Tenancy Act (B & O Act II of 1913) s 31 (1)* An occupancy tenant in Orissa is entitled to object to the sale of his holding in execution of a money decree on the ground that the holding is not transferable without the consent of the landlord MADHU PADHAN v JAGU JEN **4 Pat L. J 294**

33 ———— **Transfer of portion of non transferable—Collusive rent suit between landlord and transferor**—*Deposit of transferee—Suit to set aside fraudulent decree and for recovery of deposit—Bengal Tenancy Act (VIII of 1885) s 170 (3)—Principles governing transfers of non transferable holdings—Fraud* The recorded tenant of a non transferable occupancy holding sold a portion of his holding Subsequently the landlord brought a collusive suit for rent against the transferor and obtained a decree The transferee deposited the decretal amount and costs under s 170 (3) of the Bengal Tenancy Act and the deposit was withdrawn by the landlord In a suit by the transferee to set aside the decree and for recovery of the amount withdrawn *Held* (1) that at the time of the deposit it had not been finally decided that the transferee of a portion of a non transferable occupancy holding is not entitled to make deposit under s 170 (3) the plaintiff was justified in adopting the only course at that time open to him to save the holding from sale and the suit was maintainable although there was no privity of contract between the parties (2) That the deposit should be considered as money paid under terror of inceptive legal proceedings fraudulently directed against the transferee and as such recoverable (3) That the decree obtained against the recorded tenant was void not only against the latter but was a nullity (4) That in such a case irrespective of a deposit if the transferee has suffered actual damage by an unlawful infraction of his legal rights the suit would be maintainable The following principles govern the transfer of the whole or a portion of a non transferable occupancy holding —(i) Where the transfer is a *sale* of the *whole* holding the landlord is ordinarily entitled to enter on the holding (ii) (a) Where the transfer is *otherwise than by sale* of the whole holding and (b) Where the transfer is a *part* only of the holding whether *by sale or otherwise* the landlord is not ordinarily entitled to recover possession unless there has been an abandonment within the meaning of s 87 of the Bengal Tenancy Act or a repudiation of the tenancy (iii) The transferee of a portion of a non transferable accupancy holding has certain interests and legal rights which for certain purposes are limited by the provisions of the Bengal Tenancy Act read with the provisions of the Code of Civil Procedure 1908 (iv) All such transferees have irrespective of the Bengal Tenancy Act and altogether *dehors* that Act certain legal rights which if infringed the Common Law of the land will not be powerless to protect in appropriate cases (v) One of such rights is the right to possession which the transferee has even against the landlord until abandonment relinquishment or repudiation takes place (vi) The Common Law imposes an obligation on the landlord to refrain from extinguishing the rights of the transferee by committing a tortious act in conspiracy with a third person If this obligation is not observed and damage to the transferee results the Common Law may be invoked to vindicate the latter s rights (vii) The period at which damage accrues may vary in different cases but as soon as it does accrue the transferee may immediately institute a suit to attack all fraudulent proceedings between the landl

OCCUPANCY HOLDING—*contd*

19 (*a*) ———— **Ejectment**—*Notice to quit* —The raiyats of certain lands in dispute executed a mortgage of their lands and put the mortgagee in possession Subsequently the mortgagee settled the land with the under raiyats The superior land lord then brought a suit for rent against his raiyats and purchased the holding at a sale for arrears of rent Thereafter the landlord sold permanent raiyati to one Meajan who after having taken a lease from the landlord and redeemed the mortgage sold the same to the present Plaintiffs who brought a suit to eject the under raiyats *Held* that the occupancy still continued to exist after the sale but there had been due notice to quit given YAKUB ALI *v* MEAJAN

I L R 43 Calc 164

20 ———— **Receipt of rent by landlord from mortgagee of**—*Effect of*—*Recognition* Receipt by the landlord of an occupancy holding with or without protest of rent deposited by the mortgagee as such is a recognition of the rights of the mortgagee and the landlord cannot evict the mortgagee as a trespasser MATOOKDHARI SHUKUL *v* JUGDIP NARAIN SINGH (1914)

19 C W N 1319

21 ———— **Non transferable—Purchaser of share**—*Rights of as to possession against landlord* Plaintiffs Nos 2 and 3 were tenants in respect of one half only of an occupancy holding which was not transferable and the plaintiff No 1 purchased their interest *Held* that the plaintiff as purchaser of a share of an occupancy holding was entitled to possession even as against the landlord who had no right to take possession of the property PURNA CHANDRA TRIVEDI *v* CHANDRA MOHINI DASSI (1916) **20 C W N 586**

22 ———— **Non transferable—Sale by landlord in execution of rent decree**—*Under Civil Procedure Code prevented by deposit by purchaser from registered tenant*—*Withdrawal of deposit by landlord if amounts to recognition of purchaser as tenant* Prior to the passing of the Bengal Tenancy (Amending) Act of 1907 a co sharer landlord obtained a decree for rent against the registered tenant of a non transferable occupancy holding in favour of himself and his other co sharer He took out execution under the Civil Procedure Code and not under the provisions of the Bengal Tenancy Act The plaintiff who had purchased the holding in execution of a money decree against the registered tenant deposited the decretal amount in Court for payment to the decree holder landlord alleging in his petition that he had acquired a right to the holding by purchase and that he made the deposit to protect his right and reserved his right to realise the amount deposited by him from the former tenant or his heir as the tenants of the holding The decree was thereupon treated as satisfied and the attachment was withdrawn and the amount deposited was withdrawn by the landlord *Held* that upon such deposit the landlord could not as in a case under the Bengal Tenancy Act contest the right of the purchaser to make the deposit and the withdrawal of the deposit did not amount to a recognition of the purchaser by the landlord *Thomas Barclay* v *Syed Hossein Ali Khan 6 C L J 601* and *Nalini Behary Pal* v *Fulmani Dasi 14 C L J 388 391* distinguished SURENDRA NARAIN MAHATA *v* JUGAL KISHORE GHOSH (1916) **20 C W N 849**

OCCUPANCY HOLDING—*contd*

23. ———— **Non-transferable—Whether fresh settlement holder required to serve notice on under-raiyat after ejectment of transferee**—*By landlord*—*Notice*—*Bengal Tenancy Act (VIII of 1885) s 49 cl (b)* Where a person has obtained settlement of a holding from the superior landlord after the latter had ejected the transferee of the occupany raiyat from the said holding as it was not transferable he is not required to serve a notice to quit on the under raiyat under s 49 of the Bengal Tenancy Act in his suit for ejectment *Nilkanta Chaki* v *Ghatoo Sheikh 4 C W N 667,* and *Badan* v *Rajeswari 2 C L J 570* followed *Lal Mahomed Sarkar* v *Jagir Sheikh 13 C W N 913 Amirullah Mahomed* v *Nazir Mahomed I L R 31 Calc 93? Amirullah Mahomed* v *Nazir Mahomed I L R 31 Calc 104* and *Raghunath Singh* v *William Cox 19 C W N 268* distinguished JADAB SARDAR *v* GOBINDA CHANDRA MANDAL (1916)

I L R 44 Calc 272

24 ———— **Hindu Joint Family**—*Occupancy holding held under joint family not transferable without landlord s consent*—*Power of karta to recognise transfer* The karta of a joint Hindu family has authority to consent on behalf of the joint family to the transfer of an occupancy holding held by the tenants under the joint family as landlords and not transferable without their consent duly given by themselves or on their behalf GOLAPDI MEAH *v* PURNO CHANDRA DUTTA (1917)

21 C W N 774

25 ———— **Attachment**—*Objection of raiyats*—*Consent of landlords* A non transferable occupancy holding or a part of it cannot be sold in execution of a decree for money obtained against the raiyat when the raiyat objects to the sale on the ground of non transferability even if the landlords give their consent to the sale The above rule does not as expressly laid down by the Full Bench in *Dayamayi* v *Ananda Mohan Roy Chaudhuri I L R 42 Calc 172 18 C W N 971* apply to a sale held in execution of a decree founded on a mortgage or charge voluntarily made by the raiyat *Badrannessa Choudhrani* v *Alam Gazi 19 C W N 814* referred to *Ananda Das* v *Rtoo Har Panda 7 C W N 572 Shakaruddin Choudhry* v *Rani Hemangini Dasi 16 C W N 420* commented on NARAYANI *v* NABIN CHANDRA CHAUDHURI (1916) **I L R 44 Calc 720**

26 ———— **Gift validity of**—*Revocation of gift*—*Transfer of Property Act (IV of 1882) ss 122 123 126* In cases of transfer by gift of occupancy holdings the question of transferability cannot be raised by the heir of the donor to the prejudice of the donee or his representative in interest *Rahim Jan Bibi* v *Imam Jan 17 C L J 173* referred to Where a gift duly registered and executed is not suspended or made revocable on the happening of any specified event or in any of the cases (save want or failure of consideration) in which if it were a contract it might be rescinded as provided for in s 126 of the Transfer of Property Act it cannot be maintained that the property comprised in such gift continued to form part of the estate of the donor The property ceased to be part of the donor s estate and the heir did not succeed thereto by right of inheritance *In cases of transfers for value the title passes from the transferor to the transferee although the validity*

OCCUPANCY HOLDING—*contd*

o the transfer is liable to be questioned by the landlord who is not a party to the transaction and may possibly refuse to recognise the transfer *Dayamayi* v *Anandi Mohan Roy Chowdhury I L R 42 Calc 172* followed *Villers* v *Beaumont 1 Vern 101* referred to *Milroy* v *Lord 4 D G F & J 261 Richards* v *Delbridge L R 18 Eq 11 Amulya Ratan Sircar* v *Tarini Nath Dey I L R 42 Calc 254* distinguished BEHARI LAL GHOSE v SINDHUBALA DASI (1917)

I L. R 45 Calc 434

27 ———— Part of holding bequest of— —If valid—Principle of estoppel and waiver or acquiescence if applies The testamentary disposition of a part of a non transferable occupancy holding like that of the whole holding is invalid and it was so held in a suit by the devisee against the raiyat s heir at law UMESH CHANDRA DUTTA v JOY NATH DAS (1917) 22 C. W N 474

28 ———— Custom of payment of nazar— In order to establish a custom of transferability subject to the payment of a customary *nazar* the evidence must show that the landlord is bound to recognise when *nazar* of the amount or at the rate determined by custom is tendered to him A practice or course of business in a zemindary office according to which a transference is recognised provided that the amount of the *nazar* is satisfactory to the landlord is not sufficient The payment of *nazar* without more is an indication that the *jotes* are not transferable without the landlord s consent given on receipt of the *nazar* A custom which leaves the amount or rate of *nazar* indefinite must be void for uncertainty MINA KUMARI v ICHHAMOYEE CHAUDHURANI (1918) 22 C W N 929

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2 Pat L J 231

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3 Pat L J 579

31 ———— Transferability—A 16 anna landlord cannot sell his raiyat s occupancy holding in execution of a money decree unless the raiyati s occupancy holding is transferable by usage MACPHERSON v DEBIBHUSAN LAL

2 Pat. L J 530

32. ———— Transferability of, in execution of money decree—*Orissa Tenancy Act (B & O Act II of 1913) s 31 (4)* An occupancy tenant in Orissa is entitled to object to the sale of his holding in execution of a money decree on the ground that the holding is not transferable without the consent of the landlord MADHU PADHAN v JAGU JEN 4 Pat L. J 294

33 ———— Transfer of portion of non-transferable—Collusive rent suit between landlord and transferor—*Deposit of transferee—Suit to set aside fraudulent decree and for recovery of deposit—Bengal Tenancy Act (VIII of 1885) s 170 (3)—Principles governing transfers of non transferable holdings—Fraud* The recorded tenant of a non transferable occupancy holding sold a portion of his holding Subsequently the landlord brought a collusive suit for rent against the transferor and obtained a decree The transferee deposited the decretal amount and costs under s 170 (3) of the Bengal Tenancy Act and the deposit was withdrawn by the landlord In a suit by the transferee to set aside the decree and for recovery of the amount withdrawn *Held* (1) that as at the time of the deposit it had not been finally decided that the transferee of a portion of a non transferable occupancy holding is not entitled to make deposit under s 170 (3) the plaintiff was justified in adopting the only course at that time open to him to save the holding from sale and the suit was maintainable although there was no privity of contract between the parties (2) That the deposit should be considered as money paid under terror of inceptive legal proceedings fraudulently directed against the transferee and as such recoverable (3) That the decree obtained against the recorded tenant was void not only against the latter but was a nullity (4) That in such a case irrespective of a deposit if the transferee has suffered actual damage by an unlawful infraction of his legal rights the suit would be maintainable The following principles govern the transfer of the whole or a portion of a non transferable occupancy holding —(i) Where the transfer is a *sale* of the *whole* holding the landlord is ordinarily entitled to enter on the holding (ii) (*a*) Where the transfer is *otherwise than by sale* of the *whole* holding and (*b*) Where the transfer is a *part* only of the holding whether *by sale or otherwise* the landlord is not ordinarily entitled to recover possession unless there has been an abandonment within the meaning of s 87 of the Bengal Tenancy Act or a repudiation of the tenancy (iii) The transferee of a portion of a non transferable occupancy holding has certain interests and legal rights which for certain purposes are limited by the provisions of the Bengal Tenancy Act read with the provisions of the Code of Civil Procedure 1908 (iv) All such transferees have irrespective of the Bengal Tenancy Act and altogether *dehors* that Act certain legal rights which if infringed the Common Law of the land will not be powerless to protect in appropriate cases (v) One of such rights is the right to possession which the transferee has even against the landlord until abandonment relinquishment or repudiation takes place (vi) The Common Law imposes an obligation on the landlord to refrain from extinguishing the rights of the transferee by committing a tortious act in conspiracy with a third person If this obligation is not observed and damage to the transferee results the Common Law may be invoked to vindicate the latter s rights (vii) The period at which damage accrues may vary in different cases but as soon as it does accrue the transferee may immediately institute a suit to attack all fraudulent proceedings between the land

OCCUPANCY HOLDING—*contd*

lord and the recorded tenant Where a person or body of persons inflicts actual damage upon another by the intentional employment of unlawful means even though such unlawful means may not comprise an act which is *per se* actionable then such person or body of persons commits an actionable wrong Even honest or disinterested motives cannot justify the employment of illegal means *A fortiori* where it is found that the motives were dishonest and fraudulent the wrong is actionable ASARFI SINGH *v* RAMKHELAWAN SINHA

4 Pat L J 115

34 ———— **Purchase of, by thikedar effect of**—*Bengal Tenancy Act (VIII of 1885) s 22 (3)—Mesne profits power of court to reduce rate agreed upon by parties* A *thikdar* was not debarred from acquiring occupancy rights by purchase during the period of his *thika* prior to the amendment of s 22 (3) of the Bengal Tenancy Act 1885 and that section does not prevent him from acquiring occupancy rights by purchase after the period of his lease has expired Where a *thikedar* purchases an occupancy holding during the period of his lease he becomes a non occupancy *raiyat* in respect to the holding purchased and a suit to eject him must be brought within the period of limitation prescribed by sch III to the Bengal Tenancy Act 1885 Where a lease contains a stipulation that the lessee shall *pay mesne profits* at a particular rate on failure to give up the lands which form the subject matter of the lease on the expiry of the period for which it is granted the court has power to alter the rate agreed upon JOHN PIERPONT MORGAN *v* BABU RAMJEE RAM

5 Pat L J 302

35 ———— **Transferability—Custom of**—An occupancy raiyat in a village where no custom of transferability without consent of landlord exists can object to the sale of his holding by an execution creditor who is not his landlord On an execution sale of portion of holding remainder becomes an entire holding and on its sale it is the sale of an entire holding not a portion only Where a portion of a holding has been sold in execution of a mortgage decree the tenant is not estopped for denying the existence of the custom of transferability in the case of a sale of the remainder under a money decree DEWAN RAM CHOUDHURY *v* ATUL MUNDER **6 Pat L J 203**

36 ———— **Abandonment**—*what amounts to*—Where a tenant having a non transferable right of occupancy sells such right to a third person and having obtained a sub lease from the purchaser remains in possession of the land and cultivates it the landlord (in the absence of repudiation by the tenant of his relation to the landlord as such) is not entitled to recover possession inasmuch as it does not amount to abandonment SIFFFUNNESSA BIBI *v* RAMDEB RAI

24 C W N 117

37 ———— **Transferability—Whether occupancy holding not transferable by usage or custom can be sold in execution of sole landlord s money-decree**—*S ar l t i appli cit i and limitations of* The sole landlord of a *raiyat* is competent to sell in execution of a money decree against the *raiyat* his occupancy holding even though the holding may be non transferable by usage or custom *Ibrahim II Shaik Shikdar* v

OCCUPANCY HOLDING—*concld*

Gopi Kanth Shaha I L R 24 Calc 355 overruled *Durga Charan Mandal v Kali Prasanna Sarkar I L R 26 Calc 727 Sadagar Sircar v Krishna Chandra Nath I L R 26 Calc 937 Majed Hossein v Raghubur Chowdhury I L R 27 Calc 187 Gahar Khalifa Bipari v Kasi Muddi Jamadar I L R 27 Calc 415 Sita Nath Chatterjee v Atmaram Kar 4 C W N 571 Murulla v Burulla 9 C W N 972* and *Khoda Bux v Sadu Pramanick 14 C L J 620* commented on *Macpherson v Debibhusan Lal 2 P L J 530* dissented from *Narayani v Nabin Chandra Chaudhuri I L R 44 Calc 720* referred to *Ananda Das v Ratnakar Panda 7 C W N 572 Shakaruddin Choudry v Hemangini Dasi 16 C W N 420* and *Dwarkanath Pal v Tarini Sankar Ray I L R 34 Calc 199* approved The transfer for value of the whole or a part of an occupancy holding *apart from custom or local usage* is operative as against the *raiyat* whether it is made voluntarily or involuntarily Authorities reviewed at length CHANDRA BINODE KUNDU *v* ALA BUX DEWAN (1920)

I L R 48 Calc 184
24 C W N 818

38 ———— **Mortgage**—*Collateral covenant for the protection of a mortgage of occupancy holdings not enforceable* Certain occupancy holdings were mortgaged usufructuarily with a covenant that if the mortgagor failed to pay or if the mortgagees were dispossessed from the property mortgaged they would be entitled to recover the mortgage money by sale of certain other property of the mortgagor *Held* on suit brought on this covenant by the mortgagees after dispossession that the mortgage of the occupancy holdings being itself illegal the convenant fell with it and the plaintiffs could not recover *Ram Pratap Rai v Ram Phal Teli 18 Indian Cases 9* and *Pooran Singh v Jai Singh 17 Indian Cases 522* referred to *Bajrangi Lal v Ghura Rai I L R 38 All 232* and *Rajendra Prasad v Ram Jatan Rai I L R 39 All 39* distinguished TULSHI RAM *v* SAT NARAIN

I L R 43 All. 81

OCCUPANCY RAIYAT

See CENTRAL PROVINCES TENANCY ACT 1898 s 35 **3 Pat L J 88**

See LAND ACQUISITION ACT (I OF 1894) ss 23 49 **I L R 40 All 367**

See LANDLORD AND TENANT **I L R 37 Calc 742**

See OCCUPANCY HOLDING

See OCCUPANCY RIGHT

See SURRENDER **I L R 48 Calc 605**

———— **at fixed rates**—

See OCCUPANCY HOLDING **I L R 42 Calc 745**

———— **suit for declaration of status as**—

See COURT FEES ACT (VII OF 1870) Sch II Art 6 7 xi **I L R. 40 All. 358**

1 ———— *Appointed jagirdar if loses occupancy right* The mere fact that a raiyat who has a right of occupancy in his agricultural lands is at the same time a rent-collector of

OCCUPANCY RAIYAT—*contd*

the village and is remunerated as such does not d prive him of his right of occupancy DURGA PROSAD SINGH v HARI RAM MAHTO (1914)
19 C W N 578

2 ———— *Mortgage of part of o upin y holding—Subsequent lease of same while mortgage was yet unregistered—Rights of mortgagees and l ss* An o cupancy tenant made a usufructuary mortgage of certain plots of land comprised in his o upan y holding He apparently gave the mo tgagees pos on but refu ed to get the mortgag d ed registered and in consequence the mortgagees were obliged to bring a suit to compel registration Whilst this suit was pending the o cupan y tenant leased certain plots covered by the mortgage at a yearly rent for a period of five years *Held* on suit by the les ee for possession that the plaintiff was entitled to a decree and that he was not bound as a condition prec dent to pay off the mortgagees *Baharan Upadhya* v *Uttam gir I L R 33 All 779* referred to HABIB ULLAH v MANRUP (1917) **I L R 40 All 228**

3 ———— *Settlement whe th r of raiyati holding or of tenure—Statutory pre sumption —Bengal Tenancy Act (VIII of 1885) s 5 sub s (5)—Suit under s 104 H—Incidents of tenancy* In a suit under s 104 H of the Bengal Tenancy Act the plaintiff sued for a declaration that he was an occupancy raiyat in respect of certain lands He based his title on two docu m nts one was an *amalnamah* granted to his pre d cessor in 1868 which recited that certain mouzahs were s ttled with the grantee for bringing them under cultivation and directed the grantee to extir pate wild beasts clear jungles raise embankments at his own expense carry on cultivation and enjoy the crops thereof and the other document which fixed the rent was executed in 1869 and recited that on the strength of the aforesaid *amalnamah* the grantee took possession and had commenced to reclaim jungles raise embankments and cul tivate lands The grantee was further authorised to make settlements with tenants *Held* that the settlement was of a raiyati holding and not of a tenure The *amalnamah* was expre sly granted for the purpose of reclamation and culti vation by the grantee and the regular lease which followed did not indicate any intention to alter the nature of the tenancy *Held* also that the mere fact that the tenant had sublet his land did not by itself establish conclusively that this status was that of a tenure holder and not that of a raiyat The test to be applied to determine his status was the intention of the contracting parties Where the terms of the original grant were known the statutory presumption in s 5 sub s (5) of the Bengal Tenancy Act did not apply where the origin of the tenancy was un known the mode of u er of the land might furnish a valuable clue to determine its original purpose and where it was ambiguous evidence of subse quent conduct of parties might be admissible *Promotho Nath Kumar* v *Nilmani Kumar 14 C L J 38 15 C W N 902 Promoda Nath Roy* v *Asiruddin Mandal 15 C W N 896 Bama pada Roy* v *Midnapore Zemindary Co 16 C L J 39* referred to *Held* further that in a suit under s 104 H of the Bengal Tenancy Act it was not sufficient for the Court to hold that the en ry in the Settlement Roll as to the status of ten was erroneous The Court mu t affirmatively determine the exact conditions and incidents of the tenancy as also the rent to be settled on such basis SECRETARY OF STATE FOR INDIA v DIGAM BAR NANDA (1917) **I L R 46 Calc 160**

OCCUPANCY RAIYAT—*concld*

4 ———— *Suit for settlement of equitable rent whether lies—Enhancement of rent —Bengal Tenancy Act (VIII of 1885) ss 46 and 158 Chapters V and X* Defendant was a non occu pancy *raiyat* under a lease for 9 years ending on the 1st Assin 1319 On the expiry of that period the defendant having held over the plaintiff sued for *khas* possession or in the alternative for fair and equitable rent for the years 1319 to 1322 in clusive *Held (1)* that so far as the years 1319 to 1321 were concerned during which the defendant was a non occupancy *raiyat* the plaintiff not having availed him elf of the procedure laid down in s 46 of the Bengal Tenancy Act 1885 was entitled to rent at the rate provided in the lease only and (ii) that so far as the year 1322 was concerned by which time the def ndant had become an occu pan y *raiyat* the provisions of Chapter X and s 158 not being applicable to the case the plaintiff was entitled to sue for enhancement of rent under Chapter V but could not recover rent at an enhanced rate in the present suit *Per* DAWSON MILLER C J Even had the present suit been one for the enhancement of rent it would not have been within the competence of the court to award rent at an enhanced rate for previous years DAYAL KUNDU v MALHU PATHAK **5 Pat L J 406**

OCCUPANCY RIGHT

See BENGAL TENANCY
I L R 48 Calc 460

See BENGAL TENANCY ACT 1885 s 180
2 Pat. L J 48

See CHOTA NAGPUR LANDLORD AND TENANT PROCEDURE ACT s 6
14 C W N 297

See LANDLORD AND TENANT

See LAND TENURE IN MADRAS
L R 46 I A 33

See OCCUPANCY HOLDING

See OCCUPANCY RAIYAT

———— acquisition of, by a firm—

See ENDOWMENT **4 Pat L J 533**

———— acquisition of by Joint family—

See HINDU LAW (JOINT FAMILY)
4 Pat L J 354

———— acquisition of, by landholder—

See MADRAS ESTATES LAND ACT (I OF 1908) s 6 SUB S (6) AND s 8
I L R 39 Mad. 944

———— extinguishment of—

See LANDLORD AND TENANT
I L R 37 Calc. 709

———— Purchaser of—

See MADRAS ESTATE LANDS ACT 1908 ss 54 AND 146
I L R 44 Mad. 43

OCCUPANCY RIGHT—*contd*

———— transfer of—

See CENTRAL PROVINCES TENANCY ACT (XI OF 1898) s 45
I L R 46 Calc 76

1 ———————— *Mokurandar cultivating land for more than 12 years—Protection from eviction* Where a *mokurari* tenure was created in 1890 by an under tenure holder in favour of a tenant who went on cultivating the land for 12 years *Held* in a suit by a purchaser of the under tenure under Act VIII of 1865 that the tenant acquired an occupancy right and retained it even though the *mokurari* right which he had also obtained was extinguished by operation of s 16 of Act VIII of 1865 and the tenant was not liable to be ejected *Nilmadhab* v *Shibu 13 W R 410* and *Emam Ali* v *Ator Ali 22 W R 133* followed *Jogeshuar Mazumdar* v *Abed Mahomed Sirkar 3 C W N 13* distinguished BAMA CHARAN GOPAI v RAM KANAI DUBEY (1914)
19 C W N 858

2 ———————— *Incidents of another tenancy under the same landlord but in different localities in the occupation of the occupancy raiyat—Bengal Tenancy Act (VIII of 1885) 182* The provisions of the Bengal Tenancy Act are applicable to a tenancy for building a shop in a market in which the tenant afterwards came to reside where the tenant has occupancy right on certain *jamas* under the same landlord in a different village from before the acquisition of the tenancy for building the shop *Golam Mowla* v *Abdul Sowar Mundul 13 C L J 255 Protap Chandra Das* v *Bissesswar Pramanick 9 C W N 416 Kripa Nath Chakrabutty* v *Sheikh Anu 10 C W N 944* and *Harihar Chatterji* v *Dinu Bera 14 C L J 170* referred to BHIKARIRAM BHAGAT *v* MAHARAJ BAHADUR SINGH (1915) **I L R 43 Calc 195**

3 ———————— *Under raiyat—Ejectment—Bengal Tenancy Act (VIII of 1885) ss 4 49 (b) 113 183—Usage or custom* An under raiyat may by usage or custom obtain a right of occupancy and he is not then liable to ejectment after notice to quit under s 49 of the Bengal Tenancy Act *Akhil Chandra Biswas* v *Hasan Ali Sadagar 19 C W N 246* referred to GOPAL MONDAL *v* TAPAI SANKHARI (1918)
I L R 46 Calc 43

4 ———————— *It may be acquired by settled raiyat as a protected interest* A Raiyat holding at a fixed rent from the inception of the tenancy may subsequently acquire a right of occupancy (*e g*) by continuous occupancy for 12 years so as to be protected by s 160 of the Bengal Tenancy Act *Bhut Nath Naskar* v *Surendra Nath Dutt 13 C W N 10 5* considered SARBESWAR PATRA *v* MAHARAJA SIR BEJOY CHAND MOHATAP
25 C W N 15

5 ———————— *Transferability of in Orissa—Sale in execution of mortgage procedure for* In Orissa occupancy rights are transferable without the landlord s consent unless it is shown to the satisfaction of the Collector that the landlord has good reason for his objection The correct procedure in cases in which it is desired to put up for sale an occupancy right in execution of a decree on a mortgage is to allow the sale to go through and then for the purchaser to apply to the landlord unl 31 of the Orissa Tenancy Act 1913 for registration of the transfer If the landlord accepts the fee authorised the sale will hold good If he refuses to do so the purchaser should apply to the Collector and the Collector will decide whether *there is good and sufficient reason for the landlord s* objection GIRDHARI NAIK *v* KASHI TINDI
2 Pat L J 476

OCCUPANCY TENANT

See AGRA TENANCY ACT (II OF 1901) s 16 **I L R 41 All 223**

ss 18 AND 88
I L R 43 All 606

See KHOTI SETTLEMENT ACT (BOM I OF 1880)—

Ss 9 AND 10 **I L R 44 Bom 267**

Ss 33 (c) 40 (a) RR I III VIII
I L R 37 Bom 284

See LANDLORD AND TENANT
I L R 33 All 335

See OCCUPANCY HOLDING

See SURRENDER **I L P 48 Calc 605**

OCCUPANT

———— Growth of sandalwood trees *on occupancy lands subsequent to survey settlement*—

See FOREST ACT (VII OF 1878) 75 CL. (c) R 2 **I L R 45 Bom 110**

OCTROI DUTY

See GENERAL CLAUSES ACT (I OF 1904) s 24 **I L R 40 All 105**

See UNITED PROVINCES MUNICIPALITIES ACT 1916 s 326
I L R 42 All. 207

———— suit for refund of—

See LIMITATION ACT (IX OF 1908) SCH I ARTS 2 62 120
I L R 36 All. 555

OFFENCE

See HIGH COURT JURISDICTION OF
I L R 37 Calc 287

See RIOTING **I L R 39 Calc 781**

See WORKMEN S BREACH OF CONTRACT ACT 1859 s 2 **I L R 43 All 281**

———— *brought to the notice of Court* in the course of judicial proceeding—

See COURT MEANING OF
I L R 37 Calc 642

———— *committed in respect of different* persons—

See JOINDER OF CHARGES
I L P 38 All 457

———— compounding of—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 345
I L R 39 Mad. 946

———— Whether it can be spoken of as a purely personal one—

See PENAL CODE 1860 s (4 AND 3 3 **I L R 2 Lah £"**

OFFENCE—*concld*

——— Whether omission to give rent receipt amounts to—

See BENGAL TENANCY ACT 1885 s 58
1 Pat L J 149

——— Triable with the aid of assessors—Conviction of accused of minor offence triable by a jury—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 2..
I L R 45 Bom 619

——— Committed at Sea

See HIGH COURT JURISDICTION OF
I L R 39 Calc 487

OFFENDING MATTER

——— proof of—

See PRINTING PRESS FORFEITURE OF
I L R 38 Calc 202

OFFER AND ACCEPTANCE

See CONTRACT I L R 42 All 187

See CONTRACT ACT 1872 s ?

See LAND ACQUISITION
I L R 44 Bom 797

See REGISTRATION ACT 1908 ss 17 AND 19 I L R 45 Bom 8

——— Counter proposal does not amount to—

See REGISTRATION ACT (XVI OF 1908) ss 17 & 49 I L R 45 Bom 8

OFFERINGS

See SEBAIT L R 41 I A 267

——— permanent alienation of—

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 92 I L R 40 Mad 212

——— Suit by pujari against guravs to recover offerings—

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 9 AND 92
I L R 45 Bom 683

——— to a temple—*Transferability—Transfer of Property Act (IV of 1882) s 6 cl (a)* There are certain rights that cannot be transferred They are *res extra commercium* for instance sacerdotal office which belongs to the priest of a particular class Similarly a right to receive offerings from pilgrims resorting to a temple or shrine is inalienable The chance that future worshippers will give offerings is a mere possibility and as such it cannot be transferred *Lakshmanaswami Naidu v Rangamma I L R 26 Mad 31 Kashi Chandra v Kailash Chandra I L R 26 Calc 356 Dino Nath Chuckerbutty v Pratap Chandra Goswami I L R 27 Calc 30* referred to PUNCHA THAKUR v BINDESWARI THAKUR (1915)
I L R 43 Calc 28

——— to deity—*Dispute concerning the possession of a temple and its offerings—Offerings not 'profits' arising out of a temple—Jurisdiction of Magistrat —Apportionment of the offerings—Criminal Procedure Code (Act V of 1898) s 145* S 145 of the Criminal Procedure Code includes within its scope a dispute concerning the actual possession

OFFERINGS—*concld*

of a temple and the land on which it stands but not one relating to the right to and apportionment of the offerings given by the worshippers Such offerings are not *profits* arising out of the temple within the meaning of s 145 (2) An order made under s 145 declaring a party entitled to the actual possession of a temple and its offerings is therefore *intra vires* as to the temple but not as to the offerings *Gulram Ghosal v Lal Behari Das I L R 37 Calc 578* referred to RAM SARAN PATHAK v RAGHU NANDAN GIR (1911)
I L R 38 Calc 387

OFFICER

——— in the Army—

See ATTACHMENT I L R 43 Bom 716

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 60 CL (2) (b)
I L R 37 Bom 26

OFFICIAL ASSIGNEE

See CIVIL PROCEDURE CODE 1908—

S 80 I L R 37 Bom 243

O XXII R 10
I L R 39 Bom 568

See INSOLVENCY I L R 37 Calc 418

See INSOLVENT I L R 43 Bom 890

See LIQUIDATOR I L R 43 Calc 586

See PRESIDENCY TOWNS INSOLVENCY ACT 1909—

Ss 7 86 I L R 35 Bom 473

Ss 38 AND 52 I L R 44 Bom 555

——— duties and rights of—

See SALE OF GOODS
I L R 40 Calc 523

——— prospect of litigation with—

See INSOLVENCY I L R 44 Calc 374

——— right of—

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XXXVIII R 5
I L R 39 Mad 903

——— sale by—

See INSOLVENCY I L R 42 Calc 72

——— title of—

See INSOLVENCY I L R 40 Calc 7[illegible]
I L R 42 Calc [illegible]

——— verbal orders by—

See INSOLVENCY I L R [illegible]

OFFICIAL CORRUPTION

See CONTRACT I L R [illegible]

OFFICIAL RECEIVER

See PROVINCIAL I[illegible] 1907) ss [illegible]
I L R [illegible]

See RECEIVER

——— order of—

See PR[illegible] OF 1907, s [illegible]
I L R [illegible]

OFFICIAL RECEIVER—*concld*

——— order to without notice—

See PROVINCIAL INSOLVENCY ACT (III OF 1907), s 46 CL (3)
I L R 39 Mad 593

——— whether a Court—

See PROVINCIAL INSOLVENCY ACT (III OF 1907) ss 2 (c) AND (g) 22 46 52
I L R 40 Mad 752

——— *Insolvency—Conveyance if necessary to perfect title to land purchased at auction at the instance of Official Receiver—Transfer of Property Act (IV of 1882) s 54* There is nothing to exempt a conveyance by an Official Receiver in Insolvency from the operation of s 54 of the Transfer of Property Act 1882 ABDUL HASHIM v AMAR KRISHNA SAHA (1919)
I L R 46 Calc 887

OFFICIAL RECORD

See TEISHKHANA PAPER
I L R 39 Calc 995

OFFICIAL TRUSTEE

See PROBATE I L R 37 Calc 387

——— *Probate—Official Trustee s Act (XVII of 1864) ss 8 10 32* The official Trustee as constituted by Act XVII of 1864 is not entitled by virtue of his office and in his character as Official Trustee and in the name of Official Trustee to obtain a grant of probate *Ashbury Railway Carriage and Iron Co v Riche L R 7 H L 653* referred to GREY v GHARUSILA DASI (1910) I L R 38 Calc 53

OFFICIAL TRUSTEE'S ACT (XVII OF 1864)

See PROBATE I L R 37 Calc 387

——— ss 8, 10 32—

See OFFICIAL TRUSTEE
I L R 38 Calc 53

OFFICIAL WITNESS

——— privilege of—

See CHARGE I L R 42 Calc 957

OLD WASTE GROUNDS

——— ejectment from—

See MADRAS ESTATES LAND ACT (I OF 1908) ss 3 (7) 153 AND 157
I L P 38 Mad 183

OMISSION

See CHARGE
I L R 40 Calc 168

——— by mistake—

See POWER OF ATTORNEY
I L R 37 Calc 399

——— to serve notice—

See EXECUTION OF DECREE.
I L R 40 Calc 45

ONUS OF PROOF

See AGREEMENT TO SELL
I L R 36 Bom 446

See BENAMI 25 C W N 409

See BURDEN OF PROOF

See CATHIERS I L R 40 Calc 716

ONUS OF PROOF—*contd*

See CHAUKIDARI CHAKRAN LANDS
I L R 42 Calc 710

See CONSIGNMENT LOSS OF
I L R 41 Calc 576

See DEATH PRESUMPTION OF
I L R 37 Calc 103

See EJECTMENT I L R 42 Bom 357

See EVIDENCE ACT (I OF 1872)—

S 92 I L R 39 Bom 399

S 110 I L R 45 Bom 789

See EXECUTOR SALE BY
I L R 36 Mad 575

See FORFEITURE I L R 41 Calc 466

See FRAUD I L R 41 Calc 990
I L R 37 All. 537

See HINDU LAW—MINOR
I L R 38 Mad 166

See JURI 24 C W N 619

See KASBATIS I L R 39 Bom. 625

See LANDLORD AND TENANT
I L R 37 Calc 723

See LEGAL NECESSITY
I L R 43 Calc 417

See LIMITATION ACT (IX OF 1908) SCH I ARTS 140 141
I L R 40 Bom 239

See MUNICIPAL ELECTION
I L R 47 Calc 524

See NEGLIGENCE I L R 48 Calc 757

See POSSESSION 23 C W N 593

See PRESS ACT (I OF 1910) ss 3 (1) 4 (1) 17 19 20 AND 22

See PATNI I L R 39 Mad 1085
25 C W N 106

See RAILWAY COMPANY
I L R 37 Bom 1

See RENT SUIT
I L R 43 Calc 554

See SECOND APPEAL.
I L R 2 Lah 249

See WILL I L R 47 Calc. 1043
I L. R 43 Bom 845

——— placed on wrong party—

See NEGOTIABLE INSTRUMENTS ACT 1881 s 118 I L. R 1 Lah. 429

——— In a suit for succession—

See CUSTOMS (SUCCESSION)
I L R 1 Lah. 434

——— Presumption in favour of continuance of life—

See HINDU LAW (SUCCESSION)
I L. R 1 Lah 554

——— Hindu Joint Family on member of, to show that his training was not at the expense of the Joint Family—

See HINDU LAW (JOINT FAMILY PROPERTY) I L R 2 Lah 40

——— in custom case—second appeal—

See PUNJAB COURTS ACT 1918 s 41

See JURISDICTION I L R 2 Lah. 107

ONUS OF PROOF—*contd*

——— **That suit not within cognizance of Court**

See JURISDICTION I L R 2 Lah 302

——— *Unoccupied village site*—**Presumption of title vesting in Government**—

See EVIDENCE ACT (I OF 1872) s 110
I L R 45 Bom 789

——— *Suit by Government pattadar to eject tenant —Claim by tenants to right of occupancy—Facts establishing right of occupancy—Title of plaintiff and service of notices to quit undisputed—Onus on defendants to prove claim how satisfied—Second appeal—Jurisdiction of High Court on second appeal to deal with fact Civil Procedure Code (1908) s 103* In suits brought by the appellant as Government pattadar against the respondent after due service of notice to quit to eject them from agricultural land in a ryotwari village the respondents pleaded that they had a permanent tenancy or right of occupancy and the appellant s title and the notices purporting to determine the tenancy were not disputed *Held* that the onus was on the respondents to prove the existence of their right of permanent occupancy but that it had been established by the evidence that they had been immemorially in possession of the lands and that they had not been proved to have been ever let into occupation by the appellant that they had been paying uniform rate of rent that the lands were reclaimed and brought under cultivation by them that they had made great improvements and carried on cultivation either of dry or garden crops of their own choice without any interference or objection and that they had for a very long time been sometimes making alienations of wells and lands and the onus of proof had been thereby satisfied The District Judge had passed decrees in the appellant s favour for possession of all the lands in suit The High Court was of opinion that the District Court had omitted to determine a question of fact which was essential to the right decision of the suit on the merits and framed issues which it asked the District Judge to decide as to whether the respondents were yearly tenants or had a permanent right of occupancy These the District Court returned without dealing with them in a satisfactory manner The High Court on second appeal drew an inference of the respondents occupancy rights and decided the appeal (dealing with it under s 103 of the Civil Procedure Code 1908) in favour of the respondents *Held* that the inference not being contradictory to any finding of fact by the District Court and there being materials from which such inference could be drawn the High Court had jurisdiction under the circumstances to deal with the case under s 103 and make a decree as it had done SETURATNAM AIYAR *v* VENKATACHELA GOUNDAN (1920)
I L R 43 Mad (P C) 567

OPIUM

See OPIUM ACT

See OPIUM ACT (I OF 1878) ss 3 9
I L R 34 All 319

1 ——— **Illicit sale of**—*Proof of the factum of the sale—Presumption from inability to account satisfactorily for opium in absence of evidence of any sale—Opium Act (I of 1878) ss 9 10* The effect of ss 9 and 10 of the Opium Act 1878 is that when once it is proved that the accused has dealt with opium in one of the ways described in s 9 the *onus* of showing that he had a right so to deal with it is placed on him by s 10 But the commission of the act which is the foundation of the particular offence charged under s 9 must be proved before the presumption raised by s 10 comes into operation at all and the presumption cannot be used to establish such act Where therefore there is no evidence to prove the fact of any sale of opium by a person accused of illicit sale the deficiency is not supplied by the statutory presumption and a conviction of illicit sale is bad KUNWAR CHANDRA SINGH *v* EMPEROR (1910)
I L R 37 Calc 581

2 ——— **Illegal possession of**—*Opium Act (I of 1878) ss 9 (c) 10—Mere possession contrary to the Act without guilty frame of mind—Respective liabilities of owner of boat and crew—Presumption of commission of offence under the Act—Conveyance —Boat* Under ss 9 (c) and 10 of the Opium Act (I of 1878) mere possession of opium without being able to account for it satisfactorily apart from any frame of mind is an offence The owner of a boat in which opium found is in possession of it but not the crew when they are neither owners not jointly interested with him in any venture as an incident of which possession might be attributed to them Where the owner of a boat alleged that opium was carried on board by a passenger without his knowledge but there were circumstances disproving his story *Held* that as he had not satisfactorily accounted for its possession it must be presumed under s 10 that it was opium in respect of which he had committed an offence under the Act *Quære* Whether a boat in which opium is carried is a conveyance used in carrying it so as to be liable to confiscation on conviction of the owner under the Act EMPEROR *v* HAMID ALI (1909)
I L R 37 Calc 24

3 ——— **Possession by consignee of railway receipt covering contraband opium**—*Lying undelivered in a railway office—Expediency of interference on revision when accused guilty of importing such opium—Opium Act (I of 1878) s 9 cls (c) and (e) Per* RICHARDSON *J* Possession by the consignee of a railway receipt covering a parcel of contraband opium lying undelivered in the railway office under circumstances showing knowledge of its contents constitutes possession of the opium within s 9 (c) of the Opium Act though after its arrival the police tied up the parcel with tape and instructed the Parcels Clerk not to part with it in order to prevent delivery without their cognizance *Kashi Nath Bania* v *Emperor I L R 32 Calc 557* and *Ashruf Ali* v *Emperor I L R 36 Calc 1016* followed *Kali Charan Mukherjee* v *Emperor I L R 41 Calc 537* referred to *Per* SHAMS UL HUDA *J* It is very doubtful whether under the circumstances the accused was in possession of the opium within s 9 (c) of the Act *Per* CURIAM The accused was guilty under s 9 (e) of importing opium and the case was not therefore a fit one for interference on revision FONG KUN *v* EMPEROR (1919) I L R 46 Calc 820

OPIUM ACT (I OF 1878)

——— **ss 3 and 9**—

——— *Morphia—whether included in the term Opium Held* that morphia

ORISSA TENANCY ACT (II OF 1913)

——— **ss 3 (4) and (6) and 31**—

——— Miadi Sarbarkari *tenure transfer of—Landlord s consent what amounts to—Notification conferring powers of a Deputy Collector effect of—Cause of action whether can arise from pleadings* If a landlord refuses to register the transfer of a non transferable tenure registration cannot be enforced against him under s 16 (3) of the Orissa Tenancy Act 1913 A landlord is not entitled to claim the mutation fee under s 16 until he has registered the transfer The institution of a suit for recovery of the mutation fee under s 16 does not amount to a consent to the transfer *Held* therefore that where the landlord had not consented to the transfer before the institution of a suit to recover the mutation fee there was at the time the suit was instituted no cause of action *Held* that a mere request by the landlord s servants (who were not shewn to have authority to sanction a transfer) to the transferee for payment of the mutation fee did not constitute a consent to the transfer on the part of the landlord and the latter was not therefore entitled to maintain a suit for recovery of the mutation fee Where a person has been empowered by notification to discharge any of the functions of a Deputy Collector under the Act such person is a Deputy Collector within the meaning of s 3 (4) and (6) and is therefore a Collector within the meaning of that section and has jurisdiction to try a suit for recovery of a mutation fee A cause of action must be antecedent to the institution of a suit and cannot arise from the pleadings themselves MAHANT GOBIND RAMANUJ DAS *v* PANI DEBENDRABALA DASI
4 Pat L J 387

——— **s 31**—

See S 3 **4 Pat L J 387**

See OCCUPANCY HOLDING **4 Pat L J 294**

See OCCUPANCY RIGHTS **2 Pat L J 476**

——— *Transfer of occupancy holding whether fee for registration is payable when landlord s consent is not necessary* Whenever an occupancy holding in Orissa is transferred whether the transfer be with or without the consent of the landlord the transferee must apply for registration of the transfer and is bound to pay a fee for such registration BALMUKUND KANANGOE *v* MRITUNJOY IHAHARAJ **5 Pat L J 357**

——— **ss 31 and 250**—*Transfer of occupancy holding non payment of registration fee on—Suit for registration fee—Second Appeal* The transferee of an occupancy holding is bound to deposit the registration fee prescribed by s 31 of the Orissa Tenancy Act 1913 and if he fails to do so the landlord may sue for it In such a suit a second appeal lies to the High Court from the order of the lower appellate Court MRUTUNJOY IHAHARAJ *v* SREE JAGANNATH JEU **3 Pat. L. J 351**

——— **ss 57 235 220 and 221**—*Incumbrance whether the interest of an under raiyat is—Ejectment of under raiyat by auction purchaser procedure for* An under raiyat in occupation of land is an incumbrancer within the meaning of s [illegible] of the Orissa Tenancy Act 1913 and therefore ss 220 and [illegible] regulate the manner in which the incumbrance can

ORISSA TENANCY ACT (II OF 1913)—*contd*

——— **ss 57, 235, 220 and 221**—*contd*

be annulled by an auction purchaser Where the procedure for the annulment of incumbrances provided by s 221 is not followed and a year is allowed to elapse by the purchaser without taking steps to annul the incumbrance he is not entitled to eject the under *raiyat* under s 57 But if the purchaser takes the prescribed steps to annul the encumbrance and the under *raiyat* refuses to give up possession the latter can be ejected under s 57 SIBA DAS *v* GAJENDRA NATH DAS
3 Pat L J 112

——— **ss 154 and 332**—*Nij chas land acquisition of occupancy rights in—Bengal Tenancy Act VIII of 1885 ss 20 and 21—Bengal Rent Act X of 1859 s 7* S 154 of the Orissa Tenancy Act 1913 does not entitle a landlord to a declaration that lands are *nij chas* or proprietor s private lands unless the land was recorded as *nij chas* not only in the Provincial Settlement but also in the settlement between the years 1906 and 1912 That section makes a distinction between the expressions *nij chas* and *nij jote* Where lessees were introduced on to certain land and executed *kabuliyats* in May and June 1906 stipulating that on the expiry of the term of their lease they would leave the lands to the *khas* possession of the lessors *Held* that this stipulation amounted to a contract by the lessees that they should not acquire occupancy rights in the land and was binding on them, as at that time there was no provision in force in Orissa which prevented a tenant from contracting himself out of the provisions of ss 20 and 21 of the Bengal Tenancy Act 1885 which were then in force there The provisions of s 232 (2) of the Orissa Tenancy Act 1913 make it clear that the Legislature when they enacted that Act meant to give effect to contracts made between landlords and tenants under which the tenants could be prevented from acquiring occupancy rights in land provided the contracts had been made more than six years before the commencement of the Act SHEIKH AKBAR ALI *v* GOPAL PRASAD CHOLT
3 Pat L J 475

——— **ss 193 and 210**— *Court having jurisdiction to determine a suit whether Civil Court is—Application to determine rent payable by tenant whether Civil Court has jurisdiction to entertain* An ordinary suit for possession of land is not a suit under any part of the Orissa Tenancy Act 1913 The words the Court having jurisdiction to determine a suit for the possession of land in s 210 include the Civil Court and therefore such a Court has jurisdiction to determine under sub s 1 (*d*) of that section the rent payable by the tenant BANAMALI SATNATHI *v* CHOUDHURI APTARAM MAHAPATRA **4 Pat L. J 72**

——— **s 204 (2) and (3)**—*Decision deciding no rent is payable whether appealable to Collector or District Judge—tenants whether person released from payment of rent ceases to be* Where in a suit for arrears of rent the Deputy Collector decided that no rent was payable by the defendant for a *sarbarakari* tenure held by the latter *held* that under s 204 (3) of the Orissa Tenancy Act 1909 the plaintiff should have appealed not to the Collector of the district but to the District Judge *Per* CHAPMAN *J* *A person does not cease to be a* tenant merely because by an arrangement with his

ORISSA TENANCY ACT (II OF 1913)—concld

———— s. 204 (2) and (3)—*concld*

landlord be i releas ed from the payment of rent GOPI BI WAL r RAM CHANDRA SAHU 2 Pat L J 46

ORPHAN ADOPTION

See HINDU LAW—ADOPTION I L R 37 Mad 529

See LIMITATION ACT (IX OF 1908) SCH I ART 18 I L R 37 Bom 513

OSTENSIBLE MEANS OF SUBSISTENCE

See SECURITY FOR GOOD BEHAVIOUR I L R 39 Calc 456

———— *Conducting the play of ring game—Criminal Procedure Code (Act V of 1898) s 109* The conducting of the ring game is an ostensible means of subsistence within the meaning of s 109 of the Criminal Procedure Code *Hari Singh v King Emperor 6 C L J 708* referred to BANGALI SHAH v EMPEROR (1913) I L R 40 Calc 702

OSTENSIBLE OWNER

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 41 I L R 34 All 22
I L R 43 All. 263

OTTI DEED

See MALABAR TARWAD I L R 39 Mad 918

OUDH ESTATES ACT (I OF 1869)

————Will of Taluqdar—A Taluqdar in 1862 in compliance with the directions issued by the Government made a declaration that I wish to file this application that after my death Umrao Singh the eldest son (*sic*) my estate should continue to my family undivided in accordance with the custom of the Rajgaddi and that the youngest brothers shall be entitled to maintenance from the Gaddi Nashin *Held* that this was a valid testamentary disposition in favour of the eldest son UMRAO SINGH v LACHMAN SINGH I L R 33 All 344

————ss 2 3, 8 10 22—*Summary and regular settlements of Oudh—Villages settled on grantee whose name was entered as owner in Lists 1 and 2 of those prepared under s 8— Taluqdar — Estate under s 2—Impartible property—Kabuliat executed by grantee after the time limit specified in s 3—Suit for partition—After acquired properties held to be partible there being no intention shown to incorporate them with the impartible property* At the summary settlement of Oudh an order was made on the 5th of October 1859 for the settlement of certain villages with the ancestor of the parties to these appeals who however did not execute his *kabuliat* until the 13th of October 1859 and so not within the time limit specified in s 3 of the Oudh Estates Act (I of 1869) namely between the 1st of April 1858 and the 10th of October 1859 At the regular settlement shortly afterwards the grantee recovered decrees for possession of other villages and subsequently acquired other properties by purchase In respect of all the settled villages his name was entered in Lists 1 and 2 prepared under the statutory provisions of s 8 of the Act In a suit for partition to which the defence was that all the property was impartible *Held* (affirming the decisions of the Courts in India) that the grantee (the defendant) was on the construction of the provisions of Act I of 1869 relating thereto a taluk dar and the villages so settled with him formed within the meaning of the Act an estate which was impartible and descendible to a single heir On a question whether the delay in executing the *kabuliat* deprived the taluqa of the character of an estate defined in s 2 of the Act the Judges of the Judicial Commissioner s Court differed in opinion *Held* in the absence of an express declaration that non execution within the time specified would be fatal to the right given to the grantee by s 3 that no such construction could be put on that section but the execution of the *kabuliat* related back to the date of the settlement namely the 5th of October 1859 As to the after acquired properties the defendant contended that by the custom of the family they became part of the original estate and were therefore not subject to the ordinary Hindu law of inheritance *Held* (affirming the decisions of both the Courts below), that the evidence was insufficient to establish that custom that no intention of the taluqdar was shown to incorporate the subsequently acquired properties with the taluqa as was necessary on the authority of the case of *Parbati Kumari Debi* v *Jagadis Chandra Dhabal I L R 29 Calc 433 453 I R 29 I A 82 98* and that the plaintiff was therefore entitled to a decree for his share (one half) of such properties as being partible JANKI PRASAD SINGH v DWARKA PRASAD SINGH (1916) I L R 35 All 391

————ss 2 13 and 16—*Transfer by taluqdar of part of taluq—Transferee s title based on will of deceased taluqdar—Transfer in accordance with will —Absence of registration under Act* These appeal related to lands owned by the taluqdar of Dhangarh whose name was one of those entered in the 4th list prepared under s 8 of the Oudh Estates Act (I of 1869) He died in 1896 leaving a great grandson the appellant and three grand sons (uncles of the appellant) the respondents and having made a will dated the 30th of August 1892 and registered under s 13 of the Act by which he devised the taluq to the appellant a minor and appointed the mother of the boy to be his guardian and the first respondent to be manager of the estate during his minority The will also provided that in case the respondents separated from the appellant they should receive a maintenance allowance in the form of grants of taluqdari villages to be selected by the appellant On the death of the testator the first respondent entered on the management of the estate in accordance with the directions of the will until 1908 when the appellant attained his majority and assumed possession and control of it the respondents continuing to reside with him But in 1910 they separated from the appellant and he made grants to them of villages of which mutation of names took place in 1911 the villages declared to be held by the several respondents for generation after generation without right of transfer S 16 of Act I of 1869 enacts that no transfer otherwise than by gift of any estate or any portion thereof or of any interest therein made by a taluqdar under the provisions of this Act shall be valid unless made by a registered instrument signed by the transferer and attested by two or more witnesses By s 2 of the Act transfer is defined as meaning an alteration

OUDH ESTATES ACT (I OF 1869)—*contd*

——— ss 2 13 and 16—*concld*

inter vivos In suits brought by the appellant to re over poss ssion of the villages granted to the respondents on the ground (among others) that the grants were invalid as not having been made by a registered and attested deed as required by s 16 *Held* that the respondents right to maintenance out of the estate was conferred by the will which imposed on the taluqdar the duty of selecting the villages from which the maintenance should be d rived In making the selection the taluqdar imposed no additional burden on the estate but limited and defined in accordance with the will the burden thereby imposed The selection once made and accept d could not be disturb d either by the taluqdar or the *gu ara* hold r and no regis t red and attested de d was required th provisions of the will followed by the appropriation of villages and d livery of possession vesting in the *gu ara* holders a good and suffi ient titl S 16 of Ac was therefore not applicable LAL JAGDISH BAHA DUR SINGH *v* MAHABIR PRASAD SINGH

I L R 42 All 422

——— s 6—

See MORTGAGE I L R 34 All 620

See TALUQDAR I L R 33 All 125

——— *Municipalities Act (I of 1900)* ss 87 (5) 147 152—United Provinces Municipal Board—Order for demolition of building—Order ultra vires—Pension—Jurisdiction *Held* (i) that s 152 of the Municipalities Act does not apply where the prohibition notice or order issu d by the Board is *ultra vires* and (ii) that s 87 (5) of the A t applies only to buildings of the kind referred to in the preceding sub sections that is new buildings in resp ct of which notice should have b en given und r sub s (1) *Alopi Din v The Municipal Board of Allahabad All Weekly Notes (1907) 2* and *Hyam v The Calcutta Corporation 10 C W N 1931* referred to EMPEROR *v* RAM DAYAL (1910) I L R 33 All 147

——— ss 7 8 10 22—

S HINDU LAW—INHERITANCE

I L R 40 All 470

——— ss 8 10 22—

See S 2] I L R 35 All 391

——— *Sanad granted by Government and death of grantee before Act passed into law—Status and rights of grantee—Name of grantee entered in lists 1 and 2 after his death—Descent by primogeniture—Custom of descent of non taluqdari property acquired by taluqdar a Mahomedan—Burden of proof—Presumption of pre existing custom—Wajib ul arzes value of* On the 17th of October 1851 J a Mahom dan and the ancestor of the parties to this appeal, received from the British Government a *sanad* conferring on him the full propri ary right title and possession of the taluqa of Deogaon with a condition that in the event of you or any of your successors dying in testate the estate shall descend to the nearest male heir a e sons nephews etc according to the rule of primo niture He died in 1865 but his name was entered in lists 1 and 2 of those pre [illegible] und r s 3 of the Oudh Estates Act (I of 1869) *Held* that J had acquired as declare l by [illegible] A t a permanent heritable and trans [illegible] in his estate and was unquestion

OUDH ESTATES ACT (I OF 1869)—*contd*

——— ss 8 10 22—*concld*

ably a taluqdar within the meaning of the Act. His death before the Act was passed into the law made no difference in his status or in his rights The provision in s 8 that the lists should be pre pared within six months after the passing of the Act was clearly meant as a limit for their com pletion and not for their initiation Descent by primogeniture was not confined to cases coming under list 3 The provision in s 10 that the Courts shall take judicial notice of the said list and shall regard them as conclusive evidence that the persons named therein are taluqdars does not mean that they shall be conclusive merely as to the fact that the persons entered therein are taluqdars as entered in s 2 but also that the Courts shall regard the insertion of the names in those lists as conclusive evidence of the fact on which is based the status assigned to the persons named in the different lists *Achal Ram v Udai Pratab Addiya Dat Singh I L R 10 Calc 511 L R 11 I A 1* and *Thakur Ishri Singh v Thakur Baldeo Singh I L R 10 Calc 792 L R 11 I A 135* discussed and explained J s name could therefore only have been included in list 2 by virtue of a pre existing custom governing the devo lution of the estate to a single heir and s 10 made that entry conclusive evidence of that fact The present suit related to property acquired by the son of J who succeeded him which it was contended by the appellant (plaintiff) descended not by the custom of lineal primogeniture set up by the res pondent (defendant) but in accordance with the ordinary Mahomedan law *Held* that the pro vision as to conclusiveness in s 10 is confined to estates within the meaning of the Act and does not apply to non taluqdari property but the exist ence of the pre existing custom gives rise to a pre sumption in the case of a family governed by Mahomedan law which makes no distinction between ancestral and self acquired property that if a custom governs the succession to the taluqa it attaches also to the personal acquisitions of the last owner left by him on his death and it is for the person who asserts that these properties follow a line of devolution different from that of the taluqa to establish it *Janki Prasad Singh v Dwarka Prasad Singh I L R 35 All 391 L R 40 I A 170* *Maharajah Pertab Narain Singh v Maharani Subhao Kooer I L R 3 Calc 626 L R 4 I A 228* and *Parbati Kumari Debi v Jagadis Chander Dhabal I L R 29 Calc 433 L R 29 I A 82* distinguished as being cases governed by the Hindu law of the Mitakshara which recognizes different courses of devolution for ancestral and self acquired properties *Wajib ul arzes* which merely narrated traditions and pur ported to give the history of devolutions in certain families not even of the narrator were held to be not sufficient to rebut the presumption of pre existing custom. MURTAZA HUSAIN KHAN *v* MUHAMMAD YASIN KHAN (1916)

I L R 38 All 552

——— ss 8 22, sub-s. (11)—*Succession to estate of taluqdar dying intestate whose name was entered in list 1 and 5—Impartible estate—Primogeniture means of in sanad granted by British Government in 1860—Effect of passing of Act No I of 1869—Lineal primogeniture and not nearness of degree* A sanad granted to a taluqdar in 1860 contained the condition that in the event of your

OUDH ESTATES ACT (I OF 1869)—*contd*

———— ss. 8 22, sub s (11)—*concld*

dying intestate the estate shall descend to the nearest male heir according to the rule of primogeniture. After the passing of the Oudh Estates Act (I of 1869) his name was entered as a taluqdar in list 1 and in list 5 which was a list of the grantees to whom sanads or grants may have been or may be given or made by the British Government up to the date fixed for the closing of the list declaring that the succession to the estates comprised in such sanads or grants shall thereafter be regulated by the rule of primogeniture. *Held* that the meaning of the word primogeniture in the sanad was the ordinary meaning of the same word in the law of England. On the death of the taluqdar's widow the succession to his estate was contested by his cousin the respondent who would be the heir if the succession was governed by the rule of lineal primogeniture and his uncle who would succeed if it was regulated by nearness of decree *Held* that the question whether the estates of taluqdars for the purposes of intestate succession must be treated as impartible is settled by authority in the affirmative *Ran Bijai Bahadur Singh* v *Jagatpal Singh I L R 18 Calc 111 L R 17 I A 173* and *Jagdish Bahadur* v *Sheo Partab Singh I L R 23 All 369 L R 28 I A 100* The succession therefore to a taluq must be to an impartible estate whether the estate ordinarily devolved upon a single heir as in list 2 of s 3 or whether the succession was to be regulated by the rule of primogeniture as in lists 3 and 5 of s 8 S 22 in so far as it describes in the first ten of its sub sections the specific order of heirs preferred to the succession must have force given to it to the effect of standing as a statutory substitute for any line of succession set forth in the sanad Where sub s 11 of s 22 coming as it does at the close of the long list of specific stages of prescribed succession sets up the rule that in default of any one taking under the previous sub sections there should be preferred such persons as would have been entitled to succeed to the estate under the ordinary law to which persons of the religion and tribe of such taluqdar etc are subject' it must be construed as being a general relegation of parties to the situation in which they would have been found apart from the Act In the present case that situation was found in the sanad itself and was also contained, either by way of affirmance or at least by way of narrative in list 5 of s 8 of the Act While the specific rules of succession in Act I of 1869 must be held to displace this the general reference to what is not covered by those specific rules must include a reference to the rights of parties ascertained in the sanad which was the original title to the property On these principles and this construction *Held* (affirming the decision of the Court of the Judicial Commissioner) that the succession should be regulated by the rule of lineal primogeniture and not by nearness of degree and that the respondent was entitled to succeed DEBI BAKHSH SINGH *v* CHANDRABHAN SINGH (1910) I. L. R 32 All. 599

———— ss 8 22 cls 11 14, 15—*Succession to taluqdar in list 3 under s 8 when specified heir fails—Will—Limitation* Cl 11 to s 22 of the Act which provides that in default of any descendants specified in the previous ten clauses as heirs upon intestacy to taluqdars or grantees whose names have been inserted to the second or third lists provided for in cl 8 of the Act the estate is to descend to such persons as would have been entitled to succeed under the ordinary law provides special limitations When the succession is regulated by cl 11 the simple heir in cases coming under list 2 is the one nearest in succession and may be male or female but under list 3 premogeniture applies THAKUR SITLA BAKSH SINGH *v* THAKUR SITAL SINGH 25 C W N 721

———— s 13—

See S 2 I. L. R 42 All 422

———— ss. 13 16 and 17—*Transfer of immoveable property in Oudh—Oral gift inter vivos—Transfer of Property Act (IV of 1882) s 123—Deed construction of—Whether testamentary or deed of gift inter vivos—Legatee predeceasing testator* Under the Oudh Estates Act (I of 1869) immoveable property is not transferable by gift *inter vivos* otherwise than by registered deed Although an adopted son is exempt from the operation of s 13 as being one of the special class therein designated a gift to him to be valid must comply with the provisions of ss 16 and 17 of the Act the two sets of sections not being contradictory of each other By a deed dated the 5th May 1887 executed by a taluqdar in favour of his adopted son the predecessor in title of the appellant the executant (after stating that he had by a deed of will on 26th May 1883 appointed his adopted son as his successor to the whole of the property and that it had become necessary to alter some of the provisions of that deed) declared that it was written by way of deed of adoption and codicil to a will and that he had made over the whole of the property in suit to his adopted son, and had absolutely and unconditionally relinquished all right and proprietorship as well as ceased interference with the property In a subsequent clause he described the person in whose favour the deed was made as my adopted son and donee and legatee under the deed dated the 26th May 1883 as well as under this deed in respect of all my moveable and immoveable property which has already been acquired or which may be acquired hereafter during my lifetime or which may come to me by inheritance or to which I may become entitled *Held* (affirming the decision of the Court of the Judicial Commissioner) that on a consideration of the provisions of the deed and of the circumstances which led up to its execution it was testamentary in character and could not be construed as a gift *inter vivos* to the appellant's predecessor in title who predeceased his adoptive father In styling him donee the deed referred simply to what was given him by the deed and codicil UDAI RAJ SINGH *v* BHAGWAN BAKHSH (1910) I L R 32 All 227

———— ss 14, 15 and 22—*Oudh taluqdari estates—Succession Primogenature sanad—Breaking the line of succession* The predecessor of a Hindu Oudh taluqdar was included in list 3 made under the Oudh Estates Act (I of 1869) s 8 as a taluqdar to whom the British Government had granted a primogeniture sanad The taluqdar died in 1899 having by his will bequeathed the taluq to his mother Had the taluqdar died intestate the taluqa would have descended under s 22 cl (11) of the Act to such persons as would have been entitled to succeed to the estate under the ordinary law to which persons of the religion and tribe

OUSTER—*contl*

of all the property held in common equal to the right of each of his companions in interest and superior to that of all other persons He has the same right to the use and enjoyment of the common property that he has to his sole property except in so far as it is limited by the equal right of his co sharers Each co owner may at all time reasonably enjoy every part of the common property It necessarily follows that one co owner has no right to the exclusive possession and use of any particular portion of joint property and if he exercises such rights and excludes his co sharers from participation in the possession he must account to his co sharer for his interest in the part from which he is ousted even though he takes no more than his just share But the co sharer out of possession cannot complain of the mere possession of the co owner so long as he refrains from setting up any claim to share in that possession Hence in order to give rise to a cause of action against the co sharer it must be proved that his act has amounted to ouster or disseisin Where there is an actual turning out or keeping excluded the party entitled to the possession there is an ouster Any resistance preventing a co sharer from obtaining effective possession is an actual ouster Such resistance must be clearly and affirmatively shown and is not presumed from equivocal facts which may or may not have been designed to operate as an exclusion A tenant in common cannot be held liable to his co tenant for damages for use and occupation of the joint property unless there has been waste or ouster Where one tenant in common occupies part of the joint property without assertion of hostile or exclusive title and without claim by his co tenant to be admitted into possession he is under no obligation even to account for he has a right to such occupancy DEBENDRA NARAYAN SINGHA *v* NARENDRA NARAYAN SINGHA (1919)
23 C W N 900

OUTCASTE

See HINDU LAW—JOINT FAMILY
I L R 38 Mad. 684

OVERCROWDING OF HOUSE

See BOMBAY MUNICIPAL ACT ss 379 379A **I L R 36 Bom 81**

OVER-HEAD TANK

See MACHINERY **I L R 46 Calc 910**

OWNER

See BOMBAY CITY MUNICIPAL ACT ss 379 379A **I L R 36 Bom 81**

See MADRAS LAND REVENUE ASSESSMENT ACT (I OF 1876) s 2
I L R 38 Mad 1128

———— liability of—

See BUSTEE LAND
I L R 41 Calc 164

See MOTOR VEHICLES
I L R 45 Calc 4?0

See RIOTING **I L R 39 Calc 834**

———— rights of—

See PUBLIC DRAIN
I L R 44 Calc 689

OWNERSHIP

———— dispute as to—

See WAJIB UL ARZ
I L R 45 Calc 793

———— entry of, in record-of rights—

See MAHOMEDAN LAW—ENDOWMENT
I L R 40 Calc 297

———— public assertion of—

See LIMITATION **L R 46 I A. 197**

P

PACHETE RAJ

———— *Khorposh grant resumption of —Custom—Grant of putni by Raja after khorposh grant in grantee s lifetime—Death of Raja if entitles putnidar to resume in grantee s lifetime—Option of heir of grantor to resume in grantee s lifetime—Res judicata—Transfer of Property Act (IV of 1882) s 3* On the evidence *held* that the Plaintiffs had failed to establish that by custom a *khorposh* grant under the Pachete Raj lapses in the grantee s lifetime upon the death of the grantor and the land reverts forthwith to the Raj but that there was good grounds for the view that a maintenance grant in the Pachete Raj is for the life of the grantee but is liable to be resumed by the successor of the grantor should the latter die during the lifetime of the grantee The cases in *Panchum Kumari v Guru narain Deo 6 Mac Sel Rep 166 Gurunarain Deo v Unud Lal Singh 6 Mac Sel Rep 251* and *Anand Lal Singh v Girrood Narayan 5 Moo I A 18* do not establish the custom as alleged by the plaintiff Where the grantor of a *khorposh* grant purported to resume the grant in the life time of the grantee and then granted a *putni* in respect of the subject matter to another person and on the grantor s death the *putnidar* sued to resume the subject matter of the grant from the grantee *Held* that it was not a case where s 43 of the Transfer of Property Act could apply since the heir of the grantor was still free to exercise his option to resume or not If a transferor without title has once become entitled to a valid estate in the land the transferee s equity would attach upon it in the hands of all persons claiming under the transferor otherwise than for a legal interest by purchase for value without notice—the heir inclusive A suit by the *putnidar* brought in the lifetime of both grantor and grantee for recovery of the property was dismissed the Court expressing the opinion that the *khorposh* grant was not resumable in the grantee s lifetime *Held* that the decision did not bar the *putnidar s* suit to recover possession brought after the donor s death CHETA BAHIRA SAHEBA *v* PURNA CHANDRA CHOUDHURI (1914) **19 C W N 1272**

PADDY

See APPRAISEMENT
I L R 48 Cal 1086

See MORTGAGE **I L R 47 Calc 125**

————suit to recover value of

See LIMITATION **I L R 48 Calc 625**

PAIK

——— suit to eject—

See Prasad I L R 43 Calc 1104

PAKKI ADAT TRANSACTIONS

——— distinguished from kachchi adat—

See Contract I L R 42 Bom 224

See Wagering Contract I L R 42 Bom 373

——— Incidents of—Wager ing, defence of From about the end of June 1913 the defendant a young man without much experience of business entered into pakki adat transactions for the sale of linseed with the plaintiffs who were a firm of Marwar shroffs and merchants in a large way of business dealing as merchants and commission agent largely in cotton and to a small extent in linseed. There was one transaction in cotton between the parties and the defendant entered into transactions in linseed to the extent of 4 000 tons in all with the plaintiffs which transactions the plaintiffs passed on to various purchasers 39 in all between which purchasers and the defendant there was no privity whatever In the contract made by the plaintiffs with each of the said purchasers there was a term that delivery should not be given to the firm of Narrondas Rajaram & Co a Marwari firm who were in the habit of insisting on delivery and of refusing to settle contracts by the payment or receipt of differences The plaintiffs subsequently attempted to secure evidence to show that the transactions between themselves and the defendant were genuine transactions and not wagers They endeavoured to induce the defendant to sign a draft letter prepared by the plaintiffs attorneys in which instructions were given for the purchase of a small part of the 4 000 tons of linseed for the sale of which the defendant had entered into transactions with the plaintiffs and ultimately induced the defendant to sign a draft letter acknowledging the correctness of the statements made in a letter of the plaintiffs attorneys to the defendant setting out the plaintiffs version of the transactions between the parties The plaintiffs further purchased and delivered 300 tons of linseed in part fulfilment of their contracts with the 39 purchasers and as to the balance of 3 700 tons the contracts with these purchasers were settled by the payment of differences It appeared however that the purchase of 300 tons had been effected by the plaintiffs with the view to influence the result of litigation *Held* that in view of the fact that the *pakka adatia* was not a disinterested broker but a party to the contract whose intention to gamble or otherwise might well be known at the inception of the contract and that there was no privity between the defendant and the 39 buyers from the plaintiffs the existence of such purchasers was only relevant as affording an indication of the plaintiffs intention at the time of their contracts with the defendant but in view of the condition that delivery should not be given to Narrondas Rajaram & Co it appeared that it was not intended that delivery should be given to the 39 purchasers by the plaintiffs and accordingly the said 39 contracts were not a sufficient indication of an intention on the part of the plaintiffs to call for delivery from the defendant

PAKKI ADAT TRANSACTIONS—*contd*

Held further that on an examination of the business of the contracting parties and of the surrounding circumstances of the case it appeared that the common intention of the parties was that the plaintiffs and the defendant should deal in differences and settle that way and that accordingly the suit must fail *Bhagwandas v Kanji I L R 30 Bom 205* discussed BURJORJI RUTTONJI v BHAGWANDAS PARASHRAM (1913) I L R 38 Bom 204

——— Wager intention to not negatived—Pakka adatia position of qua client — Transactions by Munim — Costs The existence of the pakka adat relationship does not of itself negative the existence of an understanding between the *adatia* and his constituent that no delivery should be given or taken under forward contracts and that only differences should be recovered *Qua* the client the *pakka adatia* is a principal and not a disinterested middleman bringing two principals together The question which has to be decided is what on the evidence was the common intention of the parties with regard to the settlement or completion of the transactions in dispute A defendant who has successfully pleaded a lawful defence is entitled to his costs *Burjorji Ruttonji v Bhagwandas Parashram I L R 38 Bom 204* followed CHHOGMAL BALKISSONDAS v JAINARAYAN KANAIYALAL (1913)

I L R 39 Bom 1

——— PAKKA broker—*Wagering contracts—Forward contracts of sale and purchase of cotton between a* PAKKA *Adatia and up country constituents—Whether such contracts as contracts of employment or as between principal and principal—Evidence showing differences only to be paid and delivery not to be given or taken—Evidence showing* PAKKA ADATIA *contracting to enter into wagering transactions on behalf of constituents—Difference between a* PAKKA ADATIA *and an ordinary broker—Proper issues in a suit between a* PAKKA ADATIA *and constituent —Bombay Act III of 1865 ss 1 and 2—Indian Contract Act (I of 1872) ss 30—55 and 5, Vic Chap 9 s 1* The plaintiffs alleged that they were employed in Bombay as *Pakka brokers* (*i e Pakka Adatias*) by the defendants doing business in the Berars to enter into forward contracts of sale and purchase of cotton Under instructions of the defendants who were advised by the plaintiffs about the state of the market from time to time the plaintiffs entered into a number of transactions of sale and purchase of cotton on defendants behalf The accounts between the plaintiffs and the defendants were adjusted from time to time and according to the plaintiffs the defendants losses at the date of the suit amounted to Rs. 20 272 7 3 the greater portion of the same relating to differences which resulted from cross contracts The plaintiffs having sued to recover the said amount the defendants contended *inter alia* that the transactions in which they employed the plaintiffs were gambling and wagering transactions and that it was well understood between the parties that no delivery was ever to be given or taken in respect of them and that the plaintiffs were to enter into such transactions only In support of the said

PAKKI ADAT TRANSACTIONS—*contd*

contention the defendants relied upon the surround ing circumstances and in particular upon the correspondence between the parties and the actual course of dealing which showed that the transac tions were not intended to be anything more than mere debit and credit entries and were to be settled by payment of differences only The trial Court (BEAMAN J) decreed the plaintiffs claim and directed an account to be taken holding that the transactions were not wagering contracts and that the plaintiffs merely occupied the position of middlemen or ordinary brokers The defendants having appealed it was urged on their behalf that the trial Court erroneously allowed the plaintiffs in the course of their reply to alter their case which was that of a *palla* broker (which is the same thing as a *palla adatia*) into one of an ordinary broker The appellants accordingly asked that they should be allowed inspection of the plaintiffs ledger and to call for further evidence by cross examining the plaintiffs witnesses to prove that the plaintiffs in their dealings with third parties were acting as principals and not as *middlemen* The appellate Court (SCOTT C J and HEATON J) came to the conclusion that in the interest of justice and having regard to the facts brought to their notice further evidence should be taken in the case On fresh evidence being recorded and on further hearing of the appeal — *Held* (reversing the decision of the trial Court) by MACLEOD C J and FAWCETT J —(1) that the correspondence between the parties in which the plaintiffs frequently referred to *satta* dealings and the need of hedging as the market turned against the defendants and the actual course of dealings between the parties established beyond doubt that not only the plaintiffs knew that the defendants were gambling and not speculating but that there was a secret understanding that there was to be no actual delivery of cotton and that all transac tions were to be adjusted by paying and receiving differences only (2) that the evidence in the case further established that a similar understand ing prevailed between the plaintiffs and third parties (with whom the plaintiffs dealt for the same *Vaida* and for amounts of produce corres ponding with those for which the defendants entered into contracts) that the transactions between them should be closed either before or at the Vaida by the payment of differences only (3) that if the plaintiffs were to be regarded as employed for labour the evidence showed that the parties had entered into transactions knowingly to further or assist the entering into or carrying out agreements by way of wager within the meaning of Bombay Act III of 1865 inasmuch as the plaintiffs were in effect employed by the defend ants to make bets on the rise and fall of the cotton market and the plaintiffs having that knowledge encouraged the defendants to give them orders for bets with the result that the plaintiffs made bets in con equence of those orders with the third parties who also knew that in their own transac tions they were betting with the plaintiffs (4) that the mere circumstance that the greater part of the plaintiffs claim related to differences result ing from cross contracts did not make the contracts less the wagering transactions for where the Court found that when the contracts were entered nto there was a secret understanding that only diff rence w r to le paid and received it did not matt r much if the parties before the Vaida

PAKKI ADAT TRANSACTIONS—*concld*

agreed to fix their lo ses or gains than wait till the Vaida The proper i sue in a suit by a *palla adatia* against his constituent are—(1) If the contract between *the parties is one of employment* for reward was it knowingly made to further or as i t the entering into of agreements by way of gaming or wagering ? (2) If the contract between the parties was as principal and principal was it by way of wagering or gaming ? In order to win on the 1st is ue the defendants mu t prove that there was an understand ng between them and plaintiffs (i) that they were not only specul t ing but gambling (ii) that if they ordered th plaintiffs to buy they would never call upon them to give delivery (iii) that if the plaintiffs incurred losses in carrying out their orders they would indemnify them and (iv) that even if the plaintiffs did not contract with third parties in pursuance of their orders differences would be received and paid exactly a if they had Inci dentally it might be arranged that plaintiffs should only enter into wagering contracts with third parties and that would be sufficient to vitiate the contract of employment though it might not be possible to prove that those third parties with whom the plaintiffs contracted were also wagering On the 2nd issue the defendants would have to prove that there was a common intention only to pay differences *Per* MACLEOD *C J* —The only difference between the relationship of a *palla adatia* and his constituent on the one hand and that of a broker personally liable on the contract he enters into on orders received and his client on the other is that in the latter case the broker enters into the contract as agent for the client he being personally liable to the person with whom he contracts while the *adatia* does not make the contracts with third parties as agent but as principal the constituent having no right to be brought into contact with the third parties *Bhagwandas Parasram* v *Burjorji Ruttonji Bomonji (1917) L R 45 I A 29 42 Bom 373* distinguished *Bhagwandas* v *Kanji (1905) 30 Bom 205* discussed *The Universal Stock Exchange Company* v *Strachan [1896] A C 166 In re Gieve [1899] 1 Q B 794* and *Thacker* v *Hardy (1878) 4 Q B D 685* referred to MANALAL RAGHUNATH v RADHAKISSON RAMJIWAN (1920)
I L R 45 Bom. 386

PALA" OR TURN OF WORSHIP

See LIMITATION I L R 46 Calc 455

——————— *Mortgage—Transferabi lity of* palas—*Custom—Kalighat Temple—Estoppel of mortgagor even if trustee—Essential attributes of valid custom—Public policy contravention of—Onus probandi—Civil Procedure Code (Act V of 1908) O XXXII—Chattels—Intangible property foreclosure of mortgage of—Pledge* *Per* MOOKER JEE J (BEACHCROFT J reserving opinion) A mortgagor even when acting in a public capacity and not for his own benefit is *estopped* to deny his title and cannot set up as a defence for himself against the mortgagee that the property so mort gaged is trust property which he had no right to mortgage *Doe* v *Horne L R 3 Q B 760 61 R R 397* followed This principle is inapplicable where the mortgage is void as contrary to Sta tute *Barrow s Case 14 Ch D 432* followed

PALA " OR TURN OF WORSHIP—*contd*

Trustees for a public purpose are not by the nature of their office protected from the operation of estoppel as against the assignees of the original parties to the deed in question *Doe v Horne L R 3 Q B 760 61 L R P 39 Webb v Herne L R 5 Q B 64* and *Higgs v Assam Tea Co L R 4 Ex 38* referred to [View indicated by BANERJEE J in *Mallik v Ranamani I C W N 493* not accepted] *Per* MOOKERJEE and BEACHCROFT J J A custom to be valid must have four essential attributes (i) it must be immemorial (ii) it must be reasonable (iii) it must have continued without interruption since its immemorial origin and (iv) it must be certain in respect of its nature generally as well as in respect of the locality where it is alleged to obtain and the persons whom it is alleged to affect *Tyson v Smith 9 Ad & El 406* followed A custom cannot be enlarged by parity of reasoning *Arthur v Bolenham 11 Mad 148 Pradyo v Gopi Krishna I L R 27 Calc 3* referred to A custom originating within time of memory even though existing in fact is void at law *Mayor of London v Cox L R 2 H L 239* followed Evidence showing exercise of a right in accordance with an alleged custom as far back as living testimony can go raises the presumption though only a rebuttable one as to the immemorial existence of the custom. *Bastard v Smith 2 Moo & P 129 Mercer v Denne [1904] 2 Ch. 534* followed If the existence of the custom has been proved for a long period the *onus* lies on the person seeking to disprove the custom to demonstrate its impossibility If a custom be against reason (*i e* artificial and legal reason warranted by authority of law) it has no force in law When a custom is said to be void as being unreasonable the unreasonable character of the alleged custom conclusively proves that the usage even though it may have existed from time immemorial must have resulted from accident or indulgence and not from any rights conferred in ancient times *Salisbury v Gladstone 9 H L C 69* followed The period for ascertaining whether a particular custom is reasonable or not is the time of its possible inception. *The Tanistry Case (1608) Davis 29* followed. In practice, the Kalighat Temple *palas* have been transferred during at least 90 years though in a limited market which those alone can enter who are qualified to become shebit by birth or marriage the time when this custom originated being unknown. Proof of the existence of a custom need not be carried back by direct evidence to the year 1773 when the Supreme Court was established or even to 1793 when the first Regulations were passed by the Indian Legislature The customary right to make a sale mortgage gift or lease of a *pala* in favour of persons within a limited circle (the transferee being under precisely the same obligation to the endowment as the transferor himself) is closely associated with and possibly developed out of the heritable devisable and partible character of a *pala* *Janokee v Gopaul I L R 2 Calc 365* referred to A custom of this description clearly cannot be characterised on any rational grounds as unreasonable or opposed to public policy Foreclosure as a remedy of the mortgagee is not confined to mortgages of *land* it is equally applicable to mortgages of *chattels* *Harrison v Hart I Comyn 393 2 Eq Cas Abr 6* followed. A mortgage of *intangible* property is entitled *to foreclose* the mortgagor quite as much

PALA " OR TURN OF WORSHIP—*concld*

as a mortgagee of *chattels* MAHAMAYA DEBI v HARIDAS HALDER (1914) **I L R 42 Calc 455**

———— *Pala of worship whether immoveable property—Limitation Act (IX of 1908) Art 130 whether governs suit to enforce mortgage of pala* A turn of worship is not an interest in immoveable property Consequently a suit to enforce a mortgage of a turn of worship is not governed by Art 132 but by Art 120 of the Limitation Act NARASHINGHA BANA GOSWAMI v PROLHADMAN TEORI (1918) **22 C W N 994**

———— *Pala alienation of apart from the debutter land—Custom proof and validity of—Subdivision of pala validity of—Objection taken in second appeal* Where there was an alienation of a *pala* or turn of worship *only* apart from the debutter land and evidence was adduced of instances of alienations along with the debutter land —*Held* that no custom of alienating the *pala* or turn of worship apart from the debutter land was established and that such an alienation was unreasonable *Mahamaya Debi v Haridas Haldar I L R 42 Calc 455 20 C L J 183* distinguished The transfer by a *shebait* of his turn of worship to two persons in different shares is unreasonable and objection to such a division may be taken for the first time in second appeal it being a point of law and the respondent not being taken by surprise NITYA GOPAL BANERJEE v NANI LAL MUKERJEE (1919)

I L R 47 Calc 990

PALAYAM.

See UNSETTLED PALAYAM

I L R 41 Mad 749

———— *Unsettled palayam—Alienability—Land held on service tenure—Abolition of service—Police duties of land owner—Effect of sanads* A palayam in the Madura district was held originally on military service tenure and subject to the payment of a tribute to the paramount power It was contended that it was also held on condition of rendering police service to the State In support of that contention reliance was placed upon sanads granted in 1797 and 1803 by which the palayagar was bound to protect the inhabitants from robberies and to deliver up murderers and deserters In 1895 the palayagar mortgaged villages of the palayam for debts incurred by him prior to that date and in 1900 the villages were bought by the mortgagees at a sale under a mortgage decree No permanent settlement had been made with the palayagar but in 1905 one was made with the alienees. *Held* that the palayam was not by reason of its tenure inalienable since military service was abolished in the Madura district by a proclamation in 1801 and since even if it could be inferred from the sanads that the palayam was held on a tenure of rendering police service to the State (which it could not) such police duties by land holders were abolished before the alienation and that the alienees obtained a good title [Judgment of the High Court approved] APPAYASAMI NAICKER v MIDNAPORE ZAMINDARI COMPANY LTD (1921)

L R 48 I A 100

I L R 44 Mad (P C) 175

PALMYRA JUICE

——— lease of whether lease of the moveable property—

See REGISTRATION ACT (III OF 1877) s 17 (1) (c) AND (d)
I L R 38 Mad 883

PANCHAYAT

See LIBEL I L R 39 All 561

PANDARASANNADHI

See MUTT I L R 40 Mad 177

PAPER CURRENCY ACT (II OF 1910)

——— s 26—

——— *Promissory note payable to a person or order or bearer legality of—Right of suit on the note* A promissory note payable to a person or order or bearer is illegal and void under s 26 of the (Indian) Paper Currency Act (II of 1910) and a bearer cannot be given any decree for money in a suit on such a note *Jetha Parkha v Ramchandra Vithoba I L R 16 Bom 689* referred to *Obiter* If there is an obligation apart from the one under the note it may be enforced and the fact that the loan and the note are contemporaneous is not conclusive of the non existence of such an obligation *Shanmuganatha Chettiar v Srinivasa Ayyar 4 M L W 27* and *31 Mad L J 138* referred to CHIDAMBARAM CHETTIAR v AYYASAWMI THEVAN (1916) I L R 40 Mad. 585

——— *Hundi payable to bearer validity of*—Bona fide *customer drawing hundi on a bank without money to his credit effect of* Where a hundi though drawn in favour of a specified person is made payable to bearer it is void as being obnoxious to s 26 of the Indian Paper Currency Act (II of 1910) unless the hundi comes within the proviso to the section The object of the proviso being to enable *bona fide* customers to operate on actual or intended deposits the fact that the drawer of the hundi had actually no money in the bank does not take the hundi out of the proviso *if as a fact* he intended to deposit money before presentment ARUNACHALAM CHETTIAR v NARAYANAN CHETTIAR (1918) I L R 42 Mad 470

——— *Hundi payable to bearer—Suit by endorsee against endorser—Invalidity of hundi—Estoppel if any* The endorsee of a hundi which was drawn payable to bearer and which was *not* saved by the proviso to s 26 of the Paper Currency Act sued to enforce it as against the endorser *Held* that the hundi was invalid according to the section and that the endorser was not estopped from denying the validity of the hundi *Chidambaram Chettiar v Ayyasawmi Thevan (1917) I L R 40 Mad 585* followed The observations of SESHAGIRI AYYAR J to the contrary in *Arunachalam Chettiar v Narayanan Chettiar (1919) I L R 42 Mad 470* held *obiter* and not followed The mere fact that a hundi is drawn on a certain person and that he endorses it to another does not make the drawee a banker within the proviso to the section ALAGAPPA CHETTY v ALAGAPPA CHETTY (1921) I L R 44 Mad 157

PARALYSIS

——— Testator suffering with—

See WILL I L R 1 Lah. 1?3

PARDANASHIN LADY

See ATTESTATION I L R 37 Calc 526
See GIFT I L R 39 Calc 933
See GUARDIAN I L R 38 Calc 783
See MORTGAGE I L R 45 Calc 748
L R 46 I A 270
I L R 47 Calc 175
24 C W N 977
See PRESENTATION OF COMPLAINT I L R 42 Calc 19
See PROBATE I L R 39 Calc 834
See SUCCESSION ACT 1865 ss 2 AND 331 I L R 43 All 525

——— examination of—

See COMPLAINT I L R 42 Calc 19
See EXAMINATION ON COMMISSION I L R 45 Calc 492, 697
I L R 48 Calc 443

——— execution by—necessity for—caution—

See MORTGAGE 25 C W N 285 942

——— liability of—

See MORTGAGE I L R 40 Calc 378

1 ——— Mortgage by in favour of her legal adviser—*Transaction to be closely scrutinised—Onus—Proof—that deed was explained to executant and she understood it—Relations cognisant of execution—Inference that deed properly explained if follows—Stipulation in deed to substitute for properties mortgaged partitioned share of estate under partition if inoperative—Pleader and client relationship if ceases on passing of judgment when the time for appealing has not expired* T a pardanashin lady and S her brother who had been parties in a partition suit with members of their family were represented in that suit by one R as their pleader The suit terminated in their favour but before the time for appeal had expired property belonging wholly to T was mortgaged in favour of R to secure an advance of Rs 8 000 of which Rs 4 773 was said to have been cash and the balance went mainly if not entirely in the discharge of moneys due from S A clause was inserted in the bond to the effect that after the partition should have been effected the property awarded to T should be substituted for the mortgaged properties and it was admitted that the effect of this would be to quadruple the amount of property There were concurrent findings that this clause was not properly explained to the lady but the Trial Court held it to be of no consequence as the clause was inoperative The Trial Judge upheld the deed subject to a reduction of the stipulated interest which he held to be unconscionable being mainly influenced by the consideration that the relatives of the lady must have been aware of the transaction because her brother was a co signatory of the deed and two of her relatives were the identifying witnesses but the brother was personally interested in carrying through the transaction by which he derived advantage at the expense of the lady and the other relatives generally were taking gross advantage of her unprotected state *Held* that this was a case of the legal adviser to a *pardanashin* woman acting the part of money lender to her and procuring the execution by her of a mortgage bond to secure its repayment and it was

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difficult to conceive a case in which the Court would be entitled and indeed obliged to examine the transaction with closer scrutiny or to insist more sternly on the mortgagee supporting the heavy onus of showing that the client was fully aware of the meaning and effect of the deed and that the transaction was a fair and honest one That the Trial Judge was in error in holding that in the mortgage bond if otherwise valid the clause which was clear in its language stipulating for the substitution of *T* s partitioned properties for the property mortgaged would be inoperative That in the circumstances the relative of *T* should in no way have been regarded as the defenders of her interests MAHABIR PRASAD *v* TAJ BEGAM (1914) 19 C W N 162

2. ——————— **Execution of mortgage by**—*Attestation by witnesses* A mortgage executed by a *pardanashin* lady was attested by her husband and another witness The husband actually saw the signature being made and the other witness was outside the screen in the same room with the lady and he knew her voice and heard her say " yes " when the document was explained to her *Held* that the document was duly attested in accordance with law RUKMINI KOERI *v* NILMONI BANDAPADHYAYA (1915) 19 C W N 1309

3. ——————— **Illiterate document executed by and drawn up under her instruction**—*Document if to be explained—Presumption of knowledge—Registration—Power of attorney scope of* Where a *pardanashin* lady took a loan from another *pardanashin* lady on a mortgage security had the deed drawn up by her own men under her own instruction and then got it registered through her muktear and husband authorised to act on her behalf by a general power of attorney *Held* that it was not necessary that the contents of the document should have been explained to her after the draft was made but knowledge as the contents was to be presumed specially as the document came from the side of the executant *Held* also that in second appeal the High Court can make deductions from acts without disturbing the findings of the lower Appellate Court *Held* also that authority to appear in the Registration office implied authority to appear for all purposes authorised by the Registration Act BHUBAN MOHINI DASI *v* GAJALAKSHMI DEBI (1915) 19 C W N 1330

4. ——————— **Plea that promisor was not raised**—*Decree for specific performance—Court if bound to raise the plea* In a suit for specific performance of a contract of sale by the widow of a deceased Hindu and his executor there were no pleas taken in defence either that the price agreed upon was inadequate or that one of the promisors was a *pardanashin* lady and no issue was raised or tried on either of these points *Held* that neither of these points could be allowed to be raised by them on appeal The High Court having reversed the decision of the Subordinate Judge on an issue as to payment by the purchaser of a sum of Rs. 1,500 to the vendors *Held* on the evidence that the decision of the Subordinate Judge was correct and should be restored NAROTTAM DAS *v* KEDAR NATH SAMANTA (1916) 21 C W N 665

5 ——————— **Execution of deed depriving herself of nearly all her property**—*Burden of proof—Requisites to be proved—Concurrent findings on facts that burden had not been discharged—First Court s decision on that point affirmed by Appellate Court—Finding sufficient to dispose of case* A *pardanashin* lady separated from her husband unable to read or write and without independent legal advice created an endowment of practically her whole property by a deed of which she appointed the appellants (plaintiffs) trustees In a suit for a declaration that the property was *waqf* and for possession of it *Held* that as they relied upon the deed the onus was on the appellants to show that the nature and effect of it had at the time of its execution been explained to and understood by the executant *Shambati Koeri v Jago Bibi I L R 29 Calc 749 L R 29 I A 127* followed. Upon the question whether that onus had been discharged the Appellate Court in India affirmed the decision of the first Court to the effect that it had not but nevertheless allowed an appeal to His Majesty in Council under s. 596 of the Civil Procedure Code (XIV of 1882) on the ground that the judgment of the lower Court had not been *wholly* affirmed *Held* that the findings of the Courts below amounted to concurrent findings of fact which could not be disturbed on appeal and there being no substantial question of law the appeal must be dismissed *Karuppanan Servai v Srinivasan Chetti I L R 25 Mad 215 L R 29 I A 38* followed SAJJAD HUSSAIN *v* WAZIR ALI KHAN (1912) I L R 34 All 455

6 ——————— **Execution of mortgage by**—A mortgage deed was executed by a *Pardanashin* lady the attesting witness being on one side of the *parda* and the lady on the other Her son took the deed to the lady behind the *purdha* and came back with it signed after which it was attested Held the deed was properly attested ISRI PROSAD *v* RAI GUNGA PROSAD 14 C W N 165

7 ——————— **Suit for cancellation of deed—Nature of proof required—Independent advice not absolutely necessary**—*Lady of strong will and in the habit of managing her affairs with considerable capacity for business—Undue influence—Natural affection* In the case of a deed executed by a *pardanashin* lady the law protects her by demanding that the burden of proof shall in such case rest not with those who attack but with those who rely upon the deed and it must be proved affirmatively and conclusively that the deed was not only executed by but was explained to and really understood by the grantor It must also be established that it was not signed under duress but by the free and independent exercise of her will *Sajjad Husain v Wazir Khan I L R 34 All 455 L R 39 I A 156* followed There is no absolute rule that a deed executed by a *pardanashin* lady cannot stand unless it is proved that she had independent advice The possession of absence of independent advice is a fact to be taken into consideration and well weighed on a review of the whole circumstances relevant to the issue of whether the grantor thoroughly comprehended and deliberately and of her own free will carried out the transaction and if upon such a review of the facts—which include the nature of the thing done and the training and habit of mind of the grantor as well as the proximate circumstances affecting the execution—the conclusion is

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reached that the obtaining of independent advice would not really have made any difference in the result then the deed ought to stand In a suit for cancellation of gift executed by a *parda nashin* lady the facts were that her husband had died long before and her property (consisting of shares in a large number of villages) was managed by the mukhtar with whom she had formed an intimacy the result of which was the birth of two illegitimate daughters one of whom was alive at the date of the deed The donee was the legitimate son of her mukhtar The deed was found to be duly executed attested by just the persons who would naturally be called upon for such a purpose and registered in the usual way by the proper officers The property given was about one half of her estate and there was no question of her being impoverished by giving it No undue in fluence was affirmatively proved It appeared in evidence that the lady was strong minded and had been in the habit for many years of managing her affairs of entering up her accounts and of attend ing to business matters *Held* (reversing the deci sion of the Court of the Judicial Commissioner) that the evidence as to her strength of will and business capacity and the fact that the deed was not in the circumstances of her life in any way an unnatural disposition of her property went far tal en together with the other evidence in the case to make it con lusive that the deed was granted by her as the expression of her deliberate mind and apart from any undue influence exerted upon it and that had independent advice been obtained the lady would have acted just as she did *Mahomed Bakhsh Khan* v *Hosseini Bibi* *I L R 15 Calc 684 L R 15 I A 81* referred to KALI BAKHSH SINGH *v* RAM GOPAL SINGH (1913) **I L R 36 All 81**

8 ———— **Executing mortgage for husband's benefit**—*Proof of intelligent execution —Explanation —Independent advice—Undue in fluence—Indian Contract Act (IX of 1872) s 16* Where a *pardanashin* lady was induced by her husband to give a mortgage by way of security at a time when she was living with her husband and the evidence was that the document was read and explained to her by the husband in the presence of the mortgagee *Held* that the Court would not be justified in holding that the mortgage was fairly taken or that the lady executing it was a free agent duly informed of what she was about and the mortgagee must be taken to have been aware of the influences under which the lady came to ex ecute the document *Held* (without expressing any opinion as to wh ther s 16 of the Contract Act requires the undue influence to proceed from a party to the suit) that the undue influence which may affect a *pardanashin* lady s understanding of a document may proceed from a third party *Greesh Ch Lahorey* v *Phugobutty Debia 13 Moo I A 419 Bank of Montr al* v *Stuart [1911] A C 120 In re Coomber [1911] 1 Ch 723 730 Kanhaya Lal* v *The National Bank of India Ld 17 C W N 541* referred to BADIATANNESSA BIBEE *v* AMBICA CHARAN GHOSH (1914) **18 C W N 1133**

9 ———— **Deed of trust executed by**—*Independent advic absence of if invalidates d ed—Free agent intelligent apprehension nature of transaction—Bengali deed containing English words not explained.* The Courts should be care ful to see that d eds taken from *purdah* woman have been fairly taken that the party executing them has been a free agent and duly informed as to what she was about It cannot be accept ed as a formula conclusive of every case of a deed taken from a *purdah* woman that the absence of advice vitiates the transaction Advice is not in it elf e sential it is merely a means to secure that which is essential an intelligent apprehen ion of the transaction The first and practically perhaps the most important question is was the transaction a righteous tran action *i e* was it a thing which a right minded person might be expected to do? *Mohomed Bukhsh Khan* v *Hosseini Bibi L R 15 I A 81 92* followed Where an illiterate *pardanashin* woman transferred her property to her brother and his family by a deed of trust and there was evidence that the idea had originated with her that the draft was prepared according to her instructions and that the deed which was in her vernacular was read over to her and she admitted execution before the Registrar the fact that there was no evidence as to what advice she had had in the matter was not in itself sufficient to invalidate the deed Where the said vernacular deed contained some English words such as trust committee revocable and there was no evidence that those words were ex plained to her *Held* that though it is an infirmity in the case of those claiming under the instru ment it is not destructive of their claim under the instrument KESHUB LALL PYNE *v* RADHA RAMAN NUNDY (1912) **17 C W N 991**

10 ———— **Document executed by**—*Suit for canc llation on the ground of fraud* The plaintiff a *pardanashin* lady executed a con veyance in favour of the defendant the con sideration for which consisted of money due on a mortgage bond previously given by her to the purchaser and an additional sum paid at the time of sale It appeared that on the mortgage bond she wrote with her own hand this bond executed by me is correct and then signed her name Similarly on the conveyance she wrote this deed of sale which I have executed is true and correct and is admitted and ratified by me and then affixed her signature She brought a suit for can cellation of the conveyance on the ground of fraud In the plaint it was alleged that the defendants who were agents of the plaintiff got the mortgage bond and the deed of sale signed by her without the document being read out and explained to her that she did not get any independent legal advice in connection with the documents and did not get any consideration for them In her depo sition the plaintiff stated that she had put her signature on blank sheets which had subsequently been filled up without her knowledge or con ent by the defendant and turned into the mortgage bond and the sale deed *Held* that as the documents undoubtedly bore the plaintiff's signature the burden was upon her to establish that the recitals contained therein were untrue BANSIRAM *v* PANCHAMI DASI (1914) **20 C W N 638**

11 ———— **Person trusted by as manager and managing her properties**—*but a ting ad versely to her interests acts of if bind her f du ciary relationship—B trayal of trust—Fraud by fiduciary when may be condoned—Nullity—Sham arbitration proceedings and award—Limitation if applies to defence—Time for recovery to run from termination of relationship—Award if may be upheld*

PARDANASHIN LADY—*contd*

as family arrangement H a Hindu who had separated from his brothers acquired considerable property by money lending and died in 1892 leaving a widow K and several daughters and a daughter's son P by a predeceased wife K who was not a woman of business came under the influence of F a separated brother of H and F managed her properties and K believed that he was acting as her manager until he died in 1905 Shortly after H's death F in collusion with P got up a sham arbitration proceeding which resulted in an award by which the properties left by H were divided up amongst the various members of the family K receiving only a share The true nature and effect of the proceedings were concealed from her and she was misled and betrayed by F and P both of whom had interests adverse to her and were acting in their own interest In a suit by another member of the family to enforce his right under the award a mortgage effected by F from advances made out of properties left by H K denied the plaintiff's title altogether and claimed the entire mortgage money in her right as the widow of H The High Court held that the arbitration was a sham that it had not been shown that K had any independent advice or understood the effect of the so-called award on her interests and believing that she never knowingly consented to the division of her husband's estate dismissed the suit *Held* by the Judicial Committee (without dissenting from the conclusions of the High Court) that from the death of K's husband F stood to her in a fiduciary relationship which continued till he died and she was entitled to receive from him a full disclosure of all the affairs which concerned her That F having betrayed the confidence K reposed in him the question in the case was not whether K knew what she was doing had done or proposed to do but how her intention to act was produced whether all that care and providence was placed round her as against those who advised her which from their situation and relation with respect to her they were bound to exert on her behalf That fraud such as these was in this case could not be condoned unless there was full knowledge of the facts and of the rights arising out of those facts and the parties were at arm's length *Huguenin* v *Baseley 14 Ves Jun 273* and *Moxon* v *Payne 8 Ch App 881* referred to That the Indian Limitation Act was no bar to her defence and even if she were suing to recover property of which she was deprived by the award time would not under the circumstances of the case begin to run against her until F died That the award *regarded as an award* or as a document embodying a family arrangement was a nullity SRI KISHAN LAL v KASHMIRO (1916) **20 C W N 957**

12 ———— Deed executed by—*what is proper explanation* Where in the case of a *pardanashin* lady the draft of a deed of English mortgage was interpreted in Bengalee to her by her legal adviser by reading two to four lines at a time and it took about three hours to do so and ten or twelve days afterwards it was executed by her when it was again explained to her by giving out the substance it was held that the deed was duly executed SHYAMPEARY DASYA v THE EASTERN MORTGAGE AND AGENCY CO LD (1917) **22 C W N 226**

13 ———— Execution of document by—Lack of independent advice effect of—Where a deed executed by a *pardanashin* lady is challenged on the ground that she had no independent advice if it found that the obtaining of independent advice would not have made any difference to the result the deed ought to stand *Kali Baksh Singh* v *Ram Gopal Singh 18 C W N 282* referred to This is a question of fact and in deciding it the *nature of the thing done and training and habits* of mind of the executant and the proximate circumstances affecting the execution should be taken into consideration MUSSAMMAT HIRA BIBI v RAMDHAN LAL **6 Pat L J 465**

14 ———— Duty of disclosure of donee to donor of character of transaction—*Failure operates to nullify transaction apart from fraud—Indian Succession Act (X of 1865) secs 2 331—Person dying a Christian succession to if governed by Hindu law when he lived like a Hindu* The parties to a contract may stand in such a relation as (apart from fraud or of conduct partaking of the quality of fraud) may give rise to an obligation on the part of one towards the other failure to fulfil which will be a ground for rescission of the contract and for the consequent remedies *Nocton* v *Ashburton 1914 A C 932* referred to The donee from a *pardanashin* lady stands towards here in such a relation that it is his duty to see that she fully understands the transaction The release in question in this case was set aside as the duty of disclosure resting upon the donee had not been discharged Succession to the estate of a person who died a Christian is governed by the Indian Succession Act *and cases such as Abraham* v *Abraham (9 M I A 195)* and *Radhika Patta Maha Devi Garu* v *Nilamani Patta Maha Devi Garu (14 W R P C 33)* which preceded the Act cannot be relied on to modify or interpret it MUSAMMAT PAMALWATI v Kunwar Dighijai Singh (P C) **26 C W N 490**

15 ———— Rules by which court should be guided to determine validity of document—*Rul that case of fraud must depend strictly on proof of fraud alleged how far applicable to action brought by pardanashin lady* The plaintiff a *pardanashin* lady sought to have a deed of partition executed by her in favour of her husband's brother immediately after her husband's death cancelled *Held* that it is well settled that the Court when called upon to deal with a deed executed by a *pardanashin* lady must satisfy itself upon the evidence first that the deed was actually executed by her or by some person duly authorised by her with a full understanding of what she was about to do secondly that she had full knowledge of the nature and effect of the transaction into which she is said to have entered and thirdly that she had independent and disinterested advice in the matter In cases where the person who seeks to hold the lady to the terms of her deed is one who stood towards her in a fiduciary character or in some relation of personal confidence the Court will act with great caution and will presume confidence put and influence exerted and in cases where the person who seeks to enforce the deed was an absolute stranger and dealt with her at arm's length the Court will require the confidence and influence to be proved intrinsically In the former class of cases the principle formulated in sec 111 of the Indian Evidence Act applies SATISH CHANDRA GHOSE v KALIDASI DASI **26 C W N 177**

PARDANASHIN LADY—*concl'd*

16 ———— **Principles which should Guide court**—*Independent and competent advice meaning of —Necessity of greater caution in cases where person benefited holds fiduciary position—Misrepresentation or fraud proof of not essential—Joint family—Severance if effected by deed of settlement by widow entrusting reversioner with management for a term—Limitation Act (IX of 1908) Art 91 applicability of when Plaintiffs seek possession on declaration that Defendants document of title wholly void—Time from which limitation runs when deed voidable—Karta of joint Hindu family nature and extent of his accountability* On the death of a member of a Hindu joint family a deed of settlement was executed by the guardian of the widow who was at the time a minor the effect of which was to place the properties of the minor inherited by her from her husband in charge of her husbands s brother who was the reversioner on certain terms After the widow had attained majority a deed of settlement for the life of the widow was executed by her in favour of the sons of her husband s brother who was now dead The widow brought a suit for partition of the joint family properties and for other incidental reliefs on declaration that the last deed of settlement was void and inoperative *Held* that it is well settled that the Court when called upon to deal with a deed executed by a *pardanashin* lady must satisfy itself upon the evidence first that the deed was actually executed by her or by some person duly authorised by her with a full understanding of what she was about to do secondly that she had full knowledge of the nature and effect of the transaction into which she is said to have entered and thirdly that she had independent and disinterested advice in the matter NIBARAN CHANDRA MUKHERJI *v* NIRUPAMA DEBI. **26 C W N 517**

PARDON

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 337 to 339

See KING S PREROGATIVE OF PARDON

————**By Crown—If a bar to appeal**

See COURT MARTIAL. **25 C W N 701**

———— **of appellant pending appeal—**

See CRIMINAL LAW **I L. R 2 Lah 34**

1 ———— **Forfeiture of pardon**—*Proper Court to determine the question of forfeiture—Withdrawal of pardon by the Court granting it—Power of the Special Bench to reopen the question on a plea of pardon taken at the trial for the original offence in respect of which it was granted—Criminal Procedure Code (Act V of 1898) ss 337 339* Where an approver to whom a pardon was granted under s 337 of the Criminal Procedure Code by the committing Magistrate resiles at the hearing of the case before the Special Bench from his deposition given before such Magistrate the Special Bench can only discharge him but cannot take any action against him for the offence in respect of which he was accorded the pardon If he is proceeded against for the original offence the committing Magistrate who granted the pardon must determine whether he has complied with its terms or not and thereby forfeited the same and the question cannot be reopened at his trial before the Special Bench for such offence *Queen Empress v Manik Chandra Sarkar I L R 24 Calc. 492* approved of *Emperor v Kothia I L R 30 Bom 611* and *Kullan v Emperor I L R 32 Mad 173* referred to *King Emperor v Bala I L R 25 Bom 675* distinguished. EMPEROR *v* ABANI BHUSHAN CHUCKERBUTTY (1910) **I L R 37 Calc 845**

2. ———— **Withdrawal by Magistrate not granting the pardon**—*Omission to state grounds of forfeiture—Necessity of formal withdrawal or declaration of forfeiture—Plea of pardon to be raised at the trial—Trial of issues of forfeiture of pardon and guilt of accused—Criminal Procedure Code (Act V of 1898) ss 337 339* Under the present law no formal withdrawal of pardon nor formal declaration of its forfeiture are required If the approver be subsequently proceeded against it is open to him to plead at his trial that the pardon has not in fact been forfeited that is that he has not violated its condition The two questions of forfeiture of pardon and of his guilt of the offence in respect of which he received the same may be heard and determined together, under the circumstance *Emperor v Kathia I L R 30 Bom 611 Kullan v Emperor I L R 32 Mad 173* and *Emperor v Abani Bhusan Chuckerbutty I L R 37 Calc. 845* referred to EMPEROR *v* SABAR AKUNJI (1914) **I. L. R 42 Calc. 756**

3 ———— **Failure of approval to comply with terms of the pardon on examination at the preliminary enquiry**—*Forfeiture of pardon—Commitment of approver along with other accused—Joint trial of approver and others—Plea of pardon taken in the Sessions Court—Proper procedure thereon—Trial of question of forfeiture a a preliminary issue—Power of Jury to determine the point—Criminal Procedure Code (Act V of 1898) ss 298 (1) (c) 337* Where an approver has forfeited his pardon on his examination at the preliminary enquiry the Magistrate may put him in the dock recommence the enquiry and commit him for trial along with the other accused *Queen Empress v Natu I L R 27 Calc 137* discussed *Queen Empress v Brij Narain Man I L R 20 All 529 Emperor v Budhan I L R 29 All 24 Sultan Khan v King Emperor 5 All L J 961* and *King Emperor v Bala I L R 25 Bom 675* followed When an approver has been committed to the Court of Sessions as an accused he may plead his pardon in bar at the trial and the Judge must first try the issue of forfeiture and take the verdict of the Jury thereon and then proceed with the trial of accused for the offences charged *Emperor v Abani Bhusan Chukerbutty I L R 37 Calc 845* discussed. *Kullan v Emperor I L R 32 Mad 173 Alagirisami Naicken v Emperor I L R 35 Mad 514 King Emperor v Bala I L R 25 Bom 675 Emperor v Kothia I L R 30 Bom 611* and *Emperor v Kalu 31 Punj Rec 1904* approved *Per* BEACHCROFT J Under the old law the pardon remained in force until its withdrawal by the authority granting it in consequence of the approver failing to observe the conditions of the pardon but under the present law the result of such failure is that the approver may be put on trial without any formal order of withdrawal or cancellation of the pardon The plea should be taken at the commencement of the preliminary enquiry and considered by the Magistrate If he decides against it or it is not taken before him the approv

PARDON—*contd*

er may raise the plea in the Sessions Court The Judge ought to try the question of forfeiture as a preliminary issue on evidence limited to the point and take the verdict of the Jury on it before proceeding to try the general issue of the guilt of the accused. The onus of proof of forfeiture is on the Crown. *Queen Empress* v *Manik Chandra Sarkar I L R 24 Calc 4J* declared obsolete Where however the Judge tried the question of forfeiture with the Jury after some evidence on the general issue had been recorded —*Held*, that the irregularity had not prejudiced the approver of the other accused. *Semble* When the approver deviates from the conditions of his pardon in the Sessions Court he cannot be removed from the witness box and placed in the dock as an accused SHASHI RAJBANSHI v EMPEROR (1914)
I. L. R 42 Calc 856

PARLIAMENT MEMBER OF

——————— *Making contract with Secretary of State for India in Council if forfeits seat—Public service for or on account of which such contract made if comprises public service of the Crown anywhere—Place where such contract made if material—22 Geo III c 45 (1782) s 1 —41 Geo III c 52 (1801) s 4—Secretary of State for India if a British Officer and if may discharge duties of His Majesty's other Secretaries of State—21 & 22 Vict c 106 Government of India Act 1858 s 65—Secretary of State in Council if a corporation or a legal personality—3 & 4 Will IV c 41 Judicial Committee Act 1833 s 4—Construction of Statute ejusdem generis latter Act if a surplusage or ex abundante cautela* Sir Stuart Samuel being a member of the House of Commons was partner of a firm which made contracts with the Secretary of State for India in Council for borrowing money on short loan for purchasing India Council Bills and India Treasury Bill for subscribing to India Government loan and for purchasing silver for the purpose of the Indian currency *Held* that Sir Stuart Samuel forfeited his seat in the House of Common the contract having been made for the public service of the *Crown in India and with one of His Majesty's* Secretaries of State S 1 of 22 Geo III c 45 must be taken to extend to such service and to the Secretary of State for India The public service required by the Statute need not be one either executed or requited within Great Britain or paid for out of any particular fund The Secretary of State for India is in the fullest sense an officer of British Government A contract is none the less made with the Secretary of State for India that he has to obtain the concurrence of his Council before making it and that he and his Council are designated by s 65 of the Government of India Act of 1858 (21 & 22 Vict c 106) as liable to be sued or to sue on it as a corporate body Neither the personality of the Secretary of State nor that of his Council is merged in any Corporation by the Statute Their responsibilities and duties thereunder are separate and sometimes conflicting and it is only for purposes of litigation that they can be treated as though they were but one legal personality *In the matter of* SIR STUART SAMUEL (1913) **17 C W N 735**

PARLIAMENT PROCEEDINGS IN

See LIBEL **I. L. R 37 Calc 760**

PAROL ACCEPTANCE

See STAMP ACT (II OF 1899) 5"
I L R 38 Mad 340

PARSI MARRIAGE AND DIVORCE ACT (XV OF 1865)

——— ss 3 6 8 9 14—
See PARSIS **I L R 45 Bom 146**

——— s 31—
See PARSIS **I L R 38 Bom 615**

PARSIS

——————— *Maintenance—The Parsi Marriage and Divorce Act (XV of 1865) s 31 —Suit by a Parsi wife for permanent maintenance without claim for judicial separation—The High Court on its Original Side has no jurisdiction in such suit to pass an order for maintenance* The Bombay High Court on its Original Side has no jurisdiction in a suit between a Parsi husband and a Parsi wife to make an order for permanent alimony whether accompanied or not by any order for judicial separation The only way in which a Parsi wife is entitled to get a decree for permanent alimony is to file a petition in the Parsi Matrimonial Court and there establish facts coming within 31 of the Parsi Marriage and Divorce Act GOOLBAI v BIHRAMSHA (1914) **I L R 38 Bom 615**

——————— *Requisites to validity of a Parsi marriage—Certificate not a requisite of the marriage—Entry of certificate in the marriage register is merely for securing record of marriages duly solemnised—Absence of entry in the register does not affect validity of marriage—Proof of factum of marriage by any relevant evidence in the absence of entry of certificate in the register—Admission of secondary evidence* S 3 of the Parsi Marriage and Divorce Act exhausts all requisites to the validity of a Parsee marriage The certificate which is to be given under s 6 of the Act by the Officiating Priest after the marriage has been contracted and solemnized is not in itself one of the requisites for a valid marriage under the Act The provision about entering the certificate in the marriage register being merely intended to secure a proper record of marriages duly solemnized between the Parsees the absence of any entry in register would not affect the validity of the marriage Where there is no certificate and no entry in the register any other relevant evidence is admissible to prove the factum of marriage BAI AVABAI v KHODADAD ARDESHIR (1920)
I L R 45 Bom 146

PART HEARD SUIT

See EX PARTE DECREE
I L R 41 Calc 956

See TRANSFER **I L R 39 Calc 146**

PART PAYMENT

See CHEQUE PAYMENT BY
I L R 42 Calc 1043

——— in satisfaction of decree—
See LIMITATION **I L R 46 Calc 22**

PARTIAL DECREE

See REFUND OF COURT FEE
I L R 40 Calc 365

PARTIES

See Administration Suit
I L R 34 Bom 420

See Charitable Trust
I L R 48 Calc 124

See Civil Procedure Code 1882 s 368
I L R 32 All. 301

See Civil Procedure Code 1908—

s 92 I L R 36 Bom 168
I L R 37 All. 296
I L R 40 Mad 110

O IX r 13 I L R 39 All 13

O XXII r 10 I L R 37 All 226

O XXXIV r 1 O I r 9
I L R 35 All 441

O XLI r 33 I L R 43 All 85

See Evidence Act (I of 1872) s 60
I L R 34 All 615

See Fraud I L R 37 Bom 217

See Hindu Law—Joint Family
I L R 32 All 183
I L R 33 All 71
I L R 36 All 383

See Landlord and Tenant
I L R 39 Calc 696

See Limitation Act (IX of 1908) s 22
I L R 39 Bom 723

See Misjoinder I L R 45 Calc 111

See Mortgage I L R. 38 Calc 342
I L R 35 All 247
I L R 41 Calc 727

See Municipality I L R 46 Calc 784

See Partition Suit
I L R 44 Calc 23

See Possession I L R 47 Calc 907

See Provincial Insolvency Act (III of 1907) ss 22 46
I L R 39 All. 152

See Putni Sale I L R 47 Calc 387

See Receiver 14 C W N 653

See Religious Endowments Act (XX of 1863) ss 14 and 18
I L R 41 Mad 237

See Specific Relief Act (I of 1877) s 42 I L R 37 All. 185

See Transfer of Property Act s 107
I L R 36 Bom 500

———Sale of joint property to provide funds for litigation

See Vendor and Purchaser.
I L R 35 All 273

——— acts and conduct of—

See Evidence admissibility of
I L R 38 Calc 892

——— Addition of—

See Civil Procedure Code 1908 O I r. 10 (2) and O XXXIV r 1
I L R 45 Bom 1009

See Mortgage I L R 38 Calc 913

PARTIES—*contd*

See Remand I L R 37 Calc 171
I L R 43 Calc 938

——— appeal practice etc —

See Civil Procedure Code 1908 O XXI r. 60 I L R 44 Bom 860

——— array of—

See Hindu Law—Joint Family
I L R 34 All. 549 572

See Transfer of Property Act (IV of 1882) s 52 I L R 37 Bom 427

——— change of—

See Joint Owners
I L R 47 Calc 182

See Transfer of Property Act (IV of 1882) s 52 I L R 37 Bom 427

——— consent of to jurisdiction—

See Evidence Act (I of 1872) s 58
I L R 35 Bom 24

——— death of—

See Arbitration 14 C W N 759

——— dismissal on non appearance of plaintiff—Fresh suit on same cause

See Civil Procedure Code 1908 O XVII r. 4 I L R 44 Bom 82 767

——— examination of—

See Civil Procedure Code 1908 s 107
I L R 42 All 48

——— exonerated defendant—

See Civil Procedure Code (Act V of 1908) s 47 O XXI rr 100 101
I L R 40 Mad 964

——— In an application for confirmation of sale by auction purchaser

See Second appeal
I L R 39 Calc 687

——— in suit by benamidar to recover possession decree holder not a necessary party

See Civil Procedure Code 1908 ss 47 and 66 and O I r 2
I L R 44 Bom 352

———In suit for redemption where parties in possession claim independently of mortgage

See Civil Procedure Code 1908, O XXXIV r 5
I L R 44 Bom 698

——— In suit against Talukdar where estate under Settlement Officer as Court of Wards—

See Court of Wards Act (Bom Act I of 1905) ss 31 32
I L R 44 Bom 986

———Intention of—

See Mortgage
I L R 39 Calc 527

——— joinder of—

See Civil Procedure Code 1882—
s 30 I L R 32 All. 284
s 539 I L R 35 Bom 470

PARTIES—*contd.*

CIVIL PROCEDURE CODE 1908

O I R. 10 I. L. R. 35 Bom. 393

O XXXIV R. 1

I. L. R. 43 Bom. 575

See HINDU LAW—JOINT FAMILY

I. L. R. 37 Bom. 340

See LIMITATION ACT 1877 ss 22 28

I. L. R. 34 Bom. 91

See RES JUDICATA

I. L. R. 36 Bom. 207

———— Not sui juris—

See PRACTICE

I. L. R. 48 Calc. 994

———— on dissolution of Partnership—

See PARTNERSHIP 19 C. W. N. 193

———— Possessing remote interest—

See PROFIT A PRENDRE

2 Pat. L. J. 323

———— power of Court to add—

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 92 I. L. R. 40 Mad. 110

———— privity between—

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 11 I. L. R. 40 Bom. 679

———— rights of—

See LEASE I. L. R. 43 Calc. 332

See SECURITY FOR GOOD BEHAVIOUR

I. L. R. 41 Calc. 806

———— substitution of—

See LIMITATION L. R. 44 I. A. 218

———— Suit by Karta of Joint Family—

See CIVIL PROCEDURE CODE O XXXIV R. 1 6 Pat. L. J. 640

————appeal— whether lies for order on application to be brought on the Record

See CIVIL PROCEDURE CODE (1908) O XLIII R. 1 I. L. R. 37 All. 272

———— to conveyance—

See EVIDENCE L. R. 44 I. A. 236

———— witnesses if—

See CRIMINAL PROCEDURE CODE s 195

15 C. W. N. 565

1 ———— Addition of parties—*Limitation Act (XV of 1877) s 22—Changing character of defendant after period of limitation for suit has expired—Amendment of Plaint—Civil Procedure Code (Act XIV of 1882) ss 32 53 582—Suit against Debuttar estate—Expenses necessary for Debuttar estate—Indemnity to estate of former sebait by successor—Liability of Debuttar estate* The parties to this litigation were the descendants of a testator who by his will dedicated immoveable property to the performance of the worship of certain idols and other pious acts and provided for the order of succession to the office of sebait among his descendants The suit was instituted on 25th January 1897 by the respondents as executors of a deceased sebait against the appellant who had been appointed receiver of the debuttar estate for money which owing to interference and obstruction by the appellant in the collection of the rent had not been received by the deceased sebait during his sebaitship and for expenses he had consequently been obliged to pay out of his private funds to protect the estate and enable him to perform his obligations as sebait All the other surviving descendants of the testator were made parties and the appellant was sued both in his capacity as receiver and in his personal capacity. After the expiration of the period of limitation prescribed for the suit an amendment of the plaint was made by the Court adding to it a prayer that it might be determined who was the sebait and that the debuttar estate should be represented by the person declared to be entitled to the sebaitship The appellant was found to be so entitled and was impleaded as sebait —*Held* affirming the decision of the High Court that the object of the amendment was merely to determine judicially which of the living descendants of the original testator all of whom were already parties to the suit was to be considered sebait It did not alter the character of the suit nor amount to the addition of a new defendant within the meaning of s 22 of the Limitation Act (XV of 1877) and the suit was therefore not barred *Held* also that the estate of the deceased sebait was entitled to be reimbursed all sums properly expended by him in the preservation of the debuttar estate (as payment of Government revenue and the like) and in defending his position as sebait which was challenged unsuccessfully by the appellant *Walters* v *Woodbridge L R 7 Ch D 504* followed The respondents were also entitled to recover all moneys properly expended by the deceased sebait in performing the obligations imposed upon him by the original testator's will. The right of indemnity was incident to the position of a trustee and the liability in respect of that indemnity was the first charge on the trust estate PEARY MOHUN MUKERJEE *v.* NARENDRA NATH MUKERJEE (1909)

I. L. R. 37 Calc. 229

2 ———— Where a landlord sued a transferee of the tenant's rights in ejectment on the ground that the transfer was unauthorised and the defence admitted the transfer but urged that it was not a valid transfer *Held* that the transferor who applied to be added as a defendant setting up a contemporaneous agreement for retransfer and alleging that the transaction was really a mortgage by conditional sale and that he was still in possession should have been added as a party defendant by the Court although plaintiff opposed the application in order to avoid a multiplicity of suits and to insure a final determination of the dispute in the presence of all the parties interested The Court does not except in special circumstances force a defendant upon the plaintiff The test to be applied is whether his presence before the Court is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter *Montgomery* v *Foy [1895] 2 Q B 321 McCheane* v *Gyles [1902] 1 Ch 911* referred to The judgment of the Judicial Committee in *Amir Hassan Khan* v *Sheo Bakhsh Singh I L R 11 Calc 6* does not furnish any test for determining under what circumstances a subordinate Court may be said to have acted illegally or with material irregularity within the meaning of s 115 Civil Procedure Code The High Court is not precluded by the terms of s 115 Civil Procedure Code from interfering with an

PARTIES—*contd*

order granting or refusing applications for adding parties *Held* that the High Court ought to set aside the order in the present case refusing the transferor s application to be made a party as otherwise the result would be a needless multiplicity of suits and possible injustice to the petitioner Scope and operation of s 115 Civil Procedure Code considered with reference to authorities DWARKA NATH SEN v KESORY LAL GOSWAMY (1910) **14 C W N 703**

3 ———— *Civil Procedure Code (Act V of 1908) O XXIII r 1—Suit allowed to be withdrawn with liberty to bring fresh suit on payment of defendant s costs added plaintiffs if bound by order—Deposit of costs after institution but before trial of fresh suit if valid* Where the Judge having held that the plaintiff who was a member of a joint Hindu family should have joined the other members also as co plaintiffs the plaintiff asked for and was allowed leave to withdraw from the suit with liberty to bring a fresh suit subject to limitation and on condition that he must pay or deposit the defendant s costs before bringing a fresh suit or else the suit shall stand dismissed with costs and the coparceners together instituted a fresh suit but did not deposit the defendant s costs till some time afterwards *Held* that the suit was not liable to be dismissed so far at any rate as the added plaintiffs were concerned That as regards the original plaintiff the suit should have been treated as instituted on the date on which the costs were deposited That the deposit of the costs before the trial of the suit was sufficient compliance with the order in this case *Abdul A v Ebrahim I L R 1 Calc 965* followed *Harenath v Syed Hossein 10 C W N 8* distinguished CORI LAL v LALA NAGGU LAL (1911) **15 C W N 998**

4 ———— **Manager Joint Hindu Family** —*Managing members—Suit to recover debt due to members of family in family business—Power of managers to sue alone—Limitation Act (XV of 1877) s 22—Parties added after expiry of period of limitation* Where a joint family business has to be carried on in the interests of the joint family as a whole the managing members may properly be entrusted with the power of making contracts giving receipts and compromising or discharging claims ordinarily incidental to the business and where they are so entrusted and empowered they are entitled as the sole managers of the family business to make in their own names contracts in the course of that business and to maintain suits brought to enforce those contracts without joining in the suit with them either as plaintiffs or defendants the other members of the family *Arunachala Pillai v Vythialinga Mudaliya I L R 6 Mad 27* approved *K P Kanna Pisharody v V M Narayanan Samayagipad I L R 3 Mad 234 Ramsebuk v Ramlall Koondoo I L R 6 Calc 815 Imam ud din v Liladhar I L R 14 All 524* and *Alagappa Chetti v Vellian Chetti I L R 18 Mad 33* distinguished. In this case the original plaintiffs were the managing members of a joint family business of money lending entrusted with the regularly exercising the power of doing everything necessity to carry on the business In the course of such business they contracted in their own names with the defendants for a loan and on the accounts a balance was struck between the parties on the 9th August 1901 In a suit brought by the managing members on the 3rd June 1904 and therefore within the period of limitation to recover the amount due the other members of the family were on an objection by the defendants that the suit was improperly constituted joined as plaintiffs on the 22nd August 1904 after the period of limitation for the suit had expired and the defence was set up that under s 22 of the Limitation Act (XV of 1877) the whole suit was barred. *Held* (reversing the decision of the High Court) that the suit as originally brought was properly constituted that the members of the family subsequently added were unnecessary parties and that the suit was consequently not barred KISHAN PRASAD v HAR NARAIN SINGH (1911) **I L R 33 All 272**

5 ———— **Execution sale**—*Reversal of sale —Execution purchaser—Transferee from the purchaser—Civil Procedure Code (Act XIV of 1882) s 311* A transferee from the execution purchaser is a necessary party to a proceeding for reversal of the execution sale when such proceeding is commenced after the transfer has been effected *Bibi Sharifan v Mahomed Hubibuddin 13 C L J 535* and *In re Hammersmith Rent charge 4 Exch 87* referred to MENAJUDDI BISWAS v TOAM MANDAL (1911) **I L R 39 Calc 881**

6 ———— **Religious Endowment**—*Suit against the sole surviving member of the committee and the superintendent of a temple—Death of the sole surviving member—Substitution of the adopted son—New committee added as party—Cause of action abatement of—Civil Procedure Code (Act V of 1908) O XLI r 20 O XXII r 10 O I r 10 Religious Endowments Act (XX of 1863) s 14* A suit brought against the sole surviving members of a committee of management appointed under s 3 of the Religious Endowments Act 1863 and against the superintendent of a temple for their removal from the committee and from the office of superintendent respectively was dismissed by the District Judge Pending the appeal the 1st defendant died and his adopted son was brought on the record as a party by the plaintiffs Subsequently a new committee was appointed and added also as a party and the appeal was proceeded with against the adopted son the superintendent and the new committee *Held* that the relief against the 1st defendant was purely personal and that the cause of action did not survive against his adopted son. *Held* also that the members of the new committee should not have been added as parties respondents *Kashi v Sadasu Sakharam Shet I L R 21 Bom 229* referred to *Held* further that the suit could not be maintained as against the 2nd defendant alone and that the appeal as now constituted was incompetent BHIMA POUT v DASARATHI DASS (1912) **I L R 40 Calc. 323**

7 ———— **Suit to Recover Trust Property**— *Civil Procedure Code (Act V of 1908) s 92 O I r 3—Public Religious Trust—Suit to remove a trustee and to recover possession of trust property in the hands of a third party—Joinder of parties—Alienee of trustee* Where in a suit under s. 92 of the Civil Procedure Code (Act V of 1908) the second defendant who was the alienee of the trust property the subject of the suit contended that the suit should be dismissed as against him on the ground that he was not a necessary party to it —*Held* that there is no reason why having regard to the provisions of

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O I r 3 of the Civil Procedure Code the second defendant should not be made a party to the suit nor why if the election of the Court is again him he should not be declared to be a trustee of the trust property and be directed to convey the property *B dh S k Dhidhara v Venkatarama Pai 2 C I J 431* and *P dec Di Mulm v Choonj Lal Johurri I L R 33 Calc 759* distinguished. *Companie Sentinenra de Cane C n ga ladas v Houlder Brothers [1910] 2 K B 351* referred to ALI HAFFIZ v ABDUR RAHMAN (1915) I. L. R 42 Calc. 1135

8 ———— Admission of one of the parties to a suit—*When such admission receivable against other defendants—Identity—Documents per se not inadmissible—Objection to its admission on appeal for the first time* When several persons are jointly interested in the subject matter of a suit an admission of any one of those persons is receivable not only against himself but also against the other defendants whether they be all jointly suing or sued provided that the admission relates to the subject matter in dispute and be made by the declarant in his character of a person jointly interested with the party against whom the evidence is tendered. The requirement of the identity in the legal interest between the joint owners is of fundamental importance *Kowsulliah Sundari v Mukta Sundari I L R 11 Calc 588 Challo Singh v Jharo Singh I L R 19 Calc 995 Meajan Matbar v Alimuddi I L R 44 Calc 150 Blenkinsopp v Blenkinsopp 11 Beav 134 2 Phillip 607* referred to The admission of one co plaintiff or co-defendant is not receivable against another merely by virtue of his position as a co party in the litigation. If the rule were otherwise it would in practice permit a litigant to discredit an opponent s claim merely by joining any person as the opponent s co party and then employing that person s statements as admissions Consequently it is not by virtue of the person s relation to the litigation that the admission of one can be used against the other it must be because of some priority of title or of obligation. *Moriarty v Royal 12 Ves 355 King v the Inhabitants of Hardwick 11 East 578* referred to The Court will not entertain for the first time in appeal an objection that a document which *per se* is not inadmissible in evidence has been improperly admitted in evidence *Girindra Chandra Ganguli v Rajendra Nath Chatterjee 1 C W N 530 Preonath Mazumdar v Durga Tarini Bhose 14 C L J 578* referred to AMBAR ALI v LUTFE ALI (1917)

I L R 45 Calc 159

9 ———— Heir of Residuary legatee—*Right to sue—Cause of action survival of—Abatement of suit—Letters of Administration application by residuary legatee for grant of—Death of residuary legatee—Substitution of heir of residuary legatee—Contentious matter—Civil Procedure Code (Act V of 1908) O XXII* The right to a grant of administration is a personal right derived from the Court If on the death of the testatrix the residuary legatee under her will had obtained a grant of administration to her estate with a copy of the will annexed his title would have been derived from the Court and would not devolve on his heir The heir of the residuary legatee may be the proper person to obtain a grant of administration with a copy of the will annexed but this is not by virtue of any right to administration which he inherited from the residuary legatee but by virtue of the fact that as heir of the residuary legatee he is the person most interested in the estate of the testatrix *Sara Chandra Banerjee v Nani Mohan Banerjee I L R 36 Calc 799* referred to HARIBHUSAN DATTA v MANMATHA NATH DATTA (1918)

I L R 45 Calc. 862

10 ———— Tenants in-common—*Partition suit by a tenant in common to recover his share by partition from the defendant—Other tenants in common not necessary parties* A piece of land was held in common by several persons of whom the plaintiff owned 11 12ths share leased out their share to defendants Nos 1 and 2 on permanent tenure The plaintiff and defendants Nos 3 and 4 who owned the remaining 1 12th share leased their share to the same defendants on a yearly tenancy The plaintiff sued defendants Nos 1 and 2 to recover the 1 12th share by partition and also to recover its rent without making the other tenants in common parties to the suit *Held* that the tenants in common were not necessary parties and that the plaintiff was entitled to recover by partition the 1 12th share and also the rent NARAYAN BALKRISHNA v LASKU MONU (1917)

I L R 42 Bom. 87

11 ———— Procedure and Practice—Addition of third party defendant—*Civil Procedure Code (Act V of 1908) s 128 (2) (e) O I r 10 (2)* The second defendant in a suit applied for leave to add a third party as defendant The plaintiff objected —*Held* that the power to add a third party is discretionary but is widely exercised even though the addition may add new issues if however serious embarrassment or inconvenience be caused to the plaintiff the addition is not effected *Held* also that although in this case new issues arose between the added defendant and the original defendants serious inconvenience would not be caused to the plaintiff if his position was safeguarded by the following provisions —(i) that the issues between the plaintiff and the original defendant should be tried first (ii) that no delay should take place in the determination of those issues (iii) that if the plaintiff succeeded in obtaining a decree against the original defendants such decree was not to be stayed pending the determination of the issues between the defendants BALMUKUND PURIA v BISSENDOYAL (1918)

I L R 46 Calc 48

12 ———— Shebait suit against—*Deity if always a necessary party—co shebaits if and when all of them necessary parties in a suit under O XXI r 63 Civil Procedure Code—Parties addition of—Limitation—Civil Procedure Code (V of 1908) O VII r 9 sub r (2)* A suit can be properly maintained in the name of the *shebait* only without making the deity a party thereto where the right to sue is vested in the *shebait* and it is clear on the plaint that the *shebait* is sued in his representative capacity *Jagadindra Nath Roy v Hemanta Kumari Debi I L R 32 Calc 129 L R 31 I A 203* and *Kuarmoni Singha Mandhata v Wasif Ali Meerza 19 C W N 1193* referred to In such a case the failure to make a statement that the defendant was being sued as *shebait* would not be a defect of party but would merely be a matter which the Court might amend by adding a statement to the plaint that the defendant was being sued in that party

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cular capacity It would not be adding a new party it would be merely rectifying a simple omission to state the representative character of the defendant *Jodhi Rai* v *Baldeo Prasad* *I L R 33 All 735* referred to Where one of several *shebaits* preferred a claim under O XXI r 58 of the Code without any mention of the other *co shebaits* and succeeded in it all the co *sebaits* are not necessary parties defendants in a suit under O XXI r 63 to set aside the order in the claim case BIDHU SEKHAR BANERJEE v KULADAPRASAD DEGHORIA (1919)
I L R 46 Calc 877

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See ADMINISTRATOR PENDENTE LITE
I L R 41 Calc 771

See BABUANA GRANT
I L R 42 Calc 582

See CIVIL PROCEDURE CODE 1882 s 396
I L R 32 All 319

See CIVIL PROCEDURE CODE 1908—
- s 47 I L R 35 All 243
- ss 96 97 I L R 36 All 532
- s 144 I L R 42 All 568
- O II r 2 I L R 38 All 217
- O VII r 7 I L R 43 All 318
- O XX r 18 I L R 35 All 159; I L R 36 All 461
- O XLV r 13 I L R 42 All 170

See COMMISSIONER OF PARTITION
15 C W N 221

See COSTS I L R 42 Calc 451

See DECREE I L R 40 Bom 118

See ESTATES PARTITION ACT (BENG V OF 1897) s 7 14 C W N 632

See EVIDENCE ACT (I OF 1872)—
- s 44 I L R 33 All 143
- s 91 I L R 41 Bom 466

See EXECUTION OF DECREE
I L R 37 All 120

See HINDU LAW—ALIENATION
I L R 40 Calc 966

See HINDU LAW—JOINT FAMILY
14 C W N 221
I L R 35 All 543
I L R 43 Calc 1031
I L R 39 Mad 159
I L R 45 Calc 733
I L R 43 Bom 17

See HINDU LAW—PARTITION

See HINDU LAW—SELF ACQUISITION
I L R 32 All 305

See HINDU LAW—WIDOW
I L R 33 All 443

See JOINT OWNERS
I L R 34 All 113

See LIMITATION
I L R 42 Calc 776

See LIMITATION ACT (IX OF 1908) SCH I ARTS 62 120
I L R 37 All 318

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See MAHOMEDAN LAW—GIFT
I L R 36 All 333

See MALABAR LAW
I L R 42 Mad 292

See MORTGAGE I L R 35 Bom 371; I L R 42 All 595

See PARTITION BY COLLECTOR.

See PARTITION ACT (IV OF 1893)

See PARTITION AND POSSESSION

See PRE EMPTION I L R 32 All 567; I L R 33 All 23; I L R 37 All 129; I L R 41 All 426

See RES JUDICATA
I L R 36 Bom 127

See STAMP ACT (II OF 1899) s -(15) SCH I ART 45 (c)
I L R 36 All 137

See TITLE SUIT FOR
I L R 37 Calc 662

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 52 I L R 37 Bom 427

See UNITED PROVINCES LAND REVENUE ACT III OF 1901—
- s 4 I L R 43 All 45
- ss 106 AND 233 I L R 43 All 454
- ss 107 111 I L R 35 All 527
- ss 107 111 112 I L R 35 All 548
- ss 110 111 112 I L R 38 All 115
- ss 111 112 I L R 32 All 523
- ss 111 (1) (b) I L R 38 All 70; I L R 41 All 211
- ss 111 112 233 (k) I L R 35 All 126; I L R 38 All 307
- s 118 I L R 39 All 707
- s 233 I L R 42 All 369; I L R 43 All 88
- s 233 (k) I L R 33 All 169 440; I L R 38 All 243; I L R 39 All 469; I L R 41 All 606

See VENDOR AND PURCHASER
I L R 42 Calc 56

——— between an adopted son and an aurasa son of a Sudra—
See HINDU LAW—PARTITION
I L R 40 Mad 632

——— by Collector—
See CIVIL PROCEDURE CODE (ACT V OF 1908) s 54 I L R 42 Bom 689
See PARTITION BY COLLECTOR

——— by grandsons—
See HINDU LAW—PARTITION
I L R 39 Bom 373

——— Conversion of suit for ejectment into one for Partition—
See HINDU LAW—ADOPTION
I L R 38 Mad 5?

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——— not in accordance with decree—mistake—

See DECREE. I L R 40 Bom 118

——— mother's share on partition after father's death—

See HINDU LAW—INHERITANCE I L R 34 All 234

——— of Mines and Minerals—Lease

See LEASE 1 Pat L J 441

——— of Tenancy—

See ESTATES PARTITION ACT 1876 1 Pat L J 270

——— of Joint Family Property—Manager's liability to account for mesne profits—

See HINDU LAW—JOINT FAMILY I L R 44 Bom 179

——— of Joint Family Property purchased from a co-parcener—Part profits not allowable—

See HINDU LAW—JOINT FAMILY I L R 44 Bom 621

——— of Joint Family Property of Sudras—

See HINDU LAW—JOINT FAMILY I L R 44 Bom 166

——— Oral Evidence—when admissible to prove—

See EVIDENCE ACT 1872 s 91 I L R 41 Bom 466

——— subsequent suit for entire estate—whether barred—

See SANTAL PARGANAS SETTLEMENT REGULATION 1872. 6 Pat L J 373

——— unregistered receipts acknowledging acceptance of shares—admissibility of, to prove partition—

See REGISTRATION ACT 1908 ss 17 AND 49 I L R 44 Bom 881

——— right to—

See HINDU LAW—PARTITION I L R 43 Calc 1118

See MALABAR LAW I L R 39 Mad 317

——— Right to water and wells—

See HINDU LAW—JOINT FAMILY I L R 36 Bom 275

——— subsequent suit for entire estate—

See SANTAL PARGANAS SETTLEMENT REGULATION 1872 6 Pat L J 373

——— Property left undivided at the time of partition—Presumption that there has been a complete partition—

See HINDU LAW I L R 45 Bom 914

——— suit for—

See BENAMIDAR I L R 43 Calc 504

See CIVIL PROCEDURE CODE ACT V OF 1908 s 11 I L R 37 Bom. 307

See COURT FEES ACT (VII OF 1870) SCH II ART 17 (vi) I L R 34 All 182

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——— suit for—*contd*

See HUSBAND AND WIFE I L R 38 Calc 629

See PARTITION SUIT

See U P LAND REVENUE ACT s 233 (l) I L R 41 All 182

——— suit for on behalf of a minor—

See HINDU LAW—PARTITION I L R 41 Mad 442

——— Whether widow of a Joint Owner can claim—

See SECOND APPEAL I L R 2 Lah 348

——— Appeal—*Appeal against preliminary decree after passing of the final decree* After the passing of the final decree in a suit for partition no appeal will lie which does not challenge the final as well as the preliminary decree *Mackenzie v Nar Singh Sahai I L R 36 Calc 762* followed *Uman Kunwari v Jarbandhan I L R 30 All 479* distinguished KURIYA MAL v BISHAMBHAR DAS (1910) I L R 32 All 225

BUT *See* CIVIL PROCEDURE CODE 1908 ss 96 AND 97 I L R 36 All. 532

——— Right to—*Partition between owner of fractional share in zemindari interest and mokararidars in joint possession—Interest not less permanent because the mokarari lease was liable in certain events to forfeiture* The right of partition exists when two parties are in joint possession of land under permanent titles although their titles may not be identical *Hemadri Nath Khan v Ramani Kanta Roy I L R 24 Calc 575* cited with approval The appellant plaintiffs in a suit for partition were proprietors of a *mokarari* interest in the property partition of which was sought and the respondents defendants in the suit were owners of a fractional share in the zemindari interest in the same property The *mokarari* lease was in certain contingencies liable to forfeiture and the High Court held that the appellants tenure was on that account not sufficiently permanent to support their claim to partition to which they would otherwise have been entitled —*Held* by the Judicial Committee (reversing that decision) that the distinction drawn by the High Court could not be supported The appellants title was a permanent one though liable to forfeiture in events which had not occurred and the rights incidental to that title must be those that attached to it as it existed without reference to what might be lost in the future under changed circumstances BHAGWAT SAHAI v BIPIN BEHARI MITTER (1910) I L R 37 Calc 918

——— Res Judicata Where a suit for partition to which all the members of the family are parties has once been finally decided it is not competent to a party defendant to such suit to re open the questions thereby determined in a fresh suit for a declaration of right as against a co defendant *Sheikh Khoorshed Hossein v Nubbee Fatima I L R 3 Calc 551 Dost Muhammad Khan v Said Begam I L R 20 All 81 Ahmed v Pathumma I L R 22 Mad 494* and *Ashidbai v Abdulla Haji Mahomed I L R 31 Bom 271* referred to PARSOTAM RAO TANTIA v RADHA BAI (1910) I L R 32 All. 469

PARTITION—*contd*

——————— Procedure—*Partition suit for—Amendment of plaint by order of Court altering nature of suit—Acquiescence by plaintiff—Appeal in disregard of amendment of plaint not barred* It is incumbent on the Court in a suit for partition to come to a clear and definite finding that the plaintiff had title to the property before proceeding further into the case and a Judge on appeal should also observe the same procedure *Bidhata Rai v Ram Charitar Rai 12 C W N 37* referred to If the Judge on appeal finds the question of title to the property in favour of the plaintiff any finding on the question of possession does not debar the Judge from affirming the preliminary decree for partition passed by the first Court does not justify him in remanding the case to the lower Court for retrial At the hearing of the appeal the Judge held that the plaint should be amended and the plaint was accordingly amended with the acquiescence of the plaintiff so as to alter the nature of the suit A fresh written statement was filed by the defendant and fresh issues were framed These facts did not preclude the plaintiff from filing an appeal within the time allowed by limitation if on reflection he thought that the action taken by him in amending the plaint was injudicious SHASHI BHUSHAN BEED *v* JOTINDRA NATH ROY CHOWDHRY (1911)

I. L R 38 Calc 681

——————— Mahomedan co owners—*Suit for partial partition—Partition of moveables only asked leaving immoveables ijmali—Suit if lies* Where a Mahomedan instituted a suit against his brothers and mother for partition only of the moveables held by the parties in *ijmali* but that it appeared the parties had *ijmali* immoveable properties also —*Held* that there is no distinction in principle between partition of joint property under Hindu and under Mahomedan law That it was inexpedient to allow a suit for partition of a portion only of the joint properties Plaintiff was given an opportunity to amend the plaint so as to make the suit one for partition of the whole of the joint properties FUZLUR RAHMAN CHOWDHURY *v* MAHOMED FAYZUR RAHMAN CHOUDRY (1911)

[15 C W N 677

——————— Agreement for partial partition if specifically enforceable—*Registration Act (III of 1877) s 17 (b) and (h)—Partition deed unregistered affecting portion of property—Admissibility—Part performance equitable doctrine of if applies where partition acted upon and improvements effected—Previous oral agreement if may be proved—Evidence Act (I of 1872) s 91—Equities in favour of co sharer who has effected improvements how given effect—Commissioner of partition—Delegation of judicial power to* A partition deed in respect of property of the value of Rs 100 or upwards is compulsorily registrable whether it be treated as a deed by which a partition was effected or as a deed which declared a partition previously effected by the parties Cls (b) and (h) of s 17 of the Registration Act (III of 1877) may be reconciled if it be held that a document though not admissible as creating an interest in land is receivable in evidence for a collateral purpose namely for the specific performance of the agreement Where however the defendant in a suit for partition sought to use an unregistered partition deed not for a collateral purpose but to prove that the property covered thereby had ceased to be joint property the document was inadmissible under s 49 of the Registration Act Other evidence in support of the transaction was excluded by s 92 of the Evidence Act because the written instrument was not collateral to but of the very essence of the transaction Where under an arrangement which was embodied in an unregistered partition deed the parties continued for many years in separate possession of portions of the joint property and the defendant during this time spent money in repairs on the portion allotted to him *Held* that assuming that the partition deed was preceded by an oral agreement for partial partition it was not sepecifically enforcible by suit That for this reason and also because the equities arising in favour of the party who made the improvement could be given effect to in the partition decree so that he might not suffer by reason of the agreement having been acted upon or the other party take advantage of the improvements made by him the equitable doctrine of part performance had no application to the case Although there may be a partial partition of joint property by private arrangement there cannot be a partial partition by suit Although a co tenant who has spent money in improvement of the joint property may not be entitled to call upon his co sharers to compensate him for the expenditure yet he has a defensive equity which is enforcible in the event of a partition It is in recognition of such equitable right that to the co owner who has made the improvements is assigned that portion of the property on which the improvements have been made the division being made on the basis of the unimproved value The determination of the question whether certain properties are the joint properties of the parties or the exclusive properties of any of them cannot be delegated by the Judge to the Commissioner for partition. UPENDRA NATH BANERJEE *v* UMESH CHANDRA BANERJEE (1910)

15 C W N 375

——————— Property not capable of division— *Partition Act (IV of 1893)—Plaintiff if may sue for sale of share by defendant at a valuation—All shareholders to bid for property* When the nature of the property jointly owned by the plaintiff and the defendant is such that a division of it amongst them cannot reasonably or conveniently be made the plaintiff has not the right to claim that the defendant should be compelled to transfer his share to the plaintiff at a valuation merely because he happened to have possession of the property at the commencement of the action The proper course is to direct a sale of the property amongst the co sharers and it should be given to that shareholder who offers to pay the highest price above the valuation made by the Court *Williams v Games L R 10 Ch App 204* and *Pitt v Jones 5 App Cas 651* followed *Basunta Kumar Ghose v Mohini Lal Ghose 15 C W N 555* distinguished DEBENDRA NATH BHATTACHARJEE *v* HARI DAS BHATTACHARJEE (1910)

15 C W N 552

——— Property not convenient for division—*Partition Act (IV of 1893)—Plot built on by co sharer not convenient for division—Partition of land—Court s discretion to refuse partition and to allow the party in possession to buy the other party out—Equity* The defendants in a suit for partition had built a dwelling house on a plot of 7 cottahs of land without opposition from the plaintiff who was

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a stranger and owned only a 1/4th share in it and in an adjoining plot of 1 bigha 6 cottahs The lower Appellate Court finding that it would be very inconvenient for all parties concerned if the plots were divided by metes and bounds allowed the defendants to buy up the plaintiff s shares at a proper valuation *Held* that whether s. 4 of Act IV of 1893 applied to the case or not it is a well known principle of equity which must be adopted in all partition cases that when it is inconvenient to divide a property that property must be left in the possession of the person in occupation and the other person who cannot conveniently get actual possession compensated A tank covering one bigha in which plaintiff owned a 1/4th share was left joint the lower Appellate Court holding that it was not convenient to divide it The High Court affirmed that decision BASUNTA KUMAR GHOSH v MOTI LAL GHOSH (1907)

15 C W N 555

——— **Private partition** —*Estates Partition Act (Beng V of 1897) s 99—Private partition amongst proprietors— Tenancy in common cessation of—Putnidar of separated share if bound by subsequent butwara by Collector* S 99 of the Estates Partition Act (Beng V of 189) does not apply when the estate partitioned by the Collector had already been privately partitioned amongst the proprietors and the proprietors were holding their shares of the lands in severalty and not in common tenancy as contemplated in that section A *putnidar* in possession of a separately allotted portion of such estate is not therefore affected by the subsequent partition by the Collector *Hridoy Nath Saha* v *Mohabatannessa Bibi I L R 20 Calc 285* applied The fact that the Government was not bound to recognise the private partition for purposes of revenue does not affect the question. ABDUL LATIF MIAH v AMANUDDI PATWARI (1911) **15 C W N 426**

——— **Appeal**— *Appeal against preliminary decree—Final decree passed since the appeal —No appeal against final decree* *Held* that an appeal against the preliminary decree in a suit for partition cannot be heard if after the filing of such appeal the final decree has been passed and no appeal is preferred against that decree *Kuriya Mal* v *Bishambar Das I L R 32 All 2?5* referred to NARAIN DAS v BALGOBIND (1911)

I L R 33 All 528

See ALSO DECREE **I L R 37 All. 29**

——— **Partition suit abatement of** —*Civil Procedure Code (Act V of 1908) O I r 10—Limitation (Act IX of 1908) Art 171— Death of a party—Abatement—Application to set aside the abatement—Limitation of sixty day —In a partition suit all parties should be before the Court—Inherent power of the Court to add a party at any stage of the suit for the ends of justice* On the 5th April 1892 the plaintiff obtained a decree for partition and died in October 1893 leaving him surviving a minor son who attained majority in February 1907 At a very late stage of the execution proceedings the son made an application on the 10th April 1910 for the issue of a commission to effect partition according to the rights declared in the partition decree *Held* that as soon as the Civil Procedure Code (Act V of 1908) came into force the suit abated so far as regarded the applicant s father who was a party and the application to set aside the abatement by adding the applicant as the legal representative of the deceased not having been made within sixty days under Art 171 of the Limitation Act (IX of 1908) the application was time barred *Held* further that in a partition suit all the parties should be before the Court and that there was nothing in the Civil Procedure Code (Act V of 1908) limiting or affecting the inherent power of the Court to make such orders as might be necessary for the ends of justice LAKHMICHAND REWACHAND v KACHUBHAI GULABCHAND (1911)

I L R 35 Bom 393

——— **"Instruments of partition,"** meaning of—*Undivided brothers—Instruments whereby co owners divide property in severalty— Releas —Partition—Stamp* Instruments whereby co owners of any property divide or agree to divide it in severalty are instruments of partition One of three undivided brothers agreed to take from the eldest brother the manager of the family as his share in the family property moveable and immoveable a certain cash and bonds for debts due to the family and passed to the eldest brother a document in the form of a release Subsequently one of the two brothers passed to the eldest brother a document in the form of a release whereby he and the eldest brother divided the remaining family property by the latter handing over to the former securities for money A question having arisen as to whether for the purpose of stamp duty the said two documents were to be treated as releases or instruments of partition *Held* that the documents were instruments of partition *In re* GOVIND PANDURANG KAMAT (1910)

I L R 35 Bom 75

——— **Final decree passed during pendency of appeal**—*Cross objections filed against final decree —Appeal against preliminary decree maintainable* Where the plaintiffs in a suit for partition had preferred an appeal from the preliminary decree and had also in the defendant s appeal from the final decree filed cross objections it was *held* that there was no bar to the hearing of the plaintiffs appeal against the preliminary decree *Kuriya Mal* v *Bishambhar Das I L R 32 All 2?5* and *Narain Das* v *Balgobind 8 All L J 60?* distinguished MUHAMMAD AKHTAR HUSAIN KHAN v IMDAD HUSAIN (1912)

I L R 34 All. 493

——— **Decree awarding shares effect of Appeal**—*Death of a sharer leaving daughters —Decree for partition final—Severance effected by the decree can be displaced only by a legal decree in appeal* In a suit for partition the first Court passed a decree awarding to the sharers their respective share While an appeal against the decree was pending one of the sharers died leaving two daughters Thereupon a question having arisen as to whether the shares of the surviving sharers were liable to be increased owing to the death of the sharer pending the appeal *Held* that the pendency of the undecided appeal did not detract anything from the vitality or the force of the existing decree Although the decree was under appeal it was not the less a final decree of a competent Court The decree once made there and then determined the legal status or relation of the parties and the severance of interest so effected by the decree at the moment it was

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pronounced could be displaced only by a legal decision in appeal. *Sakharam Mahadev Dange* v *Hari Krishna Dange* *I L R 6 Bom 113* explained. MAHADEV LAXMAN v GOVIND PARASHRAM (1912) **I L R 36 Bom 550**

———— **Agreement for** — *Consideration—Bonâ fide claim for separate allotment for marriages of one brother's daughters—Agreement at or before partition to allot—Execution of promissory notes by each brother for his share of the amount—Previous suit for partition—Subsequent suit on promissory note—S 43 Civil Procedure Code (Act XIV of 1882) no bar—Causes of action distinct.* An agreement made between parties to a partition by which one brother was to pay money for the marriages of his brothers daughters whether it is made before the partition and subsequently embodied in the deed of partition or made at the time of partition is an enforceable contract as the agreement by the father of the daughters to other terms of the partition is sufficient consideration. A claim at the time of partition for the allotment of a separate sum of money out of the general funds for the performance of marriages of the daughters of one of the brothers to a partition is not altogether unfounded according to Hindu law. Even otherwise an agreement so to allot would be binding on the persons agreeing as one of the terms of a *bonâ fide* compromise constituting a settlement between the members of a family if there was a *bonâ fide* claim for the same at the time of partition. If an agreement so to pay a certain sum made by the other brothers at the time of partition becomes split up into various agreements by the execution of separate promissory notes by the other brothers each for his share the obligation to pay the amounts of the promissory notes is distinct from the obligation to observe the other terms of the partition so that a suit first brought for partition against all the brothers (s 43 Civil Procedure Code Act XIV of 1882) does not bar the institution of a subsequent suit for the sum due from one of the brothers under the promissory note. Cause of action meaning of explained. *Nanu v Raman I L R 16 Mad 335*, *Sesha Ayyar v Krishna Ayyangar I L R 24 Mad 96*, *Umed Dholchand v Pir Sahib Jiva Miya I L R 7 Bom 134*, *Sundar Singh v Bholu I L R 20 All 322* and *Moro Raghunath v Balaji Trimbak I L R 13 Bom 45* followed. *Appasami v Ramasami I L R 9 Mad 279* and *Shanmugam Pillai v Syed Gulam Ghose I L R 27 Mad 116* distinguished. *Preonath Mukerji v Bishnath Prasad I L R 29 All 256* dissented from. Per CURIAM. If several promissory notes are executed for portions of the same debt each promissory note creates a cause of action and this would be so even if it be assumed that a suit might be instituted for the whole debt on the original cause of action. ANANTANARAYANA IYER v SAVITHRI AMMAL (1913) **I L R 36 Mad 151**

———— **Partition suit— Misjoinder of causes of action and parties**—*Prejudice—Res judicata amongst co defendants—Civil Procedure Code (Act V of 1908) s 11.* A suit for partition determines the shares of the co sharers amongst themselves and each co sharer whether plaintiff or defendant demanding a separate block for himself may prove his share and get a block for him. Where the causes of action in respect of different items of property the subject matter of a suit for partition appeared to be different and the parties concerned in the claim to one such item appeared to be less numerous than those concerned in the claim for the other item the joining of them in one suit caused misjoinder of parties and causes of action. But such misjoinder of causes of action and parties did not entitle the appellant (who raised this point in his written statement) to have the decree set aside particularly as the misjoinder had not prejudiced him and as if the two separate suits had been brought on the separate causes of action they would probably have had to be tried together. Where a co sharer of the present plaintiff had sued to have his title declared to a taluk and the plaintiff and the defendant appellant had been made co defendants and the decision was that there had been a binding private partition confining the interests of each co sharer to the allotment received by his or her predecessor and that that was not merely an informal division for convenience of possession. *Held* that though the question of a previous partition was one which not only *might* and ought to have been but actually was made the ground of defence in the former suit within the meaning of s 11 Expln IV Civil Procedure Code and though the present plaintiff was acting in that suit in the same interest as her cousin it was impossible to hold that in the suit in which she and the appellants were co defendants there was a conflict of interest between them and that the judgment defined their rights and obligation *inter se*. The case accordingly did not come under the rule relating to *res judicata* among the defendants as laid down in *Gurdeo Singh v Chandrika Singh I L R 36 Calc 193*. SARODA PROSAD ROY CHAUDHURY v KAILASH BASHINI GUHA (1912) **17 C W N 128**

———— **Leasehold interest purchased in execution allotted to one co-owner**—*Tenancy of the others if subsists—Bengal Tenancy Act (VIII of 1885) s 12—Registration and notice if necessary.* Where upon partition amongst co owners a share of a taluk purchased in execution on behalf of all the co owners fell into the share of one of them. *Held* that the liability of the other co owners to pay rent to the landlord of the taluk ceased. *Prosunna Coomar Sinha v Ram Coomar Ghose I L R 16 Calc 640*, *R D Mehta v Gadadhar Rai I L R 37 Calc 683*, *14 C W N 83*, *Promatha Nath v Kali Prasanna I L R 28 Calc 744* referred to. S 12 of the Bengal Tenancy Act the operation of which is confined to transfers by sale gift or mortgage does not apply to a case of transfer by partition which does not therefore require to be registered and notified as contemplated by s 12. RAM DHONE DHUR v SARUP CHANDRA SEN (1912) **17 C W N 313**

———— **Infructuous suit for partition no bar to a second suit for the same purpose**—In the year 1905 the plaintiff brought a suit for partition of a house held in joint tenancy. The suit was compromised the defendant agreeing to transfer his rights to the plaintiff for a consideration and was accordingly dismissed. The compromise however was not given effect to and thereafter the plaintiff brought a second suit for partition. *Held* that as soon as the defendant failed to carry out the compromise the parties were relegated to their rights as they

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existed prior to the compromise The right to bring a suit for partition unlike other suit is a continuing right incidental to the ownership of joint property and the second suit was therefore not barred *Nasratullah v Mujib* *ullah I L R 13 All 309 Bisheshar Das v Ram Prasad I L R 28 All 6* and *Medai Mohan Mondul v Lailanta Nath Mondul 10 C W N 9* allowed. *Calland Lal v Manni Lal I L R 23 All 219* not followed MUKERJI v AFZAL BEG (1914) **I L R 37 All 155**

——————— **Suit for if lies without including the whole of the joint properties in the suit**—*Principle for Courts to follow in such cases—Bengal Agra and Assam Civil Courts Act (XII of 1887) s 37* The plaintiffs and the defendants were the joint proprietors of a certain pargana which was partitioned by the Collector At the time of the partition certain lands which were jungle or submerged were excluded from the partition and kept joint The plaintiff brought three suits to have the joint lands partitioned. *Held* that it cannot be said that the general rule is that a joint owner cannot claim a partition of the joint property without bringing the whole of it under partition The rule to be applied is much more elastic and what the Court has to consider in cases of this kind under s 37 of the Bengal Agra and Assam Civil Courts Act 1887 is justice equity and good conscience HEM CHANDRA CHOWDHURY v HEMANTA KUMARI DEBI (1914)
19 C W N 356

——————— **Suit for—if maintainable without proof of actual or constructive possession—Possession by co sharer when may be adverse—**
—Evidence necessary to establish adverse possession by co tenant—Ouster of co tenant how may be effected to create adverse possession—Land Registration Act registration of name under effect of if necessarily implies possession—Partition as distinguished from ejectment—Costs in partition suit before preliminary decree where defendant successfully contests plaintiff s claim for partition The plaintiff sought partition of an estate of which he claimed to own one anna share by purchase He alleged that after his purchase he had his name registered under the Land Acquisition Act in place of his vendor and was in possession since the date of his purchase The lower Court found that the plaintiff was in possession of his share and made a preliminary decree for partition The defendants appealed *Held* that although as a general rule the possession of one co tenant is not deemed adverse to the other co tenants the existence of the relation of co tenancy does not preclude one co tenant from establishing an adverse possession in fact as against the other co tenants and though the co tenant enters in the first instance without claiming adversely his possession afterwards may become adverse In order to render the possession of one co tenant adverse to the others not only must the occupancy be under an exclusive claim of ownership in denial of the rights of the other co tenants but such occupancy must have been made known to the other co tenants either by express notice or by such open and notorious acts as must have brought home to the other co tenants knowledge of the denial of their rights The evidence to show adverse possession by one co tenant must be much clearer than between strangers to the title and the hostile intent of the co tenant in possession must be shown by unequivocal conduct The ouster of the other co tenants in order to render the possession adverse need not be by violent or intimidating expulsion or repulsion nor need notice of the adverse holding be actually brought home to the other co tenant by personal or formal communication but it is sufficient if the contrary is not proved that the circumstances show that such knowledge may reasonably be presumed *Held* that the registration of the name of a person under the Land Registration Act is some evidence of possession but the weight to be attached to this fact must depend upon the circumstances of each case The fact that the plaintiff was able to get his name substituted in the place of his vendor does not necessarily show that he is in possession of any share of the estate That the plaintiff having failed to prove that he had possession actual or constructive of any share of the disputed property was not entitled to maintain a suit for partition. That the remedy of the plaintiff was by a suit for joint possession and partition and on the plaint in a suit so framed court fees must be paid *ad valorem* That partition is not a substitute for ejectment because partition implies an existing joint possession and enjoyment to be converted into possession in severalty That although ordinarily in a suit for partition pure and simple the parties have to bear their own costs of the suit up to the stage of the preliminary decree the plaintiff must in this case pay the costs of the defendants who have successfully contested his claim for partition LOKE NATH SINGH v DHAKESHWAR PROSAD NARAIN SINGH (1914)
20 C W N 51

——————— **Suit for if maintainable by a lessee of mining rights against lessor s co-owners**—*Partition of underground Mines and mineral if possible—Partition (Act IV of 1893), s 2* According to the English authorities it is clear that a lessee for a term of years must maintain a claim for partition There is no reason for holding that a different rule prevails in India The authority of *Mukunda Lal Pal Chaudhuri v Lehuraux I L R 20 Calc 379* has been much shaken by the decision of the Full Bench in *Hemadri Nath Than v Ramani Kanta Roy I L R 24 Calc 575 s c 1 C W N 405 Heaton v Dearden 24 Beav 147 Bhagwat Sahai v Bepin Behari Mitter I L R 37 Calc 918 s c 14 C W N 962* and *Baring v Nash 1 V & B 551* referred to There may be no special difficulty in effecting a partition of the underground mines and minerals but in case any such difficulty arises the power to order a sale of under s 2 of the Partition Act of 1893 may be exercised LALIT KISHORE MITRA v THAKUR GIRDHARI SINGH (1916)
20 C W N 1306

——————— **Previous partition suit** *instituted by third parties against present defendants and the vendor of the plaintiff—Issue regarding the share of the plaintiff s vendor being subject to other defendants mokurari raised but expunged—Final decree in the previous partition suit passed on the basis of the mokurari interest and allocation made thereunder—Bar of res judicata to present suit—Explanation IV of s 11 Civil Procedure Code (Act V of 1908)* In a previous partition suit instituted by Y against the present plaintiff s vendor *T* and the present defendants [illegible]

PARTITION ACT (IV OF 1893)—*contd*

———ss 1 2 3—*contd*

visions of the Partition Act 1893 apply to the partition amongst co owners of such right But an order for sale of the mortgagee rights under s 2 of the Partition Act will not be valid un le s based upon the request of a party or parties interested to the extent of one moiety or upwards BANKE LAL v SHANTI PRASAD (1913)
I L R 35 All 387

——— s 4—

See PARTITION I L R 45 Calc 873

——— *Suit for partition—Undertaking by defendants to purchase plaintiff s share in the subject matter of the suit* Where the defendant to a suit for partition by metes and bounds has definitely undertaken according to the provisions of s 4 of the Partition Act 1893 to purcha e the share of the plaintiffs in the property sought to be partitioned he cannot be permitted to re ile from his undertaking and the court is bound to direct a sale ILIAS AHMAD v BULAQI CHAND (1917)
I L R 39 All. 672

PARTITION AND POSSESSION

——— suit for—

See CIVIL PROCEDURE CODE (ACT V OF 1908) O I R 3
I L R 40 Mad 365

PARTITION BY COLLECTOR

See JOINT ESTATE I L R 43 Calc 103

See PARTITION

PARTITION DECREE

See NUISANCE 14 C W N 637

PARTITION DEED

See STAMP ACT (II OF 1899) SCH I ART 50 I L R 38 All 56

PARTITION SUIT

See COURT FEES
8 Pat L J 663

See PARTITION

See PRACTICE (29) I L R 44 Calc 28

——— claim for future profits—

See MESNE PROFITS
I L R 44 Bom 954

——— *Plaintiff a purchaser from minor co parcener—Fresh sale deed subsequently obtained after attainment of majority—Whether defect in title cured—Practice and procedure* The plaintiff who was a purchaser from a minor co parcener sued for partition of the family property The minor co parcener who was made a party defendant after the attainment of his majority passed a fresh sale deed in plaintiff's favour during the progress of the suit It was contended that the plaintiff being a purchaser from a minor had no right to sue and that the defect in title was not cured by the new sale deed obtained —*Held* the suit was maintainable PER MACLEOD C J — It seems to me therefore th t i purely a matter of form which could have been ured equally well by the trial Judge by

PARTITION SUIT—*contd*

mal ing Waman [Sc the minor] a party plaintiff instead of continuing him as a defendant and by then directing partition of the property VI HNU NARHAR v SHRIRAM RAGHUNATH (1920)
I L R 45 Bom 983

PARTNER

——— Death of—

See PARTNERSHIP BUSINESS
I L R 48 Calc 906

——— liability of incoming partner—

See TRADE MARK I L R 40 Calc 814

——— Payment by—

See LIMITATION ACT 1908 ss 19 AND 20 I L R 37 Mad. 146
I L R 41 Mad. 427

——— Suit by for partial settlement of accounts—

See PARTNERSHIP
I L R 2 Lah 351

PARTNERSHIP

See ABKARI ACT (BOM V OF 1878) ss 16 43 I L R 37 Bom 320

See APPEAL
I L R 42 Calc 914

See CIVIL PROCEDURE CODE (1908) O XXII R 4 I L R 39 All. 551

See CONTRACT ACT (IX OF 1872)—

s 45 I L R 32 All 638

ss 261 263 I L R 42 Mad. 15

See HINDU LAW—JOINT FAMILY
I L R 43 All 116

See PARTNERSHIP ACT

——— acknowledgment of liability or payment by partner—

See LIMITATION ACT (IX OF 1908) s 1 (2) 19 AND 20 I L R 37 Mad 146
I L R 41 Mad 427

——— agreement to enter into—

See CONTRACT ACT (IX OF 1872) s 23
I L R 40 Bom 64

——— dissolution of—

See CIVIL PROCEDURE CODE (1908) s 16 (a) (d) I L R 41 All 513

See COURT FEES ACT (VII OF 1870) 7 SCH II CLS 3 4
I L R 32 All 517

See MINOR I L R 42 Calc 225

See SOLICITOR S LIEN FOR COST
I L R 34 Bom 494

——— Suit for dissolution in British Indian Courts—Partnership business carried on outside Jurisdiction of court—

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 20 I L R. 45 Bom 1228

——— Suit for dissolution of by a partner who has been guilty of misconduct—

See CONTRACT ACT 1872 s 254
I L R 1 Lah 6

PARTNERSHIP—*contd.*

———— winding up of—

See APPEAL I L R 42 Calc 914

1 ————Arbitration—Accounts—*Managing partners liability of—Onus—Reference to arbitration of claim of firm against customers by one partner when binds firm—Reference after suit for dissolution* One partner is not competent without special authority to bind the firm by a submission to arbitration *Administrator General v Official Assignee I L R 32 Mad 463* distinguished *Ramjarose v Kallu Mal I L R 29 All 135 Dattoobhoy v Vallu 1 Bom L R 8 S* approved The liability of co partners to account and how and to what extent it arise discussed HAZI MAHAMMAD AKBAR *v* DWARKA NATH SIRKAR (1910) 14 C W N 1106

ON APPEAL 18 C W N 1025

2 ———— Accounts—Money received after dissolution—*Partner whose remedy for general account is barred may sue to recover share of item received after dissolution* A partner whose remedy against his co partner for a general account is barred can recover his share of a particular item of assets received after the dissolution of the partnership if it be open to the defendant co partner to ask the Court to take accounts with a view to show that the plaintiff had received more than his share in the partnership assets *Sokkanadha Vanni Mundar v Sokkanadha Vanni Mundar I L R 28 Mad 344* followed THIRUVENGADA MUDALIAR *v* SADAGOPA MUDALIAR (1910) I L R 34 Mad. 112

3 ———————— *Adjusted account—Settlement of basis of account—Final adjustment not signed—Pleadings want of precision in if material—Limitation—Cross demands in partnership account—New cause of action from adjustment—Limitation Act (IX of 1908) Sch I Art 64 115 and 120* When parties had agreed on the 2nd April 1905 that a settlement of partnership accounts between them should be made upon a certain basis and the final adjustment took place on the 20th August 1906 and entries to that effect were made in the books on that date but not signed by the parties in a suit brought on the 16th April to recover the amount due on such adjustment —*Held* that it was an adjustment which gave rise to a fresh cause of action as from date and whether it was Art 115 or Art 120 of the Limitation Act that applied the suit was not barred When the plaint did not specify the day on which the adjustment took place but approximately indicated the time and proof was furnished of exact date at the hearing —*Held* that there was nothing in the pleadings which should prevent the Judge from arriving at any conclusion on the evidence adduced as to the date JALIM SINGH SRIMAL *v* CHOONEE LALL JOHURRY (1911) 15 C W N 882

4 ———— Representative carrying after partner s death—*Contract Act (IX of 1872) s 253 (10)—Partnership business carried on after death of partner on the assumption of representative continuing as partner—Widow of deceased a pardana hin lady not taking any part in business and not examining accounts—Accountability of working partners—Accounts to commence from beginning of partnership if accounts not settled—Partnership money diversion of—Accounting with interest or profits—Remuneration to working partner—Balancing of accounts effect of* Where on the death of a partner the business was carried on on the assumption that his widow was a partner *Held* that the conduct of the parties showed that there must have been a contract between the original parties that the partnership would not be dissolved by the death of a partner within the meaning of cl (*10*) of s 253 of the Indian Contract Act but should be continued with the representative of the deceased as a partner The mere balancing of account in a book of account does not itself constitute an account stated much less does it constitute an account settled which the parties cannot reopen In a general account of partnership dealing the time from which the account is to be in the commencement of the partnership unless some account has since that time been settled by the partners in which case the last settled account will be the point of departure Where one of the partners having the right to examine the partnership accounts did not for a long time exercise the right *Held* that unless fraud was established purchases and sales in respect of the business by the working partners should not be challenged but they were bound to account for sums withdrawn from the partnership business and applied for purposes unconnected therewith with the profits realised therefrom or with interest at the option of the partner demanding the account Where one of the partners wilfully leaves the others to carry on the partnership business unaided the Court may upon dissolution decree an allowance in favour of the partner who had carried on the business alone GOKUL KRISHNA DAS *v* SASHIMUKHI DASI (1911) 16 C W N 299

5 ———— Accounts—*Partnership accounts —Banking concern joint—Deposit by a partner payable with interest—Suit to recover deposit if maintainable—Suit if maintainable when suit for dissolution and accounts previously instituted—Civil Procedure Code (Act V of 1908) s 10* Where it was arranged between the mother and guardian of plaintiff a minor partner of a banking concern and his co partners that each of the partners would be entitled to draw a certain fixed monthly allowance from the bank for personal expenses but the minor s allowance was by arrangement not taken out but permitted to accumulate with interest in the bank and in a suit for dissolution and accounts by the plaintiff he applied for an order on the Receiver appointed in the suit to pay the amount of the deposit with interest but the decision of the Court being adverse he instituted a fresh suit for the recovery of deposits with interest less one third the proportion recoverable from himself as a partner but the suit was dismissed and pending an appeal from the order of dismissal the plaintiff obtained an order of the High Court in revision directing an account to be taken of the amount alleged to be in deposit if plaintiff s appeal should fail *Held* that the suit was rightly dismissed as barred by the provisions of s 10 of the Civil Procedure Code as the matter in issue in the suit was directly and substantially in issue in the previously instituted suit To stay the suit according to the strict language of s 10 until by the decision of the previous suit the matter would be *res judicata* was needless *Obiter* Though on general principles the claim of a partner against a joint banking

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subject to any agreement between the parties interest is payable on money paid or advanced by one partner for partnership purposes beyond the amount of capital which he had agreed to subscribe. That the respondent who claimed the benefit of the profits which accrued from the sums advanced to the partnership business by the defendant was bound in justice to make an allowance for interest on those sums to the partner. GOBINDA CHANDRA BASAK *v* HARIDAS BASAK (1915) **20 C W N 634**

14 ———— **Partner borrowing for partnership purposes**—*Promissory note executed by two of three partners—No indication in promissory note of execution on behalf of partnership—Liability of the partner who was not a party to the note* A promissory note was executed by two out of three partners of a firm for money then advanced to the executants for purposes of the firm. The promissory note did not contain any indication that it was executed on behalf of the firm. In a suit on the note by the promissee *Held* that even the third partner who did not execute the note was liable. *Per* SRINIVASA AYYANGAR *J* (*obiter*) An endorsee of the note cannot recover against the partner not executing the note. *Karmali Abdulla* v *Karimji Jivaji I L R 39 Bom 261* followed. *Somasundaram* v *Krishnamurthi 17 Mad L J 196* and *Muthu Sastrigal* v *Viswanatha Pandhara Sannadhi 26 Mad L J 19* distinguished. SHANMUGANATHA CHETTIAR *v* SRINIVASA AYYAR (1916) **I L R 40 Mad 727**

15 ———— **By manager of joint Hindu family with strangers**—*Right of other members of family to institute suits in respect of partnership* A contract of partnership entered into by the manager of a joint Hindu family with strangers does not *ipso facto* make the other members of the family partners and not being partners the other members whether divided or undivided cannot institute any suit in respect of partnership (*e g*) a suit for dissolution of partnership. *Sokkanadha Vannimundar* v *Sokkanadha Vannimundar I L R 28 Mad 344* and *Ramanathan Chetty* v *Yegappa Chetty 30 Mad L J 241* applied. *Joopoody Sarayya* v *Lakshmanaswamy I L R 36 Mad 185* distinguished. GANGAYYA *v* VENKATARAMIAH (1917) **I L R 41 Mad 454**

16 ———— **Boat—co owners of**—*Employment of boat to earn freight—Partnership in freight—Suit for dissolution whether maintainable—S 379 Indian Contract Act (IX of 1872)* Where the co owners of a boat employ it to earn freight they become partners in respect of such earnings and a suit for dissolution of such partnership is maintainable although the plaintiff being only a co owner is not entitled to a decree for the sale of the boat employed by the partnership. VANAMATI SATTIRAJU *v* BOLLAPRAGADA PALLAMRAJU (1918) **I L R 41 Mad 939**

17 ———— **Death of one partner leaving a minor son**—*Suit by surviving partner against minor for rendition of accounts—Procedure* One of two partners in a specific business who was alleged to have been the managing partner died leaving him surviving a minor son. The other partner sued the minor as his father's representative for rendition of accounts and for payment of what might be found due to him (the plaintiff). *Held* that suit was maintainable but the proper procedure was for the Court to direct both sides to produce their accounts and thereafter to pass a decree for whatever sum might appear to be due from one party to the other. SHANKAR LAL *v* RAM BABU (1918) **I L R 40 All 446**

18 ———— **Dissolution—Right to sue for where it cannot be carried on except at a loss**—*Clause in partnership agreement stating date agreed upon for termination of partnership—Contract Act (IX of 1872) ss 252 254 sub s (6)—Right to protection of Court on equitable grounds—Discretion of Court to grant dissolution* The defendants (respondents) a firm of contractors had undertaken the construction of the new Alexandra Dock in Bombay and they required for the work a large supply of granite and other stone. For that purpose they formed a partnership with the plaintiff (now represented by the appellants) for the quarrying and supplying the required materials. By cl 4 of the *deed of partnership it was agreed that* the working of the quarries and the partnership should continue until the supply of granite or other stone for the construction of the dock was completed and that the partnership should then terminate and be wound up. The plaintiff finding after a time that the partnership could not be carried on except at a loss brought a suit for its dissolution and for an account before the supply of granite and stone had been completed and the defendants contended that the suit was premature. *Held* (reversing on this point the decision of the appellate High Court which had set aside that of the trial Judge) that notwithstanding the terms of cl 4 the plaintiff was entitled on the ground alleged and under the circumstances *of the case to have a dissolution* under sub s (6) of s 254 of the Contract Act (IX of 1872). There was nothing in s 252 of that Act to constitute a bar to such a suit. A partner's claim to a decree for dissolution rested in its origin not on contract but on his inherent right to invoke the Court's protection on equitable grounds in spite of the terms on which the rights and obligations of the partners might have been regulated and defined by the partnership contract. There was no ground for questioning or disturbing the discretion given by the Act and exercised by the original Court in making a decree for dissolution in the plaintiff's favour. PERMATUNNISSA BEGUM *v* PRICE (1917) **I L R 42 Bom 380**

19 ———— **Contract whether one of partnership or service—Grounds for dissolution**—*Accounts* Upon the construction of the document in question the relation between the parties was held to be that of partners and not master and servants. Refusal and neglect on the part of any one to perform the duties undertaken by him would give to any other partner the right to apply for dissolution but for dissolution by agreement the consent of all is necessary. The fact however that certain partners deliberately ceased to perform their duties would be taken into consideration in taking accounts. W KRISHNAMA CHARIAR *v* *A* SANKARA SAH **25 C W N 314**

20 ———— **Death of one partner—Liability of surviving** *Partner for profits made in the business subsequent to the death of the deceased partner* Where on the death of one partner the surviving partner continued the business *Held* that he was liable to give to the representative of the deceased partner a share in the profits of the business which may have accrued subsequent to the

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death of the deceased partner *Brown* v *Tait* (15 1) Jacob 284 *Yates* v *Finn* 13 Ch D 839 *Crawshay* v *Collin* 15 Ves 218 1 Jac & Wa 267 *Heathcote* v *Hulme* 1 Jac & Wa 122 *Ahmed Musaji Salehji* v *Hashim Ebrahim Salehji* I L R 42 Cal 914 referred to MAHOMED KAMEL *v* HAJI HEDAYETULLA (1921) **I L R 48 Calc 906**

21 ——————— *Suit by a partner for a partial settlement of account during the continuance of the partnership* Plaintiff one of the partners of a press pool entered into on 20th October 1913 for 3 years sued on 13th October 1915 for a settlement of the partnership accounts from 15th June 1914 to the 15th June 1915 alleging that the partnership had been put an end to on the latter date by defendant s conduct It was found by the High Court that the partnership had not been dissolved and the question was whether the plaintiff was competent to sue for a partial settlement of accounts for the season 1914 15 *Held* that the general rule as applied in India is that if the account is sought in respect of a matter which though arising out of a partnership business or connected with it does not involve the taking of general accounts the Court will, as a rule give the relief applied for It will be for the Court to determine under what circumstances it will be equitable to order a partial account having regard to the rights of the parties under the contract *Fairthorne* v *Weston* (3 Hares Report 387) followed *Karri Venkata Reddi* v *Kollu Narasayya* (I L R 32 Mad 76) *Raghubar Dayal* v *Sheoram Das* (1 *All* L J P 94) and J P Singhal s Law of Partnership in British India pages 344 346 referred to *Held also* that considering that prior to the 15th June 1914 the accounts were rendered daily and dividends distributed daily but after that date the defendant s agent stopped giving of the accounts daily and the payment of dividends and that written demands sent by plaintiff to the latter were left unheeded the plaintiff was justified in bringing the present suit for partial settlement of accounts HARJI MAL MELA RAM *v* KIRPA RAM BRIJ LAL **I. L R 2 Lah 251**

22 ——————— *Limitation—Dissolution—Assets received by partner—Right to sue for share—Taking accounts—Indian Limitation Act (XI of 1908) Sch I art 106—Indian Contract Act (IX of 1872) sec 265* If a partnership has been dissolved and accounts have been wound up the mutual rights and obligations of the partners therein being discharged and an asset which has been forgotten or treated as valueless afterwards falls in it ought to be divided between the partners in proportion to their shares in the partnership But if no account has been taken the proper remedy of a partner in respect of an asset so received is to have an account taken if his right to sue for an account is barred by limitation he cannot sue the partner who has received the asset for a share of it *Merwanji Hurmusji* v *Rustomji Burjorji* (1882) I L R 6 Bom 628 *Sokkanadha Vannimundar* v *Sokkanadha Vannimundar* (1905) I L R 28 Mad 344 and decisions following them disapproved Observations in *Knox* v *Gye* (1871) L R 5 H L 656 explained GOPALA CHETTY *v* VIJAYARAGHAVACHARIAR (192) **I L R 45 Mad (P C) 378**

PARTNERSHIP ACCOUNT

See PARTNERSHIP

——— suit for—

See LIMITATION ACT (XV OF 1877) **I L R 36 Mad 185**

——————— *Duty of each partner to discover all documents—Arbitration reference of dispute with customer to by one partner—Others if bound—Question if one of law—Agreement to refer not originally binding becoming binding by acquiescence or acceptance of benefit—Question if should be allowed to be taken for the first time on appeal—Partner charged with entering into agreement to refer negligently and improperly—Measure of damage — Onus of proof* For the purpose of working out a partnership decree each party to the action is bound to produce and discover all documents in his possession relating to the partnership and an application by the plaintiff for discovery of documents in the possession of a defendant in such an action ought not to have been refused *Held* that the decision of the High Court in so far as it was of opinion that the accounts taken by the Commissioner (and affirmed by the trying Court) were not properly taken or supported by evidence and must be investigated afresh was correct A sum of money paid by a customer as the result of a reference to arbitration in which the legal personal representatives of a deceased partner were no parties having been brought into the partnership accounts the latter who did not dispute the item in the first Court for the first time on appeal contended that not being parties to the reference they were not bound by it *Held* that the question whether the legal personal representatives of the deceased partner were bound by the agreement to refer and by the award was not a simple question of law to be decided without reference to the facts of the case or any evidence which might have been available if it had been raised at the proper time and the contention should have been rejected as having been put forward at too late a stage An agreement to refer not originally binding might become binding later on by the acquiescence of the party or his acceptance of benefits thereunder *Held* further that if the legal personal representatives of the deceased partner were not bound by the award they would not be entitled to relief on the footing that it was binding but had been negligibly and improperly entered into That if relief could be given on this footing the difference between the amount originally claimed against the customer and the amount paid by him under the award would not necessarily be the measure of damages nor could the onus of proving that it was any less sum be thrown on the person accused of negligent and improper conduct *Haji Mahamad Akbar* v *Dwarka Nath Sarkar 14 C W N 1106* reversed in part DWARKA NATH SARKAR *v* HAJI MAHOMED AKBAR (1914) **18 C W N 1025**

——————— *Suit for partnership accounts—Limitation Act (IX of 1908) Art 106—Specific assets realised within period of limitation* If a suit for general partnership accounts and a share in partnership profits is itself barred the plaintiff in such a suit cannot be allowed to proceed speculatively against any and every partnership asset which may have been realised by the defendant after dissolution and within the period of limitation. *Merwanji Hormusji* v *Rustomji*

PARTNERSHIP ACCOUNT—*contd*

Burjori I L R 6 Bom 628 distinguished. AHMED SULEMAN *v* BHAGWANDAS VISRAM AND Co (1909)
I L R 34 Bom. 515

———— *Limitation Act (IX of 1908) Sch I Art 106—Money received by partner after dissolution of partnership—Suit by other partner for recovery of share therein if maintainable after suit for general accounts barred—Position where an item falls in after accounts squared off—Fresh cause of action* It is contrary to the policy of the Legislature to allow a partner whose right to sue for a general partnership accounts has been barred by limitation to sue for his share of specific payments received from debtors by one partner subsequently to the dissolution of the partnership permitting the latter by way of set off to claim what may be found due to him upon taking the partnership accounts If a partnership has been dissolved and the accounts have been wound up and each partner has paid what he has to contribute to the debts of the partnership and received his share of the profits the mutual rights and obligations having been thus all discharged and then it turns out afterwards that there was some item to the credit of the partnership which was either forgotten or treated as valueless by reason of the supposed insolvency of the debtor or for any other cause which item afterwards becomes of value and falls in it ought to be divided between the partners in proportion to their shares in the original partnership If on the other hand no accounts have been taken and there is no constant that the partners have squared up then the proper remedy when such an item falls in is to have the accounts of the partnership taken and if it is too late to have recourse to this remedy then it is also too late to claim a share in an item as part of the partnership assets K GOPALA CHETTY *v* T G VIJARAGRA ACHARIAR
26 C W N 977

PARTNERSHIP PROPERTY

See PARTNERSHIP **I L R 43 Calc 733**

PARTY

See RES JUDICATA
I L R 36 Bom 189

PART PAYMENT

See LIMITATION ACT (IX OF 1908) s 20

PART PERFORMANCE

See AGREEMENT TO TRANSFER.
24 C W N 463

See COMPROMISE **I L R 42 Calc 801**

See ESTOPPEL

See TRANSFER OF PROPERTY ACT 1882 ss 54 AND 48 **I L R 40 All. 187**

See UNIVERSITY LECTURESHIP
I. L. R 41 Calc 518

———— **Doctrine of applicability of** Plaintiff sued for joint possession of land on declaration of her title She claimed it as heir to her father The defence to the effect that the Plaintiff's father had exchanged the land in suit for some other land with the defendant s vendor was found to be established *Held* that on the equitable doctrine of part performance the Plaintiff could not quest on the validity of the exchange on the ground that it had not been effected by a registered document. That this doctrine has been applied by the Courts in recent judicial decisions without reference to the question whether the right to claim specific performance was or was not subsisting
25 C W N 905

PASSENGER

See CONTRIBUTORY NEGLIGENCE
I L R 34 Bom. 427

PASSING OFF ACTION

See TRADE MARK **I. L R 37 Calc 204**

PASTURE LAND

See Pasturage

See MADRAS ESTATES LAND ACT (I OF 1908) s 3 **I L R 38 Mad 738**

———— **Tenancy—if permanent**—*Chariramna holdings—Occupancy right acquisition of in—Using land for purposes of cultivation if waste—Remedy of landlord—Forfeiture—Landlord and Tenant Act (X of 1859) s 6—Bengal Tenancy Act (VIII of 1885) s 5 (2)—Notice—Service—Transfer of Property Act (IV of 1882) ss 106 108 (o) 111 (g)* The question being whether certain holdings situated in the tract known as *chariramna* or pasture lands in Mouzah Basantpur in Zillah Purnea were permanent tenancies it was proved that sales by private treaty and by auction through Court of such holdings were frequent that cases of ejectment were uncommon that such holdings frequently passed to the heirs of the deceased tenants and that mutation of names in the zemindar s *sherista* had been frequently allowed sometimes on payment of *na arana* and sometimes without *Held* that the proper inference to be drawn from these circumstances was that the tenants had a permanent right in the holdings and were not liable to ejectment on notice *Per* DOSS J —That assuming that the lands were settled with the tenants only for the purpose of grazing cattle the tenants had acquired a right of occupancy in the lands before the Bengal Tenancy Act came into force under s. 6 of Act X of 1859 *Fitz Patrick* v *Wallace 11 W R 231* followed

That it was not reasonable to hold that at the inception of the tenancies it was intended by the parties that the lands were never to be used for cultivation, and the tenants were raiyats within the meaning of s 5 sub s (2) of the Bengal Tenancy Act Per RICHARDSON J —The tenants had failed to prove that the lands were left for purposes of cultivation or that they had acquired occupancy right therein. That by using the lands intended for grazing for purposes of cultivation the tenants did not incur forfeiture SHEIKH LATIFAR RAHAMAN *v* A H. FORBES (1909) **14 C W N 372**

PASTURE RENT

———— **recovery of**—

See MADRAS ESTATES LAND ACT (I OF 1908) s 3 **I L R 38 Mad. 738**

PASTURAGE.

———— **Right of**—*Unassessed Government Waste—Right of pasture on not to exclude owner s right to possession—Acts necessary to obtain prescriptive title* There are no statutory provisions

PASTURAGE—*contd*

in the Madras Presidency as in Bombay with reference to the grazing rights of villagers over adjoining Government waste The right of pasture on unassessed waste cannot exclude the owner's right to possession and enjoyment of the property over which such a right may exist *Ram Saran Singh v Birga Singh I L P 19 All 172* referred to *Secretary of State for India v Mathmabhai I L R 14 Bom 213* 1 distinguished CORIJALA PICHI NAIDU v VALLUR VEERIAH (1910) I L R 34 Mad. 58

——— *Suit for declaration of and for injunction—Mere thirty years uninterrupted user if enough—Presumption of right* In a suit for declaration that the plaintiffs who were cultivating tenants had a right of pasturage over certain lands and for an injunction on the landlord to remove fences etc therefrom the finding of the lower Appellate Court in decreeing the suit was Th land ha been lying unoccupied from time immemorial and the villagers have been grazing their cattle here for more than 30 years Their user was open and peaceful without interruption and should b in the circumstances of this ca presumed to be as of right also *Held* that this finding was not sufficient to establish the plaintiffs right of pasturage over the land in suit It being a customary right it must be reasonable and it would be unreasonable to hold that no land over which cattle had grazed should ever be brought under the plough SYED ALI v SARJAN ALI (1913) 18 C W N 735

PATELKI SERVICE

See BOMBAY LAND REVENUE CODE (BOM ACT V OF 1879) s 202
I L R 45 Bom 894

PATENT

See INVENTION AND DESIGNS ACT (V OF 1888) s 29 I L R 41 All. 68

PATENTS AND DESIGNS ACT (II OF 1911)

See INVENTIONS AND DESIGNS ACT
See PATENT

——— ss 62, 64, 67—
See DESIGN I L R 45 Calc 606

PATERNAL AUNT

See HINDU LAW—GUARDIAN
I L R 38 Mad. 1125

PATILKI VATAN

See VATAN I L R 37 Bom 81

PATKUM PARGANAS—

See BEMIADI PATTA
6 Pat L J 687

PATNA HIGH COURT

——— *Calcutta High Court decision of binding upon Patna High Court until dissented from by Full Bench* The decision by a Divisional Bench of the Calcutta High Court is binding upon the Patna High Court until dissented from by a Full Bench HARDHAR MISSER v SYED MOHAMED (1916) 20 C W N 983

PATNA HIGH COURT RULES

See HIGH COURT RULES AND ORDERS

——— *Legality of—Letters Patent of the Patna High Court cl 29—Code of*

PATNA HIGH COURT RULES—*contd*

Civil Procedure (Act V of 1908) ss 122 1?3 1?4 and 125—Failure to furnish list of papers to be inserted in paper book whether order dismissing appeal for default is appealable to His Majesty in Council The rules of the Patna High Court 1916 are not *ultra vires* No appeal lies to His Majesty in Council from an order of the High Court dismissing an appeal on failure of the appellant to prepare and deliver a list of the papers to be inserted in the paper book in accordance with rule 8 of Chapter IX of the Patna High Court Rules 1916 RAJENDRA KISHORE v RAJKUMAR KAMAKHYA NARAIN SINGH 5 Pat L J 719

——— Ch IV r 15—

See PRIVY COUNCIL, APPEAL TO
6 Pat L J 114

——— Ch V r 3—*Held* that a question as to convenience of procedure is not a question of law within the meaning of this rule HITENDRA SINGH v MAHARAJA SIR RAMESHWAR SINGH
6 Pat L J 293

——— Ch. VI, rr 2 and 16—

See LETTER PATENT 4 Pat L J 695

——— Ch. VI r 5—

See SUBSTITUTION OF PARTIES
5 Pat L J 256

——— *Appeal by person not a party to the suit* *Held* that r 5 applied only to a person who seeks to appeal in order to establish his claim as a Beneficiary and not to any other claim SYED AHMAD NAVAT v SYED ABBAS HUSSAIN 6 Pat L J 43

——— Ch. VII, r 2—*Limitation extension of time—Limitation Act (IX of 1908) s 12* An absolute period of limitation of 30 days having been prescribed by Ch. VII r 2 of the Patna High Court Rules 1916 that period cannot be extended by virtue of any of the provisions of the Limitation Act 1908 relating to the extension of the periods of limitation prescribed by that Act DEOKI LAL v RAMANAND LAL
5 Pat L J 701

——— Ch VIII, rr 34—

See LETTER PATENT (PAT)
4 Pat L J 695

——— Ch IX, r 8—

See ANTE 5 Pat L J 719

PATNI

See PUTNI

PATNI LEASE.

See PUTNI

PATNI TALUQ

See PUTNI TALUQ

———Patni Tenure—

See PUTNI TENURE.

——— Patnidar—

See PUTNIDAR

PATTA

See MADRAS ESTATES LAND ACT (I OF 1908) ss 54 AND 58 CL. (?)
I L R. 38 Mad. 626

PATTA—*contd*

See UNDER RAIYAT
I L R 39 Calc 278

———— **tender of**—

See MADRAS ESTATES LAND ACT (I OF 1908) **I L R 37 Mad 540**

———— *Suit to enforce acceptance of—Zamindari land converted into wet with Government water—Consideration failure of—Enhancement—Rent Recovery Act (VIII of 1865) s 11* Certain dry zamindari lands were converted into wet by the use o water from a channel constructed and maintained solely by Government *Held* that there was no consideration for the zamindar to levy enhanced rent notwithstanding a stipulation for enhancement should the land be cultivated as wet The conditions laid down in the Rent Recovery Act (Mad VIII of 1865) S 11 not being present the zamindar was precluded from levying enhanced rent SRIMATU PAJAH MALLIKARJUNA PRASADA NAIDU v SUBBAYYA (1913) **I L R 36 Mad 4**

PAUPER

See CIVIL PROCEDURE CODE 1908 SCH I O XXV R 1 **I L R 36 Bom 415**

See PAUPER SUIT

———— **appeal by**—

See CIVIL PROCEDURE CODE 1908 O 44 R 1

———— **suit by**—

See CIVIL PROCEDURE CODE 1908 s 47 AND O XXX **4 Pat L J 166**

———— Next friend of a pauper minor if to prove his own pauperism AMIRMON v SECRETARY OF STATE (1919)
23 C W N 955

PAUPER PLAINT

See STAMP DUTY **I L R 38 All 469**

PAUPER SUIT

See CIVIL PROCEDURE CODE (1882) s 411 **I L R 34 All 223**

See CIVIL PROCEDURE CODE 1908—

s 115 **I L R 32 All 623**

O XXXIII

———— **Second application—where the previous one was rejected for want of schedule of property**—

See CIVIL PROCEDURE CODE 1908 O 33 RR 2, AND 15, **I L R 1 Lah 151**

———— **Application to sue as**—*Disqualification—Subject matter of suit—Cause of action—Civil Procedure Code (Act V of 1908) O XXXIII rr 1 2 and 5* A mortgagor applied for permission to institute a suit as a pauper for the setting aside of a sale of the mortgaged property by the mortgagee with an alternative claim for damages The mortgagee admitting there was a surplus due to the applicant after the mortgage debt had been satisfied paid Rs 101 into Court and contended that the applicant was not a pauper and further that the applicant disclosed no cause of action. *Held* that the applicant was a pauper within the meaning of the Explanation to O XXXIII r 1 of the Civil Procedure Code (Act V of 1908) but that the allegations contained in the application did not disclose a cause of action *Dwarkanath v Madhavrav I L R 10 Bom 207* not followed FATMABAI v DOSSABHOY RUSTOMJI UMRIGAR (1909)
I L R 34 Bom 633

———— *Application for leave to sue in forma pauperis—Civil Procedure Code (Act V of 1908) O XXXIII rr 4 5 7—Scope of enquiry—Power of the Court under r 4—Witnesses to be examined on the question of pauperism only—No evidence except evidence of the applicant on the merits of the claim permissible* In an enquiry under O XXXIII of the Civil Procedure Code the Court cannot take evidence (except the evidence of the applicant himself) on the merits of the claim P 4 expressly gives power to the Court to examine the applicant regarding the merits o the claim and the property of the applicant so that there is no doubt that the applicant himself can be examined not only with reference to the question of his pauperism but also with reference to the merits of his claim It is open to the Court to consider not only the statements made in the plaint but also the statements made in his examination by the applicant before determining whether his allegations disclose a cause of action as laid down in cl (d) of r 5 of O XXXIII But the Court cannot examine other witnesses for deciding the question o limitation or any other question than the pauperism of the applicant The evidence to be taken under r 7 is confined to the evidence which may be adduced by the applicant in proof of his pauperism and any evidence which may be adduced in disproof thereof as laid down in r 6 *Kamrakh Nath v Sundar Nath I L R 20 All 299 Dulari v Vallabhadas Pragji I L R 13 Bom 126* and *Nawab Bahadur of Moorsheedabad v Harish Chandra Acharjee 13 C L J 593* followed JOGENDRA NARAIN RAY v DURGA CHARAN GUHA THAKURTA (1918) **I L R 45 Calc 651**

PAY AND PENSION

See SECRETARY OF STATE FOR INDIA
I L R 38 Calc 3,8

PAYMENT

See BILL OF COSTS
I L R 48 Calc 817

See SALE OF GOODS
I L R 45 Calc 23
I L R 42 Bom 16

———— **By Debtor**—

See ACCOUNT—
I L R 48 Calc 839

———— **plea of**—

See MORTGAGE **I L R 37 All 426**

———— **to some only of the Trustees**—

See TRUST **I L R 39 Mad 597**

———— **under compulsion of law**—

See DEPOSIT IN COURT
I L R 43 Calc 269

PAYMENT INTO COURT

See CIVIL PROCEDURE CODE 1908—
ss 47 73 O XXI R. 5,
I L R 36 Bom 156

PAYMENT INTO COURT—contd

See CIVIL PROCEDURE CODE 190 — O XXI RR. 89 AND 9. I L R 45 Bom 1094

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 83 I L R 42 All 142

——— *Sale—Suit to set aside sale—Suit decreed on plaintiff paying into Court certain amount—Mortgagee from plaintiff paying the money to save the suit from being dismissed—Assignment of plaintiff's interest—Mortgage paid off—Application by mortgagee to withdraw the money paid into Court—Mortgagee cannot be allowed to withdraw unless on an application by one of the parties* One Banubai for herself and as guardian of her son Banemiya and daughter Putlabai sold the property in suit to one Mahomed Banemiya and Putlabai brought a suit to set aside the sale and it was decreed that the plaintiffs should on paying into Court a certain sum of money within six months take into possession their shares of the property on partition and that in default of payment the suit should be dismissed One Dattatraya who was a mortgagee from Banemiya paid the decretal amount into Court on the 22nd August 1918 to save the suit from being dismissed On the 16th September 1916 Banemiya sold the remaining interest in the property to one Ismail. Subsequently on the 3rd October 1918 Dattatraya's mortgage was redeemed and on the 4th October 1918 he applied to the Court to withdraw the amount This application was opposed by Ismail The Subordinate Judge made an order allowing Dattatraya to withdraw the money paid into Court *Held* setting aside the order that though the money was produced by Dattatraya it was paid into the credit of the proceedings and could only be dealt with an application made in the regular course by one of the parties and that Ismail could be heard as he was the person in whose favour interest was created by the plaintiffs ESMAIL ALLARAKHIA v DATTATRAYA RAMCHANDRA (1920) I L R 45 Bom 967

PAYMENT TOWARDS DEBT

See LIMITATION I L R 44 Calc 567

PECUNIARY SUFFICIENCY

See SURETY I L R 44 Calc 737

PEDIGREE.

See EVIDENCE ACT (I OF 1872) s 32 I L R 37 All 600

——— *Question of pedigree—Plaintiff and his witnesses not directly cross examined on the case raised by defendant—Court if should accept such case—Plaintiff's case believed by trial Court—Reversal by High Court on such basis if correct* Where the question was whether plaintiff A was the legitimate son of Muhammad Sher Khan by his wife Musammat Munna and A himself and his witnesses gave evidence that he was but the only question put to them in cross examination was whether Muhammad Sher Khan had a woman named Sundaria in his keeping as a mistress and when witnesses for the defendants were being examined some attempt was made to prove that A was the son of another person of the name of Muhammad Sher Khan who had a mistress named Sundaria and the trial Court believed A's case which was supported by strong and straightforward evidence on the record, and as to the case of the defendants held that the whole story was a pure concoction and was unworthy of credit *Held* agreeing with the trial Court that the High Court on appeal was not justified in dismissing the plaintiff's suit on the view that it was quite possible that the real truth was that the claimant was the son of Mussammat Sundaria who was kept by Muhammad Sher Khan having been influenced thereto by the fact that the suit was being financed by a co plaintiff in whose favour A had executed a deed of sale in respect of a moiety of the property claimed and in accordance with which the litigation was being financed ABDUL AZIZ v TASADDUQ HUSSAIN (1917) 21 C W N 873

PENAL ASSESSMENT

——— levy of—

See MADRAS LAND ENCROACHMENT ACT (III OF 190) ss 3 5 14 I L R 38 Mad 674

——— *Right of Government to levy—Interference with possession—Possession short of the statutory period is sufficient basis for a suit for a declaration of title—Specific Relief Act (I of 1877) s 42* Per CURIAM The Government has no right to collect penal assessment from a person in possession of land simply on the ground that he is not the legal owner of the land but such right is conditional on the land being communal *Per* ABDUR RAHIM J (AYLING J *dubitante*) —A person in possession of land even though for less than 12 years would under s 42 of the Specific Relief Act be entitled to a declaration that he is in lawful possession as against a wrong doer who interferes with his possession *Ismail Ariff* v *Mahomed Ghous I L R 20 Calc 834* applied *Hanmantarao* v *Secretary of State for India I L R 25 Bom 287* distinguished *Rassonada Rayar* v *Sitharama Pillai 2 Mad H C 171* referred to The levying of penal assessment on land if not justified amounts to unlawful interference with possession AYYAPARAJU v SECRETARY OF STATE (1912) I L R 37 Mad 298

PENAL CODE (ACT XLV OF 1860)

——— Effect of on previous Penal Laws

See CONTEMPT OF COURT I L R 41 Calc 173

——— Preamble and ss 1 2 5 499—

See DEFAMATION I L R 48 Calc 388

——— Chaps XII and XVII—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 348 I L R 38 Mad 552

——— ss 7 27 243—

See COUNTERFEIT COIN I L R 44 Calc 477

——— s 8—

See PLEADER I L R 44 Calc 290

——— s 21—*Illegal gratification taking of by a public servant—Public servant unpaid apprentice if* An unpaid apprentice of Government is not a public servant within the meaning of s 21 of the Indian Penal Code MAHENDRA PROSAD v EMPEROR (1910) 15 C W N 319

——— ss 22, 403—*Criminal misappropriation— Moveable property —Letter addressed to one*

PENAL CODE (ACT XLV 1860)—*contd*

———— ss 22 403—*contd*

person retained by another A letter addressed to B was handed by a postman to W who was at the time in a room in the occupation of H W read the letter and put it on a table in the room and left it there H took the letter and subsequently attempted to file it as an exhibit attached to an affidavit made by him in a suit for judicial separation between W and his wife for the purpose as he afterwards stated of strengthening Mrs W s case and of improving his own position The Court however refused to receive the letter *Held* that in the circumstances H could not be convicted of dishonest misappropriation of property with respect to his retention of the letter *Quære* Whether the letter could be regarded as moveable property within the meaning of s 22 of the Indian Penal Code EMPEROR v HARRIS (1917) **I L R 40 All 119**

———— ss 23 24 463 to 465—

See FORGERY **I L R 43 Calc 421**

———— ss 24 25 463 464, 471—

See FORGERY **I L R 38 Calc 75**

———— s 27—

See COUNTERFEIT COIN

I L R 44 Calc 477

———— ss 29 30 464 467 and 474—*Forgery—Document meaning of—Valuable security—Incomplete document—Material alteration of incomplete document effect of* An agreement in writing which purported to be entered into between five persons was signed by only two of them it was altered by the addition of some material terms by the accused who was one of the two executants without the consent or knowledge of the other executant and was not signed by the other parties to the agreement The accused was in possession of the instrument which was altered by him *Held* by OLDFIELD J (on a reference under s 429 Criminal Procedure Code owing to difference of opinion between SADASIVA AYYAR and PHILLIPS JJ) that the accused was guilty of the offence of forgery of a valuable security under s 467 or of being in possession of a forged document under s 474 of the Indian Penal Code The instrument though not signed by all the parties thereto fulfilled the requirements of the definition of a document in s 29 of the Code The document was a valuable security because it imposed an obligation on the actual executants and an option on the others and there was no express or implied condition precedent to be found in the document or established by independent evidence that the document was to be inoperative against the executants until all the parties executed it It is open to the accused to plead and to prove that the alterations were not made fraudulently or dishonestly because they represented what accused in good faith believed to be the truth and intended to use to support what in good faith he claimed or might claim *Queen Empress* v *Syed Hussein I L R 7 All 403 Queen Empress* v *Sheo Dyal I L R 7 All 459 Queen* v *Kishan Pershad 2 W R H C R 202* and *Manicka Asari* v *Emperor (1915) Mad W N 278* referred to *R* v *Turpin 2 C & K 820* disapproved *R* v *Bingley (1821) R & R 446* referred to *R* v *Lee 3 Cox 80* and *R* v *Harper 7 Q B D 78* followed RAMASWAMI AYYAR v THE KING EMPEROR (1917) **I L R 41 Mad 589**

PENAL CODE (ACT XLV OF 1860)—*contd*

———— s 30—

See MAGISTRATE POWER OF

I L R 38 Calc 68

———— ss 30 467— *Valuable security—Forgery—Incomplete documents bearing forged signature of executant* Two documents were found in the possession of the accused each bearing a signature which purported to be that of one Bindhyachal but which in fact was a forged signature One document was intended to be filled up as a promissory note the other as a receipt but the spaces for particulars of the amount the name of the person in whose favour the document was executed the date and place of execution and the rate of interest were not filled in an one anna stamp was affixed to each but it was not cancelled in any way *Held* that these documents nevertheless purported to be valuable securities within the meaning of the definition contained in s 30 of the Indian Penal Code *Queen Empress* v *Ramasami I L R 12 Mad 49* referred to EMPEROR v JAWAHIR THAKUR (1916)

I L R 38 All. 430

———— ss 30 and 471—*Forged document—User whether filing with plaint amounts to—Valuable security whether paper on which an account is written is* The filing of forged documents with a plaint is user of them within the meaning of s 471 of the Penal Code A document whereby a person acknowledges himself to be under a legal liability is a valuable security within the meaning of s 30 IDU JALAHA v THE CROWN **3 Pat L J 386**

———— s 34—*Several persons acting with a common intention* S 34 does not create a distinct offence but lays down a principle of liability and when two or more persons join actively in and assault on a 3rd person they are directly responsible for the injuries caused to the extent to which they had a common intention to cause these injuries and what their common intention was must be gathered from the circumstances FOZULLAH v THE KING EMPEROR

25 C W N 24

———— ss 34 109 114—

See AUTREFOIS ACQUIT

I L R 41 Calc 1072

———— ss 34 109 467—*Forgery—Abetment of forgery—Abetment by conspiracy—Conspiracy at Cambay foreign territory—Consequent forgery committed in British India—Trial in British India of the foreigner who conspired to forge at Cambay and who was in Cambay when the forgery was committed in British India—Jurisdiction* The accused was a subject of the Cambay State He lived there and traded with his business partner A He conspired with A at Cambay and sent A to a professional forger at Umreth (a place in British India) with instructions to instigate the latter to forge a valuable security To facilitate the forgery the accused sent his Khata book with A In pursuance of A s instigation the forgery was committed at Umreth. On these facts the accused was charged in a Court in British India with the offence of abetment of forgery under ss 467 and 109 of the Indian Penal Code The trying Judge referred to the High Court the question whether the accused not being a British subject was amenable to the jurisdiction of his Court *Held* that the Court in British India had jurisdiction to try the accused for the accused s offence was not wholly complete

PENAL CODE (ACT XLV OF 1860)—*contd*

———— ss 34 109 46‑—*contd*

within Cambay limit but having been intiated there was continued and completed within the British territory of Umreth Where a foreigner starts the train of his crime in foreign territory and perfects and completes his offence within British limits he is triable by the British Court when found within its jurisdiction S 34 of the Indian Penal Code provides not only for liability to punishment but also for subjection of a conspirator to the jurisdiction of a Court though he conspires at a place beyond the jurisdiction EMPEROR v CHHOTALAL BABAP (191-)

I L R 36 Bom 524

———— ss 37 302, 304—

1 ———— Murder —*Culpable homicide not amounting to murder—Fatal assault with lathis by three persons acting in concert* Three persons brothers attacked with *lathis* a fourth against whom they bore a grudge and beat him with great severity so that he died shortly afterwards His skull was badly fractured and numerous other injuries were inflicted upon him It did not appear which injuries were caused by which of the assailants but the evidence showed that they were acting in concert and intended to cause such bodily injury as was likely to cause death *Held* that all three assailants were guilty of murder *King Emperor* v *Subbappa Chunnappa 15 Bom L R 303* and *King Emperor* v *Kanhai I L R 35 All 329* followed *Emperor* v *Bhola Singh I L R 29 All 287 Queen Empress* v *Duma Baidya I L R 19 Mad 483 Gouridas Namasudra* v *Emperor I L R 36 Calc 659 Empress* v *Dharam Pal All Weekly Notes (1887) 2 6 Dhian Singh* v *King Emperor 9 All L J 180* distinguished EMPEROR v RAM NEWAZ (1913) **I L R 35 All 506**

2 ———— *Murder—Culpable homicide not amounting to murder—Fatal assault with lathis by several persons acting in concert* Five men—members of the same family—assaulted an unarmed man and beat him with their *lathis* They knocked him down and continued beating him with the result that he died then and there Another man who came to the rescue of the first was also knocked down and beaten by the same five men with a similar result *Held* that all five men were in each case guilty of the offence of murder *Dhian Singh* v *King Emperor 9 All L J 180* dissented from EMPEROR v HANUMAN (1913)

I L R 35 All 560

———— s 39—

See s 296 **I L R 34 Mad 92**

———— ss 40 and 79—*Madras Forest Act (V of 1882) offence under—Justification plea of not available* The plea of justification provided by s 79 of the Indian Penal Code (XLV of 1860) is available only for an offence punishable by the Penal Code and not for offences punishable by any special or local law and hence the belief of the accused that he was justified in his act does not exculpate him from punishment for his guilt under s 21 of the Madras Forest Act *Emperor* v *Kassim Isub 14 Bom L R 575* dissented from *In re Penchul Pelli 9 Mad L T 216* followed *Re* LEWIS (1913) **I L R 38 Mad 773**

———— ss 52 191 193—*Perjury—Verification of application for execution containing statements in fact untrue— Good faith* A man cannot be convicted of perjury under s 193 of the Indian Penal Code for having acted rashly or for having failed to make reasonable inquiry with regard to the facts alleged by him to be true It must be found that he made some statement which he knew to be false or which he believed to be false or which he did not believe to be true and this finding should be arrived at independently of the definition of good faith in s 52 of the Code EMPEROR v MUHAMMAD ISHAQ (1914) **I L R 36 All. 362**

———— ss 59 304 (1)—*Culpable homicide not amounting to murder —Sentence of transportation for fourteen years illegal—Sentence by High Court—Interference by Privy Council—Substantial injustice* Whilst s 304 (1) and s 59 of the Indian Penal Code authorise a sentence of transportation for life they do not empower a Court to impose a sentence of transportation for a term of years exceeding the maximum term for which a sentence of imprisonment can be imposed namely ten years Where the High Court passed a sentence of transportation for fourteen years upon the accused who had been convicted under s 304 (1) of the Penal Code *Held* that the sentence not being authorised by law the Privy Council must hold that there was substantial injustice for the sentence might involve the incarceration of the accused during many years without legal authority *Re Dillet* L R 12 App Cas 459 467 (1887) referred to SAYYAPUREDDI CHINNAYYA DHORA v THE KING EMPEROR **25 C W N 514**

———— s 62—*Sentence—Forfeiture of property—Offences in respect of which forfeiture is a suitable penalty* *Held* that s 62 of the Indian Penal Code which empowers a Court to order in certain cases the property of a convicted person to be forfeited to the Crown should ordinarily be applied in cases of crimes against the State or affecting the safety of the public generally EMPEROR v GAYA PRASAD (1914)

I L R 36 All 395

See ACT XVI OF 19-1 s 4

———— s 64—

See CALCUTTA MUNICIPAL ACT ss 374 376 **15 C W N 906**

———— ss 71 147 149 and 325—

See CRIMINAL PROCEDURE CODE s 106 (3) **I L R 33 All 48**

———— ss 71 147 149 and 325—

See SENTENCE **3 Pat L J 641**

———— ss 71 353—

———— one act constituting two offences—

See GENERAL CLAUSES ACT 1897 s 26 **1 Pat L J 373**

———— ss. 71 147 323—*Criminal Procedure Code ss 35 and 235—Separate convictions for rioting and causing hurt* Where several persons being on their trial on a charge of rioting it appears that some of them have also committed the offence of causing simple hurt under s 323 of the Indian Penal Code there is no legal objection to charging such persons under that section and convicting them of and sentencing them for such offence as well as for the offence of rioting EMPEROR v KATWARU PAI (1917) **I L R 39 All. 623**

PENAL CODE (ACT XLV 1860)—contd

——— s 75—

See PRACTICE I L R 34 Bom 326

——— *Criminal Procedure Code (Act V of 1898) s 565—Whipping Act (IV of 1909) s 3—Sentence of whipping only passed on accused—Order to accused to notify his residence—Validity of the order* S 565 of the Criminal Procedure Code (Act V of 1898) must be strictly construed The order contemplated by the section can only be made at the time of passing sentence of transportation or imprisonment upon a convict It cannot be made where the Court instead of passing that sentence passes a sentence of whipping EMPEROR v FULJI DITYA (1910)
I L R 35 Bom 137

——— *Previous conviction by a court in a Native State* Held that the provisions of s 75 of the Indian Penal Code cannot be applied when the previous conviction is one passed by a Criminal Court in a Native State *Bahawal* v *King Emperor 48 Punj Rec 61 Cr I* followed EMPEROR v BHANWAR I L R 42 All 136

——— s 76—*Evidence Act (I of 1872) s 105—Question whether act done by accused falls within general exceptions—Evidence—Presumption—Pleading* Where an accused person has raised pleas inconsistent with a defence which would bring his case within one of the general exceptions in the Indian Penal Code he cannot in appeal set up a case based upon the evidence taken at his trial that his act came within such general exception Circumstances which would bring the case of an accused person within any of the general exceptions in the Indian Penal Code can and may be proved from the evidence given for the prosecution or to be found elsewhere in the record but there must be evidence upon which such circumstances can be found to exist and when they are not shown to exist the Court is not competent to assume more particularly when the pleas taken are inconsistent with such assumption that such circumstances might have existed or that doubt may arise in consequence of such assumption and the accused ought to be given the benefit of the doubt *Queen Empress* v *Timmal I L R 21 All 122* referred to EMPEROR v WAJID HUSSAIN (1910)
I L R 32 All. 451

——— ss 76 79 342—

See WRONGFUL CONFINEMENT
I L R 47 Calc 818

——— s 79—

See s 40 I L R 38 Mad. 773

See s 107 5 Pat L J 129

See WRONGFUL CONFINEMENT
I L R 47 Calc 818

——— ss 79 141 147 342—

See RIOTING I L R 48 Calc 78

——— s 80—*Plea of accident—Onus on accused—Criminal case—Motive for committing offence—Criminal Procedure Code (Act V of 1898) s 342—Written statement filed by accused—Examination of accused by Court* Per CHITTY J It the accused puts forward a substantive defence of accident within the purview of s 80 Indian Penal Code it is incumbent upon him to prove it Where the evidence as to the deed is sufficiently convincing it is immaterial to consider with what m t e it was done Per LEACHCROFT J There is no provision in the Code of Criminal Procedure for the making of a written statement by an accused in the Sessions Court and the practice of refusing to answer questions and of putting in a written statement is a pernicious one KING EMPEROR v DWIJENDRA CHANDRA MUKHERJEE (1915)
19 C W N 1043

——— ss 82 83—*Offence of rape committed by a boy under fourteen—Presumption* Held that the presumption of English law against the possibility of the commission of the offence of rape by a boy under the age of years 14 has no application to India EMPEROR v PARAS RAM DUBE (1915)
I L R 37 All 137

——— s 84—*Exemption from criminal responsibility on account of unsoundness of mind* A person whose cognitive faculties are not so impaired as to make it impossible for him to know the nature of his act or that he was doing what was wrong or contrary to law is not exempted from Criminal responsibility under s 84 Indian Penal Code *Queen Empress* v *Kader Nasyer Khan I L R 23 Calc 604* referred to The burden of proving unsoundness of mind rests on the accused KING EMPEROR v RAM SUNDAR DAS (1919) 23 C W N 621

——— s 86—*Interpretation of—Drunkenness—Knowledge and intent* Per AYLING J Ordinary drunkenness makes no difference to the knowledge with which a man is credited and if an accused knew what the natural consequences of his act were he must be presumed to have *intended* to cause them Per TYABJI J—S 86 Indian Penal Code must be construed strictly It provides that the intoxicated person shall be dealt with as if he had the same *knowledge* as he would have had if he had not been intoxicated but it does not provide that he shall be dealt with as if he had the same *intent* Re MANDRU GADABA (1914) I L R 38 Mad 479

——— s 90—

See s 366 I L R 42 Bom 391

——— *Consent obtained on misrepresentation illegal—Penal Code (Act XLV of 1860) s 366—Kidnapping a girl with such consent obtained from guardian* The offence of kidnapping consists in taking or enticing a minor out of the keeping of the lawful guardian of such minor without the consent of such guardian If a minor is taken with the consent of the guardian and subsequently married improperly without the consent of the gurdian to any person such improper marriage would not by itself amount to kidnapping A consent given on a misrepresentation of a fact is one given under a misconception of fact within the meaning of s 90 Indian Penal Code and as such is not useful as a consent under the Penal Code A misrepresentation as to intention of a person (in stating the purpose on which the consent is asked) is a misrepresentation of a fact within the meaning of s 3 of the Evidence Act Per CURIAM Equally useless as a defence is a consent obtained by a fraud or coercion *R* v *Hopkins Car & Mar* 254 followed *Re* JALAADDU (1913)
I L R 36 Mad 453

——— s 95—

See CRIMINAL PROCEDURE CODE ss 435 AND 439 I L R 43 All 497

PENAL CODE (ACT XLV 1860)—*contd*

——— s 97—

See EVIDENCE ACT (I OF 1872) s 105
I L R 40 All 284

——— ss 97 99—*House search by Police officer—General search—Search for specific article—Criminal trespass—Right of private defence—Code of Criminal Procedure (Act V of 1898) ss 433 437 165 and 94—District Magistrate power of to order further enquiry after discharge* Every person has a right subject to the restrictions contained in s 99 of the Indian Penal Code to defend property whether moveable or immoveable of himself or of any other person against any act which is an offence falling within the definition of criminal trespass The law does not empower a police officer to search an accused person s house for anything but the specific article which have been or can be made the subject of summons or warrant to produce A general search for stolen property is not authorised and the law cannot be got over by using such an expression as stolen property relevant to the case as the law requires the mention of specific things Where one of the accused in resisting such a search pushed the Sub Inspector and the latter ordered two constables to climb on his roof and break into the house whereupon the villagers assumed a threatening attitude and threatened to cut them to pieces if they entered the house and this empty threat was sufficient to prevent the Police from committing the trespass *Held* that the accused had not exceeded the right of private defence and were rightly discharged and there was no ground for further enquiry PRANKHANG *v* KING EMPEROR (1912) 16 C W N 1078

See SEARCH BY POLICE OFFICERS
I L R 41 Calc 261

——— ss 99 147—*Right of private defence—Rioting—Trespass—Wrongful possession for 14 hours—Repelling trespass by force if any offence* Where the opposite party erected some huts stealthily at night on a plot of land of which the petitioners were in peaceful possession and it was alleged that the opposite party were in possession of the land for about 14 hours and the petitioners at break of day on coming to know of this took the earliest opportunity to exercise their own right of private defence and came to the spot armed to turn out the opposite party who were found by them still engaged in erecting more huts and there was a free fight between the parties and the petitioners did not inflict more hurt than was necessary for defending themselves *Held* that the petitioners were not guilty of rioting and that in the circumstances of the case the petitioners had no time to have recourse to the public authorities and they were entitled to their right of private defence CHANDULLA SHEIKH *v* THE KING EMPEROR (1912) 18 C W N 275

——— ss 99 147 148 and 326—

See PRIVATE DEFENCE
3 Pat L J 653

——— ss 99 103—

See PRIVATE DEFENCE—RIGHT OF

——— The resistance must only be sufficient to overcome the force employed by the attacker RAM PRASAD MAHTON *v* KING EMPEROR 4 Pat L J 289

PENAL CODE (ACT XLV OF 1860)—*contd*

——— ss 99 147 323—

See RIOTING I L R 39 Calc 896

——— ss 99 147 323 353—

See SEARCH WITHOUT WARRANT
I L R 38 Calc 304

——— ss 99 353—*Assault—Public servant acting under colour of office and in good faith—Right of private defence* Where the petitioner was convicted under s 353 of the Penal Code of having assaulted a Civil Court peon when executing a writ of delivery of possession of a share in a tank by ordering some fishermen to cast their nets in the tank and catch fish for the decree holder as provided in the writ *Held* that whatever mistake there might be in the procedure of the Munsif in giving the direction in the writ the petitioner had no right of private defence under s 99 of the Penal Code against the peon who was a public servant acting under colour of his office and in good faith PREO LAL MUKHERJI *v* THE KING EMPEROR (1913) 18 C W N 548

——— ss 100 325—*Grievous hurt—Private defence—Plea cannot be set up in cases of deliberate fight* The right of private defence cannot be successfully invoked by men who voluntarily and deliberately engage in fighting with their enemies for the sake of fighting as opposed to the case where men are reluctantly forced to use violence in order to protect themselves from violence offered to them EMPEROR *v* BECHUR ANOP (1915) I L R 40 Bom 105

——— ss 107 108 109 116 161—

See ABETMENT OF AN ABETMENT
I L R 46 Calc 607

——— ss 107 108 121 124A—Waging of war abetment of—*Sedition* The accused published a book containing eighteen poems of which four were the subject matter of the charge The general trend of the poems charged as well the remaining ones in the book evinced a spirit of blood thirstiness and murderous eagerness directed against the Government conveyed the urgency of taking up the sword and made an appeal of blood thirsty incitement to the people to take up the sword form secret societies and adopt guerilla warfare for the purpose of rooting out the British rule *Held* that the accused committed the offence of abetting the waging of war (s 121 of the Indian Penal Code) by the publication of the poems charged *Held further* that the Court was entitled to look into the poems other than those forming the subject matter of the charge for the purpose of finding out the intention of the writer and the design of the publication *Per* CHANDAVARKAR *J* Under the Indian Penal Code the waging or levying of war and the abetting of it are put upon the same footing by s 121 that is the abetting of waging of war is under the Code as much an offence of treason as the waging of war itself The word abetment is defined in s 107 of the Code and one of its meanings as given there is instigating any person to do anything This meaning is not excluded by anything that occurs in s 121 The general law is laid down in ss 107—120 of the Code According to it to constitute the offence of abetment it is not necessary that the act abetted should be committed or that the effect requisite to constitute the offence should be caused" This applies to the abetment of the waging of war

PENAL CODE (ACT XLV OF 1860)—*contd*

——— ss 107 108 121 124A—*contd*

again t the King as much as to the abetment of any other offence under the Code The only difference created between the former offence and other offences is that while under the general law as to abetment a distinction is made for the purposes of punishment between abetment which has succeeded and abetment which has failed s 121 does away with that distinction so far as the offence of waging war is concerned and deals equally with an abettor whose instigation has led to a war and one whose instigation has taken no effect whatever And that for this simple reason that such a crime more than any other must be sharply and severely dealt with at its very first appearance and nipped in the bud with a strong hand *Per* HEATON J Under s 107 of the Indian Penal Code there may be an instigation of an unknown person The word abet as used in s 121 of the Code has the same meaning a is given to it by s 107 The abetment meant by 121 is not necessarily confined to abetment of some war in progress There may be and usually is, instigation of rebellion before rebellion actually begins that kind of instigation is under the Code abetting waging war against the King So long as a man only tries to inflame feeling to excite a state of mind he is not guilty of anything more than sedition It is only when he definitely and clearly incites to action that he is guilty of instigating and therefore abetting the waging of war EMPEROR *v* GANESH DAMODAR SAVARKAR (1910)
I L R 34 Bom 394

——— ss 107 342 and 79—*Wrongful confinement—Abetment whether advice amounts to—Code of Criminal Procedure (Act V of 1898) s 59—*bona fide *arrest by private person—Prisoner not taken to nearest police station effect of* Advice *per se* does not necessarily amount to instigation within the meaning of the first clause to s 107 of the Penal Code Instigation necessarily connotes some active suggestion or support or stimulation to the commission of the act itself Advice amounts to instigation only if it was meant actively to suggest or stimulate the commission of an offence A bare finding that the accused must have advised the arrest of the complainant is not sufficient to support a conviction for abetting the offence of wrongful confinement Where a constable went into a shop and demanded the loans of a certain cooking utensil and on being refused beat the shopkeeper and another constable stood outside throughout the proceeding and shouted *maro maro held* that the latter was guilty of abetting not only the beating but also the attempt to extort and was therefore liable to arrest under s 59 of the Code of Criminal Procedure 1898 Where a private person *bona fide* makes an arrest under s 59 of the Code of Criminal Procedure 1898 but takes the prisoner to the Magistrate instead of to the nearest police station he is protected from a charge of wrongful confinement by the provisions of s 79 of the Penal Code RAGHUNATH DASS *v* THE KING EMPEROR
5 Pat L J 129

——— ss 108—

See S 107 **I L R 34 Bom 394**
I L R 46 Calc 607

——— s 108 Expl. 4 ss 109 and 116—*Abetment of an offence—Inciting another to instigate a Magistrate to accept a bribe—s 161* The words when the abetment of an offence is an offence in Expl 4 s 108 Indian Penal Code do not mean when an abetment of an offence is actually committed They mean when the abetment of an offence is by definition or description an offence under the Code that is when an abetment of an offence is punishable under s 109 or s 116 or some other provision of the Code then the abetment of such abetment is also an offence SRILAL CHAMARIA *v* KING EMPEROR (1918)
22 C W N 1045

——— s 109—

See S 34 **I L R 36 Bom 524**
See S 341 **I L R 43 Bom 501**
See S 361 **I L R 38 All 664**
See S 494 **I L R 39 Calc 409**
See ARREST BY PRIVATE PERSON **I L R 41 Calc 17**
See AUTREFOIS ACQUIT **I L R 41 Calc 1072**
See CRIMINAL PROCEDURE CODE s 403 **I L R 40 Bom 97**

——— ss 109 116 120B—

See MISJOINDER OF CHARGES **I L R 42 Calc 1153**

——— ss 109 120B 420—*Abetment by conspiracy—Indian Evidence Act (I of 1872) s 10* The accused M was a loader of the E I Railway Company The case for the prosecution was that when making out the weights in the consignment notes he entered a weight less than the actual with the result that the railway company received a sum less than they were entitled to and the other accused who were a firm of merchants paid as consignees of goods illegal gratification to M for this fraudulent work It appeared that the name of M signed by himself appeared in one of the note books of the firm of D and J and the *jama kharach* of the firm showed the payment of certain sums to accused M The accused were tried and convicted by the Deputy Magistrate under ss 120B 420 420 109 161 161 109 Indian Penal Code but the Sessions Judge in appeal being of opinion that the conviction under s 120B could not stand on the ground that the offences were committed before that section came into force took into consideration only the direct evidence against M of making the endorsement of false weight and finding this to be insufficient acquitted all the accused *Held* that the Sessions Judge rightly held that the conviction under s 120B Indian Penal Code could not stand by reason of the fact that the offences were committed before that section came into force but he entirely omitted to notice that this was immaterial as the law of abetment includes abetment by conspiracy which was distinctly charged before the Magistrate under ss 420 109 Indian Penal Code That being so the circumstantial evidence of conspiracy to defraud the railway company was to be considered. That under s 10 of the Evidence Act the note books and *jama kharach* of the firm of D and J could be used as evidence of abetment by conspiracy against M KING EMPEROR *v* MANMOHAN ROY (1916) **20 C W N 292**

PENAL CODE (ACT XLV OF 1860)—contd

——— s. 114—

See S. 283 I. L. R. 35 Bom. 365

" s. 494 I. L. R. 2 Lah. 287

See ACCEPTANCE ACCOUNT I. L. R. 41 Calc. 1072

See PUBLIC PROSECUTOR ... I. L. R. 42 Calc. 422

——— ss. 114, 148, 326 and 379—

See PRIVATE DEFENCE. 4 Pat. L. J. 269

——— ss. 114, 325—... by ... Held that when the ... s ... the co-accused was that the ... then he came with the first accused and joined in beating the deceased, they could not be convicted of abetting the causing of grievous hurt by their presence because they would have been guilty of abetment had they been absent. If it be found that they all joined in the beating and that the specific act which caused the grievous hurt was not brought home to any particular individual they would be held liable under s. 34 of the Indian Penal Code. If they aided and abetted or abetted by ... in ... actually aiding the first accused in beating the deceased, then they would be liable under s. 326 read with s. 109 of the Indian Penal Code. JAMIR ... v. KING EMPEROR (1919) 16 C. W. N. 909

——— s. 116—

See S. 109 I. L. R. 42 Calc. 1153

See ABETMENT OF AN AGREEMENT I. L. R. 43 Calc. 607

——— ss. 120, 120A, 120B, 121A—

See CHARGE I. L. R. 42 Calc. 957

——— s. 120B—

1. ——— Conspiracy. FLETCHER, J. In cases of conspiracy the agreement between the conspirators cannot generally be directly proved but only inferred from other facts proved in the case. BEACHCROFT, J. That on a conviction under s. 120B Indian Penal Code if an offence has been committed the punishment is provided by s. 109 Indian Penal Code and if an offence has not been committed the punishment is limited to the extent provided by s. 116. *Semble* Strictly speaking in cases where an offence has been committed in pursuance of a conspiracy there should not be any conviction for conspiracy but for abetment of the offence; for conspiracy followed by an act done to carry out the purpose of conspiracy amounts to abetment. KHAGENDRA NATH CHAUDHURI v. KING EMPEROR (1914) I. L. R. 42 Calc. 1153, 19 C. W. N. 706

2. ——— Criminal Procedure Code, s. 196A—Conspiracy—Authority to prosecution for conspiracy—Complaint. S. 196A of the Criminal Procedure Code provides that no Court shall take cognizance of the offence of criminal conspiracy punishable under s. 120B of the Indian Penal Code. In a case where the object of the conspiracy is to commit any non-cognizable offence or a cognizable offence not punishable with death, transportation or rigorous imprisonment for a term of two years or upwards unless the Local Government or a Chief Presidency Magistrate or District Magistrate empowered in this behalf by the

PENAL CODE (ACT XLV OF 1860)—contd

——— s. 120B—contd

Local Government has by order in writing consented to the initiation of the proceedings. *Held* that the words not punishable with death etc relate only to the term cognizable offence. Three persons presented a petition to the Magistrate and Collector of a district stating that a ... was guilty of various offences under the Indian Penal Code, the principle offence being one under s. 181. The Magistrate treated the petition as a complaint, took the evidence of the person presenting it and finally dismissed it under s. 203 of the Code of Criminal Procedure and gave sanction for the prosecution of the persons responsible for the petition. *Held* that the Magistrate's procedure was not open to objection. EMPEROR v. THAKUR DAS (1917) I. L. R. 40 All. 41

——— ss. 120B, 420—

See WITNESS I. L. R. 46 Calc. 700

See S. 109 20 C. W. N. 292

——— ss. 121, 121A—

See JURY, RIGHT OF TRIAL BY I. L. R. 37 Calc. 467

——— s. 121A—

See CHARGE I. L. R. 42 Calc. 957

See CONSPIRACY TO WAGE WAR I. L. R. 38 Calc. 169, 559; 15 C. W. N. 646

1. ——— Conspiracy—Abandonment of charge of dacoity at a bar to trial for conspiracy. Admission in evidence of lathi play as evidence of intent to wage war. The fact that proceedings for participation in a dacoity against certain individuals were dropped owing to insufficiency of evidence does not preclude a charge for conspiracy in respect of that dacoity from being brought against the same person and others for the criminality of a conspiracy distinct from and independent of the criminality of overt act. *Emperor v. Nani Gopal* 15 C. W. N. 593 distinguished. Lathi play by itself is perfectly harmless and standing alone cannot be treated as evidence of a conspiracy to wage war. To attach sinister significance to the mere association in play or pastime of those that live in the same village or attend the same school would be dangerous specially when those exercises were undertaken with a complete absence of secrecy and rather with a courting of publicity. *Emperor v. Nani Gopal* 15 C. W. N. 593 followed. Per MOOKERJEE, J. In the absence of a joint design, a joint combination, one association could not be held to be a branch of another association proved to have had revolutionary designs. PULIN BEHARI DAS v. KING EMPEROR (1911) 16 C. W. N. 1105

2. ——— Letter written by stranger to a conspirator if sufficient to establish former's connection with conspiracy. A letter written by a stranger to a conspirator which is not shown to have been received or replied to or otherwise acted upon by the latter is not sufficient to establish the former's connection with the conspiracy so as to make his acts done in pursuance of the conspiracy. *R. v. Boullon* 12 Cox C. C. S. 9 relied on. PULIN BEHARY DAS v. KING EMPEROR (1911) 16 C. W. N. 1105

3. ——— Conspiracy, crime of, essence of—Overt acts bearing of—Proof of

PENAL CODE (ACT XLV OF 1860)—*contd*

——— **s 121A**—*contd*

conspiracy indirect—Acts of co conspirators before and after entry into conspiracy if admissible and for what purpose—Members of revolutionary society not acquainted with its real object if guilty of conspiracy—Arms find of after arrest and pending prosecution of conspirator if evidence Overt acts may properly be looked at as evidence of the existence of a concerted intention and in many cases it is only by means of overt acts that the existence of the conspiracy can be made out But the criminality of the conspiracy is independent of the criminality of the overt act *Heymann* v *R L R 8 Q B 302 12 Cox C C 383 O Connell* v *R 11 Cl & F 155 1 Cox C C 413* and *R* v *Duffield 5 Cox C C 404 434* referred to The prosecution is not obliged to prove a conspiracy by direct evidence of the agreement to do an unlawful act If the facts proved are such that the jury as reasonable men can say that there was a common design and the prisoners were acting in concert to do what is wrong that is evidence from which the jury may suppose that a conspiracy was actually formed *R* v *Brown 7 Cox C C 442* followed Where it appeared that certain members of a society found to be revolutionary were not acquainted with the real object of the society not having been admitted to its secrets it was *held* that it would not be proper to convict such members under s 121A of the Indian Penal Code The criminality of a conspiracy lying in the concerted intention once reasonable grounds are made out for belief in the existence of the conspiracy amongst the accused the acts of each conspirators in furtherance of the object are evidence against each of the others and this whether such acts were done before or after his entry into the combination in his presence or in his absence Conspirators are not thereby necessarily subjected to punishment for everything done by their fellows but acts done prior to the entry of a particular person into the combination are evidence to show the nature of the concert to which he becomes a party whilst subsequent acts of the other members would indicate further the character of the common design in which all are presumed to be equally concerned *R* v *Murphy 8 C & P 297 310 R* v *Reads 6 Cox C C 134 R* v *Stenson 12 Cox C C 111 O Keefe* v *Walsh 2 I P 681* relied on If arms were collected and secreted in furtherance of a conspiracy before the activities of the associates had been brought to an end by their arrest the fact that they were discovered after the arrest and after prosecution had been started against them would not make the evidence of the find inadmissible at the trial PULIN BEHARY DAS *v* KING EMPEROR (1911)

16 C W N 1105

4 ——— *Possession of objectionable books if proof of guilty intention* The mere circumstances that a book of an objectionable character is present in the library of an individual or an association does not justify the inference that the teachings of the books are approved and adopted by persons who have access to it The mere fact that books of a distinctly revolutionary character were found in the library of an association and were now and then read by some of its members would not conclusively show that the object of the society was revolutionary *Emperor* v *Nani Gopal 16 C W N 594* followed

PENAL CODE (ACT XLV OF 1860)—*concld*

——— **s 121A**—*concld*

R v *Watson 2 Starkie 116 147 32 Howell St Tr 354* East on pleas of the Crown p 119 referred to The presence of seditious literature of this description written by members of the society would however be an important element in furnishing a clue to their tendencies and designs *Per* HARINGTON *J* The utmost that can be said of persons in whose library are found books which are calculated to excite hatred against the English is that they approved of literature of that nature and even that assumption would not in all cases be a just one But the presence in the library of a *Samity* of violently revolutionary literature (some of them written in the hands of a member of the *Samity*) urging the destruction of the English and exulting persons who had murdered English people justified the inference that the members of the *Samity* were imbued with the sentiments those documents expressed PULIN BEHARY DAS *v* KING EMPEROR (1911) **16 C W N 1105**

——— **ss 121A, 123**—*Conspiracy to wage war against the King and concealing existence of conspiracy in furtherance thereof—Joint trial for both offences if legal Per Curiam* When persons engaged in a conspiracy within the meaning of s 121A of the Penal Code in furtherance of their object conceal the existence of the conspiracy from the authorities a charge under s 123 of the Penal Code may be legally joined with one under s 121A *Barindra Kumar Ghose* v *King Emperor I L R 37 Calc 467 14 C W N 1114* followed PULIN BEHARI DAS *v* KING EMPEROR (1911)

16 C W N 1105

——— **ss 121 and 124A**—

See S 107 **I L R 34 Bom 378 394**

——— **s 124A**—

See S 511 **I L R 34 Bom 378**

See CRIMINAL LAW **I L R 2 Lah 34**

See PRESS ACT 1910 s 3 **I L R 43 Mad 146**

See SEDITION **I L R 38 Calc 214 253**
I L R 39 Calc 522, 606

——— *Press Act (XXV of 1867) ss 4 and 5—Declaration made by owner who took no part in managing a printing press—Publication of a seditious book at the press—Sedition—Intention* The accused made a declaration under Act XXV of 1867 s 4 that he was the owner of a press called The Atmaram Press Beyond this he took no part in the management of the press which was carried on by another person A book styled Ek Shloki Gita was printed at this press It was a book that dealt to a large extent with metaphysics philosophy and religion. It also contained seditious passages scattered among discussions of religious matters It was not shown that the accused ever read the book or was aware of the seditious passages it contained The accused was convicted of the offence punishable under s 124A of the Indian Penal Code 1860 as publisher of the book On appeal *Held* by CHANDAVARKAR *J* that the cumulative effect of the surrounding circumstances was such as to make it improbable that the accused had read the book or that he had known its seditious object and that the evidence having thus been evenly balanced and equivocal, reasonable doubt arose as to the guilt of the accused the benefit of which should be given to

PENAL CODE (ACT XLV OF 1860)—*contd*

———— **s. 124A**—*contd.*

him *Held* by Heaton J that before the accused could be convicted under s 124A of the Indian Penal Code it must be found that he had an intention of exciting disaffection and that the evidence fell very short of proving the intention. *Per* Chandavarkar, J A declaration made under s. 4 of the Press Act is intended by the legislature to have a certain effect namely that of fastening responsibility for the contents of the press on a person declaring in respect of matters where public interests are involved. Hence where a book is complained of as seditious or libellous it is presumable upon the Court performing the function of a jury may presume that the owner had a knowledge of the printing and was aware of the contents and character of the book. But whether such a presumption is warranted in any individual case must depend upon its own facts and circumstances. The presumption however is not conclusive; it is not one of law but of fact and it is open to the accused to rebut it. Emperor v. Shankar Shrikrishna Dev (1910)

I. L. R. 35 Bom 55

———— **s. 141**—

See Rioting I. L. R. 48 Calc. 78

———— **ss. 141 143, 148 326**—*Rioting—Maintaining a right lawful common object—Enforcing a right maintaining of*— The complainant's party without the permission of the petitioners constructed a dam across a pyne exclusively belonging to the petitioners who had obtained an injunction from the Civil Court restraining the complainant's party from interfering with the petitioners in their use and occupation of the pyne. The petitioners in attempting to cut the dam were opposed by the complainant's party two of whom were struck by the petitioners and the petitioners were convicted of rioting and of causing grievous hurt. *Held* that after the Civil Court decree and injunction the petitioners could not be held to be enforcing a right within the meaning of s 141 (*4*) and the presence of the complainant's party in opposing the petitioners was a criminal trespass which entitled the petitioners to a right of private defence. The phrase "to enforce a right" can only apply when the party claiming the right has not possession over the subject of the right and therein lies the distinction between "enforcing a right" and maintaining a right. A party in possession is entitled to resist and repel an aggression and his action in so doing would be in the maintenance of his right. Pammandas Prosad Singh *v* The Emperor (1913) 17 C W N 1132

———— **ss 141, 147 and 148**—

See Private Defence

3 Pat L J 653

———— **s 143 conviction under**—

See Security to keep the Peace

I L R 43 Calc 671

———— **ss 143 146 447**—*Unlawful assembly and criminal trespass—Bona fide belief in the existence of right to land and assertion of such right* In consequence of a dispute between two landlords the disputed property was attached under s 146 Criminal Procedure Code in a proceeding under s 14 Criminal Procedure Code and a Receiver appointed but the Magistrate appointing the Receiver omitted to give any direction as regards the management of the property. There was a dispute between the tenants on both sides as regards the grazing rights over the property but it appeared that the zemindar of the petitioners gave them the grazing rights over the land and they objected to a tenant of the rival zemindar ploughing up a portion of the land over which they alleged they had grazing rights under colour of a lease from the Receiver. The petitioners were convicted under ss 143 147 of the Penal Code. *Held* that the petitioners could not be convicted of criminal trespass when they were asserting a right which had never been declared against them which they *bona fide* believed they had and for the same reason they could not be said to have formed an unlawful assembly because they went and protested against the land being ploughed up. Fajuddin Molla *v* King Emperor (1914) 18 C. W N 1245

———— **s. 146**—*Rioting—Dispute regarding possession of land—Title with accused—Lawful common object—Propriety of conviction—Right by private defence—Hurt* Where the petitioners were convicted under ss 148 323 326 329 149 Penal Code some under one some under all of the sections the riot relating to a dispute in respect of possession of a plot of land and the Sessions Judge in appeal found that the occurrence did take place on the land in dispute and the accused took part in it but that they were in fact entitled to harvest and remove the crops grown on the disputed land but the District Magistrate in his explanation pointed out that the findings of the Judge were not in accordance with the weight of the evidence the High Court refused to go behind the findings of the Sessions Judge and *held* that the conviction under ss 148 326 149 Penal Code could not stand and so far as the offence under s 323 was concerned the accused did not in the circumstances of the case exceed their right of private defence. Jhalku Tewari *v* King Emperor (1913) 17 C W N 1081

———— **ss 146 147**—

See Jury trial by

I L R 40 Calc 367

———— **s 147**—

See S 71 I L R 39 All 623

See S 99 18 C W N 275

See S 143 18 C W N 1245

See Attachment

I L R 40 Calc 849

See Criminal Procedure Code s 106

I L R 33 All 48

See Cumulative Sentence

I L R 40 Calc 511

See Jury Trial by

I L R 40 Calc 367

See Rioting I L R 48 Calc 78

———— **Right of Private Defence**—

See Assessors Examination of

I L R 40 Calc 163

———— *Rioting* There may be an unlawful assembly and riot in respect of a right which the rioters desire to enforce. Deputy Legal Remembrancer Bihar and Orissa *v* Matukdhari Singh (1915) 20 C W N 128

PENAL CODE (ACT XLV OF 1860)—*contd*

——————— *Out of six accused persons three found to have a common object different from that set out in the charge—Legality of conviction of any of the six accused — Court's duty in cases where near relatives want to compound cases* Six accused persons were convicted under S 147 Indian Penal Code and sentenced to 15 days imprisonment In the charge the common object was stated to be to assault the complainant During the pendency of the case the complainant wanted to compound the case but the Magistrate did not allow him to do so In his judgment he found that three of the accused assaulted the complainant and the other three accused went to snatch away the cattle of the complainant in common object with that of the other accused persons *Held* that there being a difference between the common object found by the Magistrate in the case of three of the accused persons there were not five persons that shared in the common object set out in the charge and the ingredient of an offence under s 147 I P C was wanting Therefore the conviction under sec 147 against all the accused must fail AMINULLA *v* EMPEROR **26 C W N 534**

——————— ss 147 148—*Rioting with common object of obstructing measurement of* khas mahal *land—Acquittal in the absence of affirmative proof of Government's possession of the disputed land—Onus of proof of prosecution in criminal case* The petitioners were convicted of rioting with the common object of causing obstruction to measurement and demarcation of *khas mahal* land by a Kanango and a *khas mahal* Tahsildar *Held* (on a consideration of the evidence) that the question of possession of the disputed land was not one upon which a definite opinion could be expressed on the materials on the record but was eminently one for the Civil Court to determine That the burden of proving the charge substantially as drawn lay on the prosecution and if it was not established affirmatively that the land on which the alleged riot took place was in the actual possession of the Government the charge as alleged was not proved and the petitioners were not guilty of rioting with the common object stated in the charge PANCHANAN BOSE *v* KING EMPEROR (1919) **23 C W N 693**

——————— ss 147 149 and 353—
See BENGAL SURVEY ACT 1875 **2 Pat L J 18**

——————— ss 147 323—
See APPELLATE COURT **I L R 38 Calc 293**

See CUMULATIVE SENTENCES **I L R 40 Calc 511**

——————— ss 147 323 and 353—
See CRIMINAL PROCEDURE CODE 1898 s 423 **3 Pat L J 565**

——————— ss 147 325 and 149—
See RIOTING **I L R 41 Calc 43**

——————— ss 147 332—
See MAGISTRATE JURISDICTION OF **I L R 39 Calc 377**

PENAL CODE (ACT XLV OF 1860)—*contd*

——————— ss 147, 353—
See RIOTING **I L R 41 Calc 836**

——————— ss 147 426 447—*Obstruction to public way by building a wall—Pulling down the wall in* bona fide *exercise of the right of public way no offence* The complainant built a wall obstructing a public way Immediately after this the accused who were members of the public in the *bona fide* exercise of their right of way pulled down the wall *Held* that the accused were not guilty either of rioting or of mischief or of criminal trespass (ss 147 426 and 447 of the Penal Code) *Re* DHARMALINGA MUDALY (1914) **I L R 39 Mad 54**

——————— ss 147 447—*Rioting—Criminal trespass—Charge of rioting with common object of taking forcible possession of complainant's land and assaulting him—Absence of charge under s 447 of the Penal Code—Conviction of criminal trespass propriety of—Criminal Procedure Code (Act V of 1898) s 238* When the petitioners who were charged under s 147 of the Penal Code with rioting with the common object of taking forcible possession of complainant's land and of assaulting him and others were convicted of criminal trespass under s 447 of the Penal Code without any charge being framed against them or without being called upon to plead to a case of trespass *Held* that the conviction was illegal If the common object had been to commit criminal trespass the conviction under s 447 of the Penal Code without a charge having been framed against the accused might have been legally valid but the common object stated in the charge did not make out a case of trespass In a case of trespass before a conviction is obtained the prosecution must establish on the part of the trespasser an intention to commit an offence or to intimidate insult or annoy any person in possession of the property on which trespass has been committed *Queen v Salamut Ali* 23 W R Cr 59 referred to ARIFF MUNSHI *v* EMPEROR (1913) **18 C W N 992**

——————— s 148—
See S 141 **17 C W N 1132**
See S 147 **18 C W N 275**
23 C W N 693

See PRIVATE DEFENCE **3 Pat L J 653**
4 Pat L J 289

——————— ss 148 149 304 326
See CRIMINAL TRESPASS **I L R 41 Calc 662**

——————— ss 148 324 and 326—
See COMMON OBJECT **2 Pat L J 541**

——————— s 149—
See s 71 **I L R 33 All. 49**
See BENGAL SURVEY ACT 1875 **2 Pat L J 18**
See CRIMINAL TRESPASS **I L R 41 Calc 662**
See RIOTING **I L R 41 Calc. 43**
See SENTENCE **3 Pat L J 641**

1 ——————— *Charge under s 325 read with s 149 Conviction under s 323 if legal—S 34 when applicable* Where the accused were charged and convicted by the Magistrate

PENAL CODE (ACT XLV OF 1860)—*contd*

under s 147 Indian Penal C ard s read with s 149 Indian Penal Code and the Sessions Judge in appeal set aside the conviction under s 147 Indian Penal Code and altered the conviction to one under s 323 read with s 149 Indian Penal Code to one under s 323 Indian Penal Code *Held* when a person charged by implication under s 149 Indian Penal Code be not to be convicted of the substantive offence When a Court reads up a charge under s 323 read with s 149 Indian Penal Code it is the intention to the accused persons that that the offence was hurt to anybody they that they are guilty by implication of such offence must be sensible to prosecution of the common object of the riot in which they were engaged in use such grievous hurt When the accused persons are acquitted of rioting all the evidence which they are said to have committed by implication and the defence cannot be called upon to answer to the specific act of causing grievous hurt simply as it may have appeared in the evidence S 34 Indian Penal Code can only come into operation when there is a substantive charge The consideration which governs 34 Indian Penal Code are entirely different from and in many respects the opposite of those which govern s 149 Indian Penal Code Ibrahim v King Emperor (1912) 16 C W N 1077

2 ——— *In the case of common object before common intention to constitute offence—Criminal Procedure Code s 423 (1) (b)—Appellate Court how far competent to alter finding in case of which he is not convicted* ss 237 and 238 To constitute an offence under s 149 the existence of a common object before the commencement of the fight is not necessary It is enough if the common object is adopted by all the accused The power of an Appellate Court under s 423(b) of the Criminal Procedure Code to alter the finding while maintaining the sentence is not confined to cases falling under ss 237 and 238 of the Code The finding which an Appellate Court may alter under s 423 (b) may relate either to an offence with which the accused is apparently charged in the lower Court or to one of which he might be convicted under ss 237 and 238 without a distinct charge In cases not falling under ss 237 and 238 he cannot be convicted of an offence with which he was not charged in the lower Court Where however he has been charged and the lower Court has recorded a finding on such charge the Appellate Court can alter the finding GOLLA HANUMAPPA v EMPEROR (1911) I L R 35 Mad 243

——— s 153A—

See SEDITION I L R 38 Calc 214

See FORFEITURE I L R 41 Calc 466

See SECURITY FOR GOOD BEHAVIOUR I L R 43 Calc 591

——— s 154—

See RIOTING I L R 39 Calc 834

——— ss 154 and 155—The accused was convicted under ss 154 and 155 of the Penal Code in respect of a riot which took place in his *Malyan* It was found that the riot took place not in respect of the *Malyan* itself but with respect to the right to collect rent from the tenants *Held* that the

PENAL CODE (ACT XLV OF 1860)—*contd*

——— ss 154 and 155—*contd*

accused had been rightly convicted under s 154 and 155 DUNA SAHU v THE KING EMPEROR 2 Pat L J 83

——— s 155—

See S 154 2 Pat L J 83

——— *Person not having property in land nor claiming interest therein if liable — Record of riot-case if admissible* Where the petitioners were convicted under s 155 Penal Code and they had admittedly no property in the land in respect of which the riot took place but their master and the wife of one of them had interest therein and the Sessions Judge in appeal relying on the evidence that the petitioners demanded *bhaoli* from tenants found that they were claiming an interest in the land although there was no evidence to prove that the petitioners demanded the *kolsbirits* for themselves *Held* that the finding that the petitioners were claiming an interest in the land could not be supported and the conviction under s 155 Penal Code must be set aside That in the case under s 155 Penal Code the Magistrate should have excluded the record of the riot case PRAMOTHA NATH RAY CHOWDRY v KING EMPEROR (1913) 17 C W N 1247

——— s. 161—

See ABETMENT OF ALLOTMENT I L R 46 Calc 607

——— *Illegal gratification to a public servant—Elements necessary for conviction* It is not enough for a conviction under s 161 Indian Penal Code that the accused merely took a certain sum of money but it must be proved that he took the amount as a motive or reward for any of the purposes mentioned in the section UPENDRA NATH CHOWDHURY v KING EMPEROR (1916) 21 C W N 552

——— s 170—The mere assumption of a false character without any attempt to do an official act is not sufficient to bring the offender within the section SUKHDEO PATHAK v KING EMPEROR 3 Pat L J 389

——— s 173—*Summons—Refusal to receive summons when tendered no offence* Under the Code of Criminal Procedure the mere tender to a person of a summons is sufficient and a refusal by him to receive it does not constitute the offence of intentionally preventing service thereof on himself under s 173 of the Indian Penal Code EMPEROR v SAHDEO RAI (1918) I L R 40 All 577

——— s 176—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 565 I L R 40 Mad 789

——— s 180—

See CRIMINAL PROCEDURE CODE s 361 I L R 39 All 399

——— s 182—

See S 211 I L R 39 All 715

See ACQUITTAL I L R 37 Calc 604

See CIVIL PROCEDURE CODE (1908) s 63 AND 70 SCH III I L R 37 All 231

See FALSE INFORMATION 14 C W N 765

PENAL CODE (ACT XLV OF 1860)—*contd*

——— s 182—*contd*

1 ——— *Transfer—Unfounded allegations against the trying Magistrate made by an accused person in an application for transfer of his case* Held that an accused person who in support of an application for the transfer of the case against him to some other Magistrate makes unfounded and defamatory allegations against the trying Magistrate cannot be prosecuted in respect of such allegations under s 182 of the Indian Penal Code *Queen* v *Daria Khan 2 N W P H C Rep 128* and *Queen Empress* v *Subbayya I L R 12 Mad 451* referred to EMPEROR v MATAN (1910) **I L R 33 All 163**

2 ——— *Information to police that informant suspected the persons named as offenders if amounts to giving false information* Where a person in whose house a theft took place informed the police that he suspected two persons whom he named as the perpetrators of the crime *Held* that this did not amount to giving false information within the meaning of s 182 Indian Penal Code ANANGA MOHAN DUTTA v KING EMPEROR (1917) **22 C W N 478**

3 ——— *Giving false information to the Deputy Superintendent of Police in the course of a departmental inquiry in reply to questions* The petitioner sent a letter to the Deputy Inspector General of Police alleging that the Sub Inspector of Sadhaura and other persons were looting the people and that he was ready to prove it This was sent on to the Superintendent of Police for recording the petitioner s statement and for necessary action and the Superintendent passed it on to the Deputy Superintendent for taking statements The latter recorded the statement of the petitioner who made allegations as to bribes having been taken by the Sub Inspector and mentioned among others a bribe of Rs 500 taken from one M S In respect of this statement the petitioner was convicted by the Lower Courts of an offence under s 182 of the Penal Code *Held* that the statement of the petitioner to the Deputy Superintendent of Police in the departmental inquiry was information within the meaning of s 182 of the Penal Code notwithstanding that it was made in answer to questions *Queen Empress* v *Ramji Sajabarao (I L R 10 Bom 124)* followed *Mangu* v *Crown (27 P L R 1914)* distinguished and partly disapproved *Chinna Pamana* v *Emperor (I L R 31 Mad 506)* distinguished *Payan Kutti* v *Emperor (I L R 26 Mad 640)* referred to *Held also* that as the Deputy Superintendent of Police was competent to make an inquiry into the petitioner s allegations against the Sub Inspector and the petitioner knew that his allegations were likely to lead the Deputy Superintendent to make such an inquiry which would be calculated to cause annoyance to the Sub Inspector, his conviction under s 182 was justified *Queen* v *Periannan (I L R 4 Mad 241)* distinguished. PANNA LAL v CROWN **I L R 1 Lah 410**

——— ss. 182, 193—*Complaint—Statement made to the Magistrate as head of the police and not as a Magistrate* P appeared before a District Magistrate and made a statement in which he accused a certain police officer of having beaten him demanded a bribe of him and locked him up in the police *howalat* He stated however that he did not wish to make a complaint but only desired that an inquiry should be made Nevertheless the Magistrate examined P on oath and subsequently the charge having been found to be baseless P was convicted under ss 182 and 193 of the Indian Penal Code *Held* that inasmuch as P had expressly stated that he did not wish to make a complaint the statement must be taken to have been made to the District Magistrate not as Magistrate but as head of the district police and the conviction under s 193 of the Code could not be upheld EMPEROR v PHULAL (1917) **I L R 35 All 102**

——— ss 182 211—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 403 (*1*) **I L R 36 Mad. 308**

1 ——— *Sanction to prosecute—Criminal Procedure Code s 195* H made a report against several persons including one S at a police station charging them with rioting and voluntarily causing hurt The police made inquiry and sent up several persons for trial but not S Some of these were convicted by the Magistrate but acquitted by the Sessions Judge Thereupon S made a complaint to the Magistrate charging H with having made a false report in respect of himself to the police The Magistrate took cognizance of the complaint *Held* that the Magistrate had no power to take cognizance of the complaint by reason of the absence of sanction EMPEROR v HARDWAR PAL (1912) **I L R 34 All 522**

2 ——— *Sanction to prosecute—Jurisdiction—Application by insolvent to District Judge alleging misappropriation of property of insolvent* A person who had been declared an insolvent and in respect of whose property a Receiver had been appointed by the District Judge applied to the Court representing that one Bhikhi Ram had misappropriated certain property belonging to him and asking that Bhikhi Ram s house might be searched The District Judge forwarded this application to the Magistrate and Bhikhi Ram was arrested and his house searched Subsequently however proceedings against Bhikhi Ram were dropped there being no evidence against him Bhikhi Ram then applied to the District Judge for sanction to prosecute the applicant under ss 182 and 211 of the Indian Penal Code The sanction asked for was granted *Held* that as regards s 182 there was no objection to the order but as regards s 211 the criminal proceedings taken against Bhikhi Ram were not taken in the Court of the District Judge and it was at any rate doubtful whether it could be said that the offence committed by the applicant was committed in relation to any proceeding pending in that Court. MUHAMMAD FAKHR UD DIN v BHIKHI RAM (1914) **I L R 36 All. 212**

——— ss 183 186 and 353—*Resistance to execution of warrant—no date specified on warrant—Resistance to Nazir executing warrant addressed to peon* Resistance to the execution of a warrant directing the attachment of property where the warrant does not specify the date on or before which it is to be executed is not illegal Where such a warrant was addressed to a peon of the court for execution *Held* that resistance to the nazir who endeavoured to execute it was not illegal MOHINI MOHAN BANERJI v KING EMPEROR **1 Pat L J 550**

PENAL CODE (ACT XLV OF 1860)—*contd*

———— s 185— *Property —Exclusive right to sell drugs* *Held* that a person who bid at an auction of the right to sell drugs within a certain area under a false name and when the sale was confirmed in his favour denied that he had ever made any bids at all was rightly convicted of an offence under s 185 of the Indian Penal Code *Queen v Reazooddeen 3 W R Cr R 3* referred to EMPEROR v BISHAN PRASAD (1914)

I L R 37 All 128

———— s 186—

See S 183 — 1 Pat L J 550

1 ———— *Voluntarily obstructing Public Servants in the discharge of their public functions—Releasing property attached by Civil Court peons under distress warrants issued under the Public Demands Recovery Act (Beng I of 1895) and the Village Chaukidari Act (Beng VI of 1870) s 45—Legality of Warrant—Omission to specify date of extension on the face of it—Civil Procedure Code (Act V of 1908) O XXI r 24 (2)—Execution by person not named in the warrant—Delegation of powers by Nazir* A distress warrant issued under the Public Demands Recovery Act which has been extended beyond the original date of return but does not bear on the face of it the altered date is not a legal warrant under O XXI r 24 (2) of the Civil Procedure Code A warrant under s 45 of the Village Chaukidari Act must contain the name of the person charged with the execution thereof and cannot be legally executed by any other person delegated by the former for that purpose Where the accused released certain buffaloes attached by the Civil Court peons on the 2nd August under two warrants addressed to the nazir but endorsed by him to them the one issued under the Public Demands Recovery Act which was originally returnable by the 26th July but had been extended to the 8th August without the alteration of the date appearing thereon and the other under s 45 of the Village Chaukidari Act directed to the nazir but without naming any person therein as charged with the execution of it *Held* that they were not guilty of an offence under s 186 of the Penal Code as the peons were not lawfully executing the warrants SHEIK NASUR v EMPEROR (1909)

I L R 37 Calc 122

2 ———— *Obstructing a public servant in the discharge of his public functions —Local inspection by Munsif—Water ways* In a suit in which a public right of way was claimed there was a dispute not only as to whether the public right of way claimed existed but also as to whether there were not certain other public ways the existence of which would discredit the plaintiffs allegations in the suit The Munsif trying the case went to the spot to hold a local inspection He wanted to pass in a boat along a water way but was not allowed to do so by the petitioners who claimed it as their private property It was found that it was a water way used at least by the people of a particular locality None of the petitioners were parties to the suit pending before the Munsif in which the local inspection was held The petitioners were convicted under s 186 Indian Penal Code *Held* that no offence under s 186 Indian Penal Code was committed NISHI KANTO LAL v EMPEROR (1916)

20 C W N 857

3. ———— *Obstructing a public servant—Decree form of—Execution—Warrant not in form validity of—Execution of invalid warrant of arrest obstruction to effect of—Procedure* In an application for execution of a decree for restitution of conjugal rights a warrant was issued directing the executing peon to seize the wife and deliver her bodily to her husband failing which to bring her under arrest before the executing Court The peon seized the woman in execution of the warrant but he was resisted and the woman was snatched away *Held* that the warrant the execution of which was resisted was illegal and therefore no offence was committed under s 186 of the Penal Code GAHAR MAHAMED SARKAR v PITAMBAR DAS (1918)

22 C W N 814

———— ss 186 and 225B—*Obstructing public servant—Resistance to apprehension—Failure to obey order to furnish accounts—Code of Civil Procedure (Act V of 1908) O XXI r 32— injunction* Where in a suit for an account a preliminary decree was passed ordering the defendant to furnish an account within a specified time and he failed to do so and together with two companions resisted a peon sent by the Court to arrest him under the provisions of O XXI r 32 of the Code of Civil Procedure 1908 *held* that the defendant s arrest was unlawful and that the conviction of himself and his two companions of offences under ss 186 and 225B of the Penal Code could not stand. *Held also* that the order to furnish an account which was contained in a preliminary decree was not an injunction within the meaning of O XXI r 32 The word injunction as used in O XXI r 32 has a more extended meaning than it has in the Specific Relief Act 1877 The decisions in *Degamber Majumdar v Kallayanath Roy* and *Raghunath v Gangpati* on the effect of s 260 of the Code of Civil Procedure 1882 have been overruled by the provisions of O XXI r 32 of the Code of 1908 It is not every order of a Court directing a person to do a certain act that is an injunction In its essence an injunction is a relief consequential upon an infringement of a legal right ARJUN SINGH v KING EMPEROR

3 Pat L J 106

———— s 187—

See CRIMINAL PROCEDURE CODE s 4

I L R 42 All 314

———— s 188—

See APPRAISEMENT

I L R 43 Calc 1083

See SANCTION FOR PROSECUTION

14 C W N 234

I L R 41 Calc 14

1 ———— *Ord[illegible] d[illegible]ly promulga[illegible]d by public servant—Order forbidding [illegible] to enter railway premises except for [illegible]* [illegible] that the public have a right to enter upon railway premises for many purposes other than travelling and an order forbidding persons to enter a railway station except for bona fide purposes of travelling would be an illegal order In the particular instance however it did not appear that the order in question was issued by any authority which supposing it to be otherwise legal would have had power to issue it EMPEROR v [illegible] (19[illegible])

I L R 35 All 108

2 ———— [illegible]

[illegible] The word "promulgated"

PENAL CODE (ACT XLV OF 1860)—*contd*

———— **s 188**—*contd*

under s 188 of the Penal Code refers to orders issued under the Code of Criminal Procedure and not to judgments and orders of Civil Courts MAMMALI v KUTTI AMMU (1915)

I L R 39 Mad 543

3 ———— *Prohibition order under s 144 Criminal Procedure Code passed without any evidence—Prosecution for disobedience of order not properly passed—Cognizance of case under s 188 by the same Magistrate who passed the order disobeyed* A servant of the first party filed a petition before the Sub divisional Magistrate complaining that the second party were about to construct a drain and if the first party opposed them there was a likelihood of a breach of the peace whereupon the Magistrate without taking any evidence issued an injunction under s 114 Criminal Procedure Code against the second party On the next day on the complaint of the same man the Magistrate summoned the second party under s 188 Indian Penal Code Subsequently he transferred the case to a Magistrate with second class powers and again withdrew it from his file and sent it to the Additional District Magistrate *Held* that the proceedings were wholly irregular That the order under s 144 Criminal Procedure Code should never have been made That in summoning the second party under s 188 Indian Penal Code the Sub divisional Magistrate was taking cognizance of the offence under s 188 Indian Penal Code which he had no power to do Either action by the Magistrate under s 476 Criminal Procedure Code or an application for sanction under s 195 Criminal Procedure Code was necessary The High Court quashed the proceedings under s 188 Indian Penal Code and also set aside the order under s 144 Criminal Procedure Code which was the foundation of those proceedings although that order had expired CHANDRA KANTO KANJILAL v KING EMPEROR (1916)

20 C W N 981

4 ———— *Criminal Procedure Code (Act V of 1898) s 144—Prosecution for disobedience of order prohibiting disturbance* By an order under s 144 Criminal Procedure Code the petitioners were directed not to make any disturbance over a certain person s rights of a ferry and thereafter the petitioners being found plying another ferry at the site in question but not causing any disturbance were ordered to be prosecuted under s 188 Indian Penal Code *Held* that the order for prosecution was infructuous SUJAL BISWAS v SAMIRUDDIN MANDAL (191)

22 C W N 599

5 ———— *Disobedience of order under s 144 Criminal Procedure Code—Criminal Procedure Code (Act V of 1898) ss 195 487* Cognizance of a case under s 188 Indian Penal Code cannot be taken except in accordance with the provisions of s 195 Criminal Procedure Code and under s 487 Criminal Procedure Code the Magistrate whose order is disobeyed is not competent to try the case MRITYUNJOY CON v SHRISTIDHAR MULLICK (1919) **23 C W N 520**

———— **ss. 188 269**—*F[illegible] d m c D seas s Act (III of 15[illegible]) [illegible] a d 3—Local Government—Delegation of powers to—Regulations under the Act—[illegible] 104 of the [illegible] q lat [illegible] ult a vires of the Local [illegible]* A delegation under s 104 by the

PENAL CODE (ACT XLV OF 1860)—*contd*

———— **ss 188 269**—*contd*

Collector to a Divisional Officer of the power to call upon people to evacuate houses is illegal and an omission to comply with the order of such officer acting under such delegated authority is not an illegal omission *Re* NAGAPPA THEVAN (1913)

I L R 38 Mad. 602

———— **s 189**—

CRIMINAL PROCEDURE CODE s 435 **I L R 39 Mad 561**

———— **ss 191 193**—

See s. 52 **I L R 36 All. 362**

See FALSE EVIDENCE **I L R 38 Calc 368**

———— **s 192**— *Fabricating false evidence—Document helping Court to form a correct opinion* Certain cattle were sold in a market on the 21st of March 1917 A clerk whose duty it was to register sales of cattle held at that market and give receipts to the purchasers, gave a receipt on the 27th March most probably and dated it the 2[illegible]th March 1917 but subsequently altered the date to the 21st the actual date of sale *Held* that there was no case of fabricating false evidence for the alteration of the date was not intended to lead anyone to form an erroneous opinion touching the date of sale but the contrary EMPEROR v BADRI PRASAD (1917) **I L R 40 All 35**

———— **ss 192 and 193**—*False evidence—Fabrication—Judicial proceedings—Execution proceedings—Criminal Procedure Code (Act V of 1898) s 195 (b)—Sanction to prosecute—Pending proceedings)* For the purpose of ss 192 and 193 of the Indian Penal Code 1860 execution proceedings are judicial proceedings It is not essential for the purpose of these sections that the judicial proceedings in which the person intends to use the false evidence must be pending at the date of the fabrication. In the absence of any proceeding pending or disposed of in which or in relation to which the offence under s 193 of the Indian Penal Code is said to have been committed no sanction under s 195 (*b*) of the Criminal Procedure Code is necessary *In re* GOVIND PANDURANG (1920)

I L R 45 Bom 863

———— **ss 192 193 423**—

See FABRICATING FALSE EVIDENCE **I L R 46 Calc 986**

———— **s. 193**—

See S 192 **I L R 35 All 102**

See S 192 **I L R 45 Bom 163**
I L R 46 Calc 986

See CRIMINAL PROCEDURE CODE—

Ss 157 159 4[illegible]6 **I L R 32 All 30**

S 195 **I L R 39 Mad. 677**
5 Pat L J 23

Ss 236 195 37 **I L R 45 Bom 834**

S 23[illegible] **I L R 42 Mad. 561**

See JUDICIAL PROCEEDING **I L R 3[illegible] Calc 52**

See THUMB IMPRESSION **I L R 39 Calc 343**

PENAL CODE (ACT XLV OF 1860)—*contd*

———— **Perjury arising from contradictory statements—**

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) ss 236 195 537 (*b*) AND 164
I L R 45 Bom 834

1 ———————— *Order to prosecute —Case pending before Court of Session—Alleged perjury—Propriety of prosecution by Committing Magistrate* Where a Committing Magistrate had ordered the prosecution of a witness under s 193 of the Penal Code while the case in which he had deposed was pending before the Court of Sessions the High Court set aside the order The impropriety of taking proceedings against a witness while the case is still pending commented on BIRENDRA NATH DAS GUPTA v THE EMPEROR (1914) **18 C W N 1342**

2 ———————— *Perjury in a deposition before a Civil Court not read out to the deponent —Civil Procedure Code Act V of 1908 O 18 r 5—whether secondary evidence is admissible to prove the deposition—Indian Evidence Act I of 1872 s 91* The petitioner was accused of having made a false statement on oath in the Court of a Munsif The Munsif stated in evidence in the present trial that this statement was not read out to the witness The question before this Court was whether secondary evidence could be admitted to prove the making of the statement *Held* that secondary evidence cannot be admitted in the trial of the petitioner for perjury to prove the making of the statement in the Munsif s Court *Empress v Mayadeb Gossami (I L R 6 Calc 762) Mohendra Nath v Emperor (12 Calc W N 845 847) Kamatchinathan Chetty v Emperor (I L R 28 Mad 308 (310)) and Valluri Chinchiah v Emperor (I L R 42 Mad 561)* followed *Romesh Chandra Das v Emperor (23 Calc W N 661) and Crown v Jagat Ram (28 P R (Cr) 1918)* distinguished *Kahn Singh v Empress (5 P R (Cr) 1890)* not followed IMAM DIN v NIAMAT ULLAH
I L R 1 Lah 361

———— **ss 193 196 199 471—**

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 195 CLS (*b*) AND (*c*)
I L R 38 Bom 642

———— **ss 193 and 210—**

See SANCTION FOR PROSECUTION
2 Pat. L J 688

———— **ss 193, 471—**

See SANCTION FOR PROSECUTION
I L R 40 Calc. 584

———— **ss. 193 and 423—**

See FABRICATING FALSE DOCUMENT
I L R 48 Calc. 911

———— **ss. 193, 511**—*Court—District Judge hearing election petition under s 2 of the Bombay District Municipalities Act (Bom Act III of 1901) is a Court—False evidence before the District Judge —Sanction for prosecution—Criminal Procedure Code (Act V of 1898) s 195* A District Judge hearing an election petition under the provisions of s. [illegible] of the Bombay District Municipalities Act (Bombay Act III of 1901) is a Court within the meaning of s. 195, cl. (*b*) of the Criminal Procedure Code 1898. No prosecution for attempting to fabricate false evidence (ss 193 and 511 of

PENAL CODE (ACT XLV OF 1860)—*contd*

———— **ss 193 511**—*contd*

the Indian Penal Code) before the District Judge can be instituted without having obtained sanction as required by s 195 of the Criminal Procedure Code 1898 *Raghubans Sahoy v Kokil Singh I L R 17 Calc 872* followed *In re* NANCHAND SHIVCHAND (1912) **I L R 37 Bom 365**

———— **s 196—**

See CRIMINAL PROCEDURE CODE 1898 s 195 **I L R 38 Bom 642**

———— **ss 197 198**—*Issuing or signing a false certificate — Certificate meaning of—Civil Procedure Code (Act V of 1908) O XXI r 2—Petition in Court stating satisfaction of decree if a certificate within the meaning of the sections* The two petitioners were convicted under ss 197 and 198 and ss 197 109 and 198 109 respectively the charge being that one of the petitioners purporting to represent the decree holder in a certain suit signed and filed a petition in the Court of the Subordinate Judge stating contrary to fact that the other petitioner who was the judgment debtor had paid off the decretal amount to the decree holder through him her Ammuktear *Held* that the petition in question filed before the Subordinate Judge was not a certificate within the purview of ss 197 and 198 Indian Penal Code neither of the requirements of a certificate within the meaning of the sections being satisfied in the case That there is no provision of law which requires a decree holder or his agent to give or sign a certificate of payment or adjustment nor is there any provision of law which makes the statement of the decree holder or his agent as to payment or satisfaction admissible in evidence as such certificate that is without further proof That the word certificate may be used as synonymous with certification but that is clearly not its meaning in ss 197 and 198 of the Penal Code MAHABIR THAKUR v KING EMPEROR (1916)
20 C. W N 520

———— **s. 199—**

See CRIMINAL PROCEDURE CODE s. 195
I L R 38 Bom 642
25 C W N 886

———————— *Sanction to prosecute — Prosecution based on alleged false declaration—Declaration inadmissible in evidence* A declaration, before it can be made the foundation of a prosecution under s. 199 of the Indian Penal Code must be one which is admissible in evidence and which the Court before which it is filed is bound or authorized by law to receive in evidence EMPEROR v RAM PRASAD (1912)
I L R. 35 All. 58

———— **ss. 201, 203—**

See FALSE INFORMATION
I. L. R. 46 Calc. 427

———— **ss 201 302**—[illegible] *dence of murder* [illegible] *appear—Propriety of* [illegible] *—Principal and accessory* [illegible] *fact—* [illegible]
The accused were committed to the Court of Session under ss. 302 and 201 Indian Penal Code In that Court the charge under s. 201 Indian Penal Code was [illegible] the charge [illegible] being [illegible] The Sessions Judge found that the accused had a

PENAL CODE (ACT XLV OF 1860)—*contd*

——— ss 201, 302—*contd*

sufficient motive for committing murder that they disposed of the body of the deceased and were loitering near his house at the exact hour of murder On these facts the accused were convicted under s 201, Indian Penal Code *Held* that s 201 *Indian Penal Code is an attempt to define the* position known in England as that of an accessory after the fact It is settled law that a principal cannot be convicted as an accessory Where it is impossible to say definitely however strongly it might be suspected that an accused was guilty of murder mere suspicion is no bar to a conviction under s 201 But if it be accepted as a proved fact that the accused before the Court disposed of a dead body and if the acceptance of that fact completes the chain of circumstantial evidence which proves beyond doubt that the accused were actual principals present at the murder and taking part in the murder they cannot be convicted of the minor offence of causing evidence of the murder to disappear even though by an error of the Judge or by a misconception of the position by the Public Prosecutor the charge of murder is subsequently withdrawn. That on the facts found the accused were principals and the conviction under s 201 could not stand *Per* CHAPMAN J It is unsatisfactory to have an alternative indictment one count charging the accused as principal and the other as accessory after the fact *Queen Empress* v *Limbya unreported Criminal Case Bom H C 1895 at page 799* and *Torap Ali* v *Queen Empress I L R 22 Calc 638* relied on SUMANTA DHUPI v KING EMPEROR (1915) **20 C. W N 166**

——— s 203—

See FALSE INFORMATION
I L. R 46 Calc 427

——— s 210—

See SANCTION TO PROSECUTE
2 Pat L. J 688

——— s 211—

See S 182 **I L R 34 All 522**
I L R 36 All 212

See COMPLAINT DISMISSAL OF
I L R 40 Calc 444

See CRIMINAL PROCEDURE CODE—

Ss 4 AND 476 **I L R 38 All 32**

S 250 **I L R 37 Bom 376**

S 403 **I L R 36 Mad 308**

See JURISDICTION OF CRIMINAL COURT
I L. R 40 Calc 360

See SANCTION FOR PROSECUTION
4 Pat L. J 374

1 ——— *Laying false information before police—Duty of prosecution—Onus of proof—Elements necessary to be proved—Failure of defence to examine witness effect of* Where the petitioner was convicted under s. 211 of the Penal Code of having laid a false information of theft before the police and the petitioner's case was that he had heard from his wife that the persons named in the information had disappeared and the properties named therein were missing and his information was based on this statement of the wife and the prosecution did not prove that there was no such statement by the wife who was not examined as a witness for the prosecution nor did the petitioner examine her as a witness on his side *Held* that the duty of the prosecution in a case under s 211 of the Penal Code is to *prove by satisfactory evidence that the charge* was wilfully false to the knowledge of the maker of the charge That it is for the prosecution to establish their case and if they fail to supply that proof which is required to secure the conviction of the accused the failure on the part of the latter to examine any particular witness or witnesses will not imply the guilt of the accused That the case against the petitioner being that no theft took place the obligation of proving it rested on the prosecution In the present case the prosecution not having established that there was as a matter of fact no theft and the petitioner knew that there was no theft the High Court set aside the conviction and sentence under s 211 of the Penal Code HASSAN MIRZA v MAHBUBAN (1913)
18 C W N 391

2 ——— *False charge—Necessary constituents of offence under s 211—Report to a police officer casting suspicion on certain persons* In order to constitute an offence defined by s 211 of the Indian Penal Code the charge therein alluded to must be made to an officer or to a court who has power to investigate and send it for trial and must be an accusation made with *the intention to set the law in motion* *Chenna Malli Gowda* v *Emperor I L R 27 Mad 129* *Chinna Ramana Gowd* v *Emperor I L R 31 Mad 506* and *Zorawar Singh* v *King Emperor 11 All L J 1106* followed The following statement was made to a police officer — I find there has been a theft I suspect the persons named and I want an inquiry to be made *Held* that if the statement was false the offence committed fell under s 182 of the Indian Penal Code and not under s. 211 EMPEROR v MATHURA PRASAD (1917) **I L. R 39 All. 715**

3 ——— *Complaint under s 1 of the Breach of Contract Act (XIII of 1859) withdrawn before passing of any order under s 2—Whether a criminal proceeding within s 211 Indian Penal Code* A complaint under s. 1 of the Breach of Contract Act (XIII of 1859) which is withdrawn before any order is made by the Magistrate under s 2 of the Act either for a refund of the advance paid or for specific performance of the contract is not a criminal proceeding within the meaning of s 211 Indian Penal Code *In the matter of Inusoori Sanyasi (1905) I L R 28 Mad 37* and *Derby Corporation* v *Derbyshire County Council [1897] A C 550* referred to HUSSAINA BEARI v KING EMPEROR (1920)
I L R 43 Mad 443

——— ss. 211, 500—

See SANCTION FOR PROSECUTION
I. L. R. 44 Calc 970

——— ss 213, 214—*Screening offence—Restitution of property for screening offence—The offence screened must be shown to have been committed before the screening could be punished* G gave certain jewellery to M by way of janjid M pledged the same with S under circumstances which constituted such pledging an offence of criminal breach of trust The jewellery was later

PENAL CODE (ACT XLV OF 1860)—*contd*

———— ss 213 214—*contd*

returned by *S* to *G* on the latter undertaking not to prosecute *M* for the offence of criminal breach of trust. *M* was tried for the offence of criminal breach of trust with regard to the jewellery and was acquitted. *S* and *G* were next tried for offences under ss 213 and 214 of the Indian Penal Code in that they offered and took restitution of property in consideration of screening an offence The trying Magistrate convicted them of the offences charged holding that for the purposes of their case *M* must be deemed to be guilty of the offence of criminal breach of trust On appeal *Held* acquitting the accused that they could not be convicted of screening of the offence of criminal breach of trust when the offence of criminal breach of trust had not been proved. *Held* also that under the circumstances the trying Magistrate was bound to proceed on the footing that no criminal breach of trust had been committed EMPEROR *v* SANALAL LALLUBHAI (1913)

I. L. R. 37 Bom 658

———— s 216—*Harbouring an offender—Assistance coming within meaning of the section nature of* To the knowledge of the petitioner warrants for the arrest of the petitioner's brother and a proclamation under s 87 Criminal Procedure Code were issued the proclamation being duly published at the house in which the two brothers as joint owners used to reside On information received the police interviewed the petitioner at his house and in answer to enquiries he replied that his brother was in the house and promised to produce him He then went inside the house and after some delay returned with his brother's son and said that he had made a mistake and that it was the son who had come to the house the preceding evening On search the petitioner's brother was found hiding in the house The petitioner was convicted under s 216 Indian Penal Code *Held* that the petitioner was rightly convicted The ways in which assistance may be rendered need not for the purposes of s 216 be restricted to methods which may properly be regarded as *ejusdem generis* or of a like nature with supplies of food or of other necessary articles MUCHI MIAN *v* EMPEROR (1917) 21 C W N 1062

———— s. 222—

See CRIMINAL PROCEDURE CODE s 234

I. L. R 41 All. 454

———— s 224—*Village Chowkidar if a police officer—Escape from custody—Abetment* A Chowkidar cannot be properly regarded as a police officer within the terms of s 59 Criminal Procedure Code and escape from his custody is not an offence under s. 224 Penal Code PURNA CHANDRA KUNDU *v* HACHANALI CHOWKIDAR

17 C W N 978

———— ss 224, 109—]

See ARREST BY PRIVATE PERSON]

I L. R 41 Calc. 17

———— ss. 224, 225—]

See RESCUE FROM LAWFUL CUSTODY

I L R 43 Calc 1161

———— ss. 224, 225 and 353—

See WARRANT 3 Pat L. J 493

PENAL CODE (ACT XLV OF 1860)—*contd*

———— ss 225 332—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 54

I L. R 40 Mad 1028

———— s 225B—

See s 186 3 Pat. L J 108

See WARRANT I L R 38 Calc 789

I L R 42 Calc 708

1 ———— *Escape from lawful custody—Defaulting co sharer arrested under warrant of Tahsildar—Rules of Board of Revenue r 9 cl (2) Act (Local) No III of 1901 (United Provinces Land Revenue Act) ss 142 143 146* Where a Tahsildar issued a warrant under s 146 of the United Provinces Land Revenue Act against certain defaulting co sharers and they were arrested but subsequently escaped from detention *Held* that this was an escape from lawful custody within the meaning of s 225B of the Indian Penal Code The Tahsildar's warrant was not illegal because the Board had directed that process should ordinarily issue in the first instance against the lambardar EMPEROR *v* GULAB SINGH (1909) I L. R 32 All 116

2. ———— *Warrant of arrest—Actual resistance necessary* In order to constitute an offence under s 225B of the Indian Penal Code something more is required than an evasion of arrest or a mere assertion by the person sought to be arrested that he would not like to be arrested or that a fight would be the result of such arrest There must be positive evidence to show that the officer armed with a warrant of arrest produced the warrant and that the person sought to be arrested resisted such arrest EMPEROR *v* AIJAZ HUSAIN (1916) I L R 38 All 506

3 ———— *Escape from jail of a person imprisoned for failure to furnish security to be of good behaviour* Where a person escapes from jail in which he was confined under s 123 of the Code of Criminal Procedure by reason of his having failed to furnish security to be of good behaviour his conviction should be recorded under s 225B and not under s 224 of the Indian Penal Code *Queen Empress v Kandhaia I L R 7 All 67* referred to EMPEROR *v* MULI

I. L R 43 All. 185

4 ———— *Execution of warrant of Civil Court and resistance thereto* It is not necessary that a bailiff executing a Civil Court warrant should in the first instance show the warrant It is sufficient that he should apprise the person to be arrested of the contents of the warrant and show it if desired THE SUPERINTENDENT AND REMEMBRANCER OF LEGAL AFFAIRS *v* BARODA KANTA MAJUMDAR

25 C W N 815

———— s 228—

———— Insult to Court—Exact words to be given—

See JUDGMENT I L. R 2 Lah 308

———— *Intentional insult to an officer sitting judicially—Application for transfer* An accused person in an application for transfer of the case pending against him made an assertion to the effect that the persons who caused the proceedings to be instituted were on terms of intimacy with the

PENAL CODE (ACT XLV OF 1860)—*contd*

——— s 228—*contd.*

officer trying the case and that therefore he did not expect a fair and impartial trial. *Held* that there being no intention on the part of the applicant to insult the Court but merely to procure a transfer of his case he was not guilty of an offence under s 228 of the Indian Penal Code *Queen Empress* v *Abdulla Khan 1898 W N 145* followed EMPEROR v MURLI DHAR (1916)

I L R 38 All 284

——— ss 235 and 243—*Counterfeit coins—Father and son presumption as to possession* It is not essential for coins to be counterfeit that they should be exact resemblances of genuine coins It is sufficient that they are such as to cause deception and may be passed for genuine Where father and son were accused of being in possession of moulds for the purpose of using the same for making counterfeit coins and of being in possession of such coins and there was evidence to show that the father looked after the family cultivation while the son exclusively attended to the shop in the verandah of which the moulds and coins were discovered and it was also shewn that the father was never seen in possession of the moulds or of the counterfeit coins *Held* that the ordinary presumption that the things in the house of a joint Hindu family were in the possession of or under the control of the managing member had been rebutted AMRIT SONAR v KING EMPEROR

4 Pat L J 525

——— s 243—

See s 235 **4 Pat L J 525**

See COUNTERFEIT COIN **I L R 44 Calc 477**

——— s 266—*Possession of false measure—Intent—Acquittal—Criminal Procedure Code s 438—Practice* It being in evidence that in the village where accused carried on the business of a cloth seller the usual standard of measurement was 35½ inches it was *held* that a conviction under s 266 of the Indian Penal Code in respect of the possession of such a measure of length could not be sustained *Held* also that the High Court will not as a rule entertain a reference by a Sessions Judge having for its object the reversal of an acquittal when the Government has right of appeal more particularly when the matter is one such as a question of correct weights and measures in which the Government may be considered to be particularly interested. EMPEROR v HARAK CHAND MARWARI (1917) **I L R 40 All 84**

——— ss 268 290—

See PUBLIC NUISANCE. **I L R 46 Calc 515**

——— s 269—

See s. 188 **I L R 38 Mad 602**

See MADRAS CITY MUNICIPAL ACT (III OF 1904) S. 3?6 **I L R 43 Mad 344**

——— s. 280—*Rash and negligent act proof and degree of—Contributory negligence how far is an element for consideration—Evidence consideration of by the High Court in revision* The accused was in charge of a steam launch which was coming up the river in a moonlight night In the river at deep water some country boats were moored having no lights in them The accused on account of mist could not make out whether the boats were stationary or moving but he thought they were moving He gave whistles but before he could stop the launch it came into collision with two of the boats with the result that they sank almost immediately The accused then sent a jolly boat to rescue the drowning passengers of the sunken boats *Held* that under the circumstances of the case the accused was not guilty of the offence under s 280 Indian Penal Code as his conduct was not rash or negligent within the meaning of that section To support conviction under s 280 Indian Penal Code it must be proved that the immediate cause of the accident was rashness or negligence on the part of the navigator In considering the question of degree the question of contributory negligence has also to be taken into account not as a defence to the indictment but for the purpose of determining causation and fixing a measure of the liability of the navigator When the accused navigator did all he could to save the situation but could not avoid the collision he would not be guilty under s 280 Indian Penal Code The High Court in revision went through the evidence to decide whether the rashness or negligence was proved KAMDAR ALI SERANG v EMPEROR (1911) **15 C W N 835**

——— s 283—*Obstruction causing of—Whether necessary to prove any particular individual obstructed* Where the evidence showed that an obstruction placed on a road must necessarily prevent vehicles from passing at all and foot passengers from passing without inconvenience *Held* that it is a necessary inference that persons were obstructed and that it is not necessary to expressly prove that any specific individual was actually obstructed *The Queen* v *Khader Moidin I L R 4 Mad 235* not followed *Queen Empress* v *Veerappa Chetti I L R 20 Mad 433* commented on *Re* VENKAPPA (1913) **I L R 38 Mad. 305**

——— ss 283 114—*Obstruction in public way—Toy shop on a street—Exhibition of toys in the shop window—Collection of crowd of persons in street—Obstruction* The accused who had a toy shop in a public street exhibited in the window of the shop overlooking the street certain clockwork toys during a Diwali festival. The result of the exhibition was that thousands of people collected on the road to witness the toys there were dangerous rushes in consequence people were knocked down and great obstruction and danger were caused to those using the road On these facts the accused were convicted of offences punishable under ss 283 and 114 of the Indian Penal Code *Held* upholding the conviction that there were obstruction danger and injury to the persons using the public way which amounted to a public nuisance and that the efficient cause of the nuisance was the act of the accused Ordinarily every shop keeper has a right to exhibit his wares in any way he likes in this shop but he must exercise the right so as not to cause annoyance or nuisance to the public *Attorney General* v *Brighton and Hove Co operative Supply Association [1900] 1 Ch. 276* followed. EMPEROR v NOOR MAHOMED (1911)

I L R 35 Bom 363

——— s 290—

See s. 268 **I. L. R 46 Calc. 515**

——— *Public nuisance—Liability of principal for act of agent.* The propric

PENAL CODE (ACT XLV OF 1860)—*contd.*

——— s 290—*contd.*

tors and the manager of a mill were prosecuted and convicted under s. 290 Indian Penal Code on a complaint that the working of the mill was a nuisance It appeared that the propne ors were *not residents in the locality and there was no alle* gation of any abetment by them *Held* that the general rule is that a principal is not criminally answerable for the acts of his agent Speaking generally the per on liable where the user of pre mises gives rise to a nui ance is the occupier for the time being whoever he may be and the con viction of the proprietors was bad in law BIBHUTI BHUSAN BISWAS v. BHUBAN RAJ (1918)
22 C W N 1062

——— s 292—

See OBSCENE PUBLICATION
I L R 39 Calc 377

——— *s 295— Defile meaning of—Moothans presence of inside a temple whether defilement* The presence of Moothans a sub caste of Sudras whose status is equal to if not higher than that of Nairs in such portions of a Hindu temple as are open to non Brahmans is not a defilement within s 295 Indian Penal Code KUTTICHA II MOOTHAN v. RAMA PATTAP (1918)
I L R 41 Mad 980

——— *s 296—Disturbing a religious assembly —Religious procession on a highway—Carrying of flags to a temple* Where certain Lodhas who with the sanction of the public authorities had been carrying flags to a temple in procession through a public street were attacked by persons who objected to the procession. *Held* that such attack constituted a disturbance of the perform ance of a religious ceremony punishable under s 296 of the Penal Code EMPEROR v. MASIT (1911) **I L R 34 All. 78**

——— *ss 296 39—Public worship disturb ance of — Voluntarily meaning of* It is not necessary for the purpose of s 296 Indian Penal Code that the accused should have an active in tention to disturb religious worship It is suffi cient if knowing they were likely to disturb it by their music they took the risk and did actually cause disturbance It is an offence under s 296 Indian Penal Code to pass a mosque with music so as to disturb religious worship carried on during hours notified therefor S 79 Penal Code cannot be pleaded in such a case *Muthial Chetti* v *Bapan Saib I L R 2 Mad 140* followed. *Sundaram* v *The Queen* and *Ponnusawmy* v *The Queen I L R 6 Mad 203* followed. PUBLIC PROSECUTOR v. SANKU SEETHIAH (1910) **I L R 34 Mad 92**

——— s 297—

See GRAVE YARD
I L R 40 Calc 548

——— *Trespass on a burial ground—Ploughing up burial ground—Joint owner* Where a person entered upon a grove for the pur pose of demarcating his share therein and in doing so dug up certain graves and exposed the bones of the persons buried there in spite of the remon strances of the relations of the buried persons. *Held* that he was properly convicted of an offence under s. 297 of the Penal Code and none the less because he happened to be part owner of the grove

PENAL CODE (ACT XLV OF 1860)—*contd*

——— s 297—*contd*

Queen Empress v *Subhan I L R 18 All 395* referred to EMPEROR v. RAM PRASAD (1911)
I L R 33 All 773

——— s 299—

See s 304 **I L R. 42 All 302**

——— *ss 299 300—Grievous hurt causing unconsciousness—Hanging an unconscious person believing him to be dead to screen an offence —Death in consequence whether culpable homicide* Where an accused struck his wife a blow on her head with a ploughshare which though not shown to be a blow likely to cause death did in fact render her unconscious and believing her to be dead in order to lay the foundation of a false defence of suicide by hanging the accused hanged her on a beam by a rope and thereby caused her death by strangulation *Held* by the Full Bench that the accused was not guilty either of murder or culpable homicide not amounting to murder *The Emperor* v *Dalu Sardar 18 C W N 1279* followed PALANI GOUNDAN v. EMPEROR (1919)
I L R 42 Mad. 547

——— s 299 *301—Murder—Intention to kill one person but death of another actually caused* Where a person intending to kill one person kills another person by mistake he is as much guilty of murder as if he had killed the per on whom he intended to kill *Public Prosecutor* v *Mushunooru Suryanarayana Moorty 13 Indian Cases 833* and *Agnes Gore s Case 77 English Rep 853* referred to EMPEROR v. JEOLI (1916) **I. L. R. 39 All. 161**

——— s 300—

See s 299 **I L R 42 Mad. 547**

——— s *300(3)—Causing death—Single blow by an iron shod stick—Culpable homicide not amounting to murder* The accused and the de ceased having quarrelled the accused took an iron shod stick, and struck one blow on the head of the deceased which caused his death The accused having been convicted of murder appealed to the High Court *Held* that the offence com mitted by the accused was not murder but culpable homicide not amounting to murder because it was possible that the blow he struck exceeded in violence the injury he had in view at the moment of striking it EMPEROR v. SARDARKHAN (1916)
I L R 41 Bom 27

——— ss. 300 (1), 302—

See MURDER **I. L. R. 37 Calc. 315**

——— ss 300 and 325—

——— *Grievous hurt—Murder—Culpable homicide not amounting to murder—Fatal assault committed by three persons acting in concert* A dispute having suddenly arisen concerning the cutting of a sugarcane crop three men armed with *lathis* attacked one of the men who was engaged in cutting the crop and beat him so severely that he died his skull being broken in three places. A nephew of the man attacked having his *lathi* with him attempted to rescue his uncle and also received considerable injuries. *Held* that the offence of which the assailants were guilty was not the mere causing of grievous hurt but culpable homicide which however might in the circumstances, be considered as not amounting to murder by the application of excep. 4 of s 300 of the Indian Penal Code *Emperor* v *Chandan S ngh*

PENAL CODE (ACT XLV OF 1860)—*contd*

——— ss 300 and 325—*contd*

I L R 40 All 103 dissented from *King Emperor v Hanuman I L R 35 All 560* and *Emperor v Ram Newa I L R 35 All 506* referred to EMPEROR v GULAB (1918)

I L R 40 All 686

——— *Murder—Grievous hurt —Common intention—Deadly assault with lathis on an unarmed person—Presumption* Four persons armed with *lathis* attacked and severely beat a fifth who was unarmed over a dispute about irrigation The person attacked died in consequence of this beating and it was found that he had received several severe blows on the head the result of which was that the bones of the skull were broken to pieces and also other injuries about the body most of the injuries having probably been inflicted whilst the person attacked was on the ground but the evidence did not disclose which of the assailants caused which of the injuries *Held* that all four assailants were properly convicted of murder under the fourth clause of s 300 of the Indian Penal Code and that the inference was not justified that the common intention of the assailants was not more than the causing of grievous hurt EMPEROR v KANHAI (1912)

I L R 35 All 329

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See s 299 **I L R 39 All 161**

——— s. 302—

See s. 37 **I L R 35 All 506 and 560**

See s. 201 **20 C W N 166**

See MURDER **I L R 37 Calc 315**

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——— *Criminal Procedure Code (Act V of 1898) ss 374 376—Accused charged with murder—Duty of presiding Judge as to arranging for his defence—Re trial on the same charge* The accused who was undefended in the Sessions Court was convicted under s 302 Indian Penal Code The case came up to the High Court for confirmation of the sentence of death under s 374 Criminal Procedure Code and also on appeal *Held* that accused persons charged with murder should not go undefended The respective duties of the Judge and the Bar as to the defence of such accused persons pointed out The High Court held that on the evidence as it stood the sentence of death could not be confirmed and directed under s 376 cl (*b*) a re trial of the accused on the same charge after arrangement being made for his defence KING EMPEROR v MOHAR ALI SHEIKH (1915) **19 C W N 556**

——— *Murder—Poisoning by arsenic—Intention—Knowledge* A person who administers a well known poison like arsenic to another must be taken to know that his act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death and if death ensue he is guilty of murder notwithstanding that his intention may not have been to cause death *Queen Empress v Tulsha I L R 20 All 143 King Emperor v Bhawana Din I L R 30 All 508* and *King Emperor v Gutali I L R 31 All 148* referred to EMPEROR v GAURI SHANKAR (1918) **I L R 40 All 360**

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I L R 41 Calc 662

——— *Offering a child to crocodiles in the superstitious belief of ultimate good to the child* The accused who were husband and wife had lost several children and they offered their next born to the crocodiles to a particular tank in the belief that the child s life would be ultimately saved but it was devoured the parents were convicted under this section KING EMPEROR v BHARAT BEPARI AND ANOTHER

25 C W N 876

——— ss 304 325 and 299—*Culpable homicide—Grievous hurt—Injury caused by a lathi resulting in death from gangrene* R struck G three blows with a *lathi* One blow fractured the bones of the left forearm another fractured a bone in the right hand while the third fractured both bones of the left leg In the case of the third injury gangrene supervened and G died in consequence *Held* that R was guilty of either culpable homicide not amounting to murder under s 304 of the Indian Penal Code or causing of grievous hurt under s 325 of the Code EMPEROR v RAMA SINGH **I L R 42 All. 302**

——— ss 304 and 323—*Accused challaned under s 304 convicted under s 323—whether proceedings abate on account of death of person assaulted—Probate and Administration Act V of 1881 s 89* The 2 petitioners and 2 other persons were challaned by the police under s 304 Penal Code for causing the death of one J S The trial Court convicted the 2 latter under s 304 and the 2 petitioners under s 325 They appealed to the Sessions Judge who altered the conviction of all 4 accused to 1 under s 323 The two petitioners then filed a revision in the High Court and urged *inter alia* that as the Appellate Court had held that only an offence under s 323 had been committed and as the person injured had died the proceedings abated and the accused should have been acquitted The Single Judge who heard the revision referred this point for consideration to a Division Bench The hurt for the causing of which the petitioners were convicted did not cause the death of J S *Held* by the Division Bench that criminal proceedings once legally instituted whether upon a complaint or

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otherwise do not terminate or abate merely by reason of the death of the complainant or the person injured S 89 of the Probate and Administration Act has no application to a criminal prosecution and there is nothing in the Criminal Procedure Code in support of the proposition that the death of the person injured or of the complainant of itself causes the proceedings to debate It is a mistake to speak of an offence as a purely personal one *Emperor* v *Sultan Singh* (I L R 31 *All* 606) and *Krishna Behari Sen* v *Corporation of Calcutta* (I L R) 31 *Cal* 993 (F B) referred to also Halsbury s Laws of England Volume IX page 232 HAZARA SINGH v CROWN I L R 2 Lah 27

——— ss 304 325—*Assault committed by three persons armed with lathis—Intention—Culpable homicide—Grievous hurt* Three persons attacked a fourth with *lathis* and death ensued through a fracture of the skull of the person so attacked There was however no evidence to show that the common intention of the assailants was to cause death or which of them actually struck the blow which fractured the skull of the deceased *Held* that the offence of which the assailants were guilty was that of causing grievous hurt and not that of culpable homicide not amounting to murder *Emperor* v *Bhola Singh I I R 29 All 282* followed EMPEROR v CHANDAN SINGH (1917) I L R 40 All 103

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——— *Criminal negligence—Carelessness of compounder in dealing with poisonous drug* An unqualified person who was in charge of a dispensary attached to a mill at Agra had to make up a quantity of quinine mixture for cases of fever He went to a cupboard where non poisonous medicines were supposed to be kept and took therefrom a bottle with an outside wrapper marked poison This wrapper he tore off and threw away The bottle itself was labelled strychnine hydrochloride but without regarding this and apparently because there was a resemblance between this bottle and another in which *quinine* hydrochloride was kept he made up the entire contents of the bottle as if it had been quinine The result was that seven patients died *Held* that the compounder was rightly convicted under s 304A of the Indian Penal Code EMPEROR v DE SOUZA I L R 42 All. 272

——— s 306—*Abetment of suicide—Sati* *Held* that persons actively assisting a Hindu widow in becoming a *sati* are guilty of the offence of abetment of suicide as defined in s 306 of the Indian Penal Code EMPEROR v RAM DAYAL (1913) I L R 36 All. 26

——— s. 317—*Exposure or abandonment of a child by a person having care of it—Person entrusted with a child for abandoning it has the care of it* Accused No 1 having given birth to an illegitimate child gave it to her sister accused No 2 with a view to dispose of it secretly Accused No 2 accordingly carried it by a railway train and abandoned it in a second class compartment On these facts accused No 2 was charged with an offence under s 317 of the Indian Penal Code and accused No 1 with having abetted the offence under ss 317 and 109 of the Code The Sessions Judge acquitted them both the accused No 2 on the ground that she had not the care of the child and accused No 1 on the ground that as no principal offence had been committed she would not be guilty of abetment The Government having appealed *Held* reversing the order of acquittal that both the accused had committed the offences with which they had been charged EMPEROR v CRIPPS (1916) I L R 41 Bom 152

——— s 323—

See s 71 I L R. 39 All 623

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See s 332 I L R 37 All 353

See BAILIFF I L R 42 Calc 313

See APPELLATE COURT I L R 38 Calc 293

See CRIMINAL PROCEDURE CODE 1898 s 423 3 Pat. L J 565

——— *Death of person injured—Abatement of proceedings—Probate and Administration Act (V of 1881) s 89* A criminal prosecution under s 323 of the Indian Penal Code does not abate by reason of the death of the person injured The words to prosecute any proceeding in s 89 of the Probate and Administration Act do not refer to criminal prosecutions but to civil actions only *Rama Nand* v *Emperor (1917) 40 I C 1008 (Punjab)* and *Labhu* v *Emperor (1919) 52 I C 797 (Punjab)* dissented from MUHAMMAD IBRAHIM SAHIB v SHAIK DAVOOD (1921) I L R 44 Mad 417

——— The petitioner a Bailiff of the Small Cause Court Calcutta was entrusted with the execution of a writ of possession which required and authorised him to give possession to the decree holder of certain premises in the occupation of the judgment debtor On the complaint of the judgment debtor s wife the petitioner was placed on his trial on the allegation that he caught hold of her by the hand forcibly dragged her out of the house and pushed her and when in consequence of the push she fell the petitioner kicked her Sometime after the occurrence the complainant sent through her husband a letter of complaint to the thana and subsequently a complaint made either by the complainant or her husband was lodged against the petitioner at the thana The Magistrate in convicting the petitioner under s 323 Indian Penal Code found that in pulling or dragging the complainant out of the house he pushed or jerked her from him in such a manner as to cause her to fall and to receive the injuries found on her elbows and knee He further found that the petitioner did not deliberately kick the complainant but nevertheless held as follows — I think it quite possible that on seeing her fall he went up to ascertain what had happened to her and pushed her more than once with his foot to make her rise *Held* (without deciding whether the provisions of the English Common Law or the Code of Civil Procedure were applicable to the writ in question)—That under the provisions of either law in the execution of a writ of possession a reasonable degree of force may be used in order to effect the removal of persons bound by the decree and refusing to vacate That on

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PENAL CODE (ACT XLV OF 1860)—*contd*

——— s 323—*contd*

the Magistrate s own finding the petitioner should not have been convicted That is to say that a thing may possibly have happened is not to find that it did happen and there was no finding by the Magistrate that after the complainant had fallen the petitioner touched or pushed her with his foot That the Magistrate should not have relied on the letter sent by the complainant to the thana previous to the lodging of the complaint That the witnesses having been disbelieved with regard to the graver charges brought against the petitioner could not be safely believed with regard to the small residuum of what the Magistrate conceived to be truth H MEREDITH v SANJIBANI DASI 19 C W N 273

——— ss 323 332—*Criminal Procedure Code s 144—Public servant in the execution of his duty as such—Police constable assaulted whilst attempting to enforce an order which in fact had become obsolete.* A police constable was assaulted whilst endeavouring to enforce an order passed by the District Magistrate as to the carrying of *lathis* by Pragwals which order if originally lawful had in any case become obsolete *Held* that in the circumstances the persons who assaulted the constable could not be convicted under s 332 of the Indian Penal Code but they were liable to conviction under s 323 *Queen Empress* v *Dalip I L R 18 All 246* referred to EMPEROR v MADHO (1917) I L R 40 All 28

——— s 324—

See COMMON OBJECT 2 Pat. L J 541

——— s 325—

See s 114 16 C W N 909

See s 300 I L R 35 All 329
I L R 40 All 686
18 C W N 1279

See s 304 I L R 42 All 302

See CRIMINAL PROCEDURE CODE s 106
I L R 33 All. 48

See RIOTING I. L R 41 Calc 43

See SENTENCE 3 Pat L J 641

——— s 326—

See s 114 4 Pat L J 289

See s 141 17 C W N 1132

See COMMON OBJECT 2 Pat L J 541

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 307
I L R 37 Mad 236

See CRIMINAL TRESPASS
I L. R 41 Calc 662

See PRIVATE DEFENCE 3 Pat. L J 653
4 Pat L J 289

——— s 329—

See CRIMINAL PROCEDURE CODE ss 109 123 397 I. L R 34 Bom 326

——— s 332—

See s 323 I L R 40 All 28

See CRIMINAL PROCEDURE CODE s 54
I. L R 40 Mad. 1028

See MAGISTRATE JURISDICTION OF
I. L R 39 Calc 377

PENAL CODE (ACT XLV OF 1860)—*contd*

——— ss 332, 323—*Public servant in the execution of his duty as such—House search by Excise Inspector without a warrant—Assault on Inspector* An Excise Inspector in searching the house of a person under the suspicion that he would find cocaine there committed many irregularities He had no warrant authorising him to make the search he had brought only one search witness and he directed a constable to scale the outer wall of the house The accused assaulted and beat him *Held* that the Inspector and the constables were not acting in the discharge of their duties as public servants and the accused were not guilty of an offence under s 332 of the Indian Penal Code but were guilty of an offence punishable under s 323 of the said Code *Queen Empress* v *Dalip I L R 18 All 246* followed EMPEROR v MUKHTAR AHMAD (1915) I L R 37 All 353

——— ss 332 and 503—

See CRIMINAL PROCEDURE CODE s 103
I L R 42 All 67

——— s 336—

1 ——— *Doing an act endangering human life or the safety of others—Temple resorted to by pilgrims on festive occasions—Duty of person in charge to ensure safety of pilgrims attending by license and invitation* The petitioner was the lessee of a certain temple from some of the *shebaits* and was the general manager of all of them It appeared that on a certain day in the year pilgrims and others in large numbers visited this temple Close by the gate leading from an outer courtyard into the inner temple there was a well which was surrounded by a masonry platform 1½ to 2 feet high and the ring or parapet of the well stood again about 1 foot above the platform Early at night on the day of the congregation of pilgrims an accident having occurred the petitioner at the instance of the Police Officer in charge had a light placed on or near the one foot parapet but at a later hour the petitioner had the light *removed* and thereafter between 1 and 2 A M while the people were again entering into the inner temple a boy who had no previous knowledge of the well and in the darkness could not see it fell into it *Held* that the facts constituted an offence within the meaning of s 336 of the Penal Code That on the occasion of the festival in question the temple becomes a place of public resort and it was the bounden duty of the petitioner as the person in charge to take all reasonable precautions necessary to ensure the safety of those crowding thither by his license and invitation NARSING CHARAN MAHAPATRA v KING EMPEROR (1914)
18 C W N 1176

2 ——— *Doing a rash or negligent act endangering human life or personal safety of others—Licensed taxi cab driver asked to wear spectacles at the time of driving—Driver using no spectacles at the time of driving—Liability* The accused was at the time he took out a license to drive taxi cabs, asked to use spectacles at the time of driving owing to his defective eyesight Still he was one night driving his taxi cab without wearing spectacles when his car collided with another car but it appeared that he was not liable for the accident He was tried for an offence punishable under s 336 of the Indian Penal Code for doing an act so rashly or negligently as to endanger

PENAL CODE (ACT XLV OF 1860)—*contd*

——— s 336—*contd*

human life or the personal safety of others The medical evidence adduced at the trial showed that the defect in the eyesight of the accused was not very much and that it would not appreciably interfere with his efficiency as a driver The Magistrate having convicted him of the offence charged the accused applied to the High Court *Held* setting aside the conviction and sentence that it was not made out that the accused if he drove his car without wearing spectacles would be acting so rashly or negligently as to endanger human life or the personal safety of others EMPEROR v ABAS MIRZA (1918) I L R 42 Bom 396

——— ss. 337 338—*Hurt caused by rashness or negligence—Hakim—Performance of eye operation with ordinary scissors—Neglect of ordinary precautions—Partial loss of eye sight* The accused a Hakim performed an operation with an ordinary pair of scissors on the outer side of the upper lid of the complainant s right eye The operation was needless and performed in a primitive way the most ordinary precautions being entirely neglected The wound was sutured with an ordinary thread The result was that the complainant s eye sight was permanently damaged to a certain extent The accused was on these facts convicted of an offence punishable under s 338 of the Indian Penal Code He having applied to the High Court *Held* that the accused had acted rashly and negligently so as to endanger human life or the personal safety of others *Held* also that the act of the accused amounted to an offence punishable under s 337 of the Indian Penal Code since there was no permanent privation of the sight of either eye in consequence of the operation Where a Hakim gives out that he is a skilled operator and charges considerable fees the public are entitled to the ordinary precautions which surgical knowledge regards as imperative To neglect such precautions entirely is negligence such a is contemplated by the criminal law EMPEROR v GULAM HYDER PUNJABI (1915)

I L R 39 Bom 523

——— s 339—*Wrongful restraint what necessary to constitute* The accused placed a lock on the outer door of complainant s house intending to prevent and thereby preventing his ingress *Held* that the offence of wrongful restraint was established although the accused were not physically present to enforce the obstruction There is nothing in s 339 Criminal Procedure Code which requires the physical presence of the obstructor at the moment of prevention ARUMUGAKADAR v EMPEROR (1910) I L R 34 Mad 547

——— s 341—*Restraint upon a drunken and disorderly person—Common Law of England—Applicability to India* A private citizen has the right to arrest under the Common Law any person as to whom there is reasonable apprehension that he will commit a breach of the peace *Timothy v Simpson (1835) 4 L J (Ex) 81* and *Queen v Light (1857) 27 L J (M C) 1* referred to *In re* RAMASWAMI AIYAR (1921)

I L R 44 Mad 913

——— ss 341 109—*Wrongful restraint—Tenant holding over—Landlord preventing the tenant from going to the demised premises* The accused having prevented a tenant of his who was holding over from entering the demised premises, was convicted of wrongful restraint (ss 341 and 109 of the Indian Penal Code) On application to the High Court under criminal revisional jurisdiction *Held* that the accused was rightly convicted inasmuch as the tenant holding over had in India a position recognised by the law and had a right to retain possession of the premises he occupied even against the landlord himself until dispossessed in due course of law EMPEROR v HAJI GULAM MAHOMED (1918)

I L R 43 Bom 531

——— s 342—

See s 107 5 Pat L J 129

See RIOTING I L R 48 Calc 78

See WRONGFUL CONFINEMENT

I L R 47 Calc 818

——— s 343—*Wrongful confinement—Detention of prostitutes in brothel* Accused No 1 who had a woman in his keeping at Kolhapur brought her from Kolhapur to Bombay where he kept her in the brothel of accused No 2 There she led the life of a prostitute her movements were watched and a guard was kept at the entrance of the house She was occasionally allowed to go out of the house under surveillance It appeared that accused No 1 had on previous occasions supplied women to accused No 2 *Held* that on these facts accused Nos 1 and 2 were both guilty of the offence of wrongfully confining the woman EMPEROR v BANDU EBRAHIM (1917) I L R 42 Bom 181

——— s 353—

See s 99 18 C W N 548

See s 183 1 Pat L J 550

See BENGAL SURVEY ACT 1875

2 Pat L J 18

See CRIMINAL PROCEDURE CODE—

s 54 (1) I L R 36 All 6

s 75 2 Pat L J 437

See RIOTING I L R 41 Calc 836

See SEARCH BY POLICE OFFICERS

I L R 41 Calc 261

See WARRANT OF ARREST

3 Pat L J 493

——— one act constituting two offences—

See GENERAL CLAUSES ACT 1897 s 26

1 Pat L J 373

——— s 360—

See s 366 I L R 42 Bom. 391

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) ss 4_3 439

I L R 37 Mad. 119

——— s 361—*Lawful guardian —Hindu law—Nearest major male relative not necessarily the lawful guardian of a female minor* The only persons having an absolute right to the custody of a Hindu minor are the father and the mother of the minor No such right exists in the person who happens to be the nearest major male relative of the minor and such a relationship would no in law be a defence to a charge of kidnapping a minor from the custody of a *de facto* guardian. EMPEROR v SITAL PRASAD

I L R. 42 All. 146

PENAL CODE (ACT XLV OF 1860)—*contd*

——— ss 361 366, 109—*Kidnapping from lawful guardianship—Completion of offence—Continuous offence—Abetment* The offence of kidnapping is completed the moment a girl under sixteen years of age is taken out of the custody of her lawful guardian and is not an offence continuing as long as the minor is kept out of such guardianship There can be no abetment of the offence by conduct which commences only after the minor has once been completely taken out of the keeping of the guardian and the guardian s keeping of the minor is completely at an end *Regina* v *Samia Kaundan I I P 1 Mad 173 Queen Empress* v *Ram Dei I L R 18 All 350* Queen Empress v Ram Sundar I L R 19 All 109 *Chelutty* v *Emperor I L R 26 Mad 454 Kemai Chattoraj* v *Queen-Empress I L R 27 Calc 1041 Chanda* v *Queen Empress (1904) Punj Rec Cr J 19* referred to EMPEROR v ABDUR RAHMAN (1916) **I L R 38 All. 664**

——— ss. 361 366 and 368—*Abduction and kidnapping— Lawful guardian — Lawfully entrusted —Evidence, duty of Crown to produce the best available—Charge necessity for precision in—Guardianship proof of—Construction of Statutes* In s 361 of the Indian Penal Code the word lawful does not necessarily mean that the person who entrusts a minor to the care or custody of another must stand in the position of a person having a legal duty or obligation to the minor It is a sufficient compliance with the section and its *Explanation* if the entrusting of the minor to the care or custody of another is effected without illegality or the commission of any unlawful act by a person legally *competent* to do so Entrusted means the giving handing over or confiding of something by one person to another It involves the idea of *active* power and motive by the person reposing the confidence towards the person in whom the confidence is reposed For an entrusting within the meaning of the *Explanation* to s 361 there must be necessarily three persons viz (1) the person imposing the confidence or trust (2) the person in whom the trust is imposed and (3) the person constituting the subject matter of the trust The *Explanation* contemplates a declaration of trust by a person competent to make such a declaration conveying handing over and confiding a minor to the care and custody of another in whom a confidence and trust is imposed It is necessary for the person accepting the trust to do so either by *express assent* or by necessary implication arising from tacit acquiescence in the performance of the trust Neither the declaration of trust nor its acceptance need be necessarily in writing it is sufficient if the declaration is verbally made and given or if it arises from a course of conduct consistent only with the existence of such antecedent declaration and accepted verbally or by necessary implication arising from the conduct of the person so entrusted with the duty imposed In a criminal trial the onus is upon the Crown to prove by the best evidence procurable the guilt of the accused Where therefore it was alleged that a girl had been abducted from the guardianship of a certain person and that person was not called to prove the guardianship *held* that the Crown had not tendered the best available evidence of the guardianship Courts of Law ought not lightly to infer that a person is a lawful guardian for one purpose only and not for all purposes if the obligation of guardianship is once established whether expressly or by inference The mere relationship *per se of master and servant does not constitute* a master the lawful guardian of a minor servant within the meaning of s 361 nor can such master in the absence of *proper proof* be deemed a person lawfully entrusted with the care and custody of such minor It is the duty of a Sessions Court in *framing* charges to see that they are precise in their scope and particular in their details *Held* therefore that in a case under s 366 of the Indian Penal Code the charge should state the time at and date on which the alleged kidnapping or abduction took place The words of a statute must be construed in their ordinary grammatical and natural sense and not in a forced and artificial sense unless such conclusion would give rise to an obvious absurdity which could never have been contemplated A court of justice is not permitted to relax the construction of a statute in a manner at variance with its express provisions and which might operate unfairly to the prejudice of an accused *person* No court in the administration of criminal justice ought to dispense with the statutory requirements of the law as to the proof necessary *to* establish a fact MUSSAMAT KESSAR v THE KING EMPEROR **4 Pat L J 74**

——— s 363—
See CRIMINAL PROCEDURE CODE s 188 **I L R 41 Calc 452**

See KIDNAPPING **I L R 40 Calc 714**

——— *Kidnapping from lawful guardianship—Minority of Mahomedan when to cease for the purpose of s 363—Majority Act (IX of 1875) s 3* According to Mahomedan Law the occurrence of puberty determines minority and the mother s right to custody but for the purpose of s 363 of the Penal Code regard must be had only to the definition of minority in s 3 of the Majority Act (IX of 1875) *In the matter of Khatja Bibi 5 B L R 557* distinguished Re MUTHU IBRAHI (1913) **I L R 37 Mad 567**

——— s 366—
See s 361 **I L R 38 All 664**
4 Pat L J 74

See ABDUCTION **I L R 45 Calc 641**

——— *Kidnapping—Taking out of custody* Where two girls under the age of 16 years ran away from their houses and *remained for nearly one or two days in the house of a woman* who belonged to the cast of Naiks in Kumaun and no report was made to the *padhan* or the *patwari* *Held* that the woman in whose house the girls stayed was properly convicted of an offence under s 366 of the Penal Code *Queen* v *Gundar Singh* *W R Cr 6* dissented from EMPEROR v JASAULI (1912) **I L R 34 All 340**

——— ss 366 360 90—*Kidnapping a girl out of British India to seduce her to illicit intercourse —Consent of the girl aged fifteen years* The accused kidnapped a girl fifteen years of age out of British India with her consent in order that she might be seduced to illicit intercourse He was convicted of an offence under s 366 of the Indian Penal Code On appeal *Held* reversing the conviction that the accused had committed no offence under s 366 of the Indian Penal Code inasmuch as the girl who was over twelve years of age was kidnapped with her consent EMPEROR v HARIBHAI (1918) **I. L. R. 42 Bom. 391**

PENAL CODE (ACT XLV OF 1860)—contd.

——— ss. 366 368—*Kidnapping—Lawful guardianship* A Jat girl under the age of 16 years was sent by her father to carry food to the bullocks. She never returned home. Shortly afterwards she was found in a village not far from her home in the company of two men of the same caste She was then dressed in boy s clothes and had her hair cut short The two men offered no explanation as to how the girl came to be with them or why she was disguised *Held* that both the men in whose cu tody the girl was found were properly convicted under s 366 of the Indian Penal Code *Emperor* v *Jetha Nathoo 6 Bom L R 785* followed EMPEROR v HARKESH (1918)
I L R. 40 All 507

——— ss. 366 372—*Kidnapping—Buying or selling minor girls for the purpose of prostitution* A low caste girl left her lawful guardian of her own free will and subsequently met the accused Ewaz Ali and lived with him for some time Later he made her over to certain persons who representing that she was a member of a higher caste induced a member of such higher caste to take her in marriage and to pay money for her in full belief that such representation was true *Held that Ewaz Ali was neither guilty of an offence* under s 366 of the Indian Penal Code inasmuch as he did not take or entice her away from her legal custody nor of an offence under s 372 of the said Code *King Emperor* v *Ram Chander 12 ALL L J 265 Empress of India* v *Sri Lal I L R 2 All 694* followed *King Emperor* v *Jetha Nathoo 6 Bom L R 785* referred to EMPEROR v EWAZ ALI (1915) **I L R 37 All. 624**

——— s 370—*Buying and selling as a slave what amounts to* The appellants in these cases were convicted by Sessions Court of North Malabar under s 3 0 Penal Code the second appellant having been found to have sold and the first to have bought a Pulayan named Vellan as a slave The document recording the above transaction ran as follows — I execute to you and give you this day this jenmam deed giving you Velandi s son Pulayan Vellan with his heirs The sum that I received from you in cash to day is ten rupees For this sum of ten rupees you should get work done for you by the said Vellan and his offspring that may come into being as your jenmam and act as you please On a difference of opinion between ABDUR RAHIM and NAPIER JJ as to whether the said transaction amounted to an offence under s 370 Indian Penal Code *Held* by AYLING J that the transaction in question was a sale of Vellan and his offspring as mere chattles and that the *appellants were guilty of an offence* under s 370 Penal Code *Empress of India* v *Ram Kuar I L R 2 All 723* and *Amina* v *Queen Empress I L R 7 Mad 277* referred to KOROTH MAMMAD v THE KING EMPEROR (1917)
I L R 41 Mad 334

——— s 372—

See 366 **I L R 37 All 624**

——— s 373—*Obtaining possession of a minor girl for purposes of prostitution—Third party need not necessarily dispose of a minor girl* To constitute an offence punishable under s 373 of the Indian Penal Code 1860 it is not necessary that the possession of the minor should be obtained from a third person It is enough if it is established that the accused in fact obtained possession of the minor with intent that the minor shall be used for

PENAL CODE (ACT XLV OF 1860)—contd

——— s 373—*contd.*

the purpose of prostitution *Queen Empr Shaikh Ali (1870) 5 Mad H C 473* ref to EMPEROR v SHAMSUNDARBAI
I L R 45 Bom

——— ss 378 380 411—

See CONVICTION **3 Pat L J**

——— s 379—

See AGRA TENANCY ACT (II OF 1 s 124 **I L R 38 All**

See BENGAL TENANCY ACT 1885 s **1 Pat L J**

See CRIMINAL PROCEDURE CODE (A OF 1898) ss 397 123 **I L R 37 Bom**

1 ——— *Servants re ing things at master s bidding when theft* In to convict a servant of theft under s 379 In Penal Code for having cut away some bamboo the order of his master it must be clearly sh that he (the servant) knew of the dishonest in tion of his master *Hari Bhuimali* v *The Emp 9 C W N 974* followed RADHA MADHAB PA v THE KING EMPEROR (1910) **15 C W N**

2. ——— *Theft—Rem of goods from a person s custody—Larceny* In o to constitute larceny there must be an inten to take entire dominion over the property i e taker must intend to appropriate the prop to his own use but there may be theft withou intention to deprive the owner of the prop permanently Hence where a person snatc away some books from a boy as he came ou school and told him that they would be retu when he came to his house *Held* that the offe of theft had been committed. *R* v *Dickin R & R 420 Prosonno Kumar Patra* v *U Sant I L R 22 Calc 669* and *Queen Empres Agha Muhammad Yusuf I L R 18 All* referred to EMPEROR v NAUSHE ALI KI (1911) **I L R 34 All**

3 ——— *Theft—Elem necessary to constitute offence—Removal of prop in assertion of bonâ fide claim of right* To sust a conviction under s 379 it is nece sary to pr dishonest intention to take property out of possession of another person Consequently w property is removed in the assertion of a *bonâ* claim of right the removal does not constit theft The claim of right must be an honest though it may be unfounded in law or in fact the claim is not made in good faith but is a m colourable pretence to obtain or to keep possessi it is of no avail as a defence ARFAN AL KING EMPEROR (1916) **I L R 44 Calc. 20 C W N 12**

4 ——— *Theft—Bomb Land Revenue Code (Bombay Act V of 1879) s — Attachment of buffaloes for non payment of la revenue—No actual seizure of buffaloes—Remo of buffaloes by their owners—Offence* On defa in the payment of land revenue by accused Nos and 3 the Mamlatdar went to their houses mad *panchnama* declared that their buffaloes were tached and forbade the accused to remove the Notwithstanding this accused Nos 2 and 3 remov the buffaloes at the instigation of accused No For this act accused Nos 2 and 3 were convict

PENAL CODE (ACT XLV OF 1860)—*contd*

——— s 379—

of the offence of theft and accused No 1 of abetment of the same The Sessions Judge was of opinion that inasmuch as the Mamlatdar had not taken actual possession of the buffaloes nor seized them the accused had committed no offence in removing them He therefore referred the case to the High Court *Held* that the offence of theft was constituted by the removal of buffaloes inasmuch as on the proved facts the Mamlatdar was in possession of them EMPEROR v LALLU WAGHJI (1918) **I L R 43 Bom 550**

5 ——— *Removal of paddy grown by trespasser from land when in possession of rightful owner if theft* A person who grows paddy on lands as trespasser has no right to go upon the land after the rightful owner has obtained possession and remove the paddy and a plea of *bonâ fide* civil dispute cannot be successfully raised on such facts in answer to a charge of theft ABINASH CHANDRA SARKAR v KING EMPEROR (1918) **23 C W N 385**

6 ——— *Theft—Appropriation by tenant of fallen trees belonging to the zamindar* Certain trees the property of the zamindar of the village in which they were situated were blown down bodily by a dust storm Some of the tenants of the village thereupon removed and appropriated the trees The zamindar laid a complaint against the tenants charging them with theft The tenants pleaded but were unable to substantiate the plea that they had a customary right to trees thus uprooted by a storm *Held* that the action of the tenants in appropriating the trees *primâ facie* amounted to the offence of theft It lays on them to establish the title which they set up and in the circumstances their conviction was right EMPEROR v DUWJAPAT **I L R 42 All 53**

——— ss 379 to 381—

See THEFT

——— ss 379 and 457—

See CRIMINAL PROCEDURE CODE 1898 s 200 **3 Pat L J 346**

——— s 380—

See CONVICTION **3 Pat L J 354**

See LURKING HOUSE TRESPASS **I L R 44 Calc 358**

——— *Circumstantial evidence necessary for conviction nature and character of* The petitioner was convicted under s 380 of the Penal Code for theft of a number of currency notes and the findings were that he as well as five other persons entered the room at or about the time the notes were stolen that his brother in law was present when two of the stolen notes were cashed in Calcutta that shortly after the theft he was in possession of a large sum of money for which he could not satisfactorily account *Held* that circumstantial evidence must be exhaustive and exclude the possibility of guilt of any other person or must point conclusively to the complicity of the accused That in the present case the evidence did not fulfil the conditions of circumstantial proof at all. CHIRAGUDDIN v EMPEROR (1914) **18 C W N 1144**

PENAL CODE (ACT XLV OF 1860)—*contd*

——— ss 390 396—*Dacoity—one of the dacoits killing two persons while the dacoits made good their escape with their booty—whether his comrades liable for the consequences of his act* The house of one K was raided by a gang of five dacoits one of whom was armed with a gun and the rest with *chharis*.—The dacoits ransacked the house and made good their escape with their booty A number of villagers had assembled outside the house and in fighting their way through the crowd one of the dacoits shot one man dead and inflicted fatal wounds upon another who died shortly afterwards The question before the Court was whether under these circumstances every dacoit was equally liable for the consequences of this act of one of them *Held* that murder committed by dacoits while carrying away the stolen property is murder committed in the commission of dacoity *vide* s 390 of the Indian Penal Code and every offender was therefore liable for the murder committed by one of them *Queen Empress* v *Sakharam Khandu* (*2 Bom L R 325*) and *Villi Thevan* v *Villi Thevan* (17 Mad L J 118) followed *Emperor* v *Chandar* (1906 *All* W N 47) distinguished LASHKAR v CROWN **I L R 2 Lah 274**

——— s 392—*Charge amendment by Sessions Judge before hearing evidence—Criminal Procedure Code s 227* Where the appellants were committed to the Court of Sessions on a charge of dacoity and the Sessions Judge without assigning any reason at the commencement of the trial amended the charge to one of robbery *Held* that it was improper for the Sessions Judge to thus alter the character of the charge before hearing evidence That under the circumstances of the case the fact that the appellants pointed out the places where some of the articles stolen in a robbery were found was not sufficient evidence to convict them under s 392 Indian Penal Code or even under s 411 Indian Penal Code *Queen Empress* v *Gobinda I L R 17 All 576* followed FAIMULLAH v KING EMPEROR (1911) **16 C W N 238**

——— s 395—

See DACOITY **15 C W N 434**

——— s 399—

See MAGISTRATE **I. L R 39 Calc 119**

——— ss 399 402—

See DACOITY **I L R 41 Calc 350**

——— s 400—*Section to be strictly construed—Association for dacoity—Gist of offence —Kind of evidence sufficient to convict—Approver's testimony —Corroboration—Proof that accused members of a criminal tribe value of—Previous conviction value of when no association established—Acquittal effect of* The offence contemplated in s 400 of the Penal Code is one of a very special character and entirely the creature of statute and should therefore be strictly construed *The Queen* v *Mooktaram Sirdar 23 W R Cr 18* referred to Association for the habitual pursuit of dacoity is the gist of the offence punishable under the section Although the evidence need not show the same degree of particularity as to the commission of each dacoity as is required to support a substantive charge of that crime it must be established for the purpose of conviction under the section that

PENAL CODE (ACT XLV OF 1860)—*contd*

——— s 400—*contd*

the accu ed belong to a gang whose bu ine s is the habitual commi sion of dacoity The special conspiracy mu t be proved *Empre s* v *Kure All W N (1886) 65 66* *King Emperor* v *Tirumal Peddi I L R 24 Mad 5 3* *The Public Prosecutor* v *Boi igiri Pottigadu I L R 32 Mad I 9* referred to Corroboration of the te timony of an approver in a trial und r s 400 mu t connect the accu ed with the offence ri the as ociation of a gang of pers ns for the bu ine s of habitually committing da c ty The general criminality of a tribe or caste cannot be imputed to individual members operating in gangs where the pro ecution is under s 400 and the fact that members of the tribe generally were all ged to have been implicated in several dacoities within a period of ten years preceding the trial was not sufficient proof against the per ons under trial when it appeared that the tribe contained within it thou ands of human beings Where a ociation for the purpo e of habitually committing dacoity had not been mad out the mere fact that some of the accused had b en previously convicted of dacoity or theft or had been bound down to be of good behaviour under s 110 Criminal Procedure Code was of no consequence The fact that some of the persons undergoing trial for an offence under s 400 had once been sent up on a charge of dacoity of which they were acquitted could not be relied on to prove that th y were habitual dacoits No adver e inference can be drawn again t accu ed persons after their acquittal *The Emperor* v *Kani Gopal Gupta 15 C W N 593* *Rex* v *Plumler [1902] 2 K B 3 9* followed *Bonai* v *The King Emp ror 15 C W N 461* distingui hed KADER SUNDAR v THE EMPEROR (1911) 16 C W N 69

——— s. 401—

See CHARGE I L R 47 Calc 154

See PREVIOUS CONVICTIONS EVIDENCE OF I L R 38 Calc 408

——— s 402—

See DACOITY I L R 41 Calc 350

——— s 403—

See s 2? I L R 40 All. 119

——— s 405—*Criminal Procedure Code (Act V of 1898) ss 179 and 182—Criminal breach of trust—Hundis sent from Dharapuram—Cashed in Bombay—Jurisdiction* The offence of criminal breach of trust is completed by the misappropriation or the conversion of the property dishonestly It is only the *intention* which is essential whether wrongful gain or loss actually results is immaterial it is a consequence but no essential part of the offence and a person is not accused of the offence by reason of it Where therefore the accused brokers in Bombay were charged in the Court of the Sub Divisional Magistrate of Erode with the offence of having committed criminal breach of trust in respect of the proceeds of certain hundis entrusted to them by the complainants merchants at Dharapuram for encashment at Bombay *Held* that the hundis having been ca hed and the proceeds misappropriated by the accused in Bombay the Erode Court had no jurisdiction to try the case *Ganeshi Lal* v *Nand Kishore I L R 34 All 487* approved *Assistant Sessions Judge of North Arcot* v *Ramasami Asari 26 Mad L J 235* distinguished *Queen Empress* v *O Brien I L R 19 All 111* and *Emperor* v *Mahadeo I L R 32 All 397* commented on *Held* also that where as in this case the complaint clearly charged dishonest mi appropriation to accu ed s own u e and not u e or di po al in violation of law or contract the offence fell under the first part of s 405 of the Indian Penal Code and not under the second And secondly if it were otherwi e the offence would be committed where the di honest u e or di po al took place not where the contract was made or should have been perform ed *Re* RAMBILAS (1914) I L R 8 Mad 639

——— ss 405 409—

See CRIMINAL BREACH OF TRUST I L R 41 Calc 844

——— s 406—

See CRIMINAL PROCEDURE CODE s 179 I L R 35 All 29

See RECEIVER I L R 46 Calc 432

1 ——— *Criminal breach of trust—Necessary elements to constitute the offence* The complainant owed money to the accu ed on a mortgage bond and on a certain day went to their hou e and paid the amount settled as due in full satisfaction of the bond An endor ement of payment was made on the back of the bond by one of the witnesses for the prosecution and the accu ed went inside their house with the bond and the money saying that they would keep the money and return the bond but they did not come back that day and afterwards denied the receipt of the money *Held* that on the facts there was no trust which could bring the case within the terms of s 406 Indian Penal Code GOLAM HOSSAIN v EMPEROR (1917) 22 C W N 1005

2 ——— *Criminal breach of trust—Prosecution bound to prove entrusting* In a case of criminal breach of trust if the pro ecution could not prove how the accused came by the money they did not establish one of the first essentials of the offence charged viz that accused was entrusted with the money GOURI NARAYAN BARRUA v TILBIKRAM CHETRI 25 C W N 838

——— ss 406 408—*Criminal breach of trust—Water works inspector misappropriating water—Money reali ed as water tax not credited to the municipality* Where a municipal water works inspector being the les or of a house within municipal limits had such house connected with a municipal water main and accepted a yearly payment as water tax from his tenants but neither informed the municipal board that the connection had been made nor credited to the board the money which he received as water tax from his tenant it was *held* that he was properly convicted under ss 406 and 408 of the Indian Penal Code whether or not he might have been punishable under the United Provinces Water Works Act 1891 EMPEROR v BIMALA CHARAN ROY (1913) I. L. R. 35 All. 361

——— s 408—

See CRIMINAL PROCEDURE CODE—

ss 182 AND 531 I. L. R 32 All. 397

PENAL CODE (ACT XLV OF 1860)—*contd*

——— s 408—*contd*

ss 233 236 239

I L R 32 All 219

——— *Embezzlement as a clerk or servant—Misjoinder of charges* A station master on the East Indian Railway under an arrangement with the Company received a fixed allowance in respect of the marking loading and unloading work at his station and used to engage his own men for that purpose One of such men engaged as a marksman was first allowed to keep certain registers which it was the duty of the station master to maintain and next allowed to receive cash payments and make entries in the cash register Whilst so employed he received a sum of Rs 5 10 0 as an overcharge or demurrage in respect of certain goods which passed through his hands and appropriated the same To this sum however *the Railway Company made no claim* He was also alleged to have received and appropriated to his own use two other sums of money under somewhat similar circumstances In respect of the three sums he was tried and convicted on three counts under s 408 of the Indian Penal Code *Held* that the offence if any committed with regard to the sum of Rs 5 10 0 did not fall within s 408 at all and this being so the joinder of the three charges in one trial was illegal EMPEROR v KARIMUDDIN (1918) **I L R 40 All 565**

——— ss 408 477A—

See CHARGE **I L R 40 Calc 318**

——— s 409—

See CRIMINAL BREACH OF TRUST **I L R 41 Calc 844**

See CRIMINAL PROCEDURE CODE 1898—

ss 22 AND 233 **I L R 38 All 42**

ss 233 234 **3 Pat L J 124**

1 ——— **Criminal misappropriation**—*Evidence—What prosecution has to prove* On a charge under s 409 of the Indian Penal Code it is no necessary for the prosecution to prove in what manner money alleged to have been misappropriated has actually been disposed of by the accused If it is shown that money entrusted to the accused was not accounted for nor returned by him in accordance with his duty if unspent it lies on the accused to prove his defence EMPEROR v KADIR BAKHSH (1910) **I L R 33 All 249**

2 ——— **Criminal breach of trust**—*Charge—Criminal Procedure Code s 222 (2)* An accused person was charged under s 409 of the Indian Penal Code with having embezzled an aggregate sum of Rs 208 12 0 on various dates between the 1st July and the 1st November 1909 *Held* that the charge so framed was not open to objection notwithstanding that evidence was available as to the various items of which the aggregate sum charged was composed *Emperor* v *Gulzari Lal I L R 24 All 254 Emperor* v *Ishtiaq Ahmad I L R 28 All 69 Samiruddin Sarkar* v *Nibaran Chandra Ghose I L R 31 Calc 928 Sat Narain Tewari* v *Emperor I L R 32 Calc 1085* and *Thomas* v *Emperor I L R 29 Mad 558* followed *Subramania Ayyar* v *King Emperor I L R 25 Mad 61* distinguished EMPEROR v IBRAHIM KHAN (1910) **I L R 33 All 36**

PENAL CODE (ACT XLV OF 1860)—*contd*

——— s 409—*contd*

3 ——— A Postmaster whose duty it was to pay over to the holders of certain cash certificates the money due thereon at a certain rate in fact paid the holders at a lower rate and misappropriated the difference *Held* that he thereby committed an offence of criminal breach of trust by a Public Servant EMPEROR v SITA RAM **I L R 42 All 204**

——— s 411—

See CONVICTION **3 Pat L J 106**

See DISHONESTLY RECEIVING STOLEN PROPERTY **I L R 40 Calc 990**

See JURY TRIAL BY **24 C W N 619**

——— *Receiving stolen property—Presumption as to knowledge of person in whose possession stolen property found after considerable lapse of time—Criminal Procedure Code (Act V of 1898) s 35—Concurrent sentences* Where in a case under s 411 Indian Penal Code the stolen property was found in the possession of the accused more than three months after the theft *Held* that having regard to the length of time there was no presumption that the accused knew or had reason to believe the property to be stolen An order directing sentences passed in two separate trials against the same accused to run concurrently is illegal JOBEDULLAH BEPARI v THE KING EMPEROR (1918) **22 C W N 597**

——— ss 411 414—*Dishonestly receiving stolen property—Assisting in the concealment of stolen property—Government currency note received in the course of business—Jurisdiction* Where a Government currency note of the value of Rs 1 000 was traced seven months after the loss to a shroff who carried on business in Bombay and through whose hands currency notes would find their way in the course of business though he could not name the person from whom he had received the currency note *Held* on a complaint under ss 411 414 of the Indian Penal Code that the Chief Presidency Magistrate was right in refusing to issue process RAM CHANDRA SAHA v HAJI MEAH HAJI ABDULLAH (1913) **17 C W N 1129**

——— s 415—

See EVIDENCE ACT (I OF 1872) s 14 15 **I L R 34 All 93**

——— *Cheating—Deceit—Shopkeeper receiving currency notes in exchange for goods sold—Retention by shopkeeper of small amount from change on ground that notes were not worth face value—Plea of guilty* The accused who had sold goods worth Rs 2 13 0 to a customer received from him two currency notes one of Rs 2 8 0 and the other of Re 1 but tendered as change only Rs 0 9 3 saying that the notes were not worth their face value and that Rs 0 1 9 were charged on that account The accused pleaded guilty and was convicted of the offence of cheating On application to the High Court *Held* (i) that whether on the admitted facts the accused ought to be held to have committed the offence of cheating was a question of law as to which the plea of the accused was immaterial (ii) that he had not committed the offence of cheating for there was no deceit at all since the customer

PENAL CODE (ACT XLV OF 1860)—*contd*

———— s 415—*contd*

was not induced to hand over the notes by any representation on the part of the shopkeeper that he would get change calculated on the face value of the notes but handed them to the accused in the ordinary course of the sale and purchase transaction EMPEROR v MURARJI LAGHUNATH (1919) I L R 43 Bom 842

———— ss 415 417—

1 ———— *Attempt to cheat—Dishonest intention—Facts proved not sufficient to support conviction—Evidence gone into in revision* Where according to the Rules regulating the levy of octroi on certain goods brought within the Sambalpur Municipality the goods had to be presented in bulk at the exit station out post with an application for a pass in a prescribed form such application being in the ordinary course handed by the applicant or his agent to the out post mohurer who made it over to the daroga whose duty it was to check the application and to certify the description and quantity of the goods actually presented and then to make out the *chalan* or pass which had to be signed by the mohurer and one of the Rules provided that a municipal member must attest the check at the exit station out post and in the absence of such attestation the exit mohurer shall not sign the *chalan* and another Rule provided that the absence of the mohurer s signature on the *chalan* is one of the reasons for which an application for a refund of duty allowed in certain cases should be rejected and where on a certain day the petitioner at the request of the daroga consented to act as Municipal member at the out post in respect of goods brought there to be passed through and among such goods brought to the out post were some cartloads of goods belonging to the petitioner s firm and in the application for a pass in respect of these goods which was not signed by the petitioner himself but in which his name was written by a gomasta (which application according to the case for the prosecution the petitioner himself handed to the daroga with whom he was in collusion) the goods were entered as 460 bags of linseed and 40 bags of rice but as a matter of fact only 230 bags of linseed were actually brought to the out post and according to the evidence of the daroga the petitioner assured him that he would make good the deficiency on the following day and it was found that the petitioner was cognisant of the application of the details therein entered and of the number of bags brought to and passed through the out post but the petitioner did not attest the check in respect of his own goods and did not attempt to induce the mohurer to sign the *chalan* (which the mohurer in fact did never sign) nor did he do anything further to carry out the purpose imputed to him and made no attempt to obtain a receipt for 500 bags as representing the number actually passed through the out post and on the next day when he tried to send goods to the railway station some of his carts were intercepted and prevented from reaching the railway station by the municipal authorities *Held* that the facts proved were not sufficient to support the conviction of the petitioner for an offence of cheating The evidence on the record fell short of the evidence required to prove dishonest mind or dishonest purpose on the part of the petitioner BIRJRAJ MARWARI v THE KING EMPEROR (1912) 17 C W N 294

PENAL CODE (ACT XLV OF 1860)—*contd*

———— ss 415 417—*contd*

2 ———— *Cheating* The petitioner proposed to the father of a girl for the hand of his daughter and obtained his consent and was admitted into his house Subsequently information was received by the father that the petitioner was a married man this the petitioner admitted to be true Shortly after the daughter who was major left the father s protection of her own accord and went to the petitioner On the complaint of the parents the petitioner was convicted of cheating under s 417 Indian Penal Code *Held* that the facts did not bring the case within s 417 read with s 415 Indian Penal Code That looking at the natural result of the deception that had been undoubtedly practised and that only between the date the father gave his consent and the date when it became known to him that the petitioner was a married man and on the facts and circumstances of the case it could not be said that any damage or harm was done to the mind or reputation of the parents and consequently the charge failed MILTON v SHERMAN (1918) 22 C W N 1001

———— s 417—*Cheating complaint of—Proceeding quashed as* primâ facie *case not made out—Pleader s promise to persuade client to give undertaking—Undertaking not given—Pleader if may be proceeded against for cheating* In a proceeding under s 107 Criminal Procedure Code the opposite party undertook not to go to the property the subject matter in dispute or to do any act that was likely to involve a breach of the peace on the pleader for the complainant agreeing to persuade complainant s master to file an undertaking that he would protect the property from sale The undertaking which the latter offered to file not having been approved of by the opposite party was not filed whereupon the opposite party started proceedings against the pleader under s 417 of the Penal Code *Held* that the proceedings should be quashed as no *primâ facie* case of cheating had been made out KRISHNANGA KUMAR MUKERJI v KUMUDENDU MUKERJI (1916) 20 C W N 1112

———— ss 417 420 and 511—

See FORGERY 4 Pat L J 16

———— *Valuable security whether acknowledgment of receipt of insured parcel is* Where the accused in order to create false evidence that he had paid off a sum of Rs 650 which he owed to complainant filed a registered envelope with blank sheets of paper and posted it to the complainant after insuring it for Rs 650 and the complainant gave an acknowledgment of receipt of the parcel to the Post Office on receiving the same *Held* that these facts amounted to an attempt to cheat An acknowledgment of receipt of an insured parcel is not a valuable security It is merely evidence that a parcel of some sort was delivered to the addressee and it cannot operate as a discharge of any liability Under s 237 (2) of the Code of Criminal Procedure an accused who is charged with an offence may be convicted of having attempted to commit that offence although the attempt is not separately charged SADHO LALL v KING EMPEROR 1 Pat L J 391

———— s 420—

See s 120B 20 C W N 292

PENAL CODE (ACT XLV OF 1860)—*contd*

———— s 420—*contd*

See s 417 **1 Pat L J 391**

See CRIMINAL PROCEDURE CODE ACT (V OF 1898) s 562 **I L R 41 Mad 533**

See EVIDENCE ACT (I OF 1872) ss 11 14 15 **I L R 39 All 273**

———— *Cheating arising out of attempt to enforce alleged unfulfilled contract* Two contracts were entered into between the complainant and accused one for sale by the complainant of a certain number of shares of a particular kind and the other for the purchase by the complainant of another kind Subsequently when the purchase by the complainant was disputed accused induced complainant to part with his shares promising to give him back cash for it but instead offered to credit the value against the sum due to him under the other contract and subsequently tendered the amount less the loss sustained by him by the non fulfilment of the other contract *Held* that the action of the accused was fraudulent and he was rightly conducted under s 420 ASWINI KUMAR CHATERJEE v THE KING EMPEROR **25 C W N 618**

———— *Whether convict can be released under s 562 Criminal Procedure Code* P B was convicted by a first Class Magistrate under s 420 Indian Penal Code but instead of sentencing him to imprisonment the Magistrate pas ed an order against him under s 562 Criminal Procedure Code, releasing him on probation of good conduct *Held* that s 562 Criminal Procedure Code applies only to a case of simple cheating under s 417 Indian Penal Code and not to aggravated forms of cheating falling under ss 418 to 420 *The Crown* v *Kehi Ram (23 P W R (Cr) 1908)* followed THE CROWN v PAR NAWAZ **I L R 1 Lah. 612**

———— s 421—**Criminal proceedings against insolvent**—*Presidency Towns Insolvency Act (III of 1909) ss 17 103 and 104—Adjudged insolvent—Sanction of Insolvency Court not obtained —Jurisdiction of Magistrate— Suit or other legal proceeding interpretation of* A person in insolvent circumstances applied to the Insolvent Debtors Court at Bombay for relief under the provisions of the Presidency Towns Insolvency Act 1909 and wa adjudicated an insolvent Ten days later a creditor of the insolvent without having obtained any sanction from the Insolvent Debtors Court filed a complaint against the insolvent in the Presidency Magistrate s Court for an offence punishable under s 421 of the Indian Penal Code 1860 It was contended that the Magistrate had no jurisdiction to entertain the complaint *Held* that the Magistrate s jurisdiction to try the insolvent for an offence under s 421 of the Indian Penal Code 1860 was not taken away by anything contained in the Presidency Towns Insolvency Act 1909 The expression or other legal proceeding in s 17 of the Presidency Towns Insolvency Act 1909 coming after the word suit a word of more limited application must be construed on the principle of *ejusdem generis* It therefore includes only proceedings of a civil nature EMPEROR v MULSHANKAR HARINAND BHAT (1910) **I L R 35 Bom. 63**

PENAL CODE (ACT XLV OF 1860)—*contd.*

———— s 423—

See FABRICATING FALSE EVIDENCE **I. L R 46 Calc 986**

———— *Consideration meaning of* The word consideration in s 423 of the Penal Code cannot mean the property transferred Therefore an untrue assertion in a transfer deed that the whole of a plot of land belonged to the transferrer is not a statement relating to the consideration for the transfer and is not an offence under the section MANIA GOUNDAN *Re* (1911) **I. L. R. 37 Mad. 47**

———— s 424—

See BENGAL TENANCY ACT 1885 **1 Pat. L. J 353**

See s 71

See s 121 **25 C W N 209**

———— *Conviction of a ryot under Madras Estates Land Act (I of 1908) for dishonest concealment and removal of crops legality of—Madras Estates Land Act (I of 1908) ss 73 and 212 no bar to conviction* The accused who was a ryot under the Madras Estates Land Act and who was bound under the conditions of his tenure to share the produce of his land with the land holder in a certain proportion dishonestly concealed and removed the produce thus preventing the land holder from taking his due share *Held* that the provisions of ss 73 and 212 of the Madras Estates Land Act were no bar to a conviction of a ryot under s 424 Indian Penal Code for the dishonest concealment and removal. *Re* SIVANUPANDIA THEVAN (1914) **I L. R 38 Mad. 793**

———— s 426—

See s 147 **I L. R 39 Mad 57**

See NORTHERN INDIA CANAL AND DRAINAGE ACT (VIII OF 1873) ss 7 AND 70 **I L R 34 All. 210**

———— ss 426 447—

See CRIMINAL TRESPASS **I. L. R 38 Calc. 180**

———— Where the accused a peadah of one R acting solely in the interests of his Master removed and damaged some bamboos and the Estate was under Court of Wards *Held* no offence was committed PURMESHUR SINGH v KING EMPEROR **15 C W N 224**

———— s 429—*Cutting off the ears of a horse is maiming within section* The cutting off the ears of a horse is maiming within the meaning of s 429 of the Indian Penal Code MARIGOWDA v SRINIVASA RANGACHAR (1912) **I. L R 35 Mad. 594**

1 ———— s. 430—*Mischief by injury to works of irrigation* There cannot be a conviction und r s 430 of the Penal Code where there is a right or a bond fide claim of right DEPUTY LEGAL REMEMBRANCER BIHAR AND ORISSA v MATUKDHARI SING (1915) **20 C. W N 123**

2. ———— *Mischief—Northern India Canal and Drainage Act (VIII of 1873), s 70* Where the foundation of the charge against an accused person is that he cut the bank of a canal for the purpose of unlawfully obtaining water for his own field in order to sustain a con

PENAL CODE (ACT XLV OF 1860)—*contd*

——— s 430—*contd.*

viction under s. 430 of the Indian Penal Code it is necessary for the prosecution to show that the act of the accused in fact caused or but for prompt intervention would have caused diminution in the ordinary supply of water for agricultural purposes If this cannot be shown the accused should be convicted under s 70 of the Northern India Canal and Drainage Act 1873 *Taj ud d n v Emperor 5 A L J 159* followed. EMPEROR v HAR NARAIN (1919) I L R. 41 All. 599

——— s 434—

See CRIMINAL PROCEDURE CODE, s 106
I. L R. 33 All. 771

——— s. 436—*Arson—Evid n e of previous fires unconnected with the charge und r enquiry —Conviction on inadmissible evidence* The accused was convicted of arson. During the trial the Sessions Judge admitted the evidence of previous fires in the locality with which however there was nothing to connect the accused and relying amongst others on that evidence convicted the accused. *Held* that the Sessions Judge was wrong in admitting the evidence in question The High Court set aside the conviction and sentence ABDUL KADIR v KING EMPEROR (1916)
20 C W N 1267

——— s 441—

1 ——— *Criminal trespass distinguished from civil trespass—Placing hay stacks and manure on another man s land—Intention to cause annoyance must be found* The placing of hay stacks and manure on another man s land may be civil trespass. It may cause annoyance in fact but the act cannot be treated as criminal trespass unless it is found that it was intended by the accused to be annoyance The distinction between civil and criminal trespass is one which is lost sight of by too many of the Subordinate Magistrates MEAJAN v SHARAFATULLAH KHAN (1912) 16 C W N 1007

2 ——— *Criminal trespass —Building on another man s land* A man may be guilty of criminal trespass on the land of another without ever personally setting foot on the land if for example he causes others to build on the land against the wishes and in spite of the protest of the owner of the land. EMPEROR v GHASI (1917) I L R 39 All. 722

3 ——— *Criminal trespass —Necessary constituents of offence* Where a person is found in the house of another in circumstances which would *primâ facie* indicate that the offence of criminal trespass as defined in s 441 of the Indian Penal Code had been committed and sets up the defence that he did not enter the house with any of the intents referred to in the section but in pursuance of an intrigue with a female living there it is the duty of the trying Court to give accused an opportunity of substantiating such defence If the accused succeeds in showing that his presence in the house was in consequence of an invitation from or by the connivance of a female living in the house with whom he was carrying on an intrigue and that he desired that his presence there should not be known to the person in possession then he cannot be convicted of criminal trespass If however it is shown that the person in possession of the house has expressly prohibited the accused from coming to the house an intent to annoy may be legitimately inferred The following cases were referred to *Balmakand Ram v Ghansamram I L R 22 Calc 391 Premanundo Shaha v Brindabun Chung I L R 22 Calc 944 Emperor v Lakshman Raghunath I L R 26 Bom 558 Emperor v Mulla I L R 37 All 395 Emperor v Gaya Bhar I L R 38 All 517* EMPEROR v CHHOTE LAL (1917) I L R 40 All 221

——— ss 441 and 442—

See CRIMINAL TRESPASS

——— ss 441, 447—

See CRIMINAL TRESPASS
I L R 43 Calc 1143

——— ss 441, 448—*Criminal Trespass—Finding that the trespass was committed with one of the intents specified in the section whether necessary —Knowledge of the consequences of the trespass whether sufficient to inculpate* *Held* by the Full Bench (AYLING J differing) —Trespass is an offence under s 441 Indian Penal Code *only* if it is committed with one of the *intents* specified in the section and proof that a trespass committed with some other object was *known* to the accused to be likely or certain to cause insult or annoyance is insufficient to sustain a conviction under s 448 Indian Penal Code Distinction between intention and knowledge of likelihood pointed out *Queen-Empress v Rajapadayachi I L R 19 Mad 240* followed *Emperor v Lakshman I L R 26 Bom 558* and the view of BENSON J in *Sellamuthu Servaigaran v Pallamuthu Karuppan I L R 35 Mad 186* not followed. *Per* AYLING J A mere knowledge that the trespass is likely to cause insult or annoyance does not amount to an intent to insult or annoy within s 441 Indian Penal Code but where the trespasser knows that his trespass is practically certain in the natural course of events to cause insult or annoyance it is open to the court to infer an intent to insult or annoy It is a question of fact whether this presumption of intent is displaced by proof of any independent object of the trespass VULLAPHA v BHEEMA RAO (1917) I L R 41 Mad 156

——— *Criminal trespass—Proceedings if lie on the complaint of some one other than the person in possession— Any person in possession meaning of* The petitioner was convicted under s 448 Indian Penel Code for having broken into a house belonging to the complainant but actually in the possession of her tenant with the object of causing annoyance to the tenant *Held* that the proceedings were properly instituted on the complaint of the landlady That the words any person in possession in s 441 Indian Penal Code do not mean only complainant in possession there being no authority for taking the offences of mischief and criminal trespass out of the general rule which allows any person to complain of a criminal act *Chandi Prasad v Evans I L R 22 Cal 122 (1894)* followed *Imperatrix v Keshavlal I L R 21 Bom 53 (1896)* distinguished RAYAZ SINGH v MR MORGAN 25 C W N 42

——— ss 443 and 444—

See LURKING HOUSE TRESPASS

PENAL CODE (ACT XLV OF 1860)—*contd*

———— s 447—

See s 147 **I L R 39 Mad. 57**

See CRIMINAL TRESPASS

I L R 33 Calc 180
I L R 43 Calc 1143

———— *Criminal trespass—One co sharer building on common land without the consent of the other co sharer* Where one co sharer built upon a piece of common land against the will of the other co sharer whose consent had been previously asked and had been refused It was *held* that the circumstance alone was not sufficient to render the co sharer so building guilty of criminal trespass *In the matter of the petition of Gobind Prasad I L R 2 All 465* and *Emperor* v *Lakshman Raghunath I L R 26 Bom 558* referred to EMPEROR v RAM SARUP (1914) **I L R 36 All 474**

———— ss 447, 379—

See THEFT **I L R 44 Calc 66**

———— s 448—

See s 441 **I L R 46 Mad 156**

See CRIMINAL PROCEDURE CODE 1898 s 145 **3 Pat L J 147**

———— s 456—*Lurking house trespass—Intent—Burden of proof* The accused was found inside the complainant s house at 2 A M and when arrested made no statement as to his reasons for being there On being sent up for trial he stated but could not prove to the satisfaction of the Court that he had an intimacy with a widow living in the house *Held* that the presence of the accused in the house at that hour pointed to a guilty intent and it was for him to rebut that presumption *Emperor* v *Ishri I L R 29 All 46* followed *Emperor* v *Jangi Singh I L R 26 All 194 Sella Muthu Servaigaran and Mottayan* v *Palla Muthu Karuppan 21 Mad L J 161 Queen Empress* v *Rayapadayachi I L R 19 Mad 240* and *Premanundo Shaha* v *Brindabun Chung I L R 22 Calc 994* referred to EMPEROR v MULLA (1915) **I L R 37 All 395**

———— *Lurking house trespass—Entering a house with intent to have illicit intercourse with a widow of full age no offence* An accused person though he may have known that if discovered his act would be likely to cause annoyance to the owner of a house cannot be said to have intended either actually or constructively to cause such annoyance Where therefore it was proved that a person entered a house with intent to have illicit intercourse with a woman who was a widow and of age *Held* that he was guilty of no offence *Jiwan Singh* v *King Emperor 1908 Punj Rec Cr J 54* dissented from *Emperor* v *Mulla I L R 37 All 395* referred to *Queen-Empress* v *Rayapadayachi I L R 19 Mad 240* followed EMPEROR v GAYA BHAR (1916) **I. L. R 38 All. 517**

———— ss 456 457—

———— *Charge of house breaking to commit theft—Conviction under s 456 if proper—Misjoinder of charges—Charge under s 457 conviction under s 556 illegality of* An accused person who was being tried on a charge under s 457 for house breaking with intent to commit theft could not be convicted under s 456 Indian Penal Code without amendment of the original charge Although it is not necessary under s 456 Indian Penal Code to specify any particular offences intended to be committed when a particular offence is specified under s 457 Indian Penal Code it is incompetent for the Court to convict the accused of house breaking with some other intent JHARU SHEIKH v THE KING EMPEROR (1912) **16 C W N 696**

See LURKING HOUSE TRESPASS.

I L R 44 Calc 358

———— *Criminal Procedure Code s 238—Conviction under s 456 when charged under s 457 propriety of—Criminal intention if should be specified in the charge in a case under s 546—Intention of accused how may be determined by Court* The view that under no circumstances can a conviction be made under s 456 of the Penal Code when the accused has been charged with the commission of an offence under s 457 cannot be maintained. The accused in the middle of the night entered the house of the complainant while she was asleep was caught but ultimately ran away The motive alleged by the prosecution was to commit theft of the complainant s ornaments The accused was summarily tried for offences under ss 457 and 380 of the Penal Code and the trying Magistrate finding that the intention of the accused was really to make immoral proposals to the complainant and thus to annoy her convicted him under s 456 of the Penal Code *Held* that although the specific intent namely the intent to commit theft was not established yet it was competent to the Court to convict the accused under s 456 of the Penal Code s 238 Criminal Procedure Code being clearly applicable to a case of this character and the accused not having in any way been prejudiced by such conviction *Jharu Sheikh* v *King Emperor 16 C W N 696* distinguished That it is well settled that to sustain a conviction under s 456 it is not necessary to specify the criminal intention in the charge it is sufficient if a guilty intention is proved such as is contemplated by s 441 of the Penal Code That the intention may be determined as well from direct evidence as from the conduct of the party concerned and the attendant circumstances and in the circumstances of the case the Court could presume that the accused effected the entry with an intent such as is provided for by s 441 of the Penal Code KARALI PROSAD v KING EMPEROR (1916) **20 C W N 1075**

———— s 457—

See s. 379 **3 Pat. L J 346**

———— *Intent to annoy what amounts to* A with a view to support a fraudulent claim of title to a house broke into it during the temporary absence of the owner assaulted the owner s servant who was in charge of the house and took forcible possession of it *Held* that A was rightly convicted of the offence of house breaking under s 457 Indian Penal Code *Per* BENSON J —That an intent to annoy under s 457 is established if annoyance in the ordinary course of events is known by the person committing the act to be the natural consequences of such act A man must in law be held to intend the natural and ordinary consequences of his acts irrespective of what his object was at the time of

PENAL CODE (ACT XLV OF 1860)—*contd*

——— s 457—*contd.*

doing such acts if at such time he knows what the ordinary and natural con quences will be If he does an act which is illegal it does not make it legal that he did it with some oth r object unless the object was such as would un ler the c rcum tances render the particular act lawful *Per* SANKARAN NAIR *J*—That although the act complained of nece sarily involved annoyance yet unl ss the intention of the accused was to annoy it may be that the act cannot be said to have been committed with int nt to annoy *Emperor* v *Ba id I L P 9 All 98* referred to *Queen Empr s* v *Rayapadayachi I I R 19 Mad 210* referred to *A* however in doing the act complained of intended to u e criminal force to the servant in po ses ion and therefore intended to commit an offence SELLAMUTHU SERVAIGA RAN v PALAMUTHU KARUPPAN (1911)

I. L. R. 35 Mad 186

See s 441 I. L. R 41 Mad. 156

——— ss 457 511—*House breaking—Attempt—Burglars digging a hole in a wall but not boring it through owing to interruption by third persons* The accused dug a hole in the wall of the complainant s dwelling house during the night with intent to complete that hole in order to make their entry into the house through it and having so entered to commit a theft in the house In fact the hole was not completed in the sense that it did not completely penetrate from one side of the wall to the other as the accu ed were inter rupted before they could complete it The accused were on these facts convicted by the trying Magis trate of the offence of attempting to commit house breaking by night On appeal the Sessions Judge reversed the conviction and acquitted the accused on the ground that the accused s acts did not amount to an attempt to commit house breaking but only to a preparation The Govern ment of Bombay having appealed against the order of acquittal *Held* setting aside the order of acquittal that the accused s acts did in law amount to an attempt for the actual transaction the dis tinct overt act was begun and carried through to a certain point but was not completed by reason of the accused s being interrupted EMPEROR v CHANDRHA SALABATKHA (1913)

I. L R 37 Bom 553

——— ss 457 380 456—

See LURKING HOUSE TRESPASS

I L R 44 Calc 358

——— s 460—*Whether applicable wh re death was caused by some of the companions of the accused while running away after committing house trespass by night* The accused appellant was one of a party of 4 men who broke into the house of the complainant by night and being discovered were running away when a neighbour caught hold of the accused whereupon some of his companions inflicted certain injuries upon the neighbour of which he died on the spot *Held* that s 460 of the Penal Code was not applicable as the expression at the time of the committing of house breaking at night must be limited to the time during which the criminal trespass continues which forms an element in house trespass which is itself essential to house breaking and can not be extended so as to include any prior or subsequent time *Jaffir* v *Empress* (*P P* (*Cr*) *1882*) per Plowden J followed MUHAMMAD v CROWN I L R 2 Lah 342

——— ss. 463-465—

See s 417 4 Pat L. J 16

See FORGERY I L. R 43 Calc 421

I. L. R 38 Calc 75

——— ss. 463 467—*Forgery—Forgery com m t d t conceal fraud already comm tted* A Kulkarni misappropriated certain moneys which the *ra yats* had paid to him as irrigation cesses Some time afterwards he forged certain receipts purporting to come from the Governm nt treasury for those moneys with the object of concealing the misappropriation The accused helped the Kulkarni in the forgery by forging the signatures on the receipts He was paid Rs 25 for the work The accused was on these facts charged with the offence of forgery The Ses ions Judge acquitted the accused on the ground that s 463 of the Indian Penal Code penalised the making of a false docu ment only if it was made (*inter alia*) with intent to commit fraud or that fraud may be committed whereas no such intent could be ascribed where the fraud had already been fully committed The Government of Bombay appealed against the order of acquittal *Held* setting aside the order of acquittal that the accused had committed forgery although it was effected in order to conceal an already completed fraud. *Lol t Mohan Sarkar* v *Queen Empress I L R 22 Calc 313 Emperor* v *Pash Behari Das I L R 35 Calc 450* and *Queen Empress* v *Sabapati I L P 11 Mad 411* followed *Empress of India* v *Jiwanand I L P 5 All 221 Empress* v *Mazhar Hussain I L R 5 All 553* and *Queen Empress* v *Girdhari Lal I L R 8 All 653* dissented from EMPEROR v BALKRISHNA WAMAN (1913)

I. L R 37 Bom 666

——— ss 463 471— *Using definition of—Criminal Procedure Code (Act V of 1898) ss 17 and 531—Jurisdiction—Commitment to Court not possessing jurisdiction bad—Tran fer* A forged document was produced in Court in obedience to an order of the Court *Held* that the production did not amount to using the document as genuine An involuntary production of a document in Court cannot be said to amount to a use of it The expres ion using a document is apparently used in the sense of its being put forward in some way for one of the purposes men tioned in s 463 Indian Penal Code Although by virtue of s 531 Criminal Procedure Code an order in an inquiry made by a Magistrate not having local jurisdiction will not be set aside unless there is in fact a failure of justic yet when a committal is made by such a Magistrate to a Court of Session which has no jurisdiction to try the case under s 177 Criminal Procedure Code such commitment is illegal The High Court has no power to transfer a case thus committed to a Court not having jurisdiction to another Court having jurisdiction The commitment must be qua hed ASSISTANT SES IONS JUDGE NORTH ARCOT v PAMAMMAL (1913)

I. L. R 36 Mad. 387

——— s 464—

See s. 29 I. L. R 41 Mad. 589

PENAL CODE (ACT XLV OF 1860)—*contd*

——— ss 464—*contd*

——— *Forgery—Document made to screen a previous offence whether made fraudulently* An attakshi made by a process server with false signatures in order to defraud a District Munsif into excusing his delay in returning processes and his absence from duty is made fraudulently and is a forged document within s 464 of the Indian Penal Code *Empress v Sabapathi I L R 11 Mad 411 Emperor v Rash Behari Das I L R 35 Calc 450* and *Kotamraju Ven Kataraydu v Emperor I L R 28 Mad 90* followed *Empress of India v Jiwanand I L R 5 All 221* and *Queen Empress v Girdhari Lal I L R 8 All 653* doubted KAMATCHINATHA PILLAI *v* EMPEROR (1919)

I L R 42 Mad 558

——— ss 464, 465 467—*Criminal Procedure Code (Act V of 1898) ss 221 222 223 342—Making a false document—Forgery of valuable security—Falsification of part of a document which is surplusage—Evidence—Onus—Defect in charge—Omission to set out intention in charge* Where the accused was convicted of having forged a kabuliat executed by himself in favour of his landlord *C B* whose name appeared on the document as a witness and there were two other witnesses to the document and it was admitted that the accused who was an illiterate man did not make the false document himself and it was not established that the intention of the accused was to fraudulently bind the landlord by his alleged signature as witness and the case for the defence was that it was not the landlord *C B* who signed the name as witness but another person of the same name and the Sessions Judge held that the onus was on the defence of showing that this *C B* whose name appeared on the document was a real person and signed the deed and where the Sub Registrar who registered the document and held an inquiry in connection therewith and saw with his own eyes that the accused was in possession of the land covered by the document gave evidence of that fact but the Sessions Judge held that his statement was not evidence *Held* that a charge of forgery cannot lie against a person who was not the writer of the forged document or who did not sign the forged name Making a false document is one thing and causing a false document to be made is another One is an offence under s 465 Penal Code the other is an act at most of abetment The part of a document in order to come within the definition of false document must be dishonestly or fraudulently made signed sealed or executed by the person who is charged and it must be made with the intention of causing it to be believed that such document or part of a document was made signed sealed and executed by or by the authority of a person by whom or by whose authority he knows *that it was not made signed sealed or executed* Even supposing that part of a document is false that part must have some material effect on the transaction. A mere surplusage would not invalidate a document In the present case even admitting that the name of *C B* was a fictitious name it would not make the document a false document There being two other witnesses to the document besides *C B* it could have no effect on the validity of the document whether this name was or was not fictitious If it was the intention of the accused that the document should be used in future as evidence that the landlord himself was a witness to it that might bring the case within the definition of fabricating false evidence for the purpose of being used in a judicial proceeding or it might be a preparation for the offence of cheating but certainly does not amount to forgery *Held* further that the Sessions Judge was wrong in throwing the onus on the defence and in holding that the statement of the Sub Registrar was not evidence HAIDER ALI PRADHANIA *v* THE EMPEROR (1912)

17 C W N 354

——— ss 465 471—*Forgery— Dishonestly—Forging a receipt for a debt which has been written off by the creditor for the purpose of obtaining a certificate of solvency and indirectly in order to secure a contract—Wrongful gain or loss* *A* in order that he might obtain the annulment of an order adjudicating him an insolvent and thereafter that he might be in a position to tender for municipal contracts produced before the receiver in insolvency a document which purported to be a receipt from a creditor for payment of debt which the creditor had in fact written off as irrecoverable *Held* that in respect of the use of this receipt *A* was properly convicted under s 465 read with s 471 of the Indian Penal Code *Queen Empress v Muhammad Saeed Khan I L R 21 All 113* and *Queen Empress v Soshi Bhusan I L R 15 All 210* referred to EMPEROR *v* ABDUL GHAFUR I L R 43 All 225

——— ss 465 471 477A—

See MISAPPROPRIATION

I L R 36 Calc 955

——— ss 466 471—

See FORGERY I L R 43 Calc 783

——— s 467—

See s 29 I L R 41 Mad 559

See s 30 I L R 38 All 450

See s 34 I L R 36 Bom 524

See s 463 I L R 37 Bom 666

——— s 467—

See CRIMINAL PROCEDURE CODE ss 233 236 239 I L R 32 All 219

——— Witness proving forged document if abets—*Abetment Semble* It is doubtful whether a witness who swears to the truth of a document in Court can be said to abet its use *Asimuddi v King Emperor 11 C W N 835 s c 5 C L J 454* referred to DEBI LAL *v* DHAJADHARI GASHAI (1911) 15 C W N 565

——— ss 467 109 471—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 403

I L R 40 Bom 97

——— s 471—

See s 30 3 Pat L J 386

See s 463 I L R 36 Mad 387

See s 465 I L R 43 All 225

See CRIMINAL PROCEDURE CODE—

s. 195 I L R 38 Bom 642

PENAL CODE (ACT XLV OF 1860)—contd.

——— s 471—contd.

s. 403 — I L. R 40 Bom. 97

See FORGERY — I L R 38 Calc 75; I. L. R 43 Calc 783

See SANCTION FOR PROSECUTION — I L. R 40 Calc. 584

——— *Using definition of* The mere production of a document in obedience to the summons of a Court cannot amount to using within the meaning of s 471 Indian Penal Code *Assistant Sessions Judge North Arcot* v *Ramammal I L R 36 Mad 387* followed. Where a document having been produced upon an order of the Court the witness gives false evidence regarding it such giving of false evidence cannot by itself be considered a fraudulent user of the document within the meaning of s 471 Indian Penal Code A mere statement that a document is genuine does not amount to using it as genuine *Re* MUTHIAH CHETTY (1913)

I. L. R. 36 Mad. 392

——— ss. 471, 474—*Whether convictions under can stand together—Forgery—User whether mere filing in Court—Guilty knowledge presumption of if rises from mere filing of a document being interested in establishing its contents* The mere fact that a litigant is interested in establishing the contents of a forged document filed by him in support of his case does not raise the presumption that he filed it knowing it to be forged Where however the accused filed a forged document in support of his case but when the forgery was discovered he fled away without prosecuting his case and without attempting to offer any explanation *Held* that his conduct was not consistent with his innocence and want of guilty knowledge The filing of a forged document as the basis of a plaint or as a necessary sequel to the pleas in the plaint constitutes an user of it within s 471 Penal Code and it is incumbent on the person using it to show that he filed the document in all good faith believing it to be genuine *Ambica Prasad Singh* v *Emperor I L R 35 Calc 820* referred to and explained Convictions of offences under ss 471 and 474 Penal Code in respect of the same document cannot stand together The two offences must be charged in the alternative *Queen* v *Nuzur Ali 6 N W P 39* followed MOBARAK ALI v THE KING EMPEROR (1912) 17 C W N 94

——— s 474—

See s 29 — I L. R 41 Mad. 589

——— s. 477A—

See CHARGE — I L R. 40 Calc 318

See COURT FEE STAMPS — I L. R 47 Calc 71

See CRIMINAL PROCEDURE CODE—

ss 222 (2) 233 — I. L R 38 All. 42

ss 235 537 — I. L. R 32 All. 57

——— *Replacing stamps on documents by used up stamps if offence under* The accused was placed on his trial on a charge under s 477A of the Penal Code on the allegation that he as clerk in the Certificate Department had tampered with requisitions filed under the Public Demands Recovery Act on behalf of an estate under the management of the Court of Wards by replacing the stamps on those documents and on the accompanying *talabatnamas* by others taken from other papers *Held* that the acts alleged did not come within the scope of s 477A Indian Penal Code KING EMPEROR v BIBHUDANANDA (1919) 23 C W N 935

PENAL CODE (ACT XLV OF 1860)—contd

——— s 477A—contd

——— ss 478 482— *Trademark —Importer using a distinctive mark has property in it as against the rest of the world* A distinctive mark may be adopted by a person who is not the manufacturer but the importer of goods and he will acquire the property in that mark as indicating that all goods which bear it have been imported by him *Ralli* v *Fleming I L R 3 Calc 417* and *Lavergne* v *Hooper I L R 8 Mad 149* referred to In this case merchants selectors and importers of hand made sugar used a distinctive mark denoting that the sugar contained in the bags so marked had been selected and imported by them and their customers accepted the mark as a guarantee that the sugar was hand made *Held* that the mark so used was a trade mark as defined in s 478 of the Indian Penal Code EMPEROR v LATIF (1916)

I L R. 39 All. 123

——— ss 478 486—*Trade mark meaning of —S 28—Counterfeiting what amounts to* The trade mark alleged to be counterfeited was that of a company who were the manufacturers of a kind of tooth powder sold in boxes It appeared that apart from two points of difference the imitation of the whole design was most marked and complete *Held* that the expression trade mark as defined in s 478 must not be confined to the trade mark of the complainants registered in England but must include the whole design on the top of the box and the black label pasted round the side That the case clearly came within the definition of counterfeit in s 28 Indian Penal Code NILMONEY NAG v DURGA PADA BANERJEE (1915) 19 C W N 957

——— s 482—

See s 478 — I L. R 39 All. 123

——— ss 482 485 486—

See TRADE MARK I L R 40 Calc 281

——— s 486—

See s 478 — 19 C W N 957

——— s 494—

——— Bigamy In a case of bigamy the person aggrieved is either the first husband or the second husband and not the father Where a complaint was preferred by the father of the first husband which resulted in a commitment on a charge under s. 498 of the Indian Penal Code it was *held* that the commitment was bad EMPEROR v LALA (1909)

I. L. R. 32 All. 78

——— A Hindu convert to Christianity married a Christian woman according to the rites of the Roman Catholic religion Subsequently and during the lifetime of his Christian wife he reverted to Hinduism and married a Hindu woman in accordance with the rites of the class

PENAL CODE (ACT XLV OF 1860)—*concld*

——— ss 499, 95—

See CRIMINAL PROCEDURE CODE, ss 435 AND 439 I L R 43 All 497

——— s 500—

See SANCTION for PROSECUTION I L R 44 Calc 970

——— s 503—

See CRIMINAL PROCEDURE CODE, s 103 I L R 43 All 67

——— s 504—

See CRIMINAL PROCEDURE CODE s 106 I L R 43 Bom 554

See PRESS ACT 1910 s 3 I L R 39 Mad 561

——— *Insult intended to provoke breach of the peace—Necessary elements constituting offence—S 95 act causing harm so slight that no person of ordinary sense and temper would complain of such harm* A Deputy Magistrate went to a locality to enquire into a petition made by the residents for funds to enable them to dig a well and in the course of a discussion with the people assembled the Deputy Magistrate remarked that as some of the residents were well to do they must make the well themselves whereupon the accused who were present there said to the Deputy Magistrate Then why do you make an enquiry go away quietly The accused were convicted under s 504 Indian Penal Code *Held* that the ingredients essential for a conviction under s 504 are threefold *first* intentional insult *secondly* provocation therefrom and *thirdly* intention that such provocation should cause or knowledge that such provocation was likely to cause the person so insulted to break the public peace or to commit any other offence *Held* on a consideration of the circumstances of the case that it was completely covered by the salutary provisions of s 95 Indian Penal Code JOY KRISHNA SAMANTA *v* KING EMPEROR (1916) 21 C W N 95

——— s 511—

See s 193 I L R 37 Bom 365

See s 417 1 Pat L J 391; 4 Pat L J 16

See s 457 I L R 37 Bom 553

——— ss 511 124A—*Attempt to commit offences—Attempt to commit the offence of sedition—Intention a question of fact* Under the Indian Penal Code (Act XLV of 1860) all that is necessary to constitute an attempt to commit an offence is some external act something tangible and ostensible of which the law can take hold as an act showing progress towards the actual commission of the offence It does not matter that the progress was interrupted An attempt to publish sedition is complete as soon as the accused knowingly sells a copy containing the seditious article It is none the less an attempt because something external to himself happens which prevents a perusal of the article by the buyers or any other member of the public In cases of sedition the question of intention is one of fact EMPEROR *v* GANESH BALVANT MODAK (1909) I L R 34 Bom 378

PENAL PROVISIONS

——— construction of—

See TENANTS IN COMMON I L R 39 Mad 1049

PENAL STATUTES

——— generally not retrospective—

See TRADING WITH THE ENEMY I L R 40 Mad 34

PENALTY

See APPEAL I L R 48 Calc 1036

See COMPANIES ACT (VI OF 1882) s 74

See CONTRACT ACT (IX OF 1872) s 74

See INTEREST I L R 42 Calc 652, 690

See THEATRICAL PERFORMANCE I L R 44 Calc 1025

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 83 I L R 39 Mad 549

——— Penalty Clause not becoming operative—

See INSTALMENT DECREE I L R 42 Bom 304

——— Security bond Breach of conditions—

See CONTRACT ACT (IX OF 1872) s 74 I L R 45 Bom 1213

——— *Court Fees Act (VII of 1870) s 19E—Scope of the section—Suit to recover penalty by Secretary of State maintainability of—Decision of Revenue authority—Jurisdiction of Civil Court* Unless there is a statutory bar a suit is maintainable by the Secretary of State for India in Council for recovery of a penalty lawfully imposed A Civil Court has no jurisdiction to review the decision of Revenue authority on the ground that the valuation had been incorrectly made or that the discretion in the imposition of the penalty had been erroneously exercised But the position is different when the order for imposition of penalty is assailed on the ground that it has not been made in accordance with the statute If the action of the Revenue authority is *ultra vires* if he has not followed the procedure described by the statute which is the source of his authority there is no enforceable claim which a Civil Court is bound to recognize *Manekji v Secretary of State for India (1896) Bom P J 529* followed S 19E of the Court Fees Act 1870 contemplates an application on the part of the person who has taken out probate and produces the same to be duly stamped It further contemplates that the estimated value of the estate is less than what the value has afterwards proved to be *A G v Freer 11 Price 183 Bradlaugh v Clarke L R 8 A C 354 Cawthorne v Campbell 1 Anst 214 In the goods of Cmda Bibee I L R 26 Calc 407 In the goods of Stevenson 6 C W N 898* referred to NIKUNJA RANI CHOWDHURANI *v* SECRETARY OF STATE FOR INDIA (1915) I L R 43 Calc 230

——— *Interest exorbitant rate of—Inference by Court—Court's power to reduce rate of interest—Mortgage—Release of one joint mortgagor effect of—Contract Act (IX of 1872) ss 44 74* It is competent to a Court to grant relief whenever the stipulation for payment of interest

PENALTY—*contd*

at a specified rate appears to the Court to be a stipulation by way of penalty What constitutes a stipulation by way of penalty must be determined in each individual case upon its own special circumstances *Webster* v *Bosanquet* [1912] *A C 394* *Khagaram Das* v *Ramsankar Das Pramanik I L R 45 Calc 657* *Pouwang Raja Chellaphroo Chowdhury* v *Banga Behari Sen 20 C W N 408* *Abdul Majeed* v *Khirode Chandra Pal I L R 42 Calc 690* and *Gopeshwar Saha* v *Jadav Chandra Chanda I L R 43 Calc 639* referred to *Per* SANDERSON *C J* The release of one of several joint mortgagors with no express reservation of the mortgagee s remedy against the other mortgagors does not *ipso facto* release the other mortgagors KRISHNA CHARAN BARMAN v SANAT KUMAR DAS (1916) I L R 44 Calc 162

COMPARE HINDU LAW (MINOR) 2 Pat L J 212

PENSION

See CIVIL PROCEDURE CODE 1908 s 10 4 Pat L J 557

See PENSIONS ACT (XXIII OF 1871)

PENSIONS ACT (XXIII OF 1871)

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 9 SCH II s 20

I. L. R 37 Bom. 442

——— ss 3, 4, 6 8—*Pension—Definition—Grant of village by Government revenue free—Wajib ul-arz—Construction of document—Condition purporting to restrain alienation* *Held* that a grant of zamindari the revenue of which is remitted by the Government is not a pension within the meaning of s 3 of the Pensions Act 1871 and no certificate is necessary under s 6 to institute a suit with respect to it Nor can an entry in the *wajib ul arz* to the effect that no co sharer is competent to transfer property standing by itself have the effect of making such property untransferable *Ganpat Rao* v *Anand Rao I L R 28 All 104 32 All 148* and *Lachmi Narain* v *Makund Singh I L R 26 All 617* referred to MANNU LAL v FAZL IMAM (1911) I L R 33 All 580

——— s 4—

See SARANJAM I L R 41 Bom 408

See SECRETARY OF STATE FOR INDIA I. L. R 38 Calc 378

——— *Collector—Certificate of Collector—Civil Court—Jurisdiction—Suit for declaration for share in cash allowance—Deshpande Kulkarni Vatan* The plaintiffs sued for a declaration that they were owners of a share in the Deshpande Kulkarni Vatan which consisted of a cash allowance paid annually from the Government Treasury They did not produce a certificate from the Collector as required by s 4 of the Pensions Act (XXIII of 1871) *Held* that the suit in the absence of a certificate from the Collector could not be entertained in a Civil Court owing to the provisions of s 4 of the Pensions Act 1871 Inasmuch as the suit was clearly one relating to a pension or grant of money conferred by the British Government *Babaji Hari* v *Rajaram Ballal I L R 1 Bom 75* followed *Govind Sita*

PENSIONS ACT (XXIII OF 1871)—*contd*

——— s 4—*contd*

ram v *Bapuji Mahadeo I L R 18 Bom 516* distinguished DWARKANATH AMRIT v MAHADEO BALKRISHNA (1912) I L R 37 Bom 91

——— *Kulkarni vatan—Land revenue assigned for the office of Kulkarni—Suit for a share in the revenue—Civil Court—Jurisdiction* A suit by a member of a Vatan family for a declaration of his right as owner of a certain share in the land revenue assigned for the purpose of supporting the office of Kulkarni is a suit falling within the purview of s 4 of the Pensions Act 1871 and is not maintainable without a certificate from the Collector BALKRISHNA SAMBHAJI v DATTATRAYA MAHADEV (1917) I L R 42 Bom 257

——— *No distinct grant of land revenue—Section no bar—Hereditary Village Offices Act (Mad Act III of 1895) s 21 in any claim to recover emoluments of an office meaning of—Regulation VI of 1831—No jurisdiction for Revenue Courts to decide what are emoluments or to decree possession—Res judicata* S 4 of the Pensions Act (XXIII of 1871) is a bar to a civil suit only where the Court is able to hold that there was distinct grant of the land revenue itself and where there is nothing to show that in the hands of Government before the grant of the *inam* the land was treated as liable for the payment of land revenue or that the Government intended to split up its ownership into *melvaram* and *kudivaram* or to make a distinct grant of the land revenue s 4 of the Pensions Act cannot have any application with reference to a suit for the recovery of such land alleged to have been granted as *inam* *Her Highness Mathu Sri Jet jamba Bai Sahib* v *Secretary of State (Appeal No 10 of 1908)* explained and followed The words any claim to recover the emoluments of an office The Madras Hereditary Village Offices Act (Mad Act III of 1895) s 21 can only mean a claim to recover what in fact are the emoluments of an office or possibly what are claimed by the plaintiff to be the emoluments of an office and cannot by any rule of construction be extended to include a claim to recover what the plaintiff denies to be the emoluments of an office but what the defendant alleges to be such emoluments *Kasiram Narasimhulu* v *Narasimhulu Patnaidu I L R 30 Mad 126* explained and distinguished Under Madras Regulation VI of 1831 which was repealed by *Madras Act III of 1895* the Revenue Courts had no jurisdiction to decide what were the emoluments of an office or to declare possession against a person alleged to be a trespasser Hence neither s 21 of Act III of 1895 nor Regulation VI of 1831 is bar to the suit *Ravutha Koundan* v *Muthu Koundan I L R 13 Mad 41* referred to Therefore a decision under the Regulation VI of 1831 cannot operate as *res judicata* with reference to a suit for lands in a civil Court SECRETARY OF STATE v SUBBARAYUDU (1913) I. L R. 36 Mad. 559

——— ss. 4 5 6—*Suit for a declaration affecting the liability of Government—Jurisdiction of civil Court* The plaintiff came into Court claiming in effect a declaration that he was entitled to be considered as the assignee of the Government revenue payable in respect of certain property as being the reversioner to one Dalpat Rai who was the last assignee He produced a certificate

PENSIONS ACT (XXIII OF 1871)—*contd*

——— ss 4 5 6—*contd*

purporting to be a certificate under s 6 of the Pensions Act 1871 but it was a certificate granted in respect of some former litigation between the plaintiff and a rival claimant to the property *Held* that the suit as framed could not be entertained without the production of a certificate in conformity with s 6 of Act No XXIII of 1871 that the certificate produced was not in conformity with s 6 of the said Act and that in any case it would be impossible to pass a decree in favour of the plaintiff without affecting the liability of Government to pay such grant within the meaning of the section *The Secretary of State for India* v *Moment I L R 40 Calc 391* distinguished SECRETARY OF STATE FOR INDIA *v* JAWAHIR LAL (1915) I L R 37 All 338

——— *Suit to recover Sardeshmukhi Haq—Pensions and grants in Ratnagiri District—Pensions Act whether* ultra vires—*Bombay Regulation (XXIX of 1827) s 6—Civil Court—Jurisdiction* Plaintiff filed a suit against Government to recover two per cent Sardeshmukhi Haq on certain villages in Ratnagiri District not on the old Jamabandi but on survey assessment The District Judge held that the suit was barred under s 4 of the Pensions Act 1871 On appeal it was contended that the Pensions Act so far as it dealt with pensions and grants of land revenue in Ratnagiri District was *ultra vires* *Held* that the Pensions Act was not *ultra vires* and that the suit was barred under s 4 of the Act *Secretary of State for India* v *Moment (1912) L R 40 I A 48* distinguished *Vasudev Sadashiv Modak* v *Collector of Ratnagiri (1877) L R 4 I A 119* relied on The Pensions Act could not be *ultra vires* unless it was established that a suit would have lain against the East India Company on a grant of land revenue But such a suit would not lie inasmuch as the East India Company exercised sovereign rights in collecting land revenue If they chose to grant any share of that land revenue to individuals they did so not as a mere matter of contract in the ordinary affairs of life but in the exercise of sovereign rights MADHAVRAO MORESHWAR *v* THE SECRETARY OF STATE FOR INDIA (1920) I L R 45 Bom 196

——— s 6—

——— Sanad construction of—*Certificate giving Court jurisdiction to try suit—Grant of soil of village not a grant of land revenue—Non production of certificate at time of institution of suit—Grant on payment of quit rent* A village portion of the subject of a suit or partition was granted to the ancestor of the parties by Maharaja Scindia of Gwalior in 1861 and the grant was confirmed in 1866 by the British Government in a sanad which declared that the village in question shall be continued to the grantee and his heirs inclusive of all lands allowances and rights belonging to others so long as he and his heirs shall continue loyal to the British Government and shall pay Rs 800 to Government as a quit rent In a later portion of the sanad there was a guarantee against any further payment by the holder on account of Imperial Land Revenue beyond the amount specified and a declaration that the village and its holder shall be liable for any local taxation which may be imposed on the district generally *Held* (affirming the decision of the High Court)

PENSIONS ACT (XXIII OF 1871)—*contd*

——— s 6—*contd*

that the sanad was not a grant of Land Revenue but of the soil of the village itself and therefore the Pensions Act (XXIII of 1871) did not apply but even if it did the Subordinate Judge had rightly held that an order made by the Revenue Court referring the plaintiff (respondent) to a suit in the Civil Court was equivalent to a certificate under s 6 *Semble* The non production of a certificate under s 6 of the Pensions Act at the time of the institution of a suit for which such a certificate is necessary is not a bar to the maintenance of the suit but is a defect which may be cured by obtaining the certificate at a later stage of the proceedings GANPAT RAO *v* ANANT RAO (1909) I L R 32 All 148

——— *Saranjam—Grant of land revenue—Suit to recover—Collector s certificate—Admission of pleader binding on client—Preliminary decree—Appeal—Remand—Civil Procedure Code (Act V of 1908) O XLI r 23* The grantee of a Saranjam filed a suit for the recovery thereof and at the trial a preliminary issue was raised as to the maintainability of the suit without the certificate provided for by s 6 of the Pensions Act The grantee s pleader admitted a certificate was necessary but after several adjournments for the purpose failed to produce a certificate A decree was thereupon passed on the preliminary issue dismissing the suit On appeal by the grantee it was contended that he was not bound by the admission of the pleader and it was stated that such evidence could be produced as would render a certificate unnecessary *Held* that the grantee was bound by the admission of his pleader and that even if he was not so bound there was no material before the Court to justify a reversal of the decree and therefore a remand under O XLI r 23 of the Civil Procedure Code (Act V of 1908) was impossible In the absence of evidence to the contrary the grant of a Saranjam must be presumed to be a grant of land revenue and not of the soil *Ramchandra* v *Venkatarao I L R 6 Bom 598* and *Raja Bommadevara Venkata Narasimha Naidu* v *Raja Bommadevara Bhashya Karlu Naidu L R 29 I A 76* referred to DATTAJIRAO GHORPADE *v* NILKANTRAO (1914) I L R 39 Bom 352

——— ss 6 8—

See s 3 I L R 33 All 580

——— ss 6 8 11—Toda giras allowance—*Purchase of the rights to receive allowance at a Court sale—The allowance entered in the name of the purchaser—Application by heirs of the purchaser to receive arrears of allowance—Certificate of Collector* It was directed by a decree that the purchaser at a Court sale of a Toda giras allowance should recover from the Collector the amount due for arrears of the allowance from the date of his purchase An application to execute this decree was made in 1864 in consequence of which the decree holder s name was entered in the Collector s books as the person entitled to the allowance in question and the arrears up to 1864 were paid In 1903 the decree holder s heirs applied to the Court to recover the arrears of allowance that had remained unpaid since 1896 The Collector contended that the application could not be entertained in the absence of a certificate from the Collector under the provisions of s 6

PENSIONS ACT (XXIII OF 1871)—*contd*

——— ss. 6, 8 11—*contd.*

of the Pensions Act 1871 *Held* overruling the contention, that the power of the Collector under the Act had been exhausted and there was no discretion for that officer to exerci e either under the Act or the rules so far as the applicant s right to recover the arrears that had become due in the life time of the last holder was concerned *Held* further that if those amounts remained unpaid the Collector held them for and on behalf of the la t holder as moneys due to him and as moneys therefore recoverable on his death by his heirs independently of any question which might arise under the Pensions Act 1871 or the rules framed thereunder CHHAGANLAL *v* PRANJIVAN (1909) I L R. 34 Bom 154

——— s 11—*Pension—Grant of land by Government—Construction of document—Execution of decree—Civil Procedure Code (1908) s 60(g)* The Government for political considerations granted certain property to the original grantee for life and to his descendants as an absolute estate *Held* that such grant did not constitute a political pension within the meaning of s 60 (*g*) of the Code of Civil Procedure and that the land so granted was not exempt from attachment and sa e in execution of a decree *Held* also that the r hts of the parties to whom the grant had b en made by the Government must be deter mined by reference to the original sanad conferring title on the grantee and his descendants and the opinions expressed by certain Revenue Officers as to its meaning were irrelevant on a question of the construction of the document *Lachmi Narain* v *Makund Singh I L R 36 All 617* and *Amna Bibi* v *Najm un nissa I L R 31 All 332* followed. KANIZ FATIMA BEGAM *v* SAKINA BIBI (1914) I L R 36 All 318

PERFORMANCE

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XXIII R 3
I L R 38 Mad 959

——— Time for—

See PROCEDURE
I L R 48 Calc 832

PERGANA REGISTER

See LAKHERAJ LANDS
I. L R 45 Calc 574

PERILS OF THE SEA

See INSURANCE 16 C W N 991

PERIOD

——— expiry of the—

See TRANSFER OF PROPERTY ACT s 67
I L R. 34 Bom 462

PERJURY

See DEPOSITION I L R 46 Calc 895

See BENGAL EXCISE ACT s 16
15 C W N 169

See FRAUD I L R 38 Mad 203

See PENAL CODE (ACT XLV OF 1860) ss 52 191 193
I L R. 36 All 362

PERJURY—*contd*

——— abetment of, before Magistrate—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 195 I L R 42 Bom 190

——— Arising from contradictory statements—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) ss 236 195 537 (*b*) AND 164
I L R 45 Bom 834

——— sanction to prosecute for not desirable in public interests—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 195
I L R 37 Mad 564

——— In deposition before Civil Court not read out to deponent—

See PENAL CODE 1860 s 193
I L R 1 Lah 361

——— *Sanction for prosecution—Criminal Procedure Code (Act V of 1898) s 195—Conditional sanction* A sanction to prosecute for perjury given under s 195 Criminal Procedure Code cannot be conditional *Re* MUNEYYA (1913) I L R 35 Mad. 471

——— *Witness—Deposition not read over to witness in the hearing of accused or his pleader but read by witness himself—Inadmissibility of deposition in subsequent trial for giving false evidence—Proceeding against witness—Preliminary inquiry—Omission to record statements of witnesses examined thereat—Order for prosecution not containing assignment of the false statements—Criminal Procedure Code (Act V of 1898) ss 360 (1) 476—Practice* S 360 (1) of the Criminal Procedure Code requires the evidence of a witness to be read over to him in the hearing of the accused or his pleader so as to enable the latter to correct any mistakes in it The reading of the deposition by the witne s himself is not a compliance with the section and renders the record of it inadmissible in a subsequent trial against him under s 193 of the Penal Code *Mahendra Nath Misser* v *Emperor 12 C W N 845* and *Jyotish Chandra Mukerjee* v *Emperor I L R 36 Calc 955* followed Although s 476 of the Criminal Procedure Code does not expressly provide for the manner in which the preliminary enquiry thereunder is to be recorded a summary of the statements of the witne ses examined thereat should be made An order under the same section directing the pro ecution of a person for giving false evidence should set out the statements alleged to be false EMPEROR *v* JOGENDRA NATH GHOSE (1914) I L R 42 Calc 240

——— *Power of High Court to direct prosecution when false evidence given before the Committing Magistrate in the Mofussil—Nearest first class Magistrate—Presidency Magistrate—Criminal Procedure Code (Act V of 1898) s 476—Practice* Where a witne s examined during the trial of a prisoner at the Original Criminal Sessions of the High Court has intentionally made false statements before the committing officer at *B* in the district of Alipore the High Court has jurisdiction, under s 476 of the Criminal Procedure Code to send the case of the witness for inquiry or trial to the District Magistrate of Alipore as the nearest Magistrate of the first class *Kedar Nath Kar* v *King Emperor 3 C*

PERJURY—*concld*

Emperor distinguished EMPEROR v *Tripura Shankar Sarkar* I L R 37 Calc 618 L J 3..7 DONALDSON (1916) I L R 43 Calc 542

PERMANENCY OF RENT

——— presumption of—

See LANDLORD AND TENANT I L R 44 Calc 930

PERMANENT AGRICULTURAL TENURE

See LANDLORD AND TENANT I L R 37 Calc 723

PERMANENT HEREDITARY TENURE

See MINES AND MINERALS I L R 44 Calc 585

PERMANENT IMPROVEMENTS

See VENDOR AND PURCHASER I L R 37 Calc 362

PERMANENT LEASE.

See HINDU LAW—PARTITION I L R 43 Calc 1118

See HINDU LAW—RELIGIOUS ENDOWMENT I L R 42 Calc 536

See LEASE I L R 43 Calc 332

See LIMITATION I L R 43 Calc 34

PERMANENT RIGHT OF OCCUPANCY

See MADRAS ESTATES LAND ACT 1908 I L R 44 *Mad* 856

PERMANENT SETTLEMENT

See CHAUKIDARI CHAKRAN LANDS I L R 44 Calc 841

See FISHERY I L R 42 Calc 489

See MADRAS IRRIGATION CESS ACT (VII OF 1865) s 1 I L R 38 Mad 997

s 14 PROS 1 AND 2 I L R 40 Mad 886

See MADRAS REGULATION XXV OF 1802 I L R 44 Mad 864

See REGULATION I OF 1793 15 *C W N 300*

PERMANENT TENANCY

See BHAGDARI ACT (BOM ACT V OF 1862) s 3 I L R 38 Bom 679

See LAND REVENUE CODE (BOM ACT V OF 1879) s 83 I L R 38 Bom 716

See LANDLORD AND TENANT I L R 47 Calc 1 and 230

See LEASE I L R 43 Calc 332

See SUB LEASE I L R 48 Calc 783

See TITLE SUIT FOR I L R. 37 Calc 662

——— by occupancy raiyat—

See BENGAL TENANCY ACT 1885 s 85 25 C W N 4

PERMANENT TENANCY—*contd.*

——— if may be granted by raiyat at fixed rent—

See BENGAL TENANCY ACT 1885 ss 11 12 18 AND 85 25 C W N 9

——— power of head of mutt to grant—

See HINDU LAW—ENDOWMENT I L R 40 Mad 745

——— Adverse possession—Necessity of notice to the landlord—

See LANDLORD AND TENANT I L R 45 Bom *508*

——— Adverse possession of tenant against mortgagee—Whether can run adversely against mortgagor—

See ADVERSE POSSESSION I L R 45 Bom 661

1 ——— Building lease—*Lease construction of—Permanency inference as to—Dwelling house—Long possession* The mere facts that a lease of land was for dwelling purposes and that the lessees have been allowed to remain in possession of the land on payment of rent for a long period would not in themselves be sufficient to establish the permanent nature of the tenancy where there is nothing to show that the building was contemplated to be or in fact was a masonry building BARADA PROSAD BARMAN v PRASANNO KUMAR DAS (1912) 16 C W N 564

2 ——— *Lease—Presumption of permanency—Lease for building purpose—Long possession—Uniform rent—Permanency question of mixed law and fact—Second appeal* Where the origin of a tenancy was unknown and it was established (i) that the original tenant and his successor had been in occupation of the land for over sixty years (ii) that the rent had never been varied (iii) that the tenancy had been treated by the landlord as heritable and (iv) that the land was let out for residential purposes the inference was held to be legitimate that the tenancy *at* its inception was permanent The *question of the* nature of the tenancy is a mixed question of fact and law the inference as to the nature of the tenancy from the facts found is a question of law which can be gone into on second appeal MOHARAM CHAPRASI v TELAMUDDIN KHAN *(1911)* 16 C W N 567

PERMANENTLY SETTLED ESTATE

See BENGAL TENANCY I L R 48 Calc 473

See LAND TENURE IN MADRAS L R 46 I A 38

See PRESERVED FOREST I L R 47 Calc 889

PERPETUAL INJUNCTION

See INJUNCTION I L R 37 Calc 731

See TRUST I L R. 41 Calc. 19

PERPETUITIES

See CHARITABLE TRUST I L R. 48 Calc 124

See PRE EMPTION I L R 38 Mad *114*

PERPETUITIES—*contd*

See PUTNI LEASE
14 C W N 601

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 54 I L R 39 Mad. 462

See WILL 3 Pat. L J 199
I L R 40 Calc 192
I L R 46 Calc 485

——— applicable to Hindu Law—

See PRE EMPTION I L R 38 Mad. 114

See HINDU LAW 25 C W N 148

——— *Rule against—Covenant to run with the land* An agreement to grant at an indefinite time in the future whatever land might be required by the other party to the agreement is void as offending the rule against perpetuities MAHARAJ BAHADUR SINGH v BALCHAND CHOWDHURY L R 48 I A 376
6 Pat L J 163

PERSONÆ INCERTÆ

See HINDU LAW—WILL
I L R 39 Calc 87
15 C W N 945

PERSONAL ACTION

——— whether criminal proceedings abate on death of person assaulted—

See PENAL CODE 1860 ss 304 AND 323
I L R 1 Lah 27

——— *Abatement—Death of plaintiff after obtaining a decree in his favour—Whether his legal representatives can carry on an appeal* One D P sold his land in 1908 P a collateral of D P brought the present suit for possession on the allegation that the sale was without consideration and necessity The first Court decreed plaintiff s claim on payment of Rs 830 being the part of the consideration which it held to have been legally proved Both parties appealed During pendency of the appeals P died leaving no heirs except his two widows whose names were brought on the record as legal representatives of the deceased The lower Appellate Court was of opinion that the right of P being personal his widows could not carry on the appeal which was therefore held to have abated and was dismissed The Court also held that the vendee s appeal must under the circumstances proceed The widows appealed to the High Court *Held* that judgment having been obtained before plaintiff s death the benefit of it survived to his legal representatives and that the lower Appellate Court must therefore hear the appeals on their merits *Muhammad Hussain v Khushalo (I L R 9 All 131 F B) Subbaraya Mudali v Manika Mudali (I L R 19 Mad 345)* and *Gopal Ganesh v Ram Chandra (I L R 26 Bom 597)* followed MUSSAMMAT RAM KAUR v JIWAN SINGH
I L R 2 Lah 189

PERSONAL COVENANT

See LIMITATION I L R 42 Calc 294

PERSONAL DEBT

See PUTNI TENURE
I L R 37 Calc. 747

PERSONAL DECREE

See CHARGE I L R 36 Mad 493

See DECREE HOLDER
I L R 38 Mad 677

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 90 I L R 34 Bom 540

——— against sub mortgagee—

See MORTGAGE I L R 45 Calc. 702

PERSONA DESIGNATA

See NAIKINS I L R 37 Bom 116

PERSONAL INAM

See MADRAS FOREST ACT (XXI OF 1882) ss 6 10 16 17
I L R 39 Mad 494

PERSONAL LIABILITY

See EXECUTOR I L R 45 Calc 538

See FOREIGN JUDGMENT
I L R 36 Mad 414

PESHKOSH

1 ——— *Abwab—Antiquity and purpose of payment—Contractual foundation—Bengal Tenancy Act (VIII of 1885) ss 74 30 (c)—Public Demands Recovery Act (Beng I of 1895)* Where the Collector in execution of a certificate issued under the Public Demands Recovery Act realised from the plaintiffs certain charges described as *peshkosh* levied on two estates from time immemorial and the plaintiff sued for a declaration that it was illegal and prayed for the cancellation of the certificate for the refund of the amount thereunder and for a perpetual injunction restraining the defendant from levying the *peshkosh* in future *Held* that *peshkosh* could not be regarded as an imposition in the nature of an *abwab* within the meaning of the various provisions enacted on that subject Such payment came out of the land and the right thereto was an interest in the land to which a title might be made by prescription *Held* also that the peculiar situation and character of the land and antiquity and purpose of the payment all pointed to a legitimate contractual foundation *Udoy Narain Jana v The Secretary of State for India in Council (1916) S A No 44 of 1912* (unreported) referred to LAKSHMI NARAYAN ROY v SECRETARY OF STATE FOR INDIA (1918) I L R 45 Calc 866

2 ——— *Peshkosh or annual sum levied by Government for upkeep of embankment if abwab* An annual sum levied by Government for the upkeep of embankments is not an *abwab* Long continued payment from time immemorial which in itself is a title in the recipient of the payment is a good and sufficient basis of the claim UDOY NARAIN JANA v SECRETARY OF STATE FOR INDIA (1915) 22 C W N 823

PETITION

——— delay in filing divorce—

See DIVORCE ACT (IV OF 1869) s 14
I L R 41 Bom 36

——— for winding up Company—

See COMPANY I L R 39 Bom. 16 47

PETITION OF COMPROMISE.

See COMPROMISE I L R 45 Calc. 816

PETROLEUM ACT (VIII OF 1899)

——— ss 11 and 15—*Keeping in possession a quantity exceeding the maximum allowed by law—Liability of a licensee for the acts of his servant or agent in the absence of finding of guilty knowledge on his own part—Petroleum Act (VIII of 1899) ss 11 and 05 (a)* A licensee is not in the absence of a finding by the Court that he knew that more than 500 gallons of petroleum were being transported at one time on his license and that he allowed the same to take place with such knowledge by his servant criminally liable under ss 11 and 15 (a) of the Indian Petroleum Act (VIII of 1899) for the acts of the latter done in contravention of the law Though the Act provides a personal penalty the only person that can be punished is the one who keeps petroleum or carries it about or puts more than 500 gallons at one place GANPAT PAI v EMPEROR (1912)
I L R 40 Calc 356

PIAL

——— over a drain right to—
See MUNICIPAL COUNCIL
I L R 38 Mad 6

PICKETING

See MARKET FRANCHISE
I L R 47 Calc 1079

PIECEMEAL ACQUISITION

See LAND ACQUISITION
I L R 48 Calc 892

PIECEMEAL TRIAL

See BAILIFF I L R 42 Calc 313

PILGRIM BUSINESS

——— profits from—
See RECEIVER I L R 40 Calc 678

PILGRIMAGE

See HINDU LAW—LEGAL NECESSITY
I L R 36 Bom 88

PITRAI CHELA

See HINDU LAW—SUCCESSION
I L R 39 Bom 168

PLACE OF EXAMINATION—

See EXAMINATION ON COMMISSION
I L R 48 Calc 448

PLACE OF SUING

See CIVIL PROCEDURE CODE 1908 s 20
I L R 42 All 480 619

PLAINT

See AMENDMENT OF PLAINT
I L R 36 All 370

See CIVIL PROCEDURE CODE (1908) O VI AND VII

See COURT FEE I L R 42 Calc 370

See PLEADINGS I L R 37 Calc 856

See PRACTICE I L R 34 Bom 244

——— amendment of—
See APPEAL I L R 43 Calc 95

See CAUSE OF ACTION
I L R 38 Calc 797

PLAINT—*contd*

——— amendment of—*contd*
See CIVIL PROCEDURE CODE 1882
I L R 34 Bom 250

See CIVIL PROCEDURE CODE 1908—
s 9 I L R 45 Bom 590
s 92 I L R 36 Bom. 168
O VI r 17 I L R 36 Mad 378
I L R 44 Bom 515

See CONTRACT I L R 47 Calc 458

See COURT FEE I L R 44 Calc 352

See HINDU LAW—ADOPTION
5 Pat L J 164

See IDOL I L R 33 All 735

See LIMITATION ACT 1877 s 8
14 C W N 128

See LIMITATION ACT (IX OF 1908) s 3
I L R 33 All. 616

See LIS PENDENS
I L R 41 All. 534

See PARTIES I L R 37 Calc 229

See PARTITION SUIT FOR
I L R 38 Calc 691

See PRE EMPTION I L R 36 All. 573

See PROCEDURE I L R 48 Calc 832

See REMAND I L R 43 Calc 938

See SPECIFIC RELIEF ACT 1877 s 42
25 C W N 553

See U P COURT OF WARDS ACT (III OF 1899) s 48 I L R 37 All 13

——— authority to file—
See PRACTICE I L R 39 All 343

——— construction of—
See SPECIFIC RELIEF ACT (I OF 1877) s 9 I L R 40 All. 637

——— order returning—for presentation in Proper Court—
See CIVIL PROCEDURE CODE 1908 s 101
O XLIII r 1 I L R 42 All. 74
s 115 I L R 43 All. 334

——— presentation of—
See MADRAS ESTATES LAND ACT (I OF 1908) s 19 I L R 38 Mad. 295

——— rejection of—
See COURT FEE I L R 40 Calc 815
I L R 44 Calc. 352

See JURISDICTION OF CIVIL COURT
I L R 34 Bom 267

See JUDICIAL OFFICERS PROTECTION ACT (XVIII OF 1850) s 1
I L R 39 All 516

——— Return of for presentation in proper Court—
See CIVIL PROCEDURE CODE 1908 s. 101
O XLIII r. 10 I L R 23 All. 58
I L R 43 All 334

See LIMITATION ACT (IX OF 1908) s 14
I L R 45 Bom 443

——— suit against Receiver—
See HIGH COURT I L R 44 Bom 903

PLAINT—*contd*

——— **Verification of** —

See Ex parte decree
I L R 43 Calc 1001

——— **Amendment**—*Plaint amendment of by party to whom it is returned for proper valuation* A plaintiff to whom a plaint was returned for properly valuing the properties claimed therein altered the valuation as directed therein and struck out some of the properties to bring the suit within the jurisdiction of the Court *Held* that there was nothing illegal in the amendment and that it was competent to the Court to accept such amended plaint Karumbayira Ponnapundan v Autromoola Ponnapundan (1909)
I L R 33 Mad. 262

——— **Leave to file**—*given by Registrar —Representment—Limitation error of procedure rectification within time delay in completion of order and recording the representment of plaint* Where on leave being asked for in the plaint under cl 12 of the Charter the Registrar on the Original Side of the High Court under a misapprehension of the change in procedure with regard to the filing of plaints gave such leave but on discovery of the fact that the Registrar had no authority to grant such leave the plaint was withdrawn on the 15th August 1907 and was immediately after presented before a Judge sitting on the Original Side who gave the leave and endorsed on the plaint presented 15th August 1907 but there was delay in the office in completing the order and stamps were supplied upon requisition from the office on the 14th December 1907 and it was recorded in the office and also re endorsed on the plaint that the plaint was re registered and filed on the 18th December 1907 on objection being taken by the defendant that the suit was barred by limitation *Held* (by Chaudhuri J) that the 15th of August 1907 as recorded by the Judge on the plaint was the date of its presentation and the suit was not barred by limitation Osmond Beeby v Kshitish Chandra Acharya Chaudhuri (1914) **18 C W N 631**

——— **Form of plaint**—*Suit against Corporations—Defendant misdescription of—Service on Corporations—Civil Procedure Code (Act V of 1908) O XXIX rr 1 and 2—Practice* In a plaint filed against two companies the defendant companies were described as the India General Steam Navigation and Railway Company Limited and the Rivers Steam Navigation Company Limited by their joint agent A E Rogers and notice was served on Mr Rogers Subsequently Mr Rogers retired from the service of companies and left the country At the trial of this suit the plaint was amended and Mr Rogers name was omitted from the title of the suit which was proceeded with against the two companies *Held* that the plaint as originally framed was in contravention of O XXIX r 1 of the Code of Civil Procedure *Ram Das Sen v Stephenson 10 W R 366* *Nubeen Chunder Paul v Stephenson 15 W R 534* and *Campbell v Jackson I L R 12 Calc 41* referred to *Held* also that the amendment might stand but the plaintiffs were bound to serve notices of the suit in the manner provided in O XXIX r 2 after the amendment had been made and the suit properly constituted India General Steam Navigation and Railway Company Ld v Lal Mohan Saha (1915) **I L R. 43 Calc 441**

PLAINT—*concld*

——— **Amendment of plaint**—*Procedure—Suit barred by limitation when change in its nature is made by amendment—Discretion to allow amendment—Valuation of suit—Judicial Committee practice of—Civil Procedure Code (Act V of 1908) O VI r 17* Where there is admittedly a power to allow an amendment of the plaint though such power should not as a rule be exercised where its effect is to take away from a defendant a legal right which has accrued to him by lapse of time yet there are cases where such considerations are outweighed by the special circumstances of the case *Mohummud Zahoor Ali Khan v Rutta Koer 11 Moo I A 468* referred to The suits which gave rise to the present appeals were instituted by the three first respondents claiming a declaration that they were entitled to certain right of pre emption against the several appellants (defendants) who were vendees of certain shares and interests in the properties to which the suits related but none of the plaints claimed possession of the property sold and the usual consequential relief The defendants in their defence admitted the plaintiffs right to pre emption but objected that a mere claim to such a right was not a claim to any right of property within the meaning of s 42 of the Specific Relief Act (I of 1877) and that the right to pre emption could not be enforced by a mere declaratory degree The Subordinate Judge and the first Appellate Court refused to permit an amendment to the plaints by adding a claim for possession after pre emption on the ground that a suit to enforce a right to pre emption was barred by lapse of time The Court of the Judicial Commissioner on second appeal allowed the amendment to be made there being no reason to suppose that the plaintiffs had acted otherwise than *bonâ fide* and the amendment not making any alteration in the nature of the relief prayed for *Held* that the discretion exercised in allowing the amendment should not be interfered with *Held* also that the Board will not interfere with any question of valuation unless it can be shown that some items has been improperly made the subject of valuation or excluded therefrom or that there is some fundamental principle affecting the valuation which renders it unsound On the mere question of the value of admitted items their Lordships will not interfere Nor will they allow an argument based upon an assertion that the valuation has proceeded on an erroneous footing to be raised on appeal to the Board unless it was raised before the Judicial Commissioner and if it were so raised the fact that it is not referred to in the written statement of the party raising it is a good and sufficient reason why it should not be introduced at this late stage of the proceedings. Charan Das v Amir Khan (1920)
I L R 48 Calc 110

PLAINTIFF

See Civil Procedure Code (Act V of 1908) O XXII rr 3 5
I L R 43 Bom. 168

See Insolvent Plaintiff

——— **death of**—

See Civil Procedure Code (Act V of 1908) s 92 **I L R 40 Mad 110**

PLAINTIFF—*contd*

——— non appearance of—

See APPEAL I L R 37 Calc 426

See NON APPEARANCE I L R 48 Calc 57

——— substitution of—

See LIMITATION L R 43 I A 113
20 C W N 833

PLANTERS LABOUR ACT (MAD I OF 1903)

See MADRAS PLANTERS LABOUR ACT 1903

——— ss 24, 35—*Imprisonment for refusal to perform contract extent of* Prosecutions and punishments under the Planters Labour Act (Mad. Act I of 1903) cannot continue indefinitely Only two terms of imprisonment may be awarded once under s 24 and again once under s 35 The refusal of a *maistry* or a labourer under s 35 to perform his contract cannot be treated as a temporary refusal. *Re* PALGA MAISTRY (1913)
I L R 36 Mad. 497

PLEA OF GUILTY

See PENAL CODE (ACT XLV OF 1860) s 415 I L R 43 Bom 842

See SANCTION FOR PROSECUTION I L R 48 Calc 867

PLEADER

See BOMBAY REGULATION II OF 1827 s 56 I L R 37 Bom 354

See DEFAMATION I L R 41 Calc 514

See LEGAL PRACTITIONER 14 C W N 521

See LEGAL PRACTITIONERS ACT

See PRACTICE I L R 34 Bom 408

See UNPROFESSIONAL CONDUCT

——— admission by—

See PENSIONS ACT (XXIII OF 1871) s 6 I L R 39 Bom. 352

——— as litigant—

See UNPROFESSIONAL CONDUCT I L R 43 Calc 685

——— contempt of Court by—

See LEGAL PRACTITIONERS ACT (XVIII OF 1879) s 14
I L R 39 Mad 1045

——— defamatory statement by Judge—

See JUDICIAL OFFICERS PROTECTION ACT 1850 I L R 45 Bom 1039

——— duty of—

See CONTEMPT OF COURT I L R 44 Bom. 443

——— status and duty of—

See HIGH COURT I L R 44 Bom. 418

——— engaging in trade without intimating to Court—

See LEGAL PRACTITIONERS ACT (XVIII OF 1879) s 13
I L R 37 Mad. 238

1. ——— Pleader right of retainer of—*Has no right to retain moneys in one cause for dues in another cause* A pleader in India has no right of retainer in moneys realised by him in one cause for his dues in other causes conducted by him NARAYANASWAMI NAIDU *v* CHELLAPALLI HANUMANULU (1909) I L R 33 Mad. 255

2 ——— Pleader's authority to compromise—*Deccan Agriculturists Relief Act (XVII of 1879) s 12—Compromise of the case—Court's duty to record the compromise—Pleader's compromising without authority from his client—client to apply to cancel the compromise* Where a party complains that compromise effected in his name was unauthorised he must move the Court to cancel all that has been done and to revive the suit PIRAJI *v* GANAPATI (1910)
I L R 34 Bom. 502

3 ——— Duty towards client—*Pleader in the mofussil—Winding up proceedings—Pleader must not represent parties whose interest are conflicting—Bombay Regulation II of 1827 s 56* By the custom of the mofussil a pleader employed by a party to a proceeding before a Court is bound faithfully and exclusively to serve that party throughout the whole proceeding The pleader in the mofussil is not merely an advocate—he is the confidential legal adviser of his client and does for him those things which in the presidency towns are often done by solicitors For legal advice for the prosecution of legal proceedings in all their stages the client depends on the pleader This dependence makes the position of the pleader peculiarly onerous and binds him to give exclusive attention to the interest of the client throughout any proceedings in which he is engaged In winding up proceedings a single pleader must not represent two different creditors whose interests are known to conflict A pleader must not accept a *vakalatnama* when he knows that he cannot act for his client throughout the proceedings A pleader in defending himself against charges of professional misconduct made certain statements He was dealt with under the disciplinary jurisdiction for making them It was contended in his behalf that the statements made by him in defence must be regarded as having been made by an accused and were therefore protected *Held* overruling the contention that the pleader was writing to the Court as a pleader and was responsible as such for the statements made by him. GOVERNMENT PLEADER *v* BHAGUBAI DAYABHAI (1912) I L R 36 Bom 606

4. ——— Suspension of vakil. Under s 95 of the Appellate Sides rule of the Madras High Court pleaders are responsible to the Registrar for all translations and printing charges incurred by him on their behalf. To that extent therefore the vakil must co operate in the conduct of the suit with the Registrar and with the Court under those regulations and vakils have also the general function applicable not only to the bar in general but also to solicitors at large that they must in the conduct of all suits entrusted to them co operate with the Court in the orderly and pure administration of justice. In a proceeding in the High Court to restore an appeal which had been struck off for non payment of the printing charges it appeared that the vakil for the appellant though the money for that specific purpose had been received in his office from his client had omitted to pay it to the Registrar had not made any true and proper explanation to his client of the cause of the appeal being

PLEADER *contd*

struck off but had allowed letters written by his clerks to go from his office to the client and had even written one himself which would lead him to believe that the appeal had been heard and dismissed in due course and had also not given the Court on the earliest possible opportunity any reason for his absence when the appeal was called on except that other professional engagements had prevented him from being present nor had he ever offered to the Court any explanation or apology concerning his conduct of the case nor expressed to the Court any regret for its effect The vakil after being called on to show cause why he should not be punished under the Letters Patent of the High Court or the Legal Practitioners Act (XVIII of 1879) for professional misconduct was whilst personally acquitted of any fraudulent or criminal act suspended from practising for six months *Held* on an appeal to the Judicial Committee that the vakil had in his acts and omissions to explain regret or apologise for them utterly failed to perform what his honour and duty to his client and to the Court made it incumbent upon him to do and their Lordships while not interfering with his acquittance of direct and personal fraud did not see their way to acquit him of conduct in the management of the appeal and of his client s affairs which caused the procedure of the Court to be the very opposite of what it should be namely responsible orderly and pure and they were of opinion that there was reasonable cause under s 10 of the Letters Patent for the sentence pronounced by the High Court which was justified both in its pronouncement and the extent of the suspension *In the matter of* KRISHNASWAMI AYYAR 1912)

I. L. R 35 Mad. 543

5 ———— **Compromise of suit by** —*Unless authorised by client—Scope of authority of* Although a pleader has no power to compromise a suit unless he is specially authorised in that behalf he can bind his client by an admission upon a question of fact provided that such question falls within the scope of the suit in which he has been retained. *Bhutnath* v *Ramlal 6 C W N 82 Jagapati* v *Ekambarn I L R 21 Mad 274* followed *Kower Narain* v *Sreenath 9 W R 485 Rajunder* v *Bijai Govind 2 Moo I A 253 Ilinga Lal* v *Mansa Ram I L R 18 All 384 Venkata Nara Simha* v *Bhasaya Karlu I L R 22 Mad 538 Nando Lal* v *Nistarini I L R 27 calc 428 Swinfu* v *Chelmsford 1 F and F 619 27 L J Ex 38* referred to DIGBIJOY RAY v SHAIKH ATA RAHAMAN (1911)

17 C W N 156

6 ———— **Admission of women as pleaders**—*Disqualification—Constant Tradition—Regulation of 1871 for the Administration of Justice—Regulation VII of 1793 (Vakils) Preamble—Regulation (XXVII of 1914 (Vakils) Preamble ss 4 5 10 to 14 18 20 to 2 30 35 37—Legal Practitioners Act (I of 1846) ss 4 1 —Pleaders of Lower Provinces Act (XVIII of 1852)—Legal Practitioners Act (XX of 1853)—Calcutta University Act (II of 1857)—Penal Code (XLV of 1860) s 8—Succession Act (X of 1865) s 3—Mofussil Small Cause Courts Act (XI of 1865) s 1—Pleaders Mukhtears and Revenue Agents Act (XX of 1865) ss 2 5 Sch II—The Punjab Chief Court s Act (XXIII of 1865) s 1—Pleaders Mukhtears and Revenue Agents Act (XXIII of 1865) s 1—Pleaders*

PLEADER *concld*

Amending Act (XXIX of 1865)—General clauses Act (I of 1868) s 2 (2)—Legal Practitioners Act XVIII of 1879) s 6 High Court rules thereunder General Clauses Act (X of 1897) s 13 As the law now stands women are not entitled to be enrolled as pleaders of Courts subordinate to the High Court The Rules of the High Court were made in accordance with and for the purpose of carrying out the intention of the Legal Practitioners Act 1879 and are not *ultra vires* Per MOOKERJEE J It is improper to give an extended construction of a statute in the absence of an intention on the part of the Legislature to reverse the established policy or to introduce a fundamental change in long established principles of law Where it appears that a change of such a policy is desirable the proper remedy is legislation and not an alteration of the law in the disguise of judicial exposition of the existing law Case law on the subject referred to *Per* CHITTY J In framing rules under an Act of the Legislature the Court should not use any particular expression or word in a different sense to be applied to the particular expression or word by the Act itself But it is doubtful whether the General Clauses Act applies to rules framed by the High Court under the Legal Practitioners Act 1879 REGINA GUHA *In re* (1916)

I. L. R 44 Calc 290

7 ———— **Professional misconduct**—*Disciplinary action—Legal Practitioners Act (XVIII of 1879) s 14—Criminal offence—Suspicion* The District Judge of Rangpur made a reference under s 14 of the Legal Practitioners Act against *C* a pleader on three charges formulating strong suspicion that he offered to bribe the record room keeper and attempted to have certain words removed from a document *Held* where the misconduct alleged has no direct connection with the conduct of the pleader in his practical and immediate relation to the Court ordinarily there should be a trial and conviction for criminal misconduct before disbarment will be ordered *In the matter of an attorney I L R 41 Calc 113 In the matter of Nil Kunt Biswas 9 W R Cr 29 In the matter of the second grade Pleaders I L R 34 Mad 29 In the matter of 5 B and A D 1088 In re— 3 Nev and Per 389 Exparte— 2 Dowl P C 110 Stephens* v *Hill 10 M and W 28 Ex parte Wall 107 U S 265* referred to CHANDI CHARAN MITTER A PLEADER *In re* (1920)

I. L. R 47 Calc 1115

PLEADER S FEES

See BOMBAY REGULATION II OF 1827 s 52 **I L R 37 Bom. 303**

See COSTS **I. L. R 40 All. 515**

See HIGH COURT GENERAL RULES OF FOR CIVIL COURTS CHAPTER XXI R 1 **I L R. 41 All. 246**

———— *Rules of Court of the 4th April 1894 r 30 (1) proviso—Pleader's fees—Fee certificate not filed at or before the hearing—Fee not paid before hearing—Discretion of Court. Held* on a construction of r 30 (1) of the rules of Court of the 4th April 1894 that the proviso to r 30 only gives a court a discretion to accept a certificate for fees filed after the commencement of the hearing but whatever might have been intended leaves no discretion as to the allowance on taxation of a fee which in fact was not paid

PLEADER'S FEES—*contd*

on or before the first hearing BANK OF BENGAL CAWNPORE v KALKA DAS (1911)
I L R 33 All. 374

———————— *Practice—Costs scale of—Taxation—Probate proceedings—Probate and Administration Act (V of 1881) s 83—General Rules and Circular Orders of the High Court Chapter VI rr 36 (a) and 42 (a) and Chapter X r 26* In a contested probate proceeding in which letters of administration and costs are granted the pleader s fee can only be assessed under Chapter VI r 42 (a) of the General Rules and Circular Orders of the High Court Rule 36 (a) and Chapter VI of the Rules and Orders has no application BAIJNATH PROSAD SINGH v SHAM SUNDAR KUAR (1913) **I L R 41 Calc 637**

PLEADER'S ACT (I of 1846)—

See REGULATION II OF 1827 (BOM) **I L R 37 Bom 303**

PLEADERS MUKHTEARS AND REVENUE AGENTS ACT (XX OF 1865)

See PLEADER **I L R 44 Calc 290**

PLEADERSHIP EXAMINATION

———————— *Pleadership Examination—Candidate—Examiners—Specific Relief Act (I of 1877) ss 45 46—Mandamus—Discretion* In making an application under s 45 of the Specific Relief Act the provisions of s 46 must be strictly observed and in dealing with such an application the principles applicable to a writ of *mandamus* should generally be followed *Bank of Bombay* v *Suleman Somji I L R 32 Bom 466* referred to PROVAS CHANDRA ROY *In the matter of* (1913) **I L R 40 Calc 588**

PLEADERS OF LOWER PROVINCES ACT (XVIII OF 1852)

See PLEADER **I L R 44 Calc 290**

PLEADINGS

See ABANDONMENT **22 C W N 853**

See ARREST OF SHIP
I L R 42 Calc 85

CIVIL PROCEDURE CODE 1908, Os VI VII & VIII

See EVIDENCE ACT (I OF 1872) s 105
I. L. R 40 All. 284

See HINDU LAW—WIDOW
I L. R 35 All 326

See ORISSA TENANCY ACT 1913
4 Pat L J 387

See PRE EMPTION **I L R 36 All 456 476 573**

See SPECIFIC MOVEABLE PROPERTY
I L. R 39 Mad 1

———— **mistake of law of liquidator—**

See CONTRACT WITH ENEMY
I L. R 44 Bom. 631

———— **whether a plea of jurisdiction can be raised on appeal—**

See AGRA TENANCY ACT 1901 s 177
I L. R. 43 All. 18

PLEADINGS—*contd*

———— **whether a plea of jurisdiction can be raised on appeal**—*contd*

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 52 **I L R 37 Bom 427**

1 ———————— *Quære* Whether a defendant who puts the plaintiffs to proof of a family usage alleged by them is pre luded at a later stage *from saying that he will not insist on* the proof of usage but will accept the plaintiff s case on the point HAZARI MALL BABU v ABANI NATH ADHURJYA (1912) **17 C W N 280**

2 ———————— *Plaint amendment of when should be allowed* Amendment of a plaint for a claim should be allowed only where the claim has been omitted by a mistake or inadvertence or for similar reasons and not deliberately BHUKI KOER v RAM KHELWAN PERSHAD (1912) **17 C W N 311**

3 ———————— *Change of case—Issues—Suit to set aside a deed of gift as fraudulent failing claim for accounts of a share as from agent* Where on the eve of a contemplated pilgrimage to Mecca *M* transferred her property to her nephew *E* by a deed of gift and on the same date the latter executed a deed which provided that a fourth share of the properties thus conveyed should remain in her possession during her life time and on her death should come into *E's* possession *Held* that the fact that in a suit to set aside the deed of gift on the ground of fraud and misrepresentation which failed a general issue as to whether *E was liable* to render an account to *M* was raised with reference to the whole property would not justify the Court in passing a decree directing *E* to account for the profits of a four annas share on the footing of his being *M* s agent in respect of that share MAHMUDA KHATUN CHOWDHURANI v MOHAMED ELAHADAD KHAN PANI (1912) **17 C W N 427**

4 ———————— *Facts in plaint not traversed in written statement or put in issue—Court not entitled to decide otherwise* Where a statement of fact in the plaint was not traversed in the written statement or put in issue the Court is not entitled to decide it against the pleadings RAM LAL MONDAL v KHIRODA MOHINI DASI (1913) **18 C W N 113**

5 ———————— *Variance between Plaintiff s allegation and proof when ground for dismissal of suit—True rule—Its object—Suit for recovery of possession—Mode of ouster and time thereof allegation as to if material* Where an order having been passed in favour of the defendants under s 335 of the Civil Procedure Code of 1882 the decree holder (now plaintiff) sued for recovery of possession upon declaration of his title alleging that the order itself deprived him of possession but the Courts below dismissed the suit without trial on the merits on the ground that the order under s 335 Criminal Procedure Code had not that effect *Held* that the suit should have been tried on the merits as the particular mode in which or the point of time at which the ouster of the plaintiff took place was not so material that a variance between pleading and proof on such matters would alone be considered a sufficient ground for dismissing the suit The determination in a cause should be founded upon a case either to be found in the pleadings or involved in or consistent with the case made thereby

PLEADINGS—*contd*

It does not follow from this that every variance between pleading and proof is material and justifies a dismissal of the claim The rule that the allegations and the proof must correspond is intended to serve a double purpos *first* to apprise the defendant distinctly and specifically of the case he is called upon to answer so that he may properly make his defence and may not be taken by surprise and *secondly* to preserve an accurate record of the cau e of action as a protection against a second proceeding founded upon the same allegations NABADIPENDRA MUKERJEE v MADHU SUDAN MONDAL (1912)

18 C W N 473

6 ———————— *Change of case—Suit on* hatchitta—*Suit on account stated—Alteration of suit on account stated to suit on account stated in previous year when account stated found to be forgery* The plaintiffs sued to recover the principal and interest due on a certain *hatchitta* The plaintiffs alleged that they were the proprietors of a joint bank that the father of the defendants used to borrow money on *hatchittas* from their bank that accounts were adjusted up to 1308 and the father of the defendants signed the *hatchitta* for 1308 on which the suit was brought The lower Court found this *hatchitta* to be a forgery but gave the plaintiffs a decree on the *hatchitta* for 1307 *Held* that the suit being on an account stated and not on an open account and the account stated sued on being found to be a forgery the suit could not be altered to one on an account stated in a previous year In any case it ought not to have been done with retrospective effect BHAIRO PROSAD v GOJADHAR PROSAD SAHU (1914) **19 C W N 170**

7 ———————— *Issues not expressly framed when may and when should not be determined* Where the parties have gone to trial knowing what the real question between them was the evidence has been adduced and discussed and the Court has decided the point as if there was an issue framed on it the decision will not be set aside in appeal simply on the ground that no issue was framed on the point Where the failure to frame the issue has led to an unfair trial or miscarriage of justice the case will be remanded for retrial MOHIUDDIN v PIRTHI CHAND LAL CHOWDHURY (1914) **19 C W N 1159**

8 ———————— *Fraud sole ground of relief—Alteration of ground of relief by picking out facts from allegations in the plaint—Defendant s duty in cases based on fraud* Where pleadings are so framed as to rest the claim for relief solely on the ground of fraud it is not open to the plaintiff if he fails in establishing the fraud to pick out from the allegations in the plaint facts which might if not put forward as proofs of fraud have yet warranted the plaintiff in asking for relief A defendant in answering a case founded on fraud is not bound to do more than answer the case in the mode in which it is put forward *Wilson v Lombard L R 1 H L 3 1* and *Guthrie v Abool Mozuffer Nooroodin Ahmed 15 W R P C 50* referred to RAJENDRA KUMAR BOSE v GANGARAM KOYAL (1910) **I L R 37 Calc 856**

9 ———————— *Variance between pleading and proof—Where plaintiff s s in ejectment on the ground of exclusive title he cannot be given a decree for partition when the claim set up is found to be barred* Where a plaintiff sues the defendant in ejectment on the ground that he and defendant were separately enjoying properties he cannot when such claim is found to be barred by limitation rely on a tenancy in common not alleged in the plaint and claim a decree for partition CHIDAMBARAM PILLAI v MUTHU PILLAI (1909) **I L R 33 Mad 356**

10 ———————— *Suit for cancellation of father s will brought by daughters—Plea of custom excluding daughters from inheritance—Custom not allowed to be raised in this suit* On suit by the daughters of the testator for a declaration that a will alleged to have been executed by their father was a false and fraudulent document and not binding on them the defendants set up a custom by virtue of which the daughters but not apparently daughters s sons were excluded from inheritance to their father s property *Held* that as members of their father's family the daughters who but for the will on the death of their mother would take the property of their father had a cause of action which entitled them to bring the suit and the issue whether or not a custom existed excluding them from inheritance was not a fit and proper issue to be determined in the present suit RISALI v BALAK RAM (1912)

I L R 34 All 351

11 ———————— *Defendant admitting plaintiff's title in written statement though claim notified before suit—Suit if may be dismissed for want of cause of action* The fact that the defendant does not in his written statement deny the plaintiff s title to land of which plaintiff had sued for recovery does not show that the plaintiff had no cause of action Where therefore it appeared that the defendant did not at any time before the institution of the suit admit the plaintiff s title to the lands in suit although plaintiff served him with notice of his claim *Held* that this Court was not justified in dismissing the suit on the ground of want of cause of action merely because the defendant in his written statement admitted plaintiff s title GANGADAS SIL v THE SECRETARY OF STATE FOR INDIA (1916)

20 C W N 636

12 ———————— *Plaint what should state—Omission to state facts necessary for defendants to meet at the trial effect of—Reliance by plaintiff on inconsistent rights alternately—Plaintiff if can allege facts destructive of each other—Partition suit—Preliminary decree—Costs* The plaintiff commenced an action for partition on the allegation that he was entitled to fourteen and a half annas share of the property in suit while the defendants contended that they had acquired a good title to a two annas share The plaint did not narrate the history of the title of the plaintiff nor did it mention the needs whereby the title had devolved on him The plaintiff did not make a definite case in plaint but sought at the trial to develop two inconsistent cases on the testimony of two different sets of witnesses Objection was taken by the defendants on the ground of defect in the plaint but the Subordinate Judge proceeded with the trial He found in favour of

PLEADINGS—*contd*

the defendants and allowed them the full amount of costs on the value of the suit Against the preliminary decree the plaintiff appealed. *Held* that in the plaint the plaintiff was bound to state the nature of the deeds on which he relied in deducing his title from the person under whom he claimed and to show the devolution of the estate to himself *Philipps* v *Philipps 4 Q B D 127 Derbyshire* v *Leigh [1896] I Q B 554* and *Davis* v *James 26 Ch D 778* It is absolutely essential that the pleading not to be embarrassing to the defendants should state those facts which will put the defendants on their guard and tell them what they will have to meet when the case comes on for trial. This much the plaintiff is bound to do though he need not set out the evidence whereby he proposes to prove the facts which give him the title *Williams* v *Wilcox 8 A and E 331* and *Gautret* v *Egerton L R 2 C P 371* A plaintiff may in certain circumstances rely upon several different rights alternately though they may be inconsistent *Narendra Nath* v *Abhoy Churn I L R 34 Calc 51 s c 11 C W N 20 4 C L J 437 Phillips* v *Phillips 4 Q B D 127 Berdan* v *Greenwood 3 Ex D 255 Hawkesley* v *Bradshaw 5 Q B D 303* and *In re Morgan 34 Ch D 496* But the plaintiff cannot be permitted to allege two absolutely inconsistent state of facts each of which is destructive of the other *Mahamud Bux* v *Hossein Bibi I L R 15 Calc 683* That in the present case the plaintiff should not have been allowed to proceed on the plaint as framed but should have been called upon to specify in his statement of claim the nature of the deeds and transactions from which he deduced his title That the order for costs on the full value of the suit could not properly be made at the stage of the preliminary enquiry when the matter in controversy related only to a half anna share in the property MOTI LAL PODDAR v JUDHISTIR DAS TEOP (1915)

20 C W N 310

13 ———————— Necessity of particularising fraud in plaint discussed. ANANDO CHANDRA MONDAL v ATUL CHANDRA MULLIK (1919) **23 C W N 1045**

14 ———————— *Pleading and proof variance between when fatal to suit—Variance not affecting cardinal points in issue—Nature of the principle—Quest on one of circumstances rather than of law—Application of the principle in an abstract way leading to error of decision on the merits—Trial Judge s appreciation of witnesses examined in his presence value of* When a sum of money due by *A* to *B* was entered in *B s* account book as having been paid on 5th November 1907 in cash but *B s* case was that it was liquidated by a promissory note which however bore date the 7th November 1907 and whilst *A* alleged that the payment was in fact made on 5th November in cash and the note of 7th November was a forgery *B* and his witnesses throughout the trial insisted that the date of the transaction was the 7th and the note was signed then but the evidence and circumstances of the case showed that there was no payment in cash and that the promissory note was genuine but had been executed not on the 7th but on the 5th—the entry in the account book to the effect that the payment was in cash being satisfactorily explained by the practice of entering payments by promissory notes as payments in cash *Held* that the variance of the case established from the case pleaded in the plaint (as to the date of the note) was not fatal to *B s* suit to enforce the promissory note in which the cardinal points to be decided where whether the debt had been paid in cash and whether the note was a forgery That the High Court in relying for the dismissal of the suit on amongst other grounds that of variance between pleading and proof had applied that principle in an abstract and unsatisfactory way which had misled them in estimating the merits of the case That the question in ultimate analysis was one of circumstances and not of law That the evidence adduced in support of the transaction having been effected on the 7th November was not necessarily perjured or fabricated when it appeared that the statements of witnesses and entries in account books might be due to *bonâ fide* mistake ABDUL RAHIMAN v GUSTADJI MUNCHERJI COOPER (1915)

20 C W N 297

15 ———————— *Inconsistent material facts in pleadings—Relief in the alternative whether may be claimed—Alternative cases how to be pleaded* Either party to a litigation may in a proper case include in his pleading two or more inconsistent sets of material facts and claim relief thereunder in the alternative but whenever such alternative cases are alleged the facts belonging to them respectively should not be mixed up but should be stated separately so as to show on what facts each alternative relief is claimed OFFICIAL ASSIGNEE OF BENGAL v BIDYASUNDARI DASI **24 C W N 145**

16 ———————— *Variance between allegations and proof* Every variance between pleading and proof is not fatal the Court must carefully consider whether the objection is one of form or of substance having in view the purpose which the rule that allegation and proof must correspond is intended to serve first to apprise the defendant distinctly and specifically of the case he is called upon to answer so that he may properly make a defence and not be taken by surprise and secondly to preserve an accurate record of the cause of action as a protection against a second proceeding founded upon the same allegations KUMAR SATISH KANTO PAL v SATISH CHANDRA CHATTAPADHYA **24 C. W N 662**

17 ———————— *Change of case at a late stage if should be permitted.* Where the plaintiff sued for recovery of certain jewels upon the allegation that the predecessors in title of the defendants had made a gift of the same to plaintiff and it was not until the appeal to the Privy Council that it was suggested the claim arose not upon gift but upon contract a case of which there was no trace in the pleadings issues evidence or judgment in India *Held* that the argument now advanced was contradictory of the case made and involved a line of attack that the defendants had no opportunity to meet while the litigation was in the lower Courts and the change of front could not be permitted at the late stage. MALRAJU LAKSHMI VENKAYYAMMA ROW v VENKATADRI APPA ROW **25 C W N 654**

PLEADINGS—*concld*

18 ———————— It is absolutely necessary that the determination in a cause should be founded upon a case either to be found in the pleadings or involved in or consistent with the case thereby made The fundamental principle that the plaintiff cannot be permitted to follow a line of attack which the defendant had no opportunity to meet is of special importance in collision cases when the accident very often happens in an entirely unexpected manner and short time W J PEES *v* JOHN YOUNG **25 C W N 519**

19 Court not to entertain a question not raised in—*Reason of the rule explained—Test* Neither party to a litigation can be allowed to set up at the hearing an entirely new and in consistent case The reason for the rule is that the plaintiff might have received no notice that the point would be raised by the defendant and would presumably be not prepared with the necessary evidence and conversely the defendant might be seriously embarrassed if the plaintiff were permitted to spring a surprise upon him in the shape of a new case The test to be applied is whether the party aggrieved has really been taken by surprise So where the plaintiff sought to eject the defendant on the ground that he was a trespasser and the defendant answered that he was a tenant at money rent but the Court determined the nature of the alleged tenancy and came to a conclusion which was not the case of either party GOVDLI BIBI *v* JOYNAL ABDIN **26 C W N 294**

PLEDGE.

See BAILMENT **I L R 37 Bom 122**

See CONTRACT ACT (IX OF 1872)—

s 103 **I L R 40 Bom 164**

s 176 **I L R 40 All. 522**

ss 178 179 **I L R 42 Bom. 205**

See PALAS OR TURNS OF WORSHIP **I L R 42 Calc 455**

See RES JUDICATA **I L R 36 Bom 189**

———— **of shares in a company—**

See COMPANY **I L R 42 Bom. 159**

POLICE

———— **custody—confession—**

See EVIDENCE ACT (I OF 1872) s 26 **I L R 42 Bom 1**

———— **powers of to forbid a certain class to enter a certain place—**

See POLICE ACT (V OF 1861) ss 31 32 **I L R 39 All. 131**

———— **powers of to require assistance from public—**

See CRIMINAL PROCEDURE CODE s 42 **I L R 42 All. 314**

———— **report to—**

See BAILABLE OFFENCE **I L R 39 Mad 1006**

POLICE ACT (V OF 1861)

See ACT OF STATE **I L R 39 Calc 615**

———— **s 15 cl. (4)—**

See PUNITIVE POLICE **I L R. 40 Calc 452**

———— **ss 17 19—**

See SPECIAL CONSTABLES **I. L R 43 Calc 277**

———— **s 29**—*Police constable—Failure to return to duty* A police constable having failed to return to duty at the expiry of casual leave was convicted and fined under s 29 of the Indian Police Act During his trial he was under suspension Subsequently he was re instated and ordered to return to duty He failed to do so *Held* that this second disobedience of orders was a separate offence entirely from that in respect of which he had been tried and convicted and that his conviction and sentence in respect thereof were legal EMPEROR *v* NUR UL HASAN **I L R. 42 All 22**

————————*Overstaying leave by a Police officer—Conviction propriety of when there was reasonable cause* The petitioner a police officer was convicted under s 29 of the Police Act for overstaying his leave His defence was that he was detained by important private business of his own and therefore could not join in time *Held* that in the circumstances of the case it could not be said that the petitioner failed without reasonable cause to report himself to duty on the expiration of his leave and the conviction should be set aside JAGADISH CH BOSE *v* THE KING EMPEROR **25 C W N 408**

———— **ss 31 32**—*Jatrawals—Competence of police to issue general order for the control of the business of Jatrawals Held* that it is not competent to a Superintendent of Police to issue a general order forbidding persons of a certain class to frequent certain specified places without having first obtained a license EMPEROR *v* KRISHNA LAL (1916) **I L R 39 All. 131**

POLICE CONSTABLE

See POLICE ACT 1861 s 29 **I L R 42 All. 22**

POLICE DIARIES

See CRIMINAL PROCEDURE CODE s 110 **4 Pat L J 7**

See POLICE REPORT

See PRIVY COUNCIL PRACTICE OF **I L R. 44 Calc 876**

———————— *Hostile Crown witness use of police diaries against—Code of Criminal Procedure (Act V of 1898) s 162—Evidence Act (I of 1872) ss 155 and 157* The police diary may be used to impeach the evidence of a hostile witness for the prosecution. Statements of witnesses made to the police should not be used to corroborate them except in very special circumstances RAMCHARITRA SINGH *v* KING EMPEROR **3 Pat L J 568**

POLICE JAGIRS

———————— *Police jagirs in the Pachit Zamindari—Liability of jagir to sale for arrears of rent—Whether successor bound by sale*

POLICE JAGIRS—*contd*

The decision of the Privy Council in the case of *Nilmoney Singha Deo v Bal ra Nath Singh* amounts to a decision that the police *jagirs* in the zamindari of Pachit are hereditary subject to the condition that it is competent to the representative of Government to dismiss the heir of the la t jagirdar and to appoint even an outsider but that the customary rule of inheritance operates until the representative of Government exercises his option Although in *Nilmoni Singh Deo v Bakra Nath Singh* the Privy Council held that a *jagir* in the *zemindari* of Pachit is not liable to be sold for arrears of rent due from a previous jagirdar yet where in fact such a *jagir* was sold in execution of a decree for arrears of rent previous to the decision of the Privy Council *held* that the entire tenure passed at such sale and the subsequent decision of the Privy Council did not affect the rights of the parties because when a sale is held the rights of the parties are fixed with reference to the state of the law at that time and any subsequent interpretation does not affect the results of that sale JADAB LAL v SRI SRI DEBI LAL SINGH 2 Pat L. J 725

POLICE OFFICER

See EXCISE OFFICER I L R 46 Calc 411

———— duties of—

See HEBEAS CORPUS I L R 44 Calc 76

———— opinion of—

See SEARCH WARRANT I L R 47 Calc 597

———— statements made to—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898)—
ss 162 288 I L R 34 Bom 599
s 162 I L R 39 Bom 58

———— *Detention in custody of suspended police officer—Legality of detention—Police Circular Order No 1159—Legality of the Circular—Calcutta Police Act (Beng IV of 1866) s 13* The Commissioner of Police has no authority in law to order the detention of a police officer on suspension as he ceases to be a police officer thereafter and the Police Circular Order No 1159 published in the *Calcutta Police Gazette* dated the 5th June 1917 empowering him to do so is illegal PRAMATHA NATH BARAT v P C LAHIRI (1919) I L R 46 Calc 581

POLICE PATIL

———— arresting the accused—

See PRACTICE I L. R 40 Bom. 220

POLICE REGULATIONS

See PROCESSION I L. R 40 Calc 470

POLICE REPORT

See COGNIZANCE I L. R 40 Calc 854

See CRIMINAL PROCEEDINGS INSTITUTION OF L. L. R 37 Calc 49

See CRIMINAL PROCEDURE CODE—
ss 4 173. 25 C W N 357
s 110 4 Pat L. J 7

POLICE REPORT—*contd*

s 190 I L R 38 Mad 1044

See FALSE INFORMATION
I L R 43 Calc 173
I L R 46 Calc 807

See SANCTION FOR PROSECUTION
I L R 41 Calc 14

See SURETY I L R 42 Calc 706
I L R 43 Calc 1094

POLICY OF INSURANCE

See INSURANCE

See LIFE INSURANCE

See TRANSFER OF PROPERTY ACT (IV OF 1882 AS AMENDED BY ACT II OF 1900) s 130 I L R 37 Bom 198

———— if creates trust—

See MARRIED WOMEN S PROPERTY ACT (III OF 1874) s 6
I L R 37 Mad. 493

POLITICAL AGENT

———— certificate of—

See CRIMINAL PROCEDURE CODE s 188
I L R 41 All. 452
I L R 42 All. 89

POLITICAL AGENT AT SIKKIM, COURT OF

———— *Execution of decree—Transfer of decree for execution—Civil Procedure Code (Act XIV of 1882) s 229A (Act V of 1908) ss 43 45* By the notifications of the 29th March 1889 and 3rd October 1907 the Governor General Council declared that s 229A of the Code of Civil Procedure of 1882 (s 45 of the Code of 1908) should apply to the Court of the Political Agent at Sikkim A decree obtained in the Court of the Political Agent at Sikkim and transferred for execution to a Court in British India could therefore be executed within the jurisdiction of that Court ZAMIL AHMED v THE MAHARAJAH OF SIKKIM (1911) L. L. R. 38 Calc 859

POLITICAL OFFICER.

———— certificate of, for trial of offence—

See CRIMINAL PROCEDURE CODE, ss 188 227 I. L. R 33 All. 514

POLITICAL RESIDENT AT ADEN

See DIVORCE ACT (IV OF 1869) s 3 (?)
L L R 37 Bom 57

POLYGAMY

See BURMESE LAW—MARRIAGE.
I. L R 39 Calc. 492

POOLBUNDI CHARGES

See EMBANKMENT I L R 41 Calc 130

POONA CANTONMENT

See CANTONMENT PROPERTY
I L. R 36 Bom 1

PORAMBOKE

See MADRAS FOREST ACT (V OF 1882)
ss 6 10 10 17
I. L R 39 Mad. 494

PORT COMMISSIONERS
—— liability of—
See Loss of Goods.
I L R 46 Calc 56

POSSESSION
See Adverse Possession
See Acquiescence
I L R 37 All. 412
See Arms Act s. 19 (f)
15 C W N 440
See Civil Procedure Code 1908 47
I L R 35 Bom 452
O XXI rr 95 96
I L R 43 Bom. 559
See Cocaine I L R 41 Calc 537
See Conscious Possession
See Counterfeit Coin
I L R 44 Calc 477
See Court Fee Act (VII of 1870)
etc I L R 38 Mad 1184
See Criminal Procedure Code s 145
I L R 34 Mad 138
See Ejectment suit for
I L R 38 Bom 240
See Fraud I L R 36 Bom 185
See Injunction I L R 38 Calc 791
See Land Revenue Code (Bom Act V of 1879) s 65 66
I L R 39 Bom 494
See Lessor and Lessee
I L R 39 Mad 1042
See Mahomedan Law—Dower
I L R 38 Calc 475
See Mahomedan Law—Endowment
I L R 47 Calc 866
See Mahomedan Law—Gift
I L R 34 All 465
See Opium I L R 45 Calc 820
I L R 37 Calc 24
See Petroleum Act ss 11 15
I L R 40 Calc 356
See Possessory Suit
I L R 41 All 108
See Receiver I L R 47 Calc 418
See Sale I L R 41 Calc 148
See Specific Relief Act s 9
15 C W N 294
I L R 33 All 647
See Title I L R 41 Calc 394
See Transfer of Property Act (IV of 1882) 4 and 54
I L R 38 Mad 1158

—— by agent—
See Limitation Act (XV of 1877) Arts 142 and 144 I L R 35 Bom 79

—— by person claiming as trustee—
See Adverse Possession
I L R 37 Mad. 373

—— by servant—
See Arms I L R 41 Calc. 11

POSSESSION—*contd*

—— by widow—
See Hindu Law—Maintenance
I L R 38 Mad. 153

—— change of—
See Pre emption I L R 44 Calc 675

—— confirmation—
See Survey Act ss 41 62
14 C W N 366

—— Decree for partition—
See Adverse possession
I L R 45 Bom 943

—— Decree by Mamlatdar for—
See Limitation Act (IX of 1908) Art 47 I L R 45 Bom 1135

—— delivery of—
See Transfer of Property Act 1882 s 54 I L R 34 Bom 139

—— delivery of in execution—
See Civil Procedure Code (Act V of 1908) s 47 O XXI rr 100 101
I L R 40 Mad 964

—— length of—
See Municipal Council
I L R 38 Mad. 6

—— non delivery of—
See Landlord and Tenant
I L R 46 Calc 956

—— presumption arising from—
See Lakheraj Lands
I L R 45 Calc 574

—— protection of former possession as against Trespasser—
See Tree Patta I L R 36 Mad. 148

—— recovery of—
See Transfer of Property Act (IV of 1882) s 54 I L R 39 Bom 472
See Tree Patta I L R 36 Mad. 148

—— right to—
See Hindu Law—Endowment
L R 46 I A. 204

—— Right of Khot to forfeit occupancy rights—
See Khoti Settlement Act (Bom Act I of 1880) ss 9 and 10
I L R 44 Bom. 267

—— suit for—
See Chaukidari Chakaran Lands
I L R 45 Calc. 685
I L R 46 Calc. 173
See Ex parte Decree
I L R 45 Calc. 920
See Ghatwali Tenures
I L R 41 Calc. 812
See Hindu Law—Guardian
I L R 38 Mad. 1125
See Limitation I L R 41 Calc. 52
I L R 43 Calc. 34
I L R 46 Calc. 694

POSSESSION—*contd*

———— suit for—*contd*

See LIMITATION ACT 1877 SCH II ART 142 AND 144 I L R 35 Bom 79

SCH II ART 91 I. L. R 38 Mad. 321

See LIMITATION ACT 1908—

Sch I Art 47
I. L R 45 Bom 1135

Sch I Arts 142 144
I L R 39 Bom 335

See MESNE PROFITS I. L R 40 Calc 53

———— transfer of—

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 40 I L R 40 Bom 498

———— writ of—

See BAILIFF I L R 42 Calc 313

1 ———— Nature of necessary to prove lost grant or title by adverse possession—*Madras Forest Act (V of 1882) ss 3 16 25—Notification under s 25 of reservation made before the Act extinguishes all rights existing at time of reservation* Whether enjoyment is set up as the basis of a title by prescription or as evidence on which a lost grant should be presumed the same characteristics will be necessary Acts done on parts of a tract of land will only be evidence of possession of the whole where the said tract of land possesses a denned boundary *Sivasubramanya* v *Secretary of State for India I L R 9 Mad 285 at pp 304 and 305* referred to The intention of the legislature in enacting s 25 of the Madras Forest Act *is to place all forests* reserved by executive order prior to the introduction of the Act on precisely the same *footing* as reserves subsequently constituted in accordance with the provisions of the Act *The intention* was that the notification under s 25 should operate in exactly the same manner as one under s 16 to which s 17 is a mere corollary The further inquiry provided for in s 25 is purely discretionary with Government Where a reservation made prior to the Act is notified under s 25 of the Act such notification extinguishes any right existing at the time of reservation whether the lands were within s 3 of the Act at the disposal of Government or not at the time of reservation Where the reservation is made under s 16 the section provides a mode of redress to the party while s 25 gives none as the further inquiry provided therein is merely discretionary with the Government SUBRAMANIA PILLAI v THE SECRETARY OF STATE FOR INDIA (1910)
I L R 34 Mad 353

2 ———— Suit for by proprietor of undivided half share—*Nature of decree plaintiff entitled to—Proprietor of undivided half share if can eject any one on the land from the whole of it* The plaintiff brought a suit for recovery of possession of a plot of land to the extent of an eight annas share the plaintiff being the proprietor to the *extent of eight annas and defendants Nos 5 and 6* proprietors to the extent of the other eight annas. Defendants Nos 1 to 3 were tenants of the land recognised by defendants Nos 5 and 6 The plaintiff asked for joint possession with defendants Nos 1 to 3 *If joint possession with defendants* Nos 5 and 6 could not be granted *Held* that all that the plaintiff could ask for was joint possession of an eight annas share He could not in this suit ask the Court to decide who was entitled to possession of the other eight annas share of *the land* with which he had no concern *That* a person entitled to an undivided half share of the land cannot sue to eject anybody from the whole of it and the defendants Nos 1 to 3 who had been recognised as tenants by the co sharer land lords could not be ejected by the plaintiff from the whole of the land That the plaintiff was entitled to a decree against all the defendants for recovery of joint possession of an eight annas *share* of the disputed property and he was *entitled* to enforce the right by a suit for partition if *he* was not satisfied with the delivery of possession of an undivided half share GAJADHAR AHIR v BHIKARI LAL (1914) 18 C W N 1011

3 ———— Tenants in common—*Presumption—Possession of one co owner the possession of all* Possession of one co owner is in law the possession of all the co owners and nothing short of ouster or something equivalent to ouster *will* put an end to that possession Where a co owner in possession did not deny the title of the other co owners till shortly before the institution of the suit and never laid claim to more than his share it was presumed that the co-owner in possession was in possession on his own behalf and as well as on behalf of his co owner *Corea* v *Appuhamy [1912] A C 230* followed *Jafar Husain* v *Mashuq Ali I L R 14 All 193* and *Jogendra Nath Rai* v *Baladeo Das I L R 35 Calc 961* referred to AHMAD RAZA KHAN v RAM LAL (1914) I L R 37 All. 203

3a ———— *Suit to recover possession of land from an alleged licensee—Act No IX of 1908 (Limitation Act) Sch I Art 144—Defence of title by adverse possession—Burden of proof* The plaintiff who was the zamindar sued to eject the defendant from certain land within the ambit of the plaintiff s zamindari alleging that the defendant was in possession merely as a licensee The defendant *denied* that he was a licensee and claimed that he had acquired a *title to the land in suit by adverse* possession *The defendant however* failed to prove that he had been in adverse possession of the land *for more* than twelve years *Held* that the plaintiff was entitled to succeed simply on the strength of his *primâ facie title as zamindar* It was not necessary for him *to go further* and prove that he had been in actual possession at some period within twelve years previous to the commencement of the suit *In* cases to which Art 144 of the *first schedule* to the Indian Limitation Act 1908 applies the defence being a title acquired by adverse possession for more than twelve years it is not necessary for the plaintiff as in cases failing under Art 142 to prove that he has been in possession at a period within twelve years from the commencement of the suit it is sufficient if he establishes a *primâ facie* title and it is then for the defendant to make good his plea of adverse possession JAI CHAND BAHADUR v GIRWAR SINGH
I. L. R 41 All 669

4. ———— Possession and title—suit to establish—*Whether suit for mere declaration—Maintainability—Whether catching fish in a stream let amounts to dispossession* Where the plaintiffs in a suit establish their title to a village and also that they have been in possession of it and of a

POSSESSION—*contd*

streamlet which lies within it but that the plaint iff's possession has been disturbed inasmuch as the defendants people have caught fish in it *Held* that under such circumstances the plaintiffs suit for a mere declaration is maintainable Even if the defendants are found to have granted the right to catch fish in the streamlet to other persons not parties to the suit that act would not amount even to disturbance of possession still less to dis possession nor would the fact that some persons have at times caught fish in the streamlet show that the plaintiffs have been dispossessed At most the *catching of fish in the streamlet would* be a disturbance of possession SAHDEO LAL v BHAGAT r KESHO MOHAN THAKUR (1916)
20 C W N 1274

5 ———— **Suit for recovery of, by pur chaser at sale of land**—*Defendant if can set up occupancy right after suffering it by conduct to merge in tenure right* The plaintiffs brought a suit in 1909 to recover possession of land purchased at a sale in execution of a decree in 1893 After the sale the land remained vacant for ten years from 1895 and the defendants took possession in 1905 The plaintiffs case was that the defend ants were in occupation after the sale without any right or title the defence was that the plaint iffs purchased their right *as tenure holders only* and the defendants had also the occupancy right *Held* the defendants not having kept alive and distinct the two interests which they possessed but having by conduct treated the occupancy right as no longer existent could not turn round and set up the latter right to the detriment of the execution purchaser That the plaintiffs cau e of action dated back to 1905 when the defendants took possession and the suit was not barred by limitation PROMOTHA NATH ROY v KISHORE LAL SHAHA (1916) **21 C W N 304**

6 ———— **Suit for recovery of Reversal by Appellate Court on ground of limitation**—*necessary findings in—Entry in record of rights presumption of possession arising from—Onus on defendant to prove plaintiffs dispossession—Judgment of Criminal Court in proceeding under s 145 Cr P C evidentiary value of—Statement of witnesses examined before Criminal Court but not in the suit if admissible—Previous statements in the Criminal Court of witnesses examined in the suit proper use of—Decision of Appellate Court as to admissibility of a document solely on opinion of the Criminal Court in s 145 proceeding propriety of* The plaintiff sued for declaration of his title and recovery of possession In a record of rights published in 1896 the plaintiff was recorded as an occupancy raiyat of the land in suit By an order of the Magistrate under s 145 Cr P C dated the 27th September 1909 the defendants were declared to be in po session thereof The plaintiff s case was that he was dispossessed on the 1 th December 1909 The suit was brought on the 19th March 1910 The Munsif decreed the plaintiff's suit finding that he had been in posse ion within 12 years of the date of the s it The District Judge in appeal without finding the date of the plaintiff s dispossession hel l that *the suit was barred by* limitation *Held* that it was necessary for the District Judge to find when the plaintiff was dispossessed He must also clearly find under what law the plaintiff s suit was barred and whether the facts necessary for applying that law have been e tablished That in a suit for ejectment the plaintiff has to prove his possession within the statutory period but in the present case the record of rights raised a presumption in the plaintiff's favour and shifted the onus on the defendants to establish affirmatively that the plaintiff had been out of possession for more than the statutory period That although the judgment of the Criminal Court in the case under s 145 Cr P C was evidence of possession the statements of witnesses who were not examined in the present suit were wholly inadmissible That if it was sought to use the previous statements of such witnesses as were examined in the present suit then those statement must first be put to the witnesses and duly proved before they could be treated as evidence BARKAT ALI v BASANT NUNIA (1915) **21 C W N 175**

7 ———— **Involving boundary dispute**—*Onus of proof when one party in possession under order under s 145 Criminal Procedure Code Act V of 1898* The plaintiff sued for declaration of title and possession of certain lands lying on the boundary between their mau a and that of the defendants It appeared that the d fendants were in posse sion for some years previous to the suit by virtue of an order of the Criminal Court under s 145 Criminal Procedure Code *Held that regard being had to the decision of the Privy Council in Dinamani Chowdhurani v Brojo Mohini Chowdhurani L R 29 I A 24 s c I L R 29 Calc 187 6 C W N 386* it seems clear that the principle stated in *Lukhi Narain Jagadeb v Maharaja Jadu Nath Deo L R 21 I A 39 s c I L R 21 Calc 981* [as to the shifting of onus from the plaintiff to the defendant in cases where scientific accuracy regarding boundaries cannot be attained and especially in ca es where the disputed line of division runs be ween waste lands which have not been the subject of definite possession] must yield to the circumstances of the present case and the onus was on the plaintiff to show that the persons in possession under the order of the Magistrate had no right to possession MANINDRA CHANDRA NANDI v SARADINDU ROY (1918) **23 C W N 593**

8 ———— **Resistance to delivery of pos session to decree holder**—*Claim to be in poss ssion of the property as a tenant under the judgment debtor—Sub tenant—Civil Procedure Code 1908 O XXI rr 97 99—Parties* On the 7th July 1919 the plaintiff instituted a suit against his lessee for the recovery of possession of certain premises upon the determination of the term by forfeiture for breach of conditions in the lease In that suit the plaintiff did not join as def ndant the respondent who was admittedly in posses sion of the said premises as under tenant of the lessee On the 18th December 1919 an ord r was made for the recovery of posse ion in the said suit by which the lessee was given time until the 29th February 1920 to make over possession This not being done an order dat d the 12th March 1920 was obtained by the plaintiff directing the Sheriff to put him into pos ession The Sheriff on the 8th April 1920 was obstructed in the execution of this order by the respondent and the plaintiff thereupon made this application before the sitting Judge in Chambers complaining of such obstruction under O XXI r 97 The re pond nt was summoned to appear to answer the said complaint *Held* that the application

POSSESSION—*contd*

must be dismissed and the plaintiff must be left to his remedy by suit against the respondent An action for possession based upon forfeiture of a term should for practical reasons be brought against all persons in possession (including con structive possession) at the date of the suit not that the suit is necessarily defective otherwise but because the decree will be difficult to enforce under the Code D E D J EZRA *v* J E GUBBAY (1920) **I L R 47 Calc 907**

9 ———— **Onus probandi**—*conflicting evi dence as to title—Presumption from possession* It is only when the evidence of possession is strong on both sides and is equally balanced that the presumption that possession goes with title should prevail This principle does not apply to cases in which the evidence is equally unworthy of credit on both sides except in respect of land of a special character such as waste or jungle lands or lands under water Arable land is not land of a special character FAKIR LALL SAHU *v* MUNSHI RAMCHARAN LAL

1 Pat. L J 146

10 ———— **Trespasser suit against**—*by person in possession* Previous possession even for a period short of the statutory period of 12 years entitles a plaintiff to a decree for possession in a suit against a trespasser SAHODRA KUER *v* GOBARDHAN TEWARI **2 Pat L J 280**

11 ———————— **When follows title**—*Suit by auction purchaser against person claiming adversely to judgment debtor—Limitation Act (IX of 1908) Arts 138 137 and 142* In suits for recovery of possession of land where no evidence of possession within twelve years prior to the institution of the suit has been given or where the evidence tendered is so un atisfactory and weak on both sides as to leave the Court un able to determine which of the litigating parties is entitled to possession the legal presumption that possession follows title may be resorted to Art 138 of the Limitation Act 1908 does not apply to a suit against a person claiming title by posses sion adverse to the judgment debtor BHIKHAD BHUNJAN NARAIN TEWARI *v* UPENDRA NATH ROY **4 Pat. L J 463**

12 ———————— The plaintiffs were the owners of a miras tenure and under them was a darmiras tenure held by the defendants This under tenure was sold in execution of a rent decree and purchased by a third party who never obtained possession and in execution of a rent decree obtained against the latter the under tenure was again sold more than twelve years after and purchased by the plaintiffs who used for possession Per Walmsley J (Woodroffe and Subrawardy JJ contra) —That Art 137 of the Limitation Act applied to the case and the suit was barred Per Suhrawardy J —Art 140 or Art 144 applied to the case Per Woodroffe J (to whom the case was referred under sec 98 C P C)—That none of the articles of the Limitation Act applied to the case but the suit was barred under sec 167 of the Bengal Tenancy Act Where a rent decree has been properly obtained the tenure itself passes to the purchaser and not the right title and interest of the judgment debtor only and the rights of the purchaser must be deter mined by the provisions of the Bengal Tenancy Act under sec 158B and sec 1 9 The plain tiffs by their purchase acquired the under tenure with power to annul encumbrances and the interest acquired by the defendants by adverse possession against the recorded tenants of which the plaintiffs were aware was an encumbrance which the plaintiffs could have and should have annulled under sec 167 Bengal Tenancy Act within one year and not having done so their right to recover possession was lost The word encumbrance as used in secs 159 and 161 of the Bengal Tenancy Act includes a statutory title acquired by a trespasser or by adverse possession JANANENDRA MOHON DUTT *v* UMESH CHANDRA GUHA **26 C W. N 985**

POSSESSION—*contd*

POSSESSION BY FRAUD

See SHARES **I L R 46 Calc 331**

POSSESSORY RIGHT

See POSSESSION

———— **protection of, as against tres passers**—

See TREL PATTA **I L R 36 Mad. 148**

POSSESSORY SUIT

See MAMLATDAR S COURTS ACT (BOM. II OF 1906)—

ss 19 23 **I L R 35 Bom 487**

s 23 **I L R 36 Bom 123**
I L R 39 Bom 552

See SPECIFIC RELIEF ACT (I OF 1877)
s 9 **I L R 41 All 108**

———————— *Specific Relief Act (I of 1877) s 9—Second appeal—Civil Procedure Code (Act V of 1908) s 102—Review* Where in a suit under s 9 of the Specific Relief Act judg ment was purported to be passed against five defendants but the decree was drawn up against one defendant only who alone contested the suit and the decree holder applied for execution against all the defendants the Court dismissed the appli cation on the ground that decree was against one defendant only on appeal the District Judge allowed execution to proceed against all the defend ants but on a subsequent application for review he discharged his original order on the ground of juri diction under s 9 of the Specific Relief Act *Held* that an application in execution proceedings was included in the term suit in s 9 of the Specific Relief Act and an appeal to the District Judge from an order of the Court of first instance was incompetent and the application for review equally so *Thomas Souza v Gulam Moidin Beari I L R 26 Mad 438 Motfu Ali v Brij Nand Kurat (1915) I L R 45 Anund Chunder Roy v Sidhy Gopal Misser 8 W R 117 Gora Chand Misser v Baylanto Narayan Singh 12 B L R 261 Din Dayal v Patrokhan I L R 18 All 481 Narayan Parmanand v Nagindas Bhaida I L R 30 Bom 113 Marula Ammal v Marula Maracoir I L R 30 Mad 217 Shyama Charan Mitter v Debendra Nath Mukerjee I L R 27 Calc 484 Minakshi Naidu v Subramanya Sastri I L R 11 Mad 26 L R 14 I A 160 Sasi Bhusan Mookerjee v Radha Nath Bose 20 C L J 433* and *Profulla Krishna Deb v Nasibannesa I L R 21 C L J 331* referred to KANAI LAL GHOSE *v* JATINDRA NATH CHANDRA (1917)

I. L. R 45 Calc. 519

POSSESSORY TITLE

See ESTOPPEL I L R 34 All 538

See HINDU LAW (SUCCESSION)
I L R 1 Lah 588

See SPECIFIC RELIEF ACT (I OF 1877) s 9 I L R 36 All 51

See TITLE I L R 41 Calc 394

POST-NUPTIAL GIFTS

See HINDU LAW—GIFT
I L R 37 Calc 1

POST OFFICE ACT (VI OF 1898)

———— ss 19 61 70—*Offence—Cocaine—Transmission of by post* Held that cocaine is not a substance which falls within the purview of s 19 of the Indian Post Office Act 1898 and it is not an offence under that Act to transmit the same by post EMPEROR v ISMAIL KHAN (1915)
I L R 37 All 289

———— ss 35 64, 74—*Rules framed under Act infringement of falls within s 63—General power to frame rules conferred by s 74 cl (1) not confined to such rules as are contemplated by s 74 cl. 2* Rules framed by the Governor General in Council under s 74 cl. (1) of the Post Office Act regarding the declaration in the case of articles sent by value payable post form part of the Act under s 74 (3) and infringement of such rules is punishable under s 64. S 35 also enables the Governor General in Council to make such rules The general power to make rules conferred by s 74 cl. (1) is not confined to making such rules as are contemplated by cl 2 THE CROWN PROSECUTOR v KOTHANDARAMIAH (1910)
I L R 33 Mad. 511

POSTING OF A DEMAND DRAFT

See SALE OF GOODS
I L R 42 Bom 16

POSTPONEMENT

See CROSS EXAMINATION
I L R 41 Calc 299

POUNDAGE

———— **Sheriff's right to poundage** The Sheriff is only entitled to poundage on sums levied so where a seizure is wrongful and is withdrawn by direction of law the Sheriff receives no poundage *Mortimore* v *Cragg 3 C P D 216 In re Ludmore 13 Q B D 415* and *In re Thoma* [1895] 1 Q B 460 followed BRIJRATAN v JAYNARAIN (1910) I L R 37 Calc 649

POWER OF ATTORNEY

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XLV RR 15 16 ETC
I L R 38 Mad 832

See COMPLAINT I L R 42 Calc 19

See ESTOPPEL 2 Pat L J 600

See MALABAR TARWAD
I L R 39 Mad. 918

See OATHS ACT (X OF 1873) ss 8 9 10
I L R 38 All. 131

See PRINCIPAL AND AGENT
I L R 43 Calc 527

POWER OF ATTORNEY—*contd*

See REGISTRATION ACT (III OF 1877) s 32 25 C W N 73

s 33 I L R 32 All. 179

See STAMP ACT (II OF 1899) ss 2 (21) AND 60 SCH I ART 48 (g)
I L R 33 All. 487

See VAKALATNAMA
I L R 43 Calc 884

———— **construction of—**

See LETTERS OF ADMINISTRATION
I L R 40 Calc 74

———— **Amendment of**—*Omission of name of mukhtiar in the power by mistake—Amendment of mistake by Court by allowing fresh power to be filed—Inherent jurisdiction of Court to allow amendment of mistake—Effect of amendment as to limitation—Civil Procedure Code (Act V of 1908) ss 36 37—Rules and Circular Orders Ch XI Art 34* Where there is no doubt as to the fact that the *mukhtiar* who filed an application for execution had in fact authority from the decree holder to do so and that his name was omitted by mistake from the power of attorney the Court may in its discretion allow the power to be amended upon proper application by the decree holder for the insertion of the name of the attorney If such amendment is allowed it takes effect from the date when the power of attorney was originally filed CHHAYEMANNESSA BIBI v BASIRAR RAHMAN (1910) I L R 37 Calc 399

———— **Construction of general power-of-attorney**—*What is a—Civil Procedure Code (Act XIV of 1882) s 37 (a)—Stamp Act (II of 1889) Sch I Art 48—Single transaction meaning of* A power of attorney which authorises a person to do all things and take all steps necessary to complete the execution of a decree is a general power of attorney within the meaning of s 37 (a) of the Civil Procedure Code (Act XIV of 1882) *Semble* The expression a single transaction in the Stamp Act (II of 1889) Sch I Art 48 applies to a single act or acts so related to each other as to form one judicial transaction VENKATARAMANA IYER v NARASINGA RAO (1914)
I L R 38 Mad. 134

———— **Construction—Whether special or general**—*Agent's authorisation extending to all acts for one particular purpose—Civil Procedure Code (Act V of 1908) O III r 2 (a) High Court R III under s 122 of the Civil Procedure Code (Act V of 1908)* A power of attorney was issued in plaintiff's favour in the following terms

Accordingly I have become owner of the said mortgage bond Out of the principal and interest due to me in respect of the said mortgage bond nothing has been paid to me As the time in respect of it is about to expire and it is necessary for me to go to my native place I have constituted and appointed the above named person my true and lawful attorney in the matter to recover all moneys due to me in respect of the principal and interest of the aforesaid mortgage bond by suing on my behalf in a civil Court or by coming to an amicable settlement and to pass receipts for me and on my behalf to sue and to receive process and to do all such acts in this one matter as I if present would have done or could have done or would have been permitted to do or would have been called upon

POWER-OF-ATTORNEY—*concld*

to do The question being raised whether the power of attorney was a general power of attorney within the meaning of r III of the rules made by the High Court under s 122 of the Civil Pro cedure Code 1908 or a special power of attorney *Held* that the power was a special power of attorney inasmuch as the agent s authorisation extended not to any class of business or employ ment but was restricted to the doing of all neces sary acts in the accomplishment of one particular purpose *Charles Palmer* v *Sorabji Jamshedji* (*1886*) *P J 63* applied *Venkataramana Iyer* v *Narasinga Rao I L R 38 Mad 134* not followed VAPDAJI KASTURJI v CHANDPAPPA (1916) **I L R 41 Bom 40**

PRACTICE

See ACQUITTAL **I L R 38 Calc 786**
I L R 42 Calc 612
I L R 44 Calc 703

See ADMINISTRATION SUIT
I L R 34 Bom 420
I L R 44 Calc 890

See ADOPTION **I L R 37 Calc 860**
I L R 32 All 104

See AFFIDAVIT **I L R 37 Calc 259**

See AMENDMENT OF PLAINT
I L R 45 Calc 305

See APPEAL **I L R 38 Calc 397**
I L R 42 Calc 374 433
I L R 43 Calc 833

See ARBITRATION
I L R 45 Bom 1071

See ASSESSORS EXAMINATION OF
I L R 40 Calc 163

See ATTACHMENT **I L R 40 Calc 105**

See ATTORNEY **I L R 43 Calc 932**

See ATTORNEY AND CLIENT
I L R 40 Calc 386

See AWARD **I L R 47 Calc 806**

See BAILIFF **I L R 42 Calc 313**

See BARRISTER **I L R 44 Calc 741**

See BOMBAY CITY MUNICIPAL ACT (BOM ACT III OF 1888) ss 140 (c) 143 (1) (a) AND (2) (d)
I L R 43 Bom 281

See BOMBAY HIGH COURT RULES
I L R 36 Bom 418

See BOMBAY LAND REVENUE ACT 1879 s 68 **I L R 45 Bom 920**

See BOMBAY REGULATION II OF 18— s. 52 **I L R 37 Bom 303**

See BOMBAY REVENUE JURISDICTION ACT 1876 s 12 **I L R 45 Bom 1177**

See BOOK OF REFERENCE
I L R 40 Calc 898

See CHARGE **I L R 40 Calc 168**

See CHARGE CANCELLATION OF
I L R 39 Calc 885

See CIVIL PROCEDURE CODE 188—
ss 27[illegible] 3[illegible]0 3 [illegible]
I L R 35 Bom 516

PRACTICE—*contd*

ss 324A 272, 285
I L R 36 Bom 519

s 539 **I L R 35 Bom 470**

See CIVIL PROCEDURE CODE 1908—

s 10 **I L R 44 Bom 283**

ss 47 AND 104
I L R 44 Bom 472

s 92 **I L R 40 Bom 439**

ss 96 100 **I L R 36 Bom 360**

s 97 **I L R 36 Bom 536**
I L R 37 Bom 480
I L R 38 Bom 331
I L R 45 Bom 627

s 109 (c) **I L R 37 All 124**

s 115 **I L R 45 Bom 832**

O V R 5 **I L R 38 Bom 377**

O V RR 15 23
I L R 33 All 649

O VII RR 14 AND 18
I L R 44 Bom 625

O VIII RR. 3 4 5
I L R 41 Bom 89

O XXI R 1 **I L R 35 Bom 35**

O XXI R 16 **5 Pat. L J 390**

O XXI R 35
I L R 34 All. 150

O XXI R. 60
I L R 44 Bom 860

O XXII R. 10
I L R 39 Bom 568

O XXV R. 1 AND O XXXIII R 1
I L R 36 Bom 415

O XLI R 22
I L R 34 All 140

O XLVII R 1
I L R 38 Bom 416

O XLVIII R 9
I L R 33 All 280

SCH II PARA 12
I L R 45 Bom 512

See COGNIZANCE **I L R 40 Calc 854**

See COMMISSION AGENT
I L R 45 Calc 138

See COMPANIES ACT (VII OF 1913) s. 38
I L R 41 Bom 76

See COMPANY
I L R 47 Calc 620 901

See COMPLAINT **I L R 41 Calc 1013**

See CONSOLIDATION OF APPEAL
I L R 43 Calc 95

See CONTEMPT OF COURT
15 C W N 771
I L R 42 Calc. 1169

See CONTRACT ACT 18[illegible] ss 1[illegible] AND [illegible]
4 Pat. L J 563

PRACTICE—*contd*

See MORTGAGE I L R 37 Calc 907
I L R 38 Mad. 18

See MUKHTEAR I L R 38 Calc 488

See MUNICIPAL ELECTION
I L R 39 Calc 754
I L R 46 Calc 119

See MUNICIPALITY I L R 34 All. 649

See NEW TRIAL APPLICATION FOR
I L R 47 Calc 763

See PARTIES I L R 46 Calc 48

See PERJURY I L R 42 Calc 240
I L R 43 Calc 542

See PLAINT I L R 43 Calc 441

See PLEADER S FEE
I L R 41 Calc 637

See PRE EMPTION
I L R 36 All. 476 514

See PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882) ss 9 AND 38
I L R 38 Mad. 823

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909) s 25
I L R 35 Bom 47

See PRIVY COUNCIL
I L R 40 All. 497
I L R 34 All 57

See PROBATE I L R 37 Calc 224
I L R 39 Calc 245

See PROFESSIONAL MISCONDUCT
I L R 41 Calc. 113

See PROVINCIAL INSOLVENCY ACT (III OF 1907)—

s 15 I L R 32 All. 645

ss 15 TO 22 46 52
I L R 38 Mad 15

See PUBLIC PROSECUTOR
I L R 41 Calc 425
I L R 42 Calc 422

See RECEIVER I L R 46 Calc 352

See RECORDS POWER TO CALL FOR
I L R 43 Calc 239

See REFUND OF COURT FEE
I L R 40 Calc 365

See REMAND I L R 43 Calc 1104
I L R 46 Calc 738

See REVIEW I L R 45 Calc 60
I L R 38 Calc. 828

See REVISION I L R 43 Calc 903

See SANCTION FOR PROSECUTION
I L R 44 Calc 816
I L R 40 Calc 423

See SECURITY OF GOOD BEHAVIOUR
I L R 41 Calc 806

See SOLICITOR'S LIEN FOR COSTS
I L R 34 Bom. 484
I L R 43 Calc 676

See SPECIFIC RELIEF ACT (I OF 1877)—
s 9 I L R 40 All 637

See STAY OF EXECUTION
I L R 48 Calc 796

See SUMMONS SERVICE OF
I L R 43 Calc. 447

See TITLE SUIT FOR DECLARATION OF
I L R 38 All. 440

See TRANSFER OF APPEAL
I L R 40 Calc 259
3 Pat L J 218

See TRANSFER OF PROPERTY ACT
s 52 I L R 37 Bom 427
s 107 I L R 36 Bom 500

See VAKALATNAMA
I L R 43 Calc 884

See VALUATION OF SUIT
I L R 43 Calc 225

See WARRANT I L R 38 Calc 789

See WIFE S COSTS I L R 44 Calc 35

See WINDING UP PETITION
I L R 34 Bom 533

See WITHDRAWAL OF SUIT
I L R 44 Calc 454

See WRITTEN STATEMENT
I L R 42 Calc 957

——— Assignment of decree—notice—adjournment (whether Court bound to grant)—

See CIVIL PROCEDURE CODE (1908) O XXI R. 16 5 Pat L J 390

——— appeal Presentation of out of time—

See LIMITATION ACT 1908 SCH. I ART 152 I L R 43 Bom 376

——— as to mode of proof—

See EVIDENCE ACT (I OF 1872) ss. 4 90
I L R 37 Mad. 455

——— award of Court—

See ANCIENT MONUMENTS PRESERVATION ACT (VII OF 1904) ss 10 21
I L R 42 Bom. 100

——— deaf and dumb accused—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 341
I L R 40 Bom 598

——— delay in filing process fees—

See LIMITATION 1 Pat. L J 173

——— appointment of guardian—Court's power to pass order regarding marriage pending appointment—

See GUARDIANS AND WARDS ACT (VIII OF 1890) ss 12 43 AND 47
I L R 44 Bom. 690

——— Order in personam against a party residing out of the Court s jurisdiction—

See CIVIL PROCEDURE CODE (1908) s. 10.
I L R 44 Bom. 293

——— documents relied on by plaintiff should be produced in Court along with the plaint—

See CIVIL PROCEDURE CODE, 1908 O VII R. 14 I L R. 44 Bom. 625

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———— Insolvency—Appearance of the insolvent to obtain a final order of discharge—

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909) ss. 38 (*b*) AND 52 (2) (*a*)
I L R 44 Bom 555

———— Interest on overdraft—Implied contract to pay—

See BANKERS I L R 44 Bom 474

———— Joint possession—Suit for recovery of—

See CIVIL PROCEDURE CODE 1908 O XXI r 35 I L R 34 All 150

———— Execution of decree—Second Appeal—

See CIVIL PROCEDURE CODE 1908 ss 47 AND 104 (2) O XXI R 89
I L R 44 Bom 472

———— Parties to appeal—

See CIVIL PROCEDURE CODE 1908 O XLI R 60 I L R 44 Bom 860

———— Publication of proceedings in pending cases—

See CONTEMPT OF COURT
I L R 44 Bom 443

———— Right to worship in a temple and to carry processions through public streets suit whether of a civil nature—

See CIVIL PROCEDURE CODE 1908 s 9
I L R 44 Bom 410

———— Revision—Whether application should be to Sessions or District Judge—

See CRIMINAL PROCEDURE CODE 43
I L R 43 All 497

———— Suit against a Receiver—application for leave—amendment of plaint—

See HIGH COURT I L R 44 Bom 903

———— suit for possession—Conversion to suit for *redemption*—

See CIVIL PROCEDURE CODE 1908 O VI R 17 I L R 44 Bom 515

———— Commissioners appointed by Court to examine arbitration award—

See CIVIL PROCEDURE CODE 1908 SCH II PARA 15 ( ) AND (*c*)
I L R 45 Bom 512

———— Third party proceedings (Summons for directions)—

See LETTERS PATENT 186 CL 1
I L R 45 Bom 428

———— Filing objections to arbitration award—

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 115 SCH II PARA 16
I L R 45 Bom 832

———— Summary eviction for Breach of condition of the grant—

See BOMBAY LAND REVENUE CODE (BOM ACT V OF 1879) s 79A
I L R 45 Bom. 920

———— Reference to High Court under Bombay Revenue Jurisdiction Act—Taxation of Costs—Power of High Court to give direction as to how costs should be taxed—

See BOMBAY REVENUE JURISDICTION ACT (X OF 1876) s 12
I L R 45 Bom. 1177

———— Minor—Purchase from—

See PARTITION SUIT
I L R 45 Bom 983

———— Reference to arbitration after suit without intervention of Court—

See CIVIL PROCEDURE CODE 1908 O XXIII R 3 O VIII RR 8 AND 9 AND SCH II PARAS 1 TO 17 20 AND 21
I L R 45 Bom 245

———— Claim by a Parsi wife for Costs—

See PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882)
I L R 45 Bom 318

———— Consent order for extension of time—

See ARBITRATION
I L R 45 Bom 1071

———— Decree—Application to set aside sale by Collector—

See BOMBAY HIGH COURT CIVIL CIRCULARS P 10C R 17
I L R 45 Bom 1132

———— Inherent powers of Court to readmit appeals—

See CIVIL PROCEDURE CODE 1908 s 151 AND O XLI R 19
I L R 45 Bom 648

———— Mistake—Discovery of—when first Court s decree was passed—

See LIMITATION ACT 1908 SCH I ART 96 I L R 45 Bom 582

———— Preliminary issue—

See CIVIL PROCEDURE CODE 1908 ss 9 AND 2 I L R 45 Bom 627

———— Summons case—Magistrate to examine accused—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 34
I L R 45 Bom 672

———— Trial of an offence with the aid of assessors—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 38
I L R 45 Bom. 619

1 ———— **Analogous appeals** Two analogous app al wer p f rre l ag in t the d ci i ns of th Sul rdinate Ju d e and the D trict Judge r pect v ly In remanding the ca the High C t d rected both cases to be tried by the District Judge MAFIZUDDIN SARDAR *v* ASUTOSH CHUKERBUTTY (1910) 14 C W N 352

2. ———— **Arbitration**—*Ord r of Judge re fus ng to d c de whether a b trators are go g beyo d sc pe of their a thor ty—Judg ent—Appeal—Con str ct on f sul m ss on to arb trat on—Insurance aga n t fire—L ab l ty of Compa y for further loss —Lett rs Patent 1865 cl 15* The fact that a

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petition by nineteen different Companies was not signed by all the nineteen Companies and that the appeal from the order of the Judge dismissing the petition was by but one of the nineteen Companies and the other Companies were not parties to it would have required serious consideration if the Court had to revoke the submission to arbitration but when the order which the Court passes is only an intimation to the arbitrators of its opinion on the question of their jurisdiction it is immaterial whether all or some of the Companies are formally parties to the proceedings in appeal As to the objection that even so far as the petition is by one Company it is signed by one of its officers without any authorisation as required by law the defect is a mere irregularity which can be cured if necessary by the Company putting in a power of attorney showing the authority given to a signatory ATLAS ASSURANCE COMPANY LD *v* AHMEDBHOY HABIBHOY (1908) **I L R 34 Bom 1**

3 ———— **Compromise**—*Court—Inherent powers—Compromise assented to by pleader not specially authorised in that behalf—Decree in terms of compromise—Decree set aside* In the course of a suit a compromise was presented which was signed by the defendants pleader who was not specially authorised in that behalf The Court passed a decree in terms of the compromise The defendant then applied to the Court to set aside the decree on the ground that he did not engage the pleader and that he had not authorised the pleader to compromise the suit The Court set aside the decree and set down the suit for hearing *Held* that it is the inherent power of every Court to correct its own proceedings where it has been misled *Held* also that under the circumstances the compromise was not binding upon the defendant and the decree passed upon it was void as to him BASANGOWDA *v* CHURCHIGIRIGOWDA (1910) **I. L R 34 Bom 408**

4 ———— **Decree amendment of**—*Decree not conformable to what the Court intended—Inherent power of Courts in India—Attachment setting aside of—Sheriff's right to Poundage—Civil Procedure Code (Act V of 1908) s 152* The Courts in India have an inherent power to amend or vary decrees so as to bring them into accordance with the judgments after they are signed by the Judges even if they do not fall within s. 152 of the Civil Procedure Code (Act V of 1908) *In re Swire 30 Ch D 239* referred to *Ainsworth v Wilding [1896] 1 Ch 673* distinguished The Sheriff is only entitled to poundage on sums levied so where a seizure is wrongful and is withdrawn by direction of law the Sheriff receives no poundage *Mortimore v Cragg 3 C P D 216* *In re Ludmore 13 Q B D 415* and *In re Thomas [1899] 1 Q B 460* followed BRIJRATAN *v* JAYNARAIN (1910) **I L. R 37 Calc 649**

5 ———————— *Decree modification of the terms of after appeal—Jurisdiction—Appellate Court powers of—Civil Procedure Code (Act V of 1908) s 148* S 148 of the Civil Procedure Code 1908 cannot be taken to give any Court power to interfere with or modify its decree after there has been an appeal filed against the decree The only Court that could after an appeal had been preferred modify the terms of the decree or extend the time fixed in the decree for its execution or suspend the order made in the decree would be the Appellate Court PARMANAND DAS *v* KRIPASINDHU ROY (1909) **I L R 37 Calc 548**

6 ———— **Plaint, amendment of**—*Suit against defendant on ground which failed not to be decreed on another ground—Application for leave to amend plaint after arguments heard in appeal disallowed—Res judicata* A suit brought against the defendants on one ground which fails should not be decreed against them on another ground which they had no opportunity of meeting After arguments in appeal have been heard the Court will not allow an amendment of the plaint so as to convert a suit of one character into a suit of a substantially different character *H* filed a suit in 1904 against *A* and *J* the drawer and indorser respectively of two hundies At the time of filing the suit *J* was dead *H* obtained a decree against both defendants which decree remained unsatisfied. In 1905 *H* filed a suit against the heirs of *J* on the same two hundies *Held* that the earlier suit having been filed against the firm of *J* and not against *J* personally was a bar to the later suit BAYABAI *v* HAJI NOOR MAHOMED (1908) **I L R 34 Bom 244**

7 ———— **Reference under Legal Practitioners Act**—*Jurisdiction—Legal Practitioners Act (XVIII of 1879) ss 13 14—Division Bench jurisdiction of to hear reference under the Act from subordinate Courts* According to a long and undeviating course of practice which may be regarded as the law of the Court a Division Bench appointed to dispose of the civil business arising out of a particular group has power to hear and dispose of a reference under s 14 of the Legal Practitioners Act by the Presiding Officer of a Court within that Group ABINASH CHANDRA MOITRA *In re* (1909) **I L R 37 Calc 173**

8 ———— **Same transaction"**—*Civil Procedure Code (Act V of 1908) O I r 3 O II r 3—Grades of several defendants in one suit—Same act or transaction — Series of acts or transactions* In reading O I r 3 of the Civil Procedure Code (Act V of 1908) it seems quite obvious that the word same which precedes the words acts or transaction governs also the words series of acts or transactions and must be read before those words also The first condition to be fulfilled before joining several persons as co-defendants in the same suit is that the right to relief sought in the suit must arise against all the defendants from the *same* act or transaction or from the *same* series of acts or transactions The second condition to be fulfilled under the rule is that some common question either of fact or law should arise against the defendants if separate suits were brought against such persons Before a plaintiff can join several defendants in the same suit *both* the conditions laid down in the rule must be fulfilled *first* the relief sought against the defendants whether jointly severally or in the alternative must arise from the *same act or transaction* or the same series of acts or transactions. And *secondly* there must arise between the plaintiff and all the defendants some common question of law or fact The plaintiff *may* in one action unite several causes of action against several defendants provided that *all such defendants* are jointly liable in respect of each and all of such causes of action and that the condition precedent to the plaintiff being allowed to

PRACTICE—*contd*

join several cau es of action against several de fendants is that such defendants must all have a joint interest in the main question raised by the litigation and that causes of action joined in one suit against several defendants must be causes of action in which the def ndants are all jointly interested. It is not neces ary that every defendant should be interes ed as to all the reliefs claimed in the suit but it is necessary that there must be a cause of action in which all the defendants are more or less interested although the relief asked again t them may vary UMABAI v BHAU BALWANT (1908)

I L R 34 Bom 358

9 ———— **Third party procedure**—*Direc tions refusal to g ve—Discretion* The general principle on which a Court will issue third party directions is —(i) that there must be a clear case of contribution or indemnity from the third party (ii) that all the disputes arising out of a transac tion as between the plaintiff and the defendant and between the defendant and a third party can be tried and settled in one suit and (iii) that in cases of contract and sub contract it must appear that the contract between the plaintiff and the defendant has been imported into the contract between the defendant and the third party Under the rules now in force the third party cannot be cited so as to be bound by the trial of one particular question which is identical as between the plaintiff and the defendant and as betw en the defendant and the third party *Baxter v France (No 2) (1895) 1 Q B 591* followed W & A. GRAHAM & Co v CHUNILAL HARILAL & Co (1909) I L R 34 Bom 423

10 ———— **Vakil s right to appear be fore a Judge sitting on the Original Side of the High Court**—*Application to file warrant of attorney—Extraord nary Civil J risd ction—C vil Procedure Code (Act XIV of 1882) s 635—Civil Procedure Code (Act V of 1908) ss 119 129* A vak l of the High Court applied before a Judge sitting on the Original Side of the Court claiming a right to file a warrant of attorney in respect of a suit pending before the Midnapore District Court in which a rule had been is ued calling upon the plaintiffs to show cause why the suit should not be transferred to the High Court in its Extraordinary Original Civil Juri dic tion *Held* that having regard to the long con tinued course of practice during which *vakils* never appeared on the hearing of such applica tions the present application should be refu ed *Held* further that the Civ l Procedure Code of 1908 has nothing to do with a matter governed by old rules in force before 1909 *In re* A VAKIL S APPLICATION (1910) I L R 37 Calc 853

11 ———— **Raising of issues** The prac tice of raising a number of is ues which do not state the main questions in the suit but only vari ous subsidiary matters of fact upon which there is not agreement between the parties is very embar rassing Is ues shoul l be confined to questions of law arising on the pl adings and such questions of fact as it would be nece sary for the Judge to frame for decision by the jury in a jury trial at *nisi prius* in England WEST END WATCH COM PANY v BERNA WATCH COMPANY (1910)

I L R 35 Bom 425

12. ———— **Redemption suit**—*Second suit in ejectment—Res jud cata—Court—Discretion—ejectment suit a decree for redemption can be passed —Civil Procedure Code (Act V of 1908) s 11 Expl II* It is the practice of the Bombay High Court to pass a decree for redemption in a case in which the plaintiff has sued in ejectment That is purely in the exercise of the Court s dis cretionary power and it can hardly be main tained that the plaintiff failing in an ejectment suit ought to pray for the alternative relief by way of redemption when the Court is not bound to grant it as a matter of right MAHOMED IBRA HIM v SHEIKH HAMJA (1911)

I L R 25 Bom 507

13 ———— **Local Inspection**—*Subordinate Judge—Personal view of disputed premises—Ap preciat on of evidence based on the personal view* The plaintiff in a suit to establish easement of passing his rain water over the defendant s field tried to make out his right by the evidence of his witnesses who deposed that the passage for the rain water had all along existed and was still visible to the eye The Subordinate Judge visited the spot in question at the request of both parties to test the veracity of the witnesses but finding that there was no passage at the spot he dis believed th witnesses and dismissed the suit On appeal it was contended that the Subordinate Judge had wrongly decided the case because he had dispos d of it not by appreciating the evi dence but by the light of his own view of the pass age *Held* that there was no error in the proce dure adopted by the Subordinate Judge LAKMI DAS KHUSHAL v BHAIJI KHUSHAL (1911)

I L R 35 Bom 31

14 ———— **Security for cost**—*Infant plaintiff—C vil Procedure Code (Act V of 1908) Sch I O XXV r 1* It is not desirable to run any risk of stopping a suit filed on b half of an infant which may be a proper suit to bring merely b ause of some inability on the part of the next fr end to give security for costs BHAISHANKER AMBASHANKER v MULJI ASHARAM (1910)

I. L. R 35 Bom. 339

15 ———— **Sentence**—*Magistrate passing non appealable sentence—Adding to sentence to make it appealable—Appeal to Sessions Judge—The Sessions Judge to entertain the appeal and to dec de it on merits—Criminal Procedure Code (Act V of 1898) s 15* The Magistrate trying a case passed at first a non appealable sentence on the accused but at the request of the accused made an addition to the sentence pas ed so as to make it appealable When the accused appealed to the Se sions Judge his appeal was dismissed on the ground that no appeal lay inas much as the sentence first passed by the Magis trate was not appealable and the addition to the sentence could not be made legally In revi sion *Held that the Ses ions Judge had com mitted an error in holding that he had no jurisdic tion to hear the appeal for though the Magistrate had no jurisdiction to alter the sentence once pas ed by him yet for the purpo es of the Sessions Judge s jurisdiction so far as the appeal was con erned that was the very mistake which he was calle l upon to correct by way of appeal When the appeal was heard again by the Sessions Judge he struck out the ad lition made by the Mag strate in the sentence and having done that dismissed the appeal on the ground that the sentence appealed from was not appealable In

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revision *Held* that when the Magistrate had passed a sentence beyond one month an appeal lay to the Sessions Judge under s 413 of the Criminal Procedure Code whether that sentence was passed legally or illegally *Held* also that the Sessions Judge being once seized of the appeal the whole appeal became open to his Court even on merits EMPEROR v KESHAVLAL VIRCHAND (1911) **I L R 35 Bom. 418**

16 ———— **Service of summons**—*Procedure—Civil Procedure Code (Act V of 1908) O V r 25—Service of summons by registered post on defendant residing out of British India—Summons returned marked Refused to take —General Clauses Act (X of 1897) s 27* A summons was sent by registered post addressed to the first defendant at Navalgarh in the State of Jaipur and purported to be sent in accordance with the provisions of O V r 25 of the Civil Procedure Code (Act V of 1908) The cover was returned with an endorsement in the vernacular which was translated as follows — Refused to take The handwriting of Chunilal postman *Held* that as it appeared that the cover was properly addressed to the first defendant and had been registered duly stamped and posted the Court was entitled to draw the inference indicated in s 27 of the General Clauses Act and to hold that there was sufficient service *Per Curiam* The only rule if it can be called a rule to be laid down is that the Court must be guided in each case by its special circumstances as to how far it will give effect to a return of a cover endorsed refused or words to the like effect *Jagannath Brakhbhau v J E Sassoon I L R 18 Bom 606* distinguished. BALURAM RAMKISSEN v BAI PANNABAI (1910) **I L. R 35 Bom 213**

17 ———— **Setting aside consent decree** A consent decree once duly obtained cannot be set aside by a rule but if it is sought to impeach it upon grounds of fraud that must be done in a regular suit The only alternative which the law allows is an application for review of judgment FATMABAI v SONBAI (1911) ***I L R 36 Bom 77***

18 ———— **Appellate Court duty of**—*Defective judgment—Omission to consider the defence evidence in a bad livelihood case—Criminal Procedure Code (Act V of 1898) ss 110 118 367 and 424* It is the duty of the Appellate Court on an appeal from an order under ss 110 and 118 of the Criminal Procedure Code to look into the evidence for the defence and after dealing with it to come to a decision thereon notwithstanding that the counsel for the appellant has practically ignored it during his arguments JAN OR HOSSAIN v EMPEROR (1912) **I L R 40 Calc 378**

19 ———— **Criminal Proceedings—Special Leave to Appeal**—*Limit of jurisdiction* Leave to appeal from convictions and sentences on the grounds of alleged irregular conduct of the proceedings, misdirection to the jury and misreception of evidence refused the case not coming within the principle as laid down in *In re Dillet 12 App Cas 459* CLIFFORD v KING EMPEROR *(1913)* **L. R. 40 I A 241**

20 ———— **Magistrate cannot invite District Magistrate s opinion** While a Magistrate was trying a case a question arose whether the accused was amenable to his jurisdiction

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The Magistrate felt himself doubtful on the question and he referred it to the District Magistrate for opinion On receipt of the opinion he directed the trial to proceed before him *Held* that it was not competent to the Magistrate to seek the opinion of the District Magistrate in the way he did, but that he should finish the inquiry and complete the record by the reception of all evidence of relevant facts including the facts which bear upon the question of the accused s amenability to a British Court s jurisdiction and then consider for himself the question of law arising on those facts EMPEROR v ABDUL RAHIMAN (1912) **I L R 37 Bom 144**

21 ———— **Evidence**—*Defendant s right to offer evidence* Where the defendant appears and the plaintiff does not appear or offers no evidence when a suit is called on for hearing the Court has no jurisdiction except to dismiss the suit for want of prosecution the defendant is not entitled to have his evidence heard before the suit is dismissed *Ex parte Jacobson L R 22 Ch D 312* distinguished KESRI CHAND v NATIONAL JUTE MILLS CO (1912) **I L R 40 Calc 119**

22 ———— **Cause of action**—*Promissory Note—Consideration for Note—Separate Causes of Action—Ceylon Civil Procedure Code (Ordinance II of 1889) s 34* S 34 of the Ceylon Civil Procedure Code 1889 (which is in the same terms as the Indian Code of Civil Procedure 1908 O 2 r 2) provides that every action shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action and that a plaintiff cannot afterwards sue for a part of the claim omitted from an action or (without leave) for another remedy for the same cause of action The respondent sued upon promissory notes but the action failed owing to a material alteration in the notes He afterwards sued to recover a part of the consideration for which the promissory notes had been given *Held* that although the claims in the two actions arose out of the same transaction they were in respect of different causes of action and that consequently the second action was not brought contrary to s 34 of the Code and could be maintained PAYANA REENA SAMINATHAN v PANA LANA PALANIAPPA (1913) **L R 41 I A 142**
18 C W N 617

23 ———— **Withdrawal of suit**—*Material irregularity—Revision—High Court power of—Civil Procedure Code (Act V of 1908) s 115—High Courts Act 1861 s 15* In a suit to set aside a revenue sale the evidence on both sides had been heard the plaint amended during such evidence the arguments of both parties completed the case closed and the judgment reserved. The plaintiffs then applied for leave to withdraw the suit with liberty to bring a fresh suit on the same cause of action This application was granted on the ground of formal defects The plaintiffs subsequently instituted a fresh suit Thereupon the defendant moved the High Court to set aside the order and obtained a Rule: *Held* that the High Court had no power to deal with this case under s 115 of the Code of Civil Procedure *Khardah Co Ld v Durga Charan Chandra 11 C L J 45 Dec v D I L R 15 All 167* and *Tirupati v Mutu I L R 11 Mad 5*— distinguished BANSI SINGH v KRISHNA LALL THAKUR (1913) **I L. R. 41 Calc. 632**

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24. ———— Admission of fresh evidence—*Appellate Court—Civil Procedure Code (Act V of 1908) O XLI r 27* Where an Appellate Court desires to admit fresh papers in evidence under r 27 of O XLI of the Civil Procedure Code (Act V of 1908) it must record its reasons in writing for doing so and admit them formally in evidence DAJI BABAJI v SAKHARAM KRISHNA (1914)
I L R 38 Bom 665

25 ———— Previous conviction—*Relevancy of previous conviction for the purpose of determining extent of sentence—Indian Penal Code (Act XLV of 1860) s 75—Indian Evidence Act (I of 1872) ss 54 165* The proof of a previous conviction not contemplated by s 75 of the Indian Penal Code may be adduced after the accused is found guilty as an element to be taken into consideration in awarding punishment *Per* SHAH J — The proof a previous conviction not contemplated by s 75 of the Indian Penal Code may be adduced provided the previous conviction is relevant under the Indian Evidence Act The whole question therefore is whether the previous conviction in question is relevant under the Act It is certainly relevant with reference to the question whether the provisions of s 562 of the Code of Criminal Procedure would apply to this case and it seems to me to be otherwise relevant on the question of punishment EMPEROR v ISMAIL ALI BHAI (1914) I L R 39 Bom 326

26 ———— Reference for Assessment of damages—A reference should be directed by the Court to assess damages only when the enquiry would involve questions of detail which it would be wasting the time of the Court to investigate *Wallis* v *Sayers 6 T L R 356* referred to D N GHOSE & BROS v POPAT NARAIN BROS (1915) I L R 42 Calc 819

27 ———— Execution of decree—*Civil Procedure Code (Act V of 1908) O XXI r 41—Judgment debtor examination of—Application by judgment-debtor to have order for examination set aside* An application under O XXI r 41 of the Civil Procedure Code 1908 made *ex parte* on a verified tabular statement is in order The judgment debtor is entitled to be heard to have such order set aside but he should apply on summons The object of O XXI r 41 is to obtain discovery for purposes of execution to avoid unnecessary trouble in obtaining satisfaction of money decrees Although an order for personal examination is likely to operate harshly and cause unnecessary harassment and obviously ought not to be made unless the Court is satisfied about the *bona fides* of the application and its urgent necessity still such applications may be us fully encouraged to prevent unduly dilatory troublesome and expensive execution proceedings *In re Premji Trikamdas I L R 17 Bom 514* referred to NATIONAL BANK OF INDIA LD v A K CHUZNAVI (1915) I L R 43 Calc 235

28 ———— Charge to jury—*Misdirection—Omission to direct jury on points telling in accused's favour—High Court—Interference—Statement made by accused before Committing Magistrate—Admissibility—Criminal Procedure Code (Act V of 1898) s 287—Indian Evidence Act (I of 1872) s 24—Person in authority—Police Patil arresting the accused* The High Court will interfere in those cases where it is made to appear that the Sessions Judge has prejudiced the accused by omitting from his charge to the jury points of capital importance telling in accused's favour The phrase a person in authority in s 24 of the Indian Evidence Act would include the Police Patil who arrests one of the persons accused of the offence *Quære* Whether the statement made by an accused before the Committing Magistrate is governed by s 287 of the Criminal Procedure Code or by s 24 of the Indian Evidence Act EMPEROR v FAKIRA APPYA (1915)
I L R 40 Bom 220

29 ———— Partition Suit——*Parties—Review—Civil Procedure Code (Act V of 1908) s 15 O XLVII r 1—Partition of undivided share—Fraudulent representation* Where the mortgagees of the plaintiff's share in a partition suit applied (i) to be added as parties to the suit and (ii) for revocation of an order made by another Judge directing a sale of the one fourth share of certain premises which is one of the properties to be partitioned in the suit on the ground that the conduct of the mortgagors and their attorneys was fraudulent and that the said order was made without jurisdiction *Held* that one Judge cannot set aside an order made by another Judge even though the order be wrong The remedy lies in review on the ground set out in O XLVII r 1 *Sharup Chand Mala* v *Pat Dassee I L R 14 Calc 627 Jatra Mohun Sen* v *Aukhil Chandra Chowdhury I L R 24 Calc 334* referred to PASANTA KUMAR DAS v KUSUM KUMARI DASI (1916) I L R 44 Calc 28

30 ———— Suit filed by an agent on behalf of an absent plaintiff—*Objection raised as to authority of agent—Duty of Court in which plaint is presented* In the case of a suit filed by an agent on behalf of an absent plaintiff where the authority of the plaintiff to have a suit brought at all and to allow his name to be used as a plaintiff in the case is seriously questioned that is a matter of principle which it is a Court's duty to decide and unless it is shown that the plaintiff has in fact authorized the suit either expressly or impliedly a Court ought not to grant a decree in his favour But where authority has been given by the plaintiff in some form or another and the question is whether the agent has complied with the rules as laid down in the Code of Civil Procedure that is not a question of principle at all but a question of practice and procedure It is the first Court's business to see that the rules are complied with and it should not leave the investigation of that question to the Appellate Court But a suit should not be dismissed without the party who has failed to comply with the rules of procedure being given an opportunity of correcting the defect in procedure if there be any PAMAN LALJI v GOKUL NATHJI (1917)
I L R 39 All 343

31 ———— Modification of Order—*Order of Judge on Original Side of the High Court—Jurisdiction to modify order before formally drawing up the order* A Judge on the Original Side of the High Court has jurisdiction to modify the minutes of an order before the formal order is drawn up MAHBOOB BI v SHERIFA BI (1918)
I L R 42 Mad 236

32. ———— Judgment containing remarks against a person who is neither party nor witness It is very undesirable that a Judge

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or Magistrate should make remarks which are prejudicial to the character of a person who is neither a party nor a witness in the proceeding before him and who has therefore no opportunity of giving an explanation or defending himself against the remarks made by the Court *In re* HOLIBASSAPPA (1920) **I L R 45 Bom 1127**

33 ———— **Probate and Administration proceedings**—*Appeals—Rules of the High Court 35 36 38—Fees payable to legal practitioners* In appeals from orders granting or refusing probate or letters of administration the fee allowable to a legal practitioner is regulated by rule 38 and not by rr 35 and 36 of the Appellate Side Rules of the High Court SIDHIA CHETTY v VENKATAROYA CHETTY (1920) **I L R 43 Mad 282**

34 ———— **Revision**—*Application to the High Court to revise a proceeding under s 133 Criminal Procedure Code without moving the Judge in the first instance—Criminal Procedure Code (Act V of 1898) ss 435 438 439* It is not the practice of the High Court to entertain an application in revision against an order made by a Magistrate in a proceeding under s 133 of the Criminal Procedure Code unless the party aggrieved has first moved the Sessions Judge under ss 435 and 438 RASH BEHARY SAHA v PHANI BHUSAN HALDAR (1920) **I L R 48 Calc 534**

35 ———— **Judicial Committee**—*Compromise of Appeal—Parties not sui juris—Certificate of High Court* When a person not *sui juris* is a party to an appeal to His Majesty in Council and an agreement by way of compromise having been made it is desired to obtain leave to withdraw the appeal the regular and usual course is to obtain a certificate from the High Court from which the appeal is preferred that the agreement is for the benefit of that party It is only in rare cases that the Judicial Committee will itself make the necessary inquiries and grant leave without a certificate as was done in *Sahibbai v Shrinibas* L R 47 I A 88 GOBINDA CHANDRA PAL v KAILASH CHANDRA PAL (1921) **I L R 48 Calc 994**

36 ———— **Peremptory order dismissing action**—*Order dismissing action in default of condition precedent—Difference—Order not completed or filed effect of on suit* On the suit coming for hearing on the 10th April 1919 it was ordered that it be adjourned to the 1st June 1919 that the plaintiff was to pay to day s costs and was to pay Rs 200 as a condition precedent before the 1st June to the defendant s attorney refundable on taxation of bills and that in default the suit would be dismissed with costs and no further adjournment would be granted This order was never drawn up or filed The suit came up again on the 25th June 1919 when it was adjourned though opposed on the ground that the suit could not proceed on an application of the surviving plaintiff to enable substitution in respect of one of the plaintiffs who had died on the 28th June 1919 On the 25th August 1919 the surviving plaintiff obtained an *exparte* order recording the death of the deceased plaintiff On the 13th January 1921 when the suit was on the Special List plaintiffs applied that it would be placed in the Prospective List It was contended on behalf of the defendants that the suit was dead *Held* that irrespective of sub ... proceedings or any question of drawing up of the order and in the absence of any appeal from the order the dismissal would be from the date of the order had it contained the words in default the suit will stand dismissed but in the terms of the order of the 10th April 1919 containing conditions precedent a further order of the Court was necessary before the suit was dead SEWPATAN v KRISTO MOHON SHAW (1921) **I L R 48 Calc 902**

PRADHAN

———————— **Status of** *in Santal Parganas—tenants inducted by* pradhan *whether can set up adverse possession as against the landlord* Although a *pradhan* in the Santal Parganas is not a tenure holder as defined in the Bengal Tenancy Act he has all the attributes of a tenure holder and tenants inducted on to the land by him cannot acquire title by adverse possession as against the landlord RAM CHARAN SINGH v L H BERRI **5 Pat L J 656**

———————— **pre-emption**—*mukarrari interest sale of—whether right of pre emption arises* The doctrine of pre emption applied only to the sale of the proprietary interest and therefore does not apply to the sale of the *mukarrari* interest SHAIKH MOHAMMAD JAMIL v KHUBLAL RAUT **5 Pat L J 740**

PRAGWAL

———————— *Right of pragwal to exclusive use of a flag of a certain design—Suit for injunction—Birt jajmani* *Held* that a *pragwal* may acquire a right to the use of a flag of a particular design so as to enable him to sue for an injunction against any other *pragwal* making use of a flag with a similar design for the purpose of diverting pilgrims from the original owner *Ganesh v Babu Ram* I L R 37 All 72 referred to BENI MADHO PRAGWAL v HIRA LAL **I L R 43 All 20**

PRAYERS

See CIVIL PROCEDURE CODE 1908 s 92
I L R 36 Bom 168

PREAMBLE

See CONSTRUCTION OF STATUTES
20 C W N 1158

PRE-EMPTION

See BUNDELKHAND ALIENATION ACT (II OF 1903) s 3 **I L R 37 All 662**

See CIVIL PROCEDURE CODE 1908 ss 2 101 148 **I L R 35 All 582**

See CIVIL PROCEDURE CODE 1908 O XXI r 88 **I L R 35 All 296**

PRE-EMPTION—*contd*

See COURT FEES ACT (VII OF 1870) s 7 CLS (v) AND (vi)

See HINDU LAW—JOINT FAMILY
I. L. R 35 All. 564

See LETTERS PATENT s 10
I. L R 34 All. 13

See LIMITATION ACT (IX OF 1908) s 4
I L R 41 All. 47

See MAHOMEDAN LAW—PRE EMPTION

See PRADHAN
5 Pat L J 740

See TRANSFER OF PROPERTY ACT 1882 s 55
I. L R 43 All 314

——— **decree for—**

See CIVIL PROCEDURE CODE 1882 s 308
I L. R 32 All. 301

——— **In respect of sale effected by compromise in a suit for land—**
I. L. P 1 Lah. 109

——— **Extension of time for payment of purchase money—**

See CIVIL PROCEDURE CODE 1908 ss 104 & 148
I L R 35 All 582
O XX R. 14
1 Pat L J 92

——— **right of—**

See LIMITATION ACT (IX OF 1908) SCH I ART 120
I L R 38 Mad 67

See MAHOMEDAN LAW—PRE EMPTION
I L R 38 Bom 183

——— **Registration—Whether sale complete without—**

See TRANSFER OF PROPERTY ACT 1882 s 54
1 Pat L J 174

——— **suit for—**

See COURT FEES ACT (VII OF 1870) s 7 (vi)
I L R 40 All 353

CONTRACT

——— **Rule against Perpetuities**—*Promisor heirs of not enforceable against—Perpetuities rule of applicable to Hindu law also* A contract of pre emption (with reference to sale of lands) which fixes no time within which the agreement to convey is to be performed cannot be enforced against the heirs of the person who entered into the contract as it infringes the rule against perpetuities The rule of perpetuities is applicable to Hindus also *Nabin Chandra Soot v Nabab Ali Sarkar 5 C W N 343* followed KOLATHU AYYAR v RANGA VADHYAR (1912)
I L R 38 Mad. 114

——— *Held* that an option to arise on any intended sale or other alienation is subject to the rule against perpetuities NABIN CHANDRA SARMA v RAJANI CHANDRA CHAKRABARTY
25 C W N 902

CUSTOM

See PRE EMPTION—WAJIB UL ARZ

See CUSTOM

1 ——— *Nature of evidence required to establish a custom of pre emption* The plaintiffs claimed a right based upon contract or custom to pre empt a sale of zamindari property The property was situate in one of the three mahals of a village named Suram The plaintiffs were not co sharers with the vendors in that mahal the vendees were strangers In 1873 the village Suram consisted of a single mahal and the village *wajib ul arz* of that date contained the following reference to pre emption —

In future if any *pattidar* wishes to transfer his share by sale to a stranger first the sharers in the *pattikha* then *pattidars* in the *thok* and then *digar pattidaran deh* shall have a right to purchase In 1883 perfect partition took place and the village was divided into three separate mahals A fresh *wajib ul arz* was drawn up for each of the new mahals but in each the provisions regarding pre emption were copied *verbatim* from the *wajib ul arz* of 1873 *Held* (i) that the plaintiffs had failed to establish any right of pre emption based on contract (ii) that the oral evidence was worthless as supporting the custom set up by the plaintiffs and (iii) that the evidence afforded by the *wajib ul arzes* of 1873 and 1883 was quite insufficient to establish the right claimed by the plaintiffs if such right was to be regarded as one based on an alleged custom *Dalganjan Singh v Kalka Singh I L R 22 All 1* referred to *Auseri Lal v Ram Bhajan Lal I L R 21 All 60?* and *Sardar Singh v Ija Husain Khan I L R 28 All 614* discussed GANGA SINGH v CHEDI LAL (1911)
I L R 33 All. 605

2 ——— *Wajib ul arz—Custom or contract—Construction of document—Regulation VII of 1882* In a suit for pre emption wajib ul arzes of 1839 and 1863 were produced The preamble to the former was worded thus — Having well understood the following matters we willingly accept them It then dealt with the right of pre emption in the following terms — Mode of sale or transfer of whole or part of share giving the right of pre emption to co sharers as against strangers and concluded with the words therefore we write this *iqrarnama* so that it may be of use *in future* The wajib ul arz of 1869 provided that near co sharers and other pattidars would have the right of pre emption Preference among them would be according to degrees of nearness —*Held* (STANLEY C J dissenting that the wajib ul arzes contained the record of custom and not of contract *Per* STANLEY C J —A custom to be binding must be unaltered uniform constant and definite If the settlement of 1833 recorded a custom then the co sharers in the village at the time of the later settlement of 1869 must be deemed to have abrogated it and to have adopted by agreement the right of pre emption which is recorded in the later wajib ul arz as more suitable to the then existing condition The variance in the rights as defined in two wajib ul arzes leads to the conclusion that the right recorded in 1869 cannot be treated as a right existing by custom *Per* KNOX and CHAMIER JJ —The word *iqrar* does not necessarily mean a contract It means *ratification or assent* LEKHRAJI DUBAIN v PAHALWAN PRAGAT (1910)
I. L. P 33 All. 196

PRE-EMPTION—*contd*

CUSTOM—*contd*

3 ———————— *Custom—Wajib ul arz—Owner of isolated revenue free plots—Evidence of custom* The pre emptive clause of a *wajib ul arz* contained the following provisions — If the owner of a share wish to sell it he shall do so first to his near relation who may be a co sharer in the zamindari and in case of his refusal to anyone he likes *Held* that this by itself was not sufficient evidence of a custom giving owners of isolated revenue free plots of land in the village a right to pre empt MAWASI v MUL CHAND (1912) **I L R 34 All 434**

4 ———————— **Evidence** *—Sales to strangers unchallenged as evidence negativing custom—Mode in which such sales should be proved* Where the Court is trying the issue of the existence or non existence of a custom of pre emption every instance of a sale to a stranger is material evidence which the Court ought to take into consideration and weigh when coming to a conclusion on the issue But a mere vague statement that there had been sales to strangers without the production of the sale deeds or certified copies thereof and without some further details of the sale is not sufficient to prove sales to strangers *Sewak Singh v Girja Pande 2 All L J 6* discussed JANKI MISIR v PANNO SINGH (1913) **I L R 35 All 472**

5 ———————— *Wajib ul arz—Custom—Effect of perfect partition* The wajib ul arz of an undivided village supported a finding that there existed a custom of pre emption amongst the co sharers in the village Subsequently to the framing of this wajib ul arz a perfect partition of the village took place *Held* that the basis of such a custom was the coparcenary relation and that after partition a co sharer in one mahal could not claim pre emption in respect of property sold in another mahal in which the pre emptor was not a co sharer *Dalganjan Singh v Kalika Singh I L R 22 All 1* and *Ganga Singh v Chedi Lal I L R 33 All 605* referred to MUHAMMAD MAHBUB ALI KHAN v RAGHUBAR DAYAL (1915) **I L R 38 All 27**

6 ———————— *Custom—Vendor bound to offer to co sharers—Refusal to purchase—Refusal to give more than a fixed price* The custom in pursuance of which a right of pre emption was claimed being that the vendor was bound to offer the property for sale to his co sharer and only in case of their refusal he could sell to a stranger the vendor offered the property in dispute to the pre emptor who offered only Rs 160 for it *and refused to give more* The vendor thereupon sold it for Rs 235 to the defendants *Held* that the conduct of the plaintiff amounted to a refusal to purchase the property and the vendor was not obliged to give him the option of taking up the contract which he subsequently made for Rs 235 *Kashi Lal v Kalka Prasad I L R 47 All 670* distinguished INDRAJ v BROTHER CLEMENT MISSIONARY (1915) **I L R 37 All 262**

7 ———————— *Wajib ul-arz—Custom—Finding of fact—Second appeal* In a suit for pre emption brought on the basis of custom if the Court considers the proper issue in the case namely whether the custom does or does not exist, and on the evidence comes to the conclusion that it does not exist the finding is one of fact and is binding on the High Court in second appeal BAFU MAL v TANSUKH RAI (1915) **I L R 37 All 524**

8 ———————— *Custom—Effect on pre existing custom of village coming to be owned by a single individual* When a mahal in respect of which there exists a custom of pre emption comes into the ownership of a single individual the effect is to put an end to the custom and not merely that the custom falls into abeyance KAMR UN NI SA BIBI v SUGHRA BIBI (1917) **I L R 39 All 480**

9 ———————— **Wajib ul arz—** *Custom—Property to be offered first to a co-sharer* In a pre emption suit the custom being that a co sharer wishing to sell his property should first offer it to the other co sharers, if the vendor goes to the other co sharers and informs them of his desire to sell and they decline to purchase on the ground that they have not the means or on any other similar ground the vendor is at liberty without violating the custom to sell to a stranger If however a co sharer offers to purchase at a particular value the vendor ought not to sell to a stranger at a lower price NAUNIHAL SINGH v RAM RATAN (1916) **I L R 39 All 127**

10 ———————— *Custom—Wajib ul arz—Right of pre emption acquired by means of imperfect partition of the village* There being a pre existing custom of pre-emption in a village a right of pre emption may arise in favour of an individual co sharer just as much by the creation of a new patti by imperfect partition as by purchase by the co sharer of a share in the patti *Mahadeo Prashad Sahu v Jaipal Raut 8 Indian Cas 867* dissented from LALTA PRASAD CHAUDHRI v GOKUL PRASAD (1918) **I L R 40 All 617**

11 ———————— *Entry in Wajib ul-arz clear and unrebutted* Where there is an entry in the Wajib ul arz as to the right of pre emption which is clear and distinct and there is no evidence to the contrary the Court ought having regard to the prevailing practice to hold that the custom of pre emption exists FAZAL HUSAIN v MAHAMMAD SHARIF **I L R 36 All 471**

12 ———————— **Partition** The Wajib ul arz of an undivided village afforded evidence of the existence of a custom of pre-emption in the village *between co-sharers* Subsequently the village was divided by perfect partition into several mahals each adopting the old custom *Held* that no right of pre emption survived as between the different mahals *I L R 33 All 605* referred to

I L R 41 All 496

13 ———————— *Hindus in Surat—Pre emption of agricultural lands—Proof of custom* Though the Hindus in Surat have adopted the Mahomedan law of pre-emption by a long established custom with regard to houses it is an open question whether they have adopted the law with regard to agricultural lands JAOJIVAN HARIBHAI v KALIDAS MULJI (19 0)

I L R 45 Bom 601

14 ———————— *Held* that there was a custom of pre emption existed amongst

PRE-EMPTION—*contd*

CUSTOM—*concld*

Hindus in Ahmedabad MOTILAL DAYABHAI v HARILAL MAGANLAL I. L. R 44 Bom. 696

15 ——————— *Held* that in the district of Bulsar when the Hanafi School of Mahomedan Law prevails neighbours have equal right to pre empt and there is nothing which is contrary to the principles of justice equity and good conscience in allowing two *neighbours* who have equal rights of pre emption to exercise them *Gokaldas v Partab (1916) 18 Bom L R 693* not followed VITHALDAS KAHANDAS v JAMETRAM I L. R 44 Bom. 887

16 ——————— *Custom—Wajib ul-arz—Partition of village—Old custom adopted in new mahals—Right of pre emption not surviving as between the new mahals* The Wajib ul arz of an undivided village afforded evidence of the existence of a custom of pre emption in the village between co sharers Sub equently the village was divided by perfect partition into several mahals and each of the new mahals adopted the old custom. *Held that no right of pre emption* survived as between the different new mahals *Ganga Singh v Chedi Lal I L R 33 All 605* referred to DEOKINANDAN v MAHTAB PAI (1919) I. L R 41 All 426

FORMALITIES

1 ——————— *Mahomedan law —Talab i ishtishhad* *Held* that a Mahomedan pre emptor cannot validly make the *talab i ishtishhad* by letter when he is in a position to do so in person MUHAMMAD KHALIL v MUHAMMAD IBRAHIM (1916) I L R 38 All 201

2 ——————— *Suit by Hindu —Mahomedan law of sale whether applicable—Sale complete when—Ceremonies necessary before pre emption compliance with—S 37 Act XII of 1887* Per MULLICK J There being special custom pleaded a case where pre emption is claimed by a Hindu must be tried on the principles of justice equity and good conscience under s 37 Act XII of 1887 As a sale is not complete till legal ownership passes no matter whether there has b en payment and d livery the pre emptor s title in the ca e of a property worth more than Rs 100 does not accrue till after regi tration It would be against equity justice and good conscience to apply in such a case the Mahomedan law of sale which is no longer in force and to attach to a m re contract for sale an incident which the Mahomedan lawyers intended to attach only to an actual sale The performance of the two formalities *talab i mawasibat* and *talab i ishtishhad* can be combined but it is essential that the *talab i isht shad* should refer expressly to the *talab i mawasibat* as having been duly made *Najmun nessa v Ajaib Ali Khan I L R 22 All 343 Janki v Girjadat I L R 7 All 48 Begum v Muhammad Yakub I L R 16 All 344 Jadu Lal Sahu v Janki Koer I L R 35 Calc 575* and *Budhai Sardar v Sonaullah Mirdha 19 C L J 601 s c 18 C W N 890* referred to ROE J —The test to apply in these cases is was the sale in the eyes of the contracting parties and the pre emptor compl te If it was it was not necessary for the pre emptor to wait till registration before performing the ceremony of *mawasibat* KHEYALI PROSAD v NAZARUL ALUM (1916) 20 C W N 1048

3 ——————— *Mahomedan law —Talab i isht shhad and talab i muwas bat—Observance of both talabs neces ary* *Held* that the performance of the *talab i ishtishhad* is an indispen ible preliminary to the enforcement of a right of pre emption according to the Mahomedan Law MUHAMMAD AHMAD SAID KHAN v MADHO PRASAD (1916) I. L R 39 All. 133

MORTGAGE

1 ——————— *Mortgage of property prior to the passing of Act No IV of 1882—Government revenue paid by mortgagee—Liability of pre emptor to pay the amount of the revenue as a condition precedent to obtaining possession of property* Under a mortgage deed the mortgagor was liable to pay the Government revenue and if he failed to do so the mortgagee was to pay it and was entitled to recover the sum from the mortgagor and his other property The mortgagor failed to pay the revenue which accordingly was paid by the mortgagee Subsequently the property was sold to the mortgagee for the amount of the mortgage *plus* the amount of the revenue paid by the mortgagee In a suit to pre empt this sale *held* that the pre emptor was bound to pay the amount paid by the mortgagee for the revenue as a condition precedent to his obtaining possession of the property as well as the amount of the mortgage LEOJ RAJ v RAM NARAIN (1916) I. L. R 38 All 530

2 ——————— *Transfer—Mortgage—Use of the term makbuza not sufficient to constitute a mortgage* The material portion of a document executed by the borrowers to secure a loan was as follows — We agree that we shall pay annually the interest and in default of payment of interest for two years the creditors shall have the right without waiting for the expiry of the time fixed to file suit and to recover their dues from the property mortgaged (*makbuza*) and if the creditors make delay in realizing the principal and interest then the aforesaid creditors shall not be entitled to recover their dues under the deed from any other property of myself excepting the property mortgaged (*makbuza*) A claim for pre emption was brought based upon this document which was claimed to be a sale or at least a mortgage *Held* by RICHARDS C J that it was very difficult to distinguish the transaction evidenced by the document in question from what is ordinarily called a simple mortgage On a construction however of the wajib-ul arz it was held not to include mortgages which did not involve a change of posses ion *Held* by TUDBALL J that the document under consideration did not amount to a mortgage but at most con st tuted a charge on the property referred to there in *Dalip Singh v Bahadur Ram I L R 24 All 446* referred to KHURSHED ALI v ABDUL MAJID (1916) I L R 38 All. 361

POSSESSION

——————— *Decree for pre-emption —Purchaser s possess on and right to rents and profits continues until full pre-emption price is*

PRE-EMPTION—contd

POSSESSION—contd

paid—Civil Procedure Code 1882 s 214—Mahomedan law of pre emption—Change of possession under decree If a claim to pre emption be disputed and a suit must be brought the rights of the parties are regulated by s 214 of the Code of Civil Procedure which in this respect embodies the principle of the Mahomedan Law That section enacts that When the suit is to enforce a right of pre emption in respect of a particular sale of property and the Court finds for the plaintiff if the amount of purchase money has not been paid into Court the decree shall specify a day on or before which it shall be so paid and shall declare that on payment of such purchase money together with the costs (if any) decreed against him the plaintiff shall obtain possession of the property but that if such money and costs are not so paid the suit shall stand dismissed with costs It is therefore only on payment of the purchase money on the specified date that the plaintiff obtains possession of the property and until that time the original vendee retains possession, and is entitled to the rents and profits *Deokinandan v Sri Ram I L R 12 All 234* approved In the present case the decree under which possession was given to the pre emptor (appellant) was made on 31st March 1900 by the Subordinate Judge who found that the pre emptive price was Rs 37 000 and on payment of that sum the pre emptor was put into possession The High Court reversed that decree and dismissed the suit but found that the price was Rs 44 850 as stated in the deed of sale On 2nd July 1904 the original purchaser was put into possession On 25th January 1908 the Privy Council set aside the decree of the High Court and restored that of the Subordinate Judge except as to the pre emptive price which was fixed as being Rs 44 850 and the additional sum making up that amount having been deposited possession was again given to the pre emptor on 19th January 1909 In proceedings in which each party claimed mesne profits from the other the original vendee from the pre emptor from 1900 to 1904 and the pre emptor from the vendee from 1904 to 1909 *Held* that the possession of the vendee continued until 19th January 1909 and the pre emptor only obtained possession within the meaning of s 214 of the Civil Procedure Code 1882 on the date No mesne profits thereafter were due to him but he was liable to the vendee for mesne profits from 1900 to 1904 for which period he was in possession without title DEOKANDAN PRASAD SINGH v RAMDHARI CHOWDHRI (1916)

I. L R 44 Calc 675

PRE MORTGAGE

——————— *Pre emption (pre mortgage)—Joint usufructuary mortgage—Further simple mortgage on share of one mortgagor in favour of same mortgagee—What amount the claimants of the right to pre mortgage are liable to pay* Certain persons made a joint usufructuary mortgage of their property On the same day one of them executed a deed by way of a further charge or simple mortgage of his share in favour of the same mortgagee In a suit for pre mortgage of the share in this second mortgagor it was *held* that the plaintiffs were not liable to pay the sum

PRE-EMPTION—contd

PRE-MORTGAGE—contd.

secured by the deed of further charge which was a separate and independent transaction but were entitled to pre mortgage upon paying such amount of the mortgage debt as was proportionate to the share of the said mortgagor KALLA v HARGIAN (1912)

I L R 34 All 416

PRICE

——————— *Decree for pre emption—Price for pre emption directed to be deposited within one month—Decree holder s application for extension of time granted—Deposit made within extended time—Civil Procedure Code (Act V of 1908) O XX r 14—S 148 Civil Procedure Code—Court s jurisdiction—S 115* On the last day fixed for the deposit of money by a decree of pre emption the decree holder applied for extension of time to make the deposit and he deposited the amount within the extended time granted to him (*ex parte*) by the Court *Held* that the Court had jurisdiction to extend the time The High Court declined to interfere under s 115 of the Civil Procedure Code ABU MUHAMMAD MIAN v MUCKUT PERTAP NARAIN (1916)

20 C W N 860

——————— *Payment of pre emption price into Court—short by one rupee—decree holder entitled to Rs 19 10 0 as costs — whether such payment is sufficient compliance with the terms of the decree* The appellants obtained a pre emption decree in their favour by which they were entitled to get possession of the property on paying into Court the sum of Rs 99 by the 30th of April 1918 and they were also entitled to Rs 19 10 0 as cost of the suit By the date fixed they paid into Court Rs 98 i e one rupee short of Rs 99 Subsequently they took possession of the property and realised the full amount of their costs *Held* that as the decree holders were entitled to deduct their costs from the decretal amount the payment of Rs 98 was really in excess of what they had to pay and the terms of the decree were therefore satisfied It is immaterial what the decree holders intended to do the only real test is whether they have sufficiently complied with the terms of the decree *Bechai Singh v Shams Nath* (10 Indian cases 454) followed KAPURIA MAL v WALI MUHAMMAD I L R 2 Lah 294

RIGHT OF PRE EMPTION

See PRE EMPTION—WAJIB UL ARZ

1 ——————— Mortgage—*Pre emption a right of substitution not of re purchase—Vendor not competent to mortgage property liable to pre-emption so as to bind pre emptor* The right of pre emption being a right of substitution rather than a right of re purchase the vendee of property which is subject to a right of pre emption cannot defeat the pre emptive right by subsequently mortgaging the property and thus force the pre-emptor to take the property subject to a mortgage so created. *Gobind Dayal v Inayatullah I L R 7 All 775* referred to *Sheo Mal v Hukam Singh I L R 20 All 100* *Narain v Parbat Singh I L R 23 All 247* and *Deo Dat v Ram Autar I L R 8 All 502* distinguished KAMTA PRASAD v MOHAN BHAGAT (1909) I L R 32 All. 45

PRE EMPTION—*contd*

RIGHT OF PRE EMPTION—*contd*

2. ———— Partition after sale but before decree—*Muhammadan law—Effect on suit* The plaintiff sued for pre emption of zamindari property basing his claim upon the Muhammadan law and the fact that he was a co sharer in the property sold After the suit but before decree the property was partitioned and the plaintiff and the vendors became owners of different *Mahals* *Held* that the plaintiff was no longer after the partition had been completed entitled to a decree for pre emption TAFAZZUL HUSAIN *v* THAN SINGH (1910) **I L R 32 All 567**

3 ———— Covenant in deed of partition—*Proper sale price meaning of* A right of pre emption reserved in a partition deed is valid as between the co owners themselves The ekrarnamah contained the following clause —Any one of the parties desirous of selling shall s ll the same to the other party willing to buy the same at the proper sale price *Held* that the proper sale price would be the market value KALIMUDDIN BHUYAN *v* REAZUDDIN AHMED (1909) **14 C W N 295**

4. ———— Misjoinder—*Civil Procedure Code 1882 ss 44 45—Two sales to same vendee—Suit in respect of both sales—Joinder of vendors as defendants* Of the four owners of undivided shares in immoveable property three sold their interest in the property and the fourth sold his interest separately at a later date to the same vendee A pre emptor sued for pre emption on the basis of both these transactions impleading as defendants the vendors and rival pre emptor as well as the vendee *Held* that the suit was not bad for misjoinder of either causes of action or parties *Bhagwati Prasad Gir* v *Bindeshri Gir I L R 6 All 106* dissented from *Kalaian Singh* v *Gur Dayal I L R 4 All 163* referred to *Held* also that the vendor is not a necessary party to a suit for pre emption *Hira Lall* v *Ram Jas I L R 6 All 57 Lok Singh* v *Balwan Singh All W N (1903) 239* and *Ram Sarup* v *Sital Prasad I L R 26 All 549* referred to HARBANS TIWARI *v* TOTA SAHU (1909) **I L R 32 All 14**

5 ———— House of residence—*Family property—Division under an award—Prohibition of sale by a co sharer of his portion to an outsider—Pre emption—Construction—Court sale—Prohibition not effective* An award under which family property was divided among co sharers provided that in case of a sale by any of the co sharers of his portion of the house of residence he should sell it to his co sharer for a certain sum and that he should not sell it to an outsider until the expiration of two months from the date of a notice in writing saying that they (co sharers) were not willing to buy it Subsequently a portion of the house belonging to one co sharer having been sold in execution of a decree against him it was purchased by an outsider The sons of one of the other co sharers thereupon having brought a suit for a declaration that the Court sale was not binding upon them *Held* that the term of pre emption in the award was contemplated to attach to sales made privately and willingly and not to attachment and sal s in *invitum* the judgment debtor VITHAL NARAYAN *v* MARUTI NARAYAN (1910) **I. L. R. 34 Bom 567**

6 ———— Suit instituted after decrees passed in favour of other pre emptors—*Plaintiff no party to former suits—Suit maintainable* *Held* that where a pre emptor having a superior right of pre emption brings his suit within limitation the fact that decrees have been made in favour of other pre emptors the plaintiff not being a party to the suits in which such decrees were passed will be no obstacle to the success of the suit *Abdur Razak* v *Mamta Husain I L R 25 All 334* distinguished *Sheo Mal* v *Hukam Singh I L R 20 All 100 Allahdad Khan* v *Abdul Halim S A No 724 of 1906* decided *April 19th 1907* and *Muhammad Latif* v *Govind Singh I L R 5 All 383* referred to RAJ NARAYAN RAI *v* DUNIA PANDE (1910) **I L R 32 All 340**

7 ———— Suit for pre emption—*Act No XVIII of 1876 (Oudh Laws Act) s 9 cls (1) and (2) and proviso as to drawing lots—Act No XVII of 1876 (Oudh Land Revenue Act)—Mahal definition of— Co sharer in subdivision of tenure in which property in suit was comprised — Co sharer in whole mahal* At the summary settlement of Oudh the taluq in which the property in suit (three villages and two pattis or parts of villages) was comprised was settled with the father of the first respondent as taluqdar but at the regular settlement in 1864 he came to a compromise with two other claimants by which he took half the taluq as superior proprietor and the other half was assigned in equal shares to the other claimants who were his relatives in under proprietary right they paying the Government revenue plus 10 per cent to the taluqdar and being jointly liable to him in respect of the same as rent One of these two died childless and his share devolved upon the other one and on the death of the latter both shares descended to the appellant (his son) and the second respondent (his grandson) Between these two in 1893 a partition took place under which the three villages and the two pattis were assigned to the second respondent and a decree and mutation of names was made in accordance with the partition but no separate engagement was made for payment of the Government revenue in respect of the property so assigned. In 190_ the second respondent sold the property in question to the first respondent who had succeeded his father as taluqdar In a suit by the appellant against the respondents claiming the right of pre emption under s 9 of the Oudh Laws Act (XVIII of 1876) *Held* (affirming the decision of the majority of the court of the Judicial Commissioner) that the meaning attributed to the term mahal in the judgment of the officiating Judicial Commissioner (Mr Chamier) namely any parcel or parcels of land which have been separately assessed to or are held under a separate engagement for the revenue and for which a separate record or right has been prepared " was the proper meaning of the word in the Oudh Laws Act and therefore although the second respondent and the appellant may have been jointly liable to the first respondent for the Government revenue plus malikana as the rent of the villages and pattis assigned under the compromise of 1864 they were not at the date of the sale to the first respondent co sharers in any sub-division

PRE EMPTION—*contd*

RIGHT OF PRE EMPTION—*contd*

of the tenure in which the property in suit was comprised (under cl 1 of s 9) or the whole mahal (under cl 2 of that section) The Appellate Court in India found that the appellant and the first respondent had an equal right to pre emption of the two pattis and that under the proviso to s 9 they must draw lots to determine which of them should be entitled to exercise the right This being done the right to purchase fell to the first respondent and the appellant consequently lost the right to pre empt SHEORAJ KUNWAR v HARIHAR BAKHSH SINGH (1910)
I L R 32 All 351

8 ———— Wajib-ul arz—Notice of sale given to member of a joint Hindu family—*Effect of such notice—Effect of conditional reply disputing amount of alleged consideration Held* that a person having a right of pre emption does not lose it by refusing to purchase the property at the price at which it is offered to him because he believes that such price is in excess of the real price where such belief is entertained and expressed in good faith Where the pre emptor and his brothers were members of a joint Hindu family and the vendor addressed a notice to him and his brothers jointly to which the pre-emptor s brother sent a reply *Held* that the plaintiff pre emptor was entitled to claim the benefit of this reply as it had been sent by himself *Lajja Prasad* v *Debi Prasad I L R 3 All 236 Amir Chand* v *Ishar Das All Weekly Notes (1882) 136 Bholi Bibi* v *Fahima Bibi All Weekly Notes (1882) 46* and *Karim Bakhsh* v *Khuda Bakhsh I L R 16 All 247* followed SRI KISHAN SINGH v BACHCHA PANDE (1911) I L R 33 All. 637

9 ———— Claim of pre emptor based on purchase by him of another share in the same mahal—*Claim made before confirmation of sale in plaintiff s favour—Civil Procedure Code 1882 s 316 Held* with reference to s 316 of the Code of Civil Procedure 1882 that a purchaser at auction sale in execution of a decree of a share in zamindari property does not become a co sharer in the mahal in which such property is situate until the sale has been confirmed in his favour HA AN ALI v MIAN JAN KHAN (1910)
I L R 33 All. 45

10 ———— Right—Personal—*Transfer—Transfer of Property Act (IV of 1882) s 6* The right of pre emption i a purely per onal right which cannot be transferred to any one except the owner of the property affected thereby JAS UDIN v SAKHARAM GANESH (1911)
I L. R 36 Bom 139

11 ———— Mahomedan law—Demand made "on the premises —*Demand made in the abadi which was part of the premises sold* Where a person claiming pre emption in respect of a certain zemindari share proved that he had made the demand with witnesses while sitting on his *chabutra* in the *abadi* which formed part of the premises sold it was *held* that the demand of pre emption was a good demand made on the premises within the meaning of the Mahomedan law *Kulsum Bibi* v *Faqir Mohammad Khan I L R 18 All 298* followed MUHAMMAD USMAN v MUHAMMAD ABDUL GHAFUR (1911)
I L R 34 All. 1

12 ———— Mahomedan law—Talab i-mawasibat—Where a person immediately on hearing of the sale of a house exclaimed *mera hak shafa hai* and without any delay took the price and brought it to the vendee and claimed the house *Held* that the expressions used by him coupled with the circumstances constituted a sufficient first demand *Muhammad Abdul Rahman Khan* v *Mahammad Khan, 8 All L J 270* distinguished MUHAMMAD NAZIF KHAN v MAKHDUM BAKHSH (1911) I L R 34 All 53

13 ———— Wazib-ul arz—*Custom—effect of joining in the purcha e a co sharer having an inferior right* The vendee in a suit for pre emption having equal rights with the pre emptor, disables himself from resisting a suit for pre emption as much by associating with him elf in the purchase another co sharer whose right are inferior to those of the pre emptor as by associating with himself a stranger GUPTESWAR RAM v RATI KRISHNA RAM (1912)
I L R 34 All. 542

14 ———— Conditional decree—*Decretal amount deposited in Court—Decree enhanced in appeal—Additional payment made not covering amount withdrawn as costs* A succe ful plaintiff pre emptor deposited in Court the amount of the decree in his favour but sub equently withdrew therefrom the amount of the costs decreed in his favour On the amount payable being enhanced on appeal he paid into Court the difference between the original and appellate decrees *Held* that the decree had been fully complied with *Gopal Saran* v *Ishri I L R 6 All 351 Balmukand* v *Pancham I L R 10 All 400 Parmanand Raot* v *Gobardhan Sahai I L R 28 All 676* and *Bechai Singh* v *Shami Nath 8 All L J Notes p 2"* followed ALI HUSAI v AMIN ULLAH (1912) I L R 34 All. 596

15 ————Second sale—*Subject matter of suit re sold at advanced price—Second sale subject to right of pre emption in respect of the first* A house in the city of Benares subject to a customary right of pre emption was sold for Rs 1 150 The vendee resold it shortly afterwards to the defendant for Rs 4 000 *Held* on suit brought to pre empt the property at the original price of Rs 1 150 that the second sale was subject to the right of pre emption and the pre emptor was only bound to pre empt the first sale making the subsequent vendee a party to the suit so as to bind him by the proceedings *Kamta Pra ad* v *Mohan Bhagat I L R 32 All 45* referred to KHETTAR CHANDRA BASU MALLIK v NABIN KALI DEBI (1913) I L. R 35 All. 385

16 ———— Right of pre-emptor to put vendor to proof of title—*Suit must be for entire property sold Held* that a pre emptor is not entitled in a pre emption suit to put the vendor on proof of his title to the property which he purports to sell The principle of pre emption is substitution A pre emptor is therefo e bound to take the title which the vendee was ready to take Further that a pre emptor cannot sue to pre empt only a portion of the property sold SABODRA BIBI v BAGESHWARI SINGH (1915)
I L. R. 37 All. 529

17 ———— Effect of perfect partition—*No fresh wajib ul ar prepared at or after*

PRE-EMPTION—*contd*

RIGHT OF PRE EMPTION—*contd*

partition—Right of a sharer in new mahal after partition to pre empt property in another new mahal in which he was not a sharer at date of sale—Value of wajib ul arz as evidence—Primâ facie evidence of custom of pre emption without proof of instances of custom being enforced In this appeal which was one arising out of a suit by the appellant one of the co sharers in a mauza for pre emption after there had been a partition of the mauza in which the land sold was situated and no fresh wajib ul arz had been prepared after the partition had taken place their Lordships of the Judicial Committee (affirming the decison of the High Court) were of opinion that the clauses relating to pre emption contained in wajib ul arzes of 1863 and 1870 proved that prior to the partition the right of pre emption had existed in the mauza but that the appellant had not shown either on the construction of the wajib ul arze or by other evidence that the custom of pre emption which obtained in the unpartitioned mauza survived the partition so as to give the appellant a sharer in one of the new mahals a right to pre empt property in another of those mahals in which he was not a sharer at the date of the sale Their Lordships did not dissent from the view expressed by BANERJI J in the full bench case of *Dalganjan Singh v Kalka Singh I L R 22 All 1* that where a fresh wajib ul arz has not been prepared at partition it does not follow as a matter of law or principle that the custom of contract in force before partition is no longer to have effect or operation and were of opinion that the question must depend upon the circumstances of each case and the inferences which may legitimately be drawn from the evidence A wajib ul arz is by itself good *prima facie* evidence of a custom of pre emption stated in it without corroboration by evidence of instances in which the custom has been enforced The evidence as to a custom of pre emption afforded by a wajib ul arz may of course be rebutted by other evidence DIGAMBAR SINGH v AHMED SYED KHAN (1914)

I L R 37 All 129

18 ———— Wajib ul arz—Owners of resumed muafi land—*Held* that the owners of a plot of resumed *muafi* land assessed to revenue separately from the rest of the village which constituted one 16 anna mahal was not a co sharer with the owners of the mahal so as to give him a right of pre emption on sale of the mahal under the terms of the wajib ul arz which declared a right of pre emption to exist on a sale by a co sharer in favour of other *co sharers* in the village *Kallian Mal v Madan Mohan I L R 17 All 44; Narain Das v Ram Saran Das I L R 17 All 419 Raghunath Prasad v Kanhaiya Lal All W N 1907 68 Ahmad Ali v Najam un nissa 2 All L J 145* and *Ballu Lal v Bhola Nath 19 Indian Cases 119* referred to *Narain Prasad v Munna Lal I L R 30 All 3 9* not followed MAHADEO PRASAD v JAGAR DEO GIR (1916)

I L R 38 All. 260

19 ———— Partition—*after institution of suit but before decree—Plaintiff if entitled to decree—Court if should take notice of matters which come into existence after suit—Talab i mua ibat erroneous statement as to price in if invalidates—Review on ground not before taken when allowed—Suits Valuation Act (VII of 1887) s 11—Valuation—Appeal—Jurisdiction* SANDERSON C J and MOOKERJEE J —The right of the plaintiff to get pre emption must exist not only at the time of the sale but also at the time of the institution of the suit and finally up to and at the date of the decree of the trial Court A judgment passed by the High Court on second appeal was reviewed on a ground not taken at any previous stage of the proceeding when the ground raised a pure question of law which did not depend for its determination upon the investigation of new facts and when the alleged error was apparent on the face of the record *Connecticut Fire Insurance Co v Kavanagh (1892) A C 473 at p 480* referred to *Per* MOOKERJEE J —The decree in a suit should ordinarily conform to the rights of the parties as they stood at the date of its institution But there are cases when it is incumbent upon a Court of Justice to take notice of events which have happened since the institution of the suit and to mould its decree according to the circumstances as they stand at the time the decree is made This principle will be applied where it is shown that the original relief claimed has by reason of subsequent change of circumstances become inappropriate or that it is necessary to base the decision of the Court on the altered circumstances in order to shorten litigation or to do complete justice between the parties *Per* SHARFUDDIN and ROE JJ —For the performance of the *talab i muasibat* what is necessary is an expression by the pre emptor in clear and explicit terms that he demands to make the purchase and it is not necessary that he should at the time of the performance of the ceremony make any mention of the price Where in performing the *talab* the claimant owing to mistaken information understated the price though the ceremonies required by law were fully performed *Held* that the *talab* was validly performed Plaintiff suing for pre emption valued his suit at Rs 4 500 the price for which according to his information the property had been sold to the defendant The suit was dismissed by the Subordinate Judge but decreed on appeal by the District Judge who however found that the real value of the property was over Rs 6 000 On second appeal it was urged that having regard to the value of property as found by the District Judge appeal lay to the High Court and not to the District Judge but the point was not taken in the memorandum of appeal *Held per* SHARFUDDIN and ROE JJ That this objection should be overruled in view of s 11 of the Suits Valuation Act and that the decision in *Raj Lakshmi Dasee v Katyayani Dasee I L R 38 Calc 63* was distinguishable from the present case as in that case the suit was intentionally and grossly undervalued NIPI MIAN v AMBICA SINGH (1916) 20 C W N 1029

20 ———— Wajib ul arz— Intiqual — Mortgage by conditional sale —*Cause of action* The wajib-ul arz of a village in recording an entry as to the right of pre-emption referred to transfers (*intiqal*) and provided for the mode in which the first offer was to be made *Held* that this provision applied to a mortgage by way of conditional sale and that the pre-emptor's cause of action arose upon the execution of the deed of

PRE-EMPTION—*contd*

RIGHT OF PRE EMPTION—*concld*

mortgage and not when a foreclosure decree was passed or when the mortgagee obtained possession thereunder SUBA SINGH v MAHABIR SINGH (1917) I L R 39 All 544

21 ———— **Sale by co-sharer to Mahomedan a Hindu**—*On the assumption that other co sharers were to have the right to pre empt—Right of pre emption of latter—Vendor if may prescribe special conditions not imposed by law—Agreement of sale understood by parties as and represented to be sale—Accrual of right of pre emption—Transfer of Property Act (IV of 1882) s 54, if determines date of sale* Where in property owned by Mahomedans co owners entitled to a fourth share agreed to sell their share to certain persons who were Hindus and in pursuance of the agreement the vendors intimated to the remaining co sharer that they had sold their share as aforesaid and gave the latter two days time within which to exercise his right of pre emption *Held* that as all the parties had considered that there was a law of pre emption which applied between the vendors and their co sharer and that it was applicable to the purchasers who too had assented to that view it was not necessary to enquire whether there was a local custom of pre emption or whether it could be enforced by a Mahomedan against a Hindu purchaser The Transfer of Property Act was not intended to alter to Mahomedan Law of pre emption SITARAM BHAWRAO DESHMUKH v SYED JIAUL HASAN KHAN (P C) 26 C W N 221

WAJIB UL ARZ

See PRE EMPTION—RIGHT OF AND CUSTOM OF

1 ———— **Custom or contract**—The wajib ul arz of a village in the Saharanpur district contained the following declaration on the part of the co sharers — Whereas a new settlement of our village from July 1860 to 1890 for a period of 30 years has been made on a revenue of Rs 484 annually therefore the agreement of us proprietors and lambardars is that till the term of this settlement and in future till the completion of the next settlement we shall remain bound and carry out — the reference intended being presumably to subsequent clauses of the document In a later wajib ul arz of 1295 Fasli the parties stated — In regard to the remaining customs of the village the wajib ul arz of 1267 Fasli should be referred to *Held* that the wajib ul arz of 1267 Fasli recorded a contract and not a custom and that contract had expired with the settlement for which it was entered into *Maratib Husain v Alam Ali All W N (1907) 28* and *Budh Singh v Gopal Rai I L R 30 All 544* followed ASA RAM v KANHAIYA LAL (1910) I L R 32 All 399

2 ———— **Partition of village**—*Separate wajib ul arzes—Change in the language* A village originally undivided was first partitioned into several mahals with a separate settlement wajib ul arz for each Subsequently one of these mahals was subdivided into two and fresh wajib ul arzes were framed for these two mahals One of these new mahals was in turn divided into two but no fresh wajib ul arzes were then framed The wajib ul arzes framed at the first and second

PRE EMPTION—*contd*

WAJIB UL ARZ—*contd*

partitions differed *inter se* as to their condition relative to pre emption *Held* that there was evidence only of a contract for pre emption which so far as the two last formed mahals were concerned had ceased to exist even before the expiry of the term of the settlement PRAN SUKH v SALIG RAM (1910) I L R 32 All 261

3 ———— **Custom or Contract**—The wajib ul arz of an undivided village gave a right of pre emption first to a near co sharer (*hissadar karib*) and then to a co sharer in the village (*hissadar deh*) Subsequently the village was divided by perfect partition No new wajib ul arz was framed Property situated in one of the new mahals was sold to a stranger and a suit for pre emption was brought by sharers in one of the other mahals claiming as *hissadaran deh* *Held per* STANLEY *C J* that the plaintiff was entitled to pre empt notwithstanding the partition and that the words *hissadar deh* as used in the wajib ul arz meant a sharer in the village *Dalganjan Singh v Kalka Singh I L R 22 All 1* distinguished *Sahib Ali v Fatima Bibi I L R 32 All 63* *Mithu Lal v Muhammad Ahmad Said Khan All W N (1899) 19* *Abdul Hai v Nain Singh I L R 20 All 92* *Matee Sah v Mussamat Goklee S D A N W P Vol 1 506* *Gokul Singh v Mannu Lal I L R 7 All 772* *Abbas Ali v Ghulam Nabi All W N (1891) 107* *Mata Din v Mahesh Prasad All W N (1882) 100* *Ram Din v Pokhar Singh I L R 27 All 555* *Auseri Lal v Ram Bhajan Lal I L R 27 All 602* and *Gobind Ram v Masihah Khan I L R 29 All 295* referred to *Held* per BANERJI *J* that the plaintiff pre emptor could not pre empt after the partition of the village as although he was a sharer in the village he was not a co sharer of the vendor and that the words *hissadar deh* as used in the wajib ul arz meant a co sharer of the undivided village for which the wajib ul arz had been prepared *Dalganjan Singh v Kalka Singh I L R 22 All 1* followed *Janki v Ram Partap I L R 28 All 268* and *Abdul Hai v Nain Singh I L R 20 All 92* referred to DORI v JIWAN RAM (1910) I L R 32 All 265

4 ———— *Custom or contract* The pre emptive clause of a wajib ul arz ran as follows — *Aiyanda jari rakhna rawaj shafa ka ham ko manzur hai* *Held* on a construction of the wajib ul arz that it denoted a record of custom and not of contract *Tasadduq Husain Khan v Ali Husain Khan All W N (1908) 121* distinguished HAZARI LAL v DURGA PRASAD (1909) I L R 32 All 187

5 ———— **Perfect partition—Malikan dhe**—The determination of an alleged right of pre emption must depend upon the particular circumstances of each case and the evidence adduced in support of the pre emptive right A village was divided by perfect partition into several mahals but no new wajib ul arz was prepared The wajib ul arz framed before partition was headed *Hakuk hissadaran bahludha* rights of co sharers *inter se* and gave the right of pre emption (i) to co sharers in the *khata* (ii) to the proprietors of the *patti* and (iii) to the proprietors of the village (*malikan deh*) Plaintiff was a co sharer in a different mahal from that in which the vendor was a co sharer *Held* that the heading of the wajib ul arz limited the mean

PRE EMPTION—*contd*

WAJIB UL ARZ—*contd*

ing of the expression *malikan del* to proprietors who were co sharers with a vendor between whom and the vendor a common bond subsisted and as the plaintiff was not a co sharer in the same mahal with the vendor she had no right of pre emption. *Janki v Ram Partap Singh I L R 28 All 286 Sardar Singh v Ija Husain Khan I L R 28 All 614* and *Gobind Ram v Masih ullah Khan I L R 29 All 295* distinguished *Dalganjan Singh v Kalka Singh I L R 22 All 1* followed. SAHIB ALI v FATIMA BIBI (1909) I L R 32 All 63

6 ———— Partition of village—*New wajib ul-arzes prepared after partition* The wajib ul arz of a village before partition provided for pre emption in the following way — Rights of co sharers as among themselves on the basis of custom or agreement The custom of pre emption obtains In case of sale of property by a co sharer another co sharer in the mauza can bring a suit for pre emption If he offers a low price then the vendor can sell the property to a stranger The village was divided by perfect partition into three mahals New wajib ul arzes were drawn up after partition and the condition as to pre emption in each ran as follows — Rights of co sharers *inter se* based on custom or agreement The custom of pre emption prevails In this case one co sharer sells his share (*hakiat*) another co sharer in the village (*hissadar sharik mau a*) can claim pre emption If he offers a smaller price the seller can sell it to a stranger The plaintiff pre emptor was a co sharer in a different mahal from that in which the property sold was situate The vendee was a stranger to the village The entire body of co sharers in the village were Muhammadans of the same stock and continued so up to the time of partition *Held* upon a construction of the language of the wajib ul arz and the circumstances of the case that the pre emptor must succeed as against the stranger vendee notwithstanding that a partition had taken place *Janki v Ram Partab Singh I L R 28 All 286* referred to CHETHUR v ABDUL HAKIM (1910) I. L. R 33 All. 296

7 ———— Contract or custom—*Presumption in absence of evidence that the record is one of custom* Where it is not apparent either from the language of the wajib ul arz itself or from other evidence that the pre emption clause of a wajib ul arz is merely the record of a new contract between the co sharers the presumption is that it is the record of a pre existing custom *Majidan Bibi v Shaikh Hayatan Ali Weekly Notes (1897) 3* followed The pre emptive clause of a wajib ul arz was headed Relating to the right of pre emption and ran as follows — If a co sharer has to sell and mortgage his *haqiat*—then at the time of transfer it will be incumbent that he should after giving information sell and mortgage for a proper price etc etc *Held* that this in the absence of evidence to the contrary indicated a pre existing custom of pre emption rather than a contract BHIM SEN V MOTI RAM (1910) I. L. R 33 All 85

8 ———— Initial—*Perpetual lease Held* that the word initial used in the pre emptive cause of a wajib ul-arz was wide enough to include a perpetual lease *Jagadam Sahai v Mahabir Prasad I L R 8 All 60* and *Ahmad Ali Khan v Ahmed I N W P 101* referred to LALJI MISR v JAGGU TEWARI (1910) I L R 33 All. 104

9 ———— "Apna shafi"—*Mahomedan law* A wajib ul arz provided that if any co sharer of a *patti* in the *Khalisa* wished to sell his share he would do so paying due respect to his own pre emptor (*apana shafi*) and if the latter refused and all the other pre emptors of the village (*our sub shafian deh*) refused then he might sell to a stranger *Held* that the expression *apna shafi* connoted nearness in space and not a blood relationship and therefore where the vendor and pre emptor were co sharers in the same *patti* the vendee being a co sharer in a different *patti* the co sharers in the same *patti* had a preferential right LAKHAN SINGH v BISHAN NATH (1910) I L R 33 All 299

10 ———— Partition of village into—*several mahals—Dastur dehi relating to whole village—Suit by co sharer of one mahal against co sharer of another mahal on ground of nearness in relationship to vendor* The *dastur dehi* of a village divided into several mahals but which nevertheless was held to be applicable to the whole village and to represent an arrangement come to by the co sharers in the village amongst themselves provided as to pre-emption as follows — If a co sharer wants to sell his share he must sell first to near co sharers then in the *patti* then in the mahal then in the village *Held* that the effect of this clause was to give to a co sharer in one mahal who was a relation of the vendor a preferential right of pre-emption over a co sharer in another mahal who was not a relation YAD RAM v CHEDA LAL (1913) I L R 35 All. 478

11 ———— Co sharer in patti—*and co sharers in mahal—Fictitious conveyance of share in patti to latter—Alleged previous offer to plaintiff—Witnesses found to have deposed falsely as to part of to be believed as to other parts—Party not coming forward to contradict positive evidence of opponent as to matters within his personal knowledge if may succeed* Plaintiff being a co sharer in the *patti* sued for pre emption and the defendants who were only co sharers in the *thok* or *mahal* resisted his claim on the grounds (i) that they had by a prior conveyance acquired a share in a *patti* and (ii that the plaintiff had refused the offer of the defendants vendor to sell the property to him *Held* that the reasons given by the High Court for holding in reversal of the first Court that the prior conveyance did not represent a genuine transaction and was fabricated with a view to defeat the claim for pre emption which the plaintiff was about to bring were cogent and decisive The High Court also disbelieved the evidence adduced by the defendants to prove plaintiff's refusal of the offer to him of the property by the defendant s vendor on the ground that the witnesses were the same who spoke to the prior conveyance and one part of whose evidence had been found to be distinctly false *Held* that it was open to the High Court to take this view although there was one witness who did not depose to the deed and neither plaintiff nor other persons in whose presence the offer was stated to have been made had come forward to contradict the defendants

PRE-EMPTION—*contd*

WAJIB UL ARZ—*contd*

witnesses The judgment of the High Court should not be treated in a piecemeal manner and taken as a whole was correct MATHURA PRASAD v SHAIKH MUHAMMAD (1912)
17 C W N 981

12 ———— **Incidents of custom not recorded**—*Mahomedan Law* A suit for pre emption was brought both under the custom recorded in the wajib ul arz and Mahomedan Law but the incidents of the custom were not recorded in the wajib ul arz *Held* that the rights were co extensive *Jagdam Sahai v Mahabir Sahai I L R 28 All 60* followed ZAMIR AHMAD v ABDUL RAZAQ (1915) **I L R 37 All 472**

13 ———— **Wajib ul-arz—Partition of village Right of co sharers different in mahals—** *to pre empt inter se* A certain village prior to 1873 consisted of one mahal which was sub divided into two *patties* The wajib ul arz of that year recorded a custom of pre emption first with near relations then with co sharers in the *patti* and lastly with co sharers in the village Subsequently the village was divided into a number of different mahals and at the last settlement a new wajib ul arz was drawn up for each of the new mahals in similar terms The plaintiff a proprietor in the village though not a co sharer in the mahal brought a suit for pre emption *Held* that the plaintiff was no longer a co sharer with the vendor and therefore had no preferential right as against the vendor who was grove holder in the village KHAYALI RAM v KALI CHARAN (1915)
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14 ———— **Custom**—*Mortgage by conditional sale* In 1895 a mortgage was made consolidating previous mortgages of the years 1892 1893 and 1894 In 1906 a suit was instituted on the mortgage which was construed as a mortgage by way of conditional sale A decree for foreclosure was obtained and in 1911 the decree was made absolute Shortly afterwards possession was obtained under this decree In 1914 a suit was brought claiming to get possession by virtue of a custom set forth in the wajib ul arzes The clause relating to pre emption was as follows — If a *pattidar* wishes to transfer his share by sale or mortgage he should do so first to another *pattidar* of the same *thok* and in case of his refusal to the *patti dars* of another *thok* of the village If the *pattidar* wants to sell his share to a stranger by entering an excessive and fictitious price the *pattidar* having the right of pre emption shall be entitled to acquire the property on payment of the price awarded by the arbitrators *Held* that having regard to the whole context of the wajib ul arzes the sale mentioned wherein for the purpose of giving rise to a right of pre emption according to custom meant a voluntary sale and the wajib ul arzes did not give him a right of pre emption under the circumstances under which the mortgagee became the owner of the property *Alu Prasad v Sukhan I L R 3 All 610* distinguished SUNDAR KUNWAR v RAM GHULAM (1918) **I L R 40 All. 626**

15 ———— **Property to be sold to co-sharer first**—*Sale to stranger— Refusal to purchase* As a general rule the custom as to pre emption as evidenced by the record in the wajib ul arz is that where a co sharer wishes to sell his property he must first offer it to another co sharer and if the co sharer refuses to purchase he is entitled to go to a stranger Where the custom proved is of this nature if the co sharer (vendor) offers the property to another co sharer and such co sharer refuses to purchase on the ground that he has no money or is unwilling for any other reason to purchase the owner of the property is entitled to go and sell it to a stranger and he is not obliged after he has made a definite agreement with the stranger to return and offer the property a second time to the co sharer *Naunihal Singh v Ram Rattan, I L R 39 All 127* and *Nathi Lal v Dhani Ram 15 A L J 315* followed *Munawar Husain v Khadim Ali 5 A L J 331* and *Kanhai Lal v Kalla Prasad I L R 27 All 670* not followed. SHAMSHER SINGH v PIARI DAT (1918)
I. L. R 40 All. 690

16 ———— **Involuntary sales**—*Held* by the Full Bench —In the absence of any statutory reservation of the right a right of pre emption does not exist in cases of involuntary sales hence a Malabar otti mortgagee has no right of pre emption against a purchaser in Court auction of the mortgaged property and he is not entitled to any notice of the intended Court sale or of the price fetched at the sale VASUDEVAN MOOSAD v ITTIRARICHAN NAIR (1918)
I L R 41 Mad. 582

17 **Purchases made by vendee on different dates**—*Suit to pre empt first sale only—Vendee claiming to be a co-sharer in virtue of second purchase—Suit not maintainable* The defendant purchased shares in a village on two different dates The plaintiff sued to pre empt the earlier sale but no suit was brought in respect of the second sale *Held* that the suit was not maintainable CHABRAJ SINGH v MAHESH NARAIN SINGH (1918) **I L R 40 All. 572**

18 ———— **Sale of right to receive malikana**—*not a subject of pre emption* *Held* that a right to receive a *malikana* allowance cannot be the subject of a suit for pre emption ABDUL WAHID v HALIMA KHATUN
I L R. 42 All. 262

19 ———— **Involuntary sale**—*Owner declared insolvent on application by a creditor—Sale of property by official assignee—Omission of pre emptor to bid at auction sale* On an application made by a creditor in *invitum* one R i Sri Kishan Das Bahadur was adjudged an insolvent and his property was placed in charge of an official assignee Some of the consisting of zamindari was sold by the official assignee at public auction *Held* that the sale not being voluntary no right of pre emption would arise under the village wajib ul arz *Kanhai Lal v Kalla Prasad I L R 27 All 670* distinguished *Held* further that the sale having been widely notified a pre emptor who knowing of the sale did not bid must be taken to have refused to purchase and the official assignee was under no obligation to offer the property to him after it had been knocked down to the highest bidder at the auction *Kanhai Lal v Kalka Prasad I L R 27 All 670* not followed GHULAM MOHI UD DIN KHAN v HARDEO SAHAI **I. L. R. 42 All. 402**

PRE EMPTION—contd

WAJIB UL ARZ—contd

20 ———— Resale of property during pre-emption suit to person with a preferential right—*but after the extinction of his right to pre empt by reason of limitation* During the pendency of a suit for pre emption under the provision of the village wajib ul arz the vendee resold the property in suit to a person who originally had a pre-emptive right superior to that of the plaintiff but who at the date of the sale was barred by limitation from enforcing it *Held* that the plaintiff's claim was not defeated by such sale. *Manpal* v *Shaib Ram I L R 27 All 544* *Janki Prasad* v *Ishar Das I L R 21 All 374* and *Ram Gopal* v *Piari Lal I L R 21 All 441* distinguished KAMTA PRASAD v RAM JAO (1913) I L R 36 All 60

21 ———— *Custom—Effect of confiscation of part of village— Karibi wa khandani* In a village comprising two eight anna *thoks* a custom of pre emption was recorded as prevailing in two wajib ul arzes of 1833 and 1860 and in the *amima kh wat* of 1884 the date of the last settlement *Held* that the custom so recorded was in no way modified by the fact that a four anna undivided share in the village had been confiscated by the Government after the mutiny and re granted to other proprietors *Held* also that a person related to a vendor through the female line only and twelve degrees removed from him could not be considered as falling within the description in the wajib ul arz of *karibi wa khandani* DURGA PRASAD PANDE v FATEH BAHADUR SINGH (1914) I L R 36 All 451

22 ———— *Claim based on relationship to vendor—Death of plaintiff pending suit—Sons of plaintiff not entitled to take advantage of the relationship of their father* The plaintiff in a suit for pre emption had a preferential right over the vendee on the ground of his nearer relationship to the vendor but the plaintiff s sons had not *Held* that the plaintiff's sons could not on the death of their father pending the suit claim to take advantage of the relationship in which their father had stood to the vendor PARTAB SINGH v DAULAT (1913) I L R 36 All 63

MISCELLANEOUS

1 ———— Execution of decree—*Decretal amount deposited but part taken out of Court by a creditor of the decree holder the decree for pre emption having been set aside—Restoration of decree on appeal—Position of decree holder* A decree for pre-emption conditional on the plaintiff pre-emptor depositing in Court by a certain date Rs 1 000 was duly complied with But on appeal by the vendee the decree was set aside and thereafter a portion of the money deposited by the pre emptor was attached and drawn out of Court by a creditor who had obtained a money decree against him The decree was however restored as the result of an appeal to the High Court *Held* that the plaintiff was entitled to execute his decree upon making good the amount which had been removed by his creditor *Held* also that the Court of first instance ought not to have permitted any part of the money deposited to be withdrawn until the pre emption suit had been finally decided *Abdus Salam* v *Wilayat Ali All Weekly Notes (1897) 31* distinguished SHEO GOPAL v NAJIB KHAN (1914) I L R 36 All 398

2 ———— Pleadings—*Alternative claims under custom and Mahomedan law* There is nothing to prevent a plaintiff in a suit for pre emption basing his claim in the alternative on contract custom or Mahomedan law But where there is an established custom of pre emption and the pre emptor fails to bring himself within that custom he cannot fall back on the Mahomedan law *Muhammad Salim* v *Sadar ud din Beg 7 All L J 660* distinguished MUHAMMAD AHSANULLAH v S AHS UN NISSA BIBI (1914) I L R 36 All 456

3 ———— Dispute as to true sale consideration—*Evidence—Burden of proof—Payment before Sub Registrar* In a suit for pre emption where it is alleged that the sale price is fictitious and put into the deed for the purpose of defeating pre emption it is open to the pre emptor to give evidence to show that the market price is far below that stated in the sale deed If he gives such evidence to the satisfaction of the Court the latter is quite justified in arriving at *its own conclusion as to what was the real consi*deration and this notwithstanding that it is proved that the amount stated in the deed was paid before the Sub Registrar *Abdul Majid* v *Amolak I L R 29 All 618* referred to *O Conor* v *Ghulam Haidar I L R 28 All 617* not followed RAM SARUP SAHU v KARAMULLAH KHAN (1914) I L R 36 All 464

4. ———— Practice—Alternative claims—*Claim for possession as owner joined with alternative claim for pre emption* There is nothing in law to prevent a plaintiff in a suit for pre emption also setting up a claim for possession of the property as owner and his suit ought not to be dismissed on the ground that he has put his case in the alternative BHAGWATI SARAN MAN TIWARI v PARMESHAR DAS (1914) I L R 36 All 476

5 ———— Mahomedan law—*Vendor a Shia and pre emptor a Sunni—Shia law to be applied* In a suit for pre emption the vendor was a Shia Mahomedan the vendees Hindus and the pre emptor a Sunni The claim was laid in the alternative either on custom or on the Mahomedan law The custom set up was not proved *Held* that the Mahomedan law applicable was that of the vendor namely the Shia law and that the pre emptor had no case *Jog D b Singh* v *Mahomed Afzal I L R 32 Calc 98* not followed *Ibbas Ali* v *Maya Ram I L R 12 All 229* *Qurban Husain* v *Chote I L R 22 All 102* and *Gobind Dayal* v *Inayatullah I L R 7 All 775* referred to PIR KHAN v FAIYAZ HUSAIN (1914) I L R 36 All 488

6 ———— Time for payment of—sum decreed—*Pre emption price enhanced on appeal by the vendee but no time fixed for payment—Practice* The appellate Court in a pre-emption suit enhanced the amount decreed to be payable by the pre emption in the first Court but omitted to fix any time within which the enhanced amount should be payable *Held* that the plaintiff pre emptor was entitled to a reasonable time within

PRE EMPTION—*contd*

WAJIB UL ARZ—*contd*

witnesses The judgment of the High Court should not be treated in a piecemeal manner and taken as a whole was correct MATHURA PRASAD v SHAIKH MUHAMMAD (1912)

17 C W N 981

12 ———— Incidents of custom not recorded—*Mahomedan Law* A suit for pre emption was brought both under the custom recorded in the wajib ul arz and Mahomedan Law but the incidents of the custom were not recorded in the wajib ul arz. *Held* that the rights were co extensive *Jagdam Sahai* v *Mahabir Sahai*, *I L R 28 All 60* followed ZAMIR AHMAD v ABDUL RAZAQ (1915) I L R 37 All. 472

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14. ———— Custom—*Mortgage by conditional sale* In 1895 a mortgage was made consolidating previous mortgages of the years 1892 1893 and 1894 In 1906 a suit was instituted on the mortgage which was construed as a mortgage by way of conditional sale A decree for foreclosure was obtained and in 1911 the decree was made absolute Shortly afterwards possession was obtained under this decree In 1914 a suit was brought claiming to get possession by virtue of a custom set forth in the wajib ul arzes The clause relating to pre emption was as follows — If a *pattidar* wishes to transfer his share by sale or mortgage he should do so first to another *pattidar* of the same *thok* and in case of his refusal to the *pattidars* of another *thok* of the village If the *pattidar* wants to sell his share to a stranger by entering an excessive and fictitious price the *pattidar* having the right of pre emption shall be entitled to acquire the property on payment of the price awarded by the arbitrators *Held* that having regard to the whole context of the wajib ul arzes the sale mentioned wherein for the purpose of giving rise to a right of pre emption according to custom meant a voluntary sale and the wajib ul arzes did not give him a right of pre emption under the circumstances under which the mortgagee became the owner of the property *Alu Prasad* v *Sukhan I L R 3 All 610* distinguished SUNDAR KUNWAR v RAM GHULAM (1918) I L R 40 All. 626

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16 ———— Involuntary sales—*Held by* the Full Bench —In the absence of any statutory reservation of the right a right of pre-emption does not exist in cases of involuntary sales hence a Malabar otti mortgagee has no right of pre emption against a purchaser in Court auction of the mortgaged property and he is not entitled to any notice of the intended Court sale or of the price fetched at the sale VASUDEVAN MOOSAD v ITTIRARICHAN NAIR (1918)

I L. R. 41 Mad. 582

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18 ———— Sale of right to receive malikana—*not a subject of pre emption Held* that a right to receive a *malikana* allowance cannot be the subject of a suit for pre emption ABDUL WAHID v HALIMA KHATUN

I L R 42 All. 262

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I. L. R. 42 All. 402

PRE EMPTION—contd

WAJIB UL ARZ—contd

20 ———— Resale of property during pre-emption suit to person with a preferential right—*but after the extinction of his right to pre empt by reason of limitation* During the pendency of a suit for pre emption under the provision of the village wajib ul arz the vendee resold the property in suit to a person who originally had a pre emptive right superior to that of the plaintiff but who at the date of the sale was barred by limitation from enforcing it *Held* that the plaintiff's claim was not defeated by such sale. *Manpal* v *Shaib Ram I L R 27 All 344 Janki Prasad* v *Ishar Das I L R 21 All 374* and *Ram Gopal* v *Piari Lal I L R 21 All 441* distinguished KAMTA PRASAD v RAM JAG (1913) I L R 36 All 60

21 ———— Custom—Effect of confiscation of part of village— *Karibi wa khandani* In a village comprising two eight anna thoks a custom of pre emption was recorded as prevailing in two wajib ul arzes of 1833 and 1860 and in the *amima khewat* of 1884 the date of the last settlement *Held* that the custom so recorded was in no way modified by the fact that a four-anna undivided share in the village had been confiscated by the Government after the mutiny and re granted to other proprietors *Held* also that a person related to a vendor through the female line only and twelve degrees removed from him could not be considered as falling within the description in the wajib ul arz of *karibi wa khardani* DURGA PRASAD PANDE v FATEH BAHADUR SINGH (1914) I L R 36 All 451

22 ———— *Claim based on relationship to vendor—Death of plaintiff pending suit—Sons of plaintiff not entitled to take advantage of the relationship of their father* The plaintiff in a suit for pre emption had a preferential right over the vendee on the ground of his nearer relationship to the vendor but the plaintiff s sons had not *Held* that the plaintiff s sons could not on the death of their father pending the suit claim to take advantage of the relationship in which their father had stood to the vendor PARTAB SINGH v DAULAT (1913) I L R 36 All 63

MISCELLANEOUS

1. ———— Execution of decree—*Decretal amount deposited but part taken out of Court by a creditor of the decree holder the decree for pre emption having been set aside—Restoration of decree on appeal—Position of decree holder* A decree for pre emption conditional on the plaintiff pre-emptor depositing in Court by a certain date Rs 1 000 was duly complied with But on appeal by the vendee the decree was set aside and thereafter a portion of the money deposited by the pre emptor was attached and drawn out of Court by a creditor who had obtained a money decree against him The decree was however restored as the result of an appeal to the High Court *Held* that the plaintiff was entitled to execute his decree upon making good the amount which had been removed by his creditor *Held* also that the Court of first instance ought not to have permitted any part of the money deposited to be withdrawn until the pre emption suit had been finally decided *Abdus Salam* v *Wilayat Ali All Weekly Notes (1894) 31* distinguished. SHEO GOPAL v NAJIB KHAN (1914) I L R 36 All 398

2 ———— Pleadings—*Alternative claims under custom and Mahomedan law* There is nothing to prevent a plaintiff in a suit for pre emption basing his claim in the alternative on contract custom or Mahomedan law But where there is an established custom of pre emption and the pre emptor fails to bring himself within that custom he cannot fall back on the Mahomedan law *Muhammad Salim* v *Sadar ud din Beg 7 All L J 660* distinguished MUHAMMAD AHSANULLAH v S AMS UN NISSA BIBI (1914) I L R 36 All. 456

3 ———— Dispute as to true sale consideration—*Evidence—Burden of proof—Payment before Sub Registrar* In a suit for pre emption where it is alleged that the sale price is fictitious and put into the deed for the purpose of defeating pre emption it is open to the pre emptor to give evidence to show that the market price is far below that stated in the sale deed. If he gives such evidence to the satisfaction of the Court the latter is quite justified in arriving at its own conclusion as to what was the real consideration and this notwithstanding that it is proved that the amount stated in the deed was paid before the Sub Registrar *Abdul Majid* v *Amolak I L R 29 All 618* referred to *O Conor* v *Ghulam Haidar I L R 28 All 617* not followed RAM SARUP SAHU v KARAMULLAH KHAN (1914) I L R 36 All 464

4 ———— Practice—Alternative claims—*Claim for possession as owner joined with alternative claim for pre emption.* There is nothing in law to prevent a plaintiff in a suit for pre emption also setting up a claim for possession of the property as owner and his suit ought not to be dismissed on the ground that he has put his case in the alternative BHAGWATI SARAN MAN TIWARI v PARMESHAR DAS (1914) I L R 36 All 476

5 ———— Mahomedan law—*Vendor a Shia and pre emptor a Sunni—Shia law to be applied* In a suit for pre-emption the vendor was a Shia Mahomedan the vendees Hindus and the pre emptor a Sunni The claim was laid in the alternative either on custom or on the Mahomedan law The custom set up was not proved *Held* that the Mahomedan law applicable was that of the vendor namely the Shia law and that the pre emptor had no case *Jog Deb Singh* v *Mahomed Afzal I L R 32 Calc 982* not followed. *Abbas Ali* v *Maya Ram I L R 12 All 229 Qurban Husain* v *Chote I L R 22 All 102* and *Gobind Dayal* v *Inayatullah I L R 7 All 775* referred to PIR KHAN v FAIYAZ HUSAIN (1914) I L R 36 All. 488

6 ———— Time for payment of—sum decreed—*Pre emptive price enhanced on appeal by the vendee but no time fixed for payment—Practice* The appellate Court in a pre-emption suit enhanced the amount decreed to be payable by the pre emptor in the first Court but omitted to fix any time within which the enhanced amount should be payable *Held* that the plaintiff pre emptor was entitled to a reasonable time within

PRE-EMPTION—*contd*

MISCELLANEOUS—*contd*

which to pay in the amount decreed and having regard to the enhanced amount (Rs 801) the time within which it was in fact paid (one month and one day after the decree) was reasonable and the plaintiff was entitled to execute his decree DEBI SARAN TIWARI v GUPTAR TIWARI (1914)
I L R 36 All 514

7 ———— Pleadings—*Mahomedan Law—Custom—Amendment of plaint—Discretion of Court* The plaintiff in a suit for pre emption based his claim upon the Mahomedan law At a somewhat late stage in the case the plaintiff asked leave to amend his plaint by adding an alternative claim based on custom as evidenced by the wajib ul arz but this was refused and the Court not withstanding that it found that according to the wajib ul arz, a custom of pre emption existed dismissed the suit *Held* that the Court ought to have permitted the plaint to be amended and even without amending the plaint was com petent to decree the claim on the basis of the wajib ul arz ABDUL HAMID v MASIT ULLAH (1912) I. L. R 36 All. 573

8 ———— Applicability of Mahomedan law—*in the case of a sale of zamindari property* The Mahomedan law of pre emption applies to zamindari property and is not restricted to houses gardens and small plots of land *Munna Lal* v *Hajira Jan I L R 33 All 28* followed FAZAL AHMAD v TASADDUQ HUSAIN (1919)
I L R 41 All 428

9 ———— Custom—*Wajib ul arz—Partition of village—Old custom adopted in new mahals—Right of pre emption not surviving as between the new mahals* The wajib ul arz of an undivided village afforded evidence of the existence of a custom of pre emption in the village *between co-sharers* Subsequently the village was divided by perfect partition into several mahals and each of the new mahals adopted the old custom *Held* that no right of pre emption survived as between the different new mahals *Ganga Singh* v *Chedi Lal I L R 33 All 605* referred to DEOKINANDAN v MAHTAB RAI (1919) I L R 41 All. 426

10 ———— Sale to stranger—*Plaintiffs joining in their suit persons who were not strangers but had pre emptive rights inferior to theirs* In a suit for pre emption where the suit is a suit against strangers the plaintiffs by joining person who have different rights *inter se* do not thereby forfeit their rights *Gupteshwar Ram* v *Rati Krishna Ram I L R 34 All 542* distinguished SHEORAJ SINGH v NAIK SINGH SAHAI (1919)
I L R 41 All. 423

11 ———— Perpetuity Rule when applicable to—*Pre emption right of with regard to immoveable property Covenant for unlimited in point of time of value* A Hindu transferred certain immoveable property to his son in law reserving a condition that if the transferee or his successor found it necessary to sell the property he or his successors might sell it to the vendor his nephew or heirs at a specified price The son of the third son in law sold the property to some others whereupon the nephew sued for enforcement of the right of pre emption. *Held* that an option to arise on any intended sale or other particular kind of alienation is subject to the rule against perpetuities unless the right is conferred by statute NABIN CHANDRA SARMA v RAJANI CHANDRA CHAKRABARTI 25 C W N 902

12 ———— Conditional decree—*With costs to the plaintiff—Amount paid by the plaintiff less than the sum named in the decree but more than the decretal amount less the plaintiff's costs* The decree in a pre emption suit ordered the plaintiff to pay Rs 100 within a certain time and also awarded costs amounting to Rs 9 annas 8 to the plaintiffs The plaintiffs deposited in court within the time allowed Rs 99 *Held* that there was a sufficient compliance with the decree *Bechai Singh* v *Shami Nath 8 A L J (Notes) p 27* and *Ali Husain* v *Amin ullah I L R 41 All 596* referred to RAM LAGAN PANDE v MUHAMMAD ISHAQ KHAN I L. R. 42 All. 181

13 ———— Mahomadan law—*Zamindari village— Imperfect partition of mahal into several pattis—No rights or property left in common —No right of pre emption amongst owners of different pattis interse* Where the Muhammadan law of pre emption is applicable there is ordinarily no right of pre emption as between owners of different *pattis* of a mahal divided by imperfect partition *Munna Lal* v *Hajira Jan I L R 33 All 28* referred to MATHURA PRASAD v HARDEO BAKHSH SINGH I L. R 42 All 477

14 ———— Sale of family property by the father of a joint Hindu family—*Suit by sons to pre empt sal —Suit not maintainable* *Held* that the sons in a joint Hindu family cannot maintain a suit to pre empt a sale of joint family property made by the father as manager and for legal necessity *Raghunath* v *Musammat Fatat Begam 3 A L J 641* and *Gandharp Singh* v *Sahib Singh I L R 7 All 181* followed PRATAP NARAIN SINGH v SHIAM LAL
I L R 42 All. 264

15 ———— Vendee becoming a co-sharer pending the suit—During the pendency of a suit for pre emption of a share in zamindari property the defendant vendee acquired by gift a share in village which put him as regards pre emption on the same level with the plaintiff pre emptor *Held* that in these circumstances the suit must be dismissed The principle of *Ram Gopal* v *Piari Lal I L R 21 All 441* applied BIHARI LAL v MOHAN SINGH
I L R 42 All. 268

16 ———— Valuation of property the subject of a claim for pre-emption—*Property subject to a mortgage—Personal remedy barred and mortgage debt in excess of market value* Where the personal remedy of the mortgagee has become barred and the mortgage debt exceeds the value of property mortgaged the value of the property from the point of view of a claimant for pre emption is the market value simply JAGAT SINGH v BALDEO PRASAD
I. L. R. 43 All. 137

17 ———— Khandesh District—*Rule of pre emption does not exist in the Khandesh District —Bombay Regulation II of 1827 cl 26* In the District of Khandesh in the Bombay Presidency the rule of pre emption does not exist either as a rule of law or as a rule of justice equity and good conscience MAHOMED BEG AMIN v NARAYAN MEGHAJI (1915) I L. R 40 Bom 358

PRE EMPTION—*contd*

MISCELLANEOUS—*contd*

18 ———— **Sale by Mahomedan to Hindu** —*Co sharer's claim to pre emption—Law applicable—Intention of parties* One of two Mahomedan co sharers in two villages in the Presidency of Bombay agreed to sell his share to a Hindu the agreement being made subject to a right in the co sharer to pre empt and as a complete and immediate sale although part of the purchase price was to be paid later and a sale deed executed The vendor informed his co sharer that he had sold and invited him to pre empt the share sold The co sharer thereupon performed the ceremonies of pre emption and claimed as pre emptor to recover the share from the purchaser *Held* that the co sharer had a right of pre emption in accordance with the intention of the parties which had to be looked at to determine what system of law was to apply and what was to be taken as the date of the sale with reference to which the ceremonies were performed Judgment of the High Court affirmed SITARAM BHAURAO v JIAUL HASAN SIRAJUL KHAN (1921) L R 48 I A 475

I L R 45 Bom 1056

19 ———— **Shafi i Khalit right of**—*Partition of estate into separate mahals—sale of separate touzi number—whether owner of one of the mahals has a right to pre emption* On partition property was divided into several *mahals* but joint between the parties were left a well certain roads a tank a number of *brahmottar* and *fakirana* holdings and two occupancy holdings A separate *touzi* number formed by this partition was sold and the owner of one of the *mahals* into which the parent estate had been divided claimed a right of pre emption over the *touzi* number which had been sold *Held* (1) that the existence of the undivided holdings did not give him a right of pre emption (2) that he had no right of pre emption as *shafi i khalit* as the road well tank etc were not appurtenances ISHAR SINGH v BANSI SINGH **4 Pat L J 420**

20 ———— **Adhlapi transaction**—*Whether a sale when no money consideration passes—Transfer of Property Act IV of 1882 s 54* One T P in 1907 entered into an *Adhlapi* transaction with G M in the Alipur Tahsil of the Muzaffargarh District by which the latter was to sink a well and clear the land attached to it within a period of 4 years and on his carrying out his undertaking G M was to get possession of one third of the land as proprietor G M apparently carried out his part of the undertaking and on 18th June 1913 his name was entered in the mutation *register* as owner of one third of the land attached to the well The present plaintiff then brought a suit for pre emption in respect of the sale of the one third share in the land and it was objected that the transaction was not a sale *Held* that the creation of the *Adhlapi* tenure in the present case did not amount to a sale as no money consideration passed at all and the defendant became proprietor of one third of the land only because he sank a well and brought the land attached to it under cultivation Such a transaction did not give rise to any rights of pre-emption *Mul Chand v Mansa Ram (15 P R 1880)* distinguished *Ude Ram v Bakhshi (1 P R 1884 p 36 note)* and *Jesa Ram v Chinda Mal (5 P P 191)* referred to GHULAM MUHAMMAD v TEK CHAND **I L R 2 Lah 199**

21 ———— **Waiver**—*Pre emptor who refused to purchase except at a price much below the value* H a member of an agricultural tribe applied to the Deputy Commissioner for permission to sell his land His application was forwarded to the Tahsildar who went to the village to make inquiries and on 8th January 1913 vendee offered to purchase the land for Rs 1,600 and the house for Rs 400 On 19th January the plaintiffs collaterals of H stated that they were not prepared to pay more than Rs 800 or Rs 900 or both the properties and declined to buy them for more than that sum The properties were then sold to the vendee *Held* that the conduct of the plaintiffs amounted to a waiver and that they could not enforce their right of pre emption *Indraj v Brother Clement (I L R 37 All 262)* referred to also *Sri Kishen Singh v Bachcha Pande (I L R 33 All 6 7)* *Karam Chand v Ghulam Hassan (74 P R 1916)* distinguished *Held also* that plaintiffs had no reasonable ground for entertaining the belief that Rs 2 000 was an excessive price MUKH RAM v HARJAS

I L R 1 Lah 51

PRE EMPTION DECREE—

———— *Whether transferable* —On 17th June 1918 Mehr Khan appellant obtained a pre emption decree on payment of Rs 1 500 within one month On 6th July 1918 Mehr Khan sold his rights in the decree to Shah Din appellant and on 8th July 1918 they both presented a joint application for execution and deposited Rs 1 500 the fact of the sale being recited in the application On 5th August 1918 Mehr Khan stated in Court that as he had sold his rights to Shah Din he wished possession under the decree to be given to him *Held* following *Ramsahai v Gaya (I L R 7 All 107 111)* that a decree for pre emption is not capable of transfer so as to enable the transferee to obtain possession of the pre emptional property in execution and that consequently Shah Din could not get possession under the decree in favour of Mehr Khan *Lashkari Mal v Ishar Singh (94 P R 1907)* referred to MEHR KHAN v GHULAM RASUL

I L R 2 Lah 251

PRE-EMPTOR

———— **right of, to put vendor to proof of title—**

See PRE EMPTION **I L R 37 All 529**

PREFERENCE.

See DEBTOR AND CREDITOR **I L R 43 Calc 521**

PREFERENCE SHAREHOLDERS

See COMPANY **I L R 42 Bom. 579**

PREFERENTIAL CLAIM

See MUTAWALLI **I L R 43 Calc 467**

PREFERENTIAL HEIR

See HINDU LAW—SUCCESSION **I L R 28 Mad 45**

———— *Findings on issues relating to misjoinder limitation and jurisdiction—Drawing up a preliminary decree—Material irregularity in declining to do so* A Subordinate Judge in trying a suit gave his decision on issues relating to misjoinder limitation and jurisdiction and directed the parties to adduce evidence relating to accounts He was asked to draw up a preliminary decree in accordance with his findings on the issues and having declined to do so *Held* that the Subordinate Judge committed a material irregularity in the exercise of his jurisdiction The decision of the issues conclusively determined the rights of the parties regarding some matters in controversy so far as his Court was concerned the decision on each of the issues was therefore sufficient to constitute a preliminary decree *Per* CURIAM It is the duty of the Court where it is applied to after the passing of a preliminary decree to have the decree drawn up so as to enable the party aggrieved to appeal. *Eas Dicali v Shah Vishrab Marordas I L R 34 Bom 18* referred to SIDHANATH DHONDDEV v GANESH GOVIND (1912) I L R 37 Bom 60

———— *Finding that a suit is not res judicata* A decision that a matter is not *res judicata* is not a preliminary decree *Chanmalswami v Gangadharappa I L R 29 Bom 339* followed BHARMA BIN SHIDAPPA v BHARAGAVDA (1914) I. L. R. 39 Bom. 421

———— *Appeal—final decree passed before appeal from preliminary decree disposed of* When an appeal has been filed and is pending against a preliminary decree in a suit for partition, the passing of the final decree does not render the appeal untenable *Per* SHARFUDDIN J —A preliminary decree retains its force as such even after the passing of the final decree A preliminary decree is not extinct after the passing of the final decree and the final decree instead of extinguishing the preliminary decree gives effect to it BIBI WAHIDUNNISSA v DEEP NARAIN PRASAD 1 Pat L J 406

PRESCRIPTION

See EASEMENT I L R 42 Calc 164
L L R 45 Bom 1027

See EASEMENT ACT (V OF 1882) s 15
I L R 39 Mad 304

——— non riparian owner—

See EASEMENTS ACT (V OF 1882) ss 2 (c) AND 17 (c) L L R 42 Bom. 238

——— Prescription proof of acquisition of title by—*Acts necessary to prove prescriptive rig as trustee of tank—Such right not acquired by acts of conservancy maintaining and repairing etc* A prescriptive right as trustee of a tank the common property of a village cannot be acquired by performing acts of conservancy clearing and maintaining the tank building flights of steps sluices etc enjoying the fruits of trees in the bund selling withered trees and similar acts *Muthayya v Sivaraman I L R 6 Mad 229* followed *Sivaraman Chetty v Muthayyan Chetty I L R 12 Mad 241 248* followed KARUTHAN CHETTY v KALIMUTHAN (1910)
I L R 34 Mad 323

——— Water rights—*Reservoir in another s land—Prescriptive right to take water by defined channels—Reservoir fed by surface water—Excavation by owner affecting supply of surface water if actionable* The defendants had by prescription acquired the right to take water for the irrigation of their lands by two defined channels issuing westward from an *ahar* or reservoir in plaintiffs mouzah and fed by water coming to it by a defined channel from the north west and surface water from the north south and east *Held* that the plaintiffs had every right to cut in their own mouzah a *pyne* or channel which in no way interfered with the passage of water to the *ahar* through the channel from the north west although it might result in drawing off the supply of surface water to the *ahar* to such an extent as would diminish the quantity of water available to the defendants for irrigating their lands INDERJIT PERTAP BAHADUR SAHI v KRISHNA DOYAL GIR (1910) 14 C W N 825

PRESENTATION

See COMPLAINT I L R 42 Calc 19

See REGISTRATION ACT (III OF 1877) s 32 I L R 34 All 355

See REGISTRATION ACT (XVI OF 1908)—

s 32 I L R 35 All 72, 134

ss. 32 33 71 73 87 88
I L R 40 All 434

PRESIDENCY BANKS ACT (XI OF 1876)

——— s 32—*Succession Certificate Act (VII of 1889) ss 16 and 17—Dividends on shares may be paid to the person obtaining succession certificate—Transfer of shares to the holder of certificate or his nominee—Case stated for opinion of Court—Civil Procedure Code (Act V of 1908) s 90 and O XXXVI* The provisions of s 23 of the Presidency Banks Act of 1876 do not prevent the Banks from accepting the succession certificate granted under the Succession Certificate Act The certificate affords full indemnity to all the persons who are liable on the securities specified in the certificate as regards all dealings in good faith in respect of such securities *Held* accordingly the Banks will not be contravening the provisions of the Act if they pay the dividends on the shares in the Banks to the person obtaining the certificate and on his requisition transfer the said shares to him or his nominee RANJITSINGHJI v THE BANK OF BOMBAY (1920)
I L R 45 Bom 138

——— ss 36 37—*Directors lending on the unauthorised securities (e g) mortgage of immoveable property not* ultra vires *of the bank* The provisions of s 37 of the Presidency Banks Act (XI of 1876) prohibiting the directors of such banks from entering into certain kinds of transactions therein mentioned such as taking mortgages of immovable properties are only directory and not mandatory and they prohibit only the directors and not the banks from entering into them and if such transactions are actually entered into by the directors on behalf of the bank they are not *ultra vires* of the bank The directors are only agents of the bank and if in entering into such transactions they exceed the powers given to them by the Act the bank can ratify them and enforce them and an assignee (as in this case) from the bank of its rights under such transactions is equally entitled to enforce them DAMODAR SHANBOGUE v PAMA ROW (1915)
I L R 39 Mad. 101

PRESIDENCY MAGISTRATES

See PIECEMEAL TRIAL
I L R 42 Calc 313

——— jurisdiction of—

See COMPANY I L R 45 Calc 490

——— notes of depositions—

See COPIES 15 C W N 770

——— courts of—*jurisdiction of inter se—Transfer High Court has power of from Court of Chief Presidency Magistrate to Court of another Presidency Magistrate —Criminal Procedure Code (Act V of 1898) s 21 cl (2) 526 cl (ii) Charter Act (1865) s 15* The Court of the Chief Presidency Magistrate and those of the other Presidency Magistrates are Courts of equal jurisdiction within the meaning of s 526 cl (ii) Criminal Procedure Code (Act V of 1898) The High Court has power to transfer a case from the file of the Chief Presidency Magistrate to that of another Presidency Magistrate *In re* VENKATASWARA SASTRI (1912) I L R 35 Mad. 729

——— Jurisdiction within Port of Calcutta—*Unauthorised erection of wall on the foreshore on the right bank of the Hughli—Dismissal of complaint for absence of complainant—Complainant present at the time by mistake in adjoining Court—Acquittal—Criminal Procedure Code (Act V of 1898) ss 20 247—Calcutta Port Act (Beng III of 1890) ss 108 and 139* A Presidency Magistrate has jurisdiction under s 20 of the Criminal Procedure Code read with s 139 of the Calcutta Port Act (Beng III of 1890) to try an offence under s 84 of the latter committed outside the limit of the town but within those of the port of Calcutta Where a complainant was present in the Court of a Magistrate who had previously dealt with the case under the belief that it would

PRESIDENCY MAGISTRATES—*concld*

be heard by him but it was taken up and dismissed under s 247 of the Code by the Chief Presidency Magistrate without the knowledge of the complainant —*Held* that the order of acquittal under s 247 ought in the circumstances of the case to be set aside W J GOOD v GUNPAT PAT KHEMKA (1919) **I L R 47 Calc 147**

PRESIDENCY SMALL CAUSE COURT

——— judgment of—

See APPEAL **I L R 41 Calc 323**

——— Rules of—

See PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882) ss 9 AND 38

I L R 38 Mad 823

——— suit in—

See SANCTION FOR PROSECUTION

I L R 44 Calc 816

——— *Jurisdiction—Fraud* Where a decree was passed by the Presidency Small Cause Court and a suit was instituted in the Court of a Munsif to set aside the decree on the ground of fraud *Held* that the jurisdiction to entertain such suits must be determined by the Civil Procedure Code and the suit must be brought either in the Court within whose jurisdiction the fraud was perpetrated or within whose local jurisdiction the defendant ordinarily resides and personally works for gain *Nilmoney Barnick* v *Puddo Lochan Chakrabutty 5 W R Act X 50* referred to *Held* further that the suit was maintainable in the Munsif s Court and the jurisdiction of the Presidency Small Cause Court to vacate its own decree when the same has been obtained by fraud is not sufficient to oust that of another Court to set aside the decree *Sarthakram Maiti* v *Nundo Ram Maiti 11 C W N 579* referred to The plaintiff in such a suit must allege fraud by which he was prevented from placing his case before the original Court He cannot bring a fresh action by merely alleging that the decree was obtained by the perjury of the person in whose favour it was given *Mohamed Golab* v *Mohomed Sallman I L R 43 Calc 612* referred to ABDUL HUQ CHOWDHRY v ABDUL HAFEZ (1910)

14 C W N 695

——— *New Trial—Powers of Bench sitting on application for new trial—Jurisdiction—Practice—Questions of fact and of law—Presidency Small Cause Courts Act (XV of 1882) ss 7 and 38—Amendment Act (I of 1895) s 13—Civil Procedure Code (Act V of 1908) 115* The Second Judge of the Presidency Small Cause Court having dismissed a suit after trial the plaintiffs applied under s 38 of the Presidency Small Cause Courts Act for a new trial and the Judges (the Chief and the Second) on such application set aside the order of dismissal and transferred the suit to the Third Judge to be tried by him On a motion to the High Court by the defendants to set aside the order for new trial *Held* that s 38 of the Presidency Small Cause Courts Act gives the Court power *inter alia* to order a new trial to be held and that there is no limitation in s 38 that the Court can only

PRESIDENCY SMALL CAUSE COURT—*concld*

exercise the power if a question of law arise *Sassoon* v *Hurry Das Bhukut I L R 24 Calc 455* referred to JOHAN SMIDT v RAM PRASAD (1911) **I L R 38 Calc 425**

PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882)—

——— *Jurisdiction of Presidency Small Cause Courts—Claim by a Parsi wife to recover costs incurred by her in a matrimonial suit—Arrears of maintenance at the rate fixed by arbitrators—Award—Practice and procedure* A suit by a Parsi wife to recover costs incurred by her in a matrimonial suit and to recover arrears of maintenance at a rate fixed by arbitrators in their award is one cognizable by the Presidency Court of Small Causes ERACH SHAW v DINBAI (1920) **I L R 45 Bom 318**

——— ss 6, 41—

See APPEAL **I L R 41 Calc 323**

——— ss 9 38—

See NEW TRIAL

I L R 47 Calc 763

——— *New trial application for—Right of a party to apply—Presidency Small Cause Court Rules O XLI r 2 ultra vires—High Court power of to make rules—Matters of practice or procedure—Right of a party to apply not a matter of practice or procedure* The rules of the Presidency Small Cause Court are made by the High Court under the powers conferred by s 9 of the Presidency Small Cause Courts Act of 1882 as amended by the Act of 1895 That section only empowers the High Court to make rules with reference to matters of practice or procedure and not matters of substantive right On a true construction of s 38 of the Act the power given to the Court is really a right given to a party to apply for a new trial such right like the right of appeal is not a matter of practice or procedure O XLI r 2 of the Presidency Small Cause Court Rules which requires at the time of presenting an application for new trial either the deposit in Court of the decree amount or the giving of security for the due performance of the decree is inconsistent with the statutory right given by s 38 of the Presidency Small Cause Courts Act and is *ultra vires* *Attorney General* v *Sillem 11 E R 1200* s c *10 H L C 704* referred to *Colonial Sugar Refining Company* v *Irving (1905) A C 369* referred to MADURAI PILLAI v MUTHU CHETTY (1914) **I L R 38 Mad 893**

——— s 19 (g)—*Suit for stones of a well or their value—Title to the well questioned—Jurisdiction of the Small Cause Court* Suit to recover stones forming part of a well and said to have been wrongfully removed by the defendant or their value is cognizable by the Presidency Small Cause Court in spite of the fact that it is necessary to determine the question of title to the well *Pullangowda* v *Nilkanth Kalo Desprande (1913) I L R 37 Bom 6 5* followed *Turaja Raju* v *Isam Lan (1901) I L R 0 Mad 15* considered and distinguished KRISHNAMACHARI v KOMALAMMAL (1920)

I L R 43 Mad 803

PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882)—*contd*

———s 19 cl (s)—*Jurisdiction—Unsuccessful claim proceedings—Suit to recover movable property attached by the Presidency Small Cause Court or for payment of its value—Not a suit for a mere declaration—The Small Cause Court Rules—Claim petitions—Civil Procedure Code (Act V of 1908)* A suit by the unsuccessful party in claim proceedings to recover movable property attached by the Presidency Small Cause Court or for the payment of its value is not excluded from the jurisdiction of the Presidency Small Cause Court under s 19 cl (s) of the Act as a suit for a declaratory decree The statutory suit to establish his right given to the unsuccessful party in claim proceedings under the Code involves in every case a prayer for the setting aside of a summary order of a Civil Court thus being so such a suit cannot be regarded as a suit for a mere declaration *Phulkumari* v *Ganshyam Mi ra I L R 35 Calc 0 235* followed The Small Cause Court rules reproduce the provisions of the Civil Procedure Code as to claim petitions and cases under them must be governed by the same considerations RAJAMMAL v NARAYANASAMI NAICKER (1915) I L R 39 Mad 219

——— s 22—

See COSTS I L R 43 Calc 190

——— s 31 cl (b)—

See EXECUTION OF DECREE

I L R 37 Calc 574

——— ss 37 38—

See CRIMINAL PROCEDURE CODE s 195

I L R 34 Bom 316

——————— *Sanction to prosecute—Order granted by single Judge—Powers of Full Court to revoke the sanction—Full Court not an Appellate Court* Where a sanction to prosecute has been granted by a Judge of the Presidency Small Causes Court at Bombay a Full Court of that Court has no power to revoke the sanction. *Per* CHANDAVARKAR J —The language used in ss 37 and 38 of the Presidency Court of Small Causes Act (XV of 1882) does not appear to be appropriate for the purpose of conferring appellate jurisdiction upon the Full Court *Per* BATCHELOR J —The jurisdiction conferred by s 38 of the Act is not appellate but revisional only SHIVLAL PADMA *In re* (1909)

I L R 34 Bom 316

——— ss 37 38—

See PRESIDENCY SMALL CAUSE COURT

I L R 38 Calc 425

——— s 38—

See s 0 I L R 38 Mad 823

I L R 47 Calc 763

——————— *New trial power of Court to order—Judgment against weight of evidence* S 38 of the Presidency Small Cause Courts Act (XV of 1882) places no limitation upon the power of the Court to order new trial in a matter when the judgment is manifestly against the weight of evidence such power is not restricted to questions of law only *Sassoon* v *Hurry Das Bhukit I C W N 11* relied on SMIDT v RAM PRASAD (1911) 16 C W N 25

——————— *Full Bench of the Small Causes Court no power to decide facts Held* by the Full Bench that a Full Bench of the Presidency Small Cause Court sitting under s 38 of Act XV of 1882 has no jurisdiction to decide questions of fact whether they are raised generally or in consequence of its finding on another question of fact or law *Sadasook Cambir Chund* v *Kannayya I L R 19 Mad 96* and *Srinivasa Charlu* v *Balaji Rau I L R 21 Mad 232* approved. *Ramasamy Iyar* v *The Madras Times Limited 30 Mad L J 207* overruled SAI SIKANDAR POWTHER v GHOUSEMOHIDIN MARAKAYAR (1916) I L R 40 Mad 355

——————— *New trial—Full Court—Difference of opinion on questions of fact—Powers of interference—Powers not restricted to questions of law only—Jurisdiction* S and D filed cross suits in the Presidency Small Cause Court The trial Judge allowed S s suit and dismissed that of D D obtained a Rule for new trial and the same coming up for argument before the Chief Judge and the trial Judge there was a difference of opinion between the learned Judges on questions of fact In this division the order of the Chief Judge prevailed with the result that D s claim was wholly allowed and that of S disallowed Against this order S applied in revision to the High Court contending that under s 38 of the Presidency Small Cause Courts Act 1882 the Full Court had no jurisdiction to make the order because they had no appellate powers on a question of fact and upon such questions their powers of interference were limited to cases where the judgment of trial Court was manifestly against the weight of evidence *Held* that the Full Court had jurisdiction as the powers conferred under s 38 of the Presidency Small Cause Courts Act 1882 were not restricted to interference on questions of law only *Per* BATCHELOR ACTING C J There is nothing in the wording of the section which suggests that the Legislature intended to confine the powers thus generally granted to particular cases where questions of law are involved nor can it be accurately said that the powers of interference are only to be used where the original judgment is manifestly against the weight of the evidence SONOO NARAYAN v DINKAR JAGANNATH (1917)

I L R 42 Bom 80

——— s 41—

See APPEAL I L R 41 Calc 323

——— ss 41—49 and Ch VII—

See BOMBAY RENT (WAR RESTRICTIONS) ACT (NO II OF 1918)—

ss. 9 AND 10 I L R 45 Bom. 928 1048

——— ss 43 and 48—

See BAILIFF I L R 42 Calc 313

——— s 43—*Order for possession —Small Cause Court has no jurisdiction to amend terms of decree or order passed under Ch. VII—Rent (War Restriction) Act (Bom. Act II of 1918)* s On the 21st January 1920 a decree for possession was made in favour of the petitioner by the Presidency Small Cause Court on the ground that the premises were reasonably and *bonâ fide* required and the opponent was ordered to vacate by the 21st June 1920 On the 15th June 1920 the opponent applied for further

PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882)—*contd*

———— s 43—*concld*

time and was granted time till the 9th July Thereafter on a further application by the opponent the Court stayed execution till the 20th October 1920 The petitioner having applied to the High Court under its revisional jurisdiction —*Held* setting aside the order that the Small Cause Court had no jurisdiction to alter or amend the terms of a decree or order for possession once passed under s 43 of the Presidency Small Cause Courts Act 1882 nor was there anything in the Rent Act which gave the Small Cause Court any power to alter its orders for possession made in due course JAMSHEDJI HORMASJI *v* GORDHANDAS GOKULDAS (1920)
I L R 45 Bom 1048

———— s 48—*Orders made in proceeding under Ch VII—Review—Power of the Court to review the order—Civil Procedure Code (Act V of 1908) ss 8 114 and O XLVII* The Presidency Small Cause Court has no jurisdiction to review its decision in a proceeding under Ch VII of the Presidency Small Couse Courts Act 1882 *Per* MACLEOD *C J* —S 48 of the Presidency Small Cause Courts Act 1882 means that in the proceedings themselves under Ch. VII the provisions of the Code shall apply as far as possible that is to say until an order is made granting or dismissing the application and while any further proceedings which might become necessary in execution of the order are being taken To go a step further by stating that any other provisions of the Code with regard to appeals or reviews apply would not be warranted by the words of the section *Per* FAWCETT *J* —The expression proceedings under Ch. VII should be construed as referring simply to the proceedings for the actual hearing of the case on its merits which are terminated by an order either refusing the application or granting possession It is a further stage and in reality a separate proceeding when the Court after passing such an order is asked to review that order FRAMROZ DOSABHAI *v* DALSUKHBHAI FULCHAND (1920)
I L R 45 Bom 972

———— s 69—

See CAUSE OF ACTION
I L R 41 Calc 825

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909) s 17
I L R 39 Mad 869

———— *Limitation Act (IX of 1908) s 20 proviso—Part payment of principal—Literate debtor—Part payment signed but not written by him whether sufficient compliance within the proviso* When two or more Judges of the Small Cause Court are sitting together for the purpose of exercising the jurisdiction conferred by s 38 of the Presidency Small Cause Courts Act (XV of 1882) they are sitting in a suit within the meaning of those words in s 69 and if a reference is made to the High Court under its provisions such reference is valid S 20 of the Limitation Act requires that in the case of a part payment of the principal of a debt the entry [illegible] the payment should be written by the person who makes the payment when such person knows how to write his mere signature to the entry written by another is not a sufficient compliance with the section *Joshi Bhai Shankar v Bai Parvati I L R 26 Bom 246 Jamna v Jaga Bhana I L R 28 Bom 262* and *Mukhi Haji Rahmuttulla v Coverji Bhuja I L R 23 Calc 546* followed *Sesha v Seshaya I L R 7 Mad 55* and *Ellappa v Annamalai I L R 7 Mad 76* distinguished LODD GOVINDOSS KRISHNADOSS *v* RUKMANI BAI (1913)
I L R 38 Mad 438

———— s 88—

See PRESIDENCY SMALL CAUSE COURT
I L R 38 Calc 425

———— s 94

See FRAUD **14 C W N 695**

PRESIDENCY SMALL CAUSE COURTS (AMENDMENT) ACT (I OF 1895)

———— s 13

See PRESIDENCY SMALL CAUSE COURT
I L R 38 Calc 425

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)

See INSOLVENT **I L R 45 Bom 550**

———— ss 5 6 36 101 sec 18 Sch II—*Appeal time within which to be filed—Signing of the findings and of the report—Jurisdiction of the Registrar in Insolvency—Validity of a mortgage whether could be decided by the Registrar—Consent when infants are concerned effect of* Under s 101 of the Presidency Towns Insolvency Act 1909 the period of limitation for an appeal from the order of the Registrar in Insolvency is twenty days from the time when the report is signed by the Registrar and the matter is thereby completed and not from the time when the findings of the Registrar are signed or filed The Registrar in Insolvency has no jurisdiction to deal with the question of validity or otherwise of a mortgage alleged to have been executed by the insolvent *re* LALBEHARI SHAH **26 C W N 631**

———— ss 6 8 25 38 39 (2)—(a) (b) (c) (d) (f) (i)—*Protection order—Appeal lies against a protection order—Opposing creditor though not a decree holder a person aggrieved by the protection order—Protection order a privilege to be granted or withheld according to the character and circumstances of the insolvency—Insolvent guilty of mal practices not entitled to protection* Under s 8 cl (2) (b) of the Presidency Towns Insolvency Act (III of 1909) an appeal lies from a protection order made by a Judge in the exercise of the insolvency jurisdiction It does not appear from s 8 of the Presidency Towns Insolvency Act that the legislature wished to put any limitation upon appeals made from original orders of a Judge except perhaps orders regulating procedure The expression any person aggrieved in cl 2 of the last mentioned section is not to be limited to a creditor who has obtained decrees against the insolvent Every application for protection after refusal or suspension of discharge must be judged on its merits If the insolvent has acted recklessly and dishonestly the fact that he cannot pay is no reason for depriving the

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*contd*

——— ss. 6 8, 25 38, 39 (2)—*concld*

creditor of the power of puni hing him by attachment and impri onment to the extent the law allows A protection order is a privilege to be granted or withheld as the Court in its di cre tion may determine In exercising that di cre tion, it is relevant and proper for the Court to have regard to the character and circum tances of the insolvency Where a Court finds that the insolvency is of a flagrantly culpable kind being the result of gro s extravagance a companied by grave malpractices and a total di regard of the creditors whose money was squandered protection ought to be refu ed *Marri v Ingram 13 Ch D 338* and *In re Cent Gent Davis v Harris 40 Ch D 190 195* referred to MAHOMED HAJI ESSACK v SHAIK ABDUL RAHIMAN (1915) I L R 40 Bom 461

——— ss. 6 27 36 121—*Indian Insolvency Act (11 & 12 Vict c 21) s 3—Bombay Insolvency rules under Indian In olvency Act r 37—Officer appointed by the Ch ef Justice under s 6 of the Presidency Towns In olvency Act—Attorneys right of audi nce* The petitioner complained that in certain proceedings before the officer appointed under s 6 of the Presidency Towns In olvency Act namely on the holding of the public examination of insolvents under s 27 of the Act and the examination of persons summoned by the Court und r s 36 such examinations had been conducted by solicitors The petitioner submitted that for reasons set forth in the peti tion solicitors had no right of audience before the said officer and petitioned the Chief Justice of the Bombay High Court to form a Special Bench for the determination of the question whether any legal practitioner except coun el had th right to audience before the office so appointed *Held* that attorneys of the High Court have a right of audience before the officer appointed by the Chief Justice in the exerci e of the powers conferred upon him under s 6 of the Presidency Towns Insolvency Act *In re* ADVOCATE GENERAL OF BOMBAY (1913) I L R 37 Bom 464

——— ss 6 101, Sch II, s 18—

See INSOLVENCY I L R 47 Calc 721

——— ss 7 36 and 90—11 and 12 Vict, cap 21, s 26—*Immoveabl property situate out side l cal limits of ord nary original civil juris d ction of High Court—Disp te as to title—Juris d ction of H gh Court in insolvency to decide—Summary proced ire when—Letters Patent cl 12 and 18—Bankruptcy Act (46 & 47 Vict cap 52 of 1883) s 10* Under s 7 of the Presidency Towns Insolvency Act (III of 1909) the High Court of Madras in the exercise of its insolvency jurisdiction has jurisdiction to adjudicate on claims relating to immoveable property situate outside the limits of its ordinary original civil jurisdiction the jurisdiction which existed under s 26 of 11 & 12 Vict cap 21 has not been cut down by the Presidency Towns Insolvency Act The jurisdiction conferred by s 7 of the Act is of a discretionary character and it is seldom that the Insolvency Court will deem it expedient to try difficult qu stions of title the Judge in such cases would ordinarily a k the Official Assignee in Insolvency to establish his title in an

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*contd*

——— ss 7 36 and 90—11 and 12 Vict, cap 21 s 26—*concld*

ordinary Civil Court S 36 of the Act does not control the language of s 7 but provides a special and summary proce lure in c rtain cases nor does s 90 curtail the jurisdiction otherwise exer ci able by the Insolvency Court Deci ions on the Bankruptcy Act (46 & 47 Vict cap 52 of 1883) s 102 corresponding to s 7 of the Indian Act III of 1909 are relevant and should be followed Cl 12 of the Letters Patent does not control the provi ions of cl 18 thereof so as to limit the insolvency juri diction of the Court *Ex parte Dickin In re Pollard L R 8 Ch D 377 378 Ex parte Brown In re Yates L R 11 Ch D 148* followed *Maule v Davis In re Motion L R 9 Ch App 192 210 In re Lucas I L R 42 Calc 109 Ganeshdas Ramalal In re R D Sethna v R S D Chopra I L R 32 Bom 195 Khan Sahib Banqi Abdul Kadhar Sahib v The Official Assignee 14 Mad L T 61* referred to ABDUL KHADER v THE OFFICIAL ASSIGNEE OF MADRAS (1916) I L R 40 Mad 810

——— ss 7 86—*Official Assignee—Third person s property tal en in custody by Official Assignee—Suit by strange —Civil Court—Right of suit* Where the Official As ignee takes into his possession property as l elonging to the insolvent which a third party claims as his own the latter can bring a suit against the Official Assignee in a Civil Court to establish his right NAGINLAL CHUNILAL v THE OFFICIAL ASSIGNEE (1911) I L R 35 Bom 473

——— s 8—

See s [illegible] I L R 40 Bom 461

See INSOLVENCY I L R 43 Calc 248

——— ss 8 35—*Rules (Calcutta) under Presidency Towns Insolvency Act rr 17 18 19 and 30—Exparte order for examination of a person if could be made—Power of the Registrar in Insolvency to make such an order—Procedure when the witness refuses to answer questions—Appeal from an order of Judg in Insolvency* Application under s 36 (1) of the Presidency Towns Insolvency Act 1919 could be and are intended to be made *ex parte* To such an application r 30 of the rules framed by the High Court under s 112 of the Act applies and not rr 17 18 and 19 *In re Kissory Mohan Roy* I L R 44 Calc 286 *s c* 20 C W N 1155 (1916) followed under s 6 (d) and (e) of the Act the Registrar in Insolvency has power to deal with such an application. An application to the Court to set as de an order made by the Registrar in Insolvency under s 36 (1) is not an appeal under cl (2) of s 8 but an application under cl (1) for the review of an *exparte* order The course to be adopted if the person summoned is advised not to answer questions put to him indicated Per ALBERT FELEX SELDANA PAI SUKHLAL KARNANI BAHADUR v THE OFFICIAL ASSIGNEE OF CALCUTTA 25 C W N 750

——— s. 9 (d) III—*Adjud ca on petit on for what to conti n—L a e l ein nd when to be g ven* A petition for adjudication n bankruptcy alleged that the d btors d d d part from their place of bu ine s an l re dence and are secreting themselves so as to deprive the r credi ors of means of communication w h them s

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—contd

——— s 9 (d) III—concld

petitioners are advised and believed that the said insolvents are liable to be adjudged to have committed an act of insolvency An affidavit in support of this petition alleged the indebtedness of the debtors and that they had left Madras leaving no one in charge of their respective business and are secreting themselves for the purpose of evading their creditors *Held* that these allegations were a sufficient compliance with s 9d (iii) of the Insolvency Act The statement of intent to defeat or delay the creditors must appear either in the petition or in the affidavit otherwise the petition is liable to be dismissed as the omission to state it is a substantial defect incurable by amendment An omission to state the fact that the petitioning creditor is a secured creditor and the value of his security as required by s 12 (2) and r 21 is one that could be cured by amendment WHITE *C J*—Leave to amend a petition by inserting new causes of action should not be given at a time when by doing so the Court would be depriving the defendant of the plea of limitation WALLIS *J* (*dubitante*) whether under peculiar circumstances leave could not be given in such cases *Per* WALLIS *J*—The passage (in the petition) conveys with sufficient certainty that the debtors committed an act of insolvency by leaving their place of business and residence with intent to defeat and delay their creditors But if that act of insolvency is not expressed with sufficient certainty we are at liberty to look at the affidavit and after reading the petition with the affidavit to find that the act of insolvency is charged with sufficient certainty Ex parte *Coates* In re *Skelton* 5 *Ch D* 979 distinguished. GUNNIS & CO *v* MAHOMED AYYUB SAHIB (1913) **I L R 37 Mad 555**

——— ss 9 (e) 10—*Partnership debt—Attachment of property in execution of a joint decree against partner—Property claimed on behalf of an endowment—Enquiry as to whether property attached was really judgment debtors if essential—General Clauses Act (X of 1897) s 13—Act or default if to be personal of person sought to be adjudicated—Delay in applying for annulment* S 9 (e) of the Presidency Towns Insolvency Act requires that the act or default which amounts to an act of insolvency must be a personal act or default of the particular individual or in certain circumstances of his agent Where properties alleged to belong to three judgment debtors remained under attachment in execution of a joint decree against them for more than 21 days *Held* that this alone could not be relied on as an act of insolvency on the part of *H* one of the co judgment debtors when in the execution proceeding claim was laid to what was alleged to be his share of the property on behalf of an endowment and that claim was pending when the adjudicating order was made against him and the other co judgment debtors. On an application by *H* for annulment of the adjudication *Held* that the above act of insolvency on the part of his co judgment debtors could not be regarded as an act of insolvency on the part of *H* *Held* that it was necessary to inquire whether the property attached was in fact the applicant s An objection that the application for annulment was not made till after the lapse of a considerable time

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—contd

——— ss 9 (e) 10—concld

having been raised for the first time on appeal *Held* that there being no bar of limitation in the matter this objection taken at this late stage should not be entertained HARISH CHANDRA MUKERJEE *v* THE EAST INDIA COAL CO LD (1912) **16 C W N 733**

——— ss 13 (8) 15 (2) and 21 (1)—*Adjudication annulment of when Court has jurisdiction to pass order for—Debts necessity that all debts of the insolvent actually and properly proved in the bankruptcy should have been fully paid in cash—Conduct of insolvent applying for annulment of an adjudication order duty of Court to scrutinise—Discretion of Court how exercised* A debtor who has been adjudicated insolvent on his own petition cannot even with the leave of the Court withdraw his petition. S 15 (2) of the *Presidency* Towns Insolvency Act only applies to petitions that are pending before any order has been made as also does s 13 (8) dealing with petitions by creditors Once an order of adjudication has been made the debtor becomes an insolvent and remains so until the order of adjudication is annulled or he obtains his discharge The Court can only annul the order of adjudication under s 21 of the Act if the Court is of opinion that the debtor ought not to have been adjudicated insolvent or it is proved to the satisfaction of the Court that the debts of the insolvent have been paid in full and in the latter case the debts including at least all debts actually and properly proved in bankruptcy must have been fully paid in cash It is the duty of the Court to scrutinize the conduct of an insolvent applying for an order of annulment The Court is given a discretion by s 21 and it would not be a good exercise of that discretion to make an order of annulment of an adjudication where if the insolvent were applying for his discharge an order of discharge would not be granted In re *Keet* (1905) 2 *K B* 666 661 applied *In the matter of* MEGHRAJ CANGABUX (1912) **I L R 39 Bom. 200**

——— ss 14, 15 21, 38—

See INSOLVENCY **I L R 44 Calc 899**

——— s 15—

See s 13

See INSOLVENCY **I L R 44 Calc 899**

——— s 17—

——— *Leave of Court—Power of secured creditor of adjudicated insolvent to realise his security by means of a regular suit without obtaining leave* A having obtained a decree in a suit brought by him against *B* for the payment of a sum of money assigned the decree to *C* by way of mortgage to secure the repayment of monies advanced by *C* to *A* Subsequently *A* became insolvent and his property being vested in the Official Assignee the latter executed the decree against *B* and obtained payment of the amount due from *B* in full Subsequently *C* without the leave of the Court first obtained brought a suit against the Official Assignee to recover the amount due to him as mortgagee of the decree against *B* out of the monies so recovered by the Official Assignee *Held* that the Official Assignee having executed a decree which had been assigned by way of

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*contd*

——— s 17—*concld*

security was in the position of a mortgagor who had sold the mortgaged property and was in po ion of the sal proceeds that until the claim of the mortgagee had been satisfied the in olvent or his Official Assignee had no right to the proceeds of the decree and that the secured creditor in such a case might file a suit to obtain payment of his claim out of the amount so re cov red by the Official Assignee without obtaining the leave of the Court under s 1 of the Pre i dency Towns In olvency Act as the proviso to s 1 covered a uit by a mortgagee to reali e his security LANG v HEPTULLABHAI ISMAILJI (1913) **I L R 38 Bom 359**

——— *Suit by creditors against an adjudicated insol ent—Suit commenced without the leave of the Court—Appl cation for l ave after the institution of the suit—Application refused* The leave contemplated under s 17 of the Pre idency Towns Insolvency Act (III of 1909) is leave which ought to be obtained before the commencement of a suit and cannot be granted after the same is filed *In re* DWARKADAS TEJ BHANDAS (1915) **I L R 40 Bom 235**

——— *Decree of Presidency Small Cause Court—Judgment debtor adjudicated insolvent subsequent to decree—Adjudication by the High Court—Application for execution by arrest in the Presidency Small Cause Court—Leave of the High Court not obtained—Release of judgment debtor on security—Non appearance effect of—Security bond validity of—Jurisdiction—Waiver—Presidency Small Cause Courts Act (XV of 1882) s 69* Where a decree was passed by the Presi dency Small Cause Court against a person who was subsequently adjudicated an insolvent by the High Court in the exercise of its insolvency jurisdiction the former Court had no jurisdiction without the leave of the High Court to entertain any application for execution of the decree against the insolvent under s. 17 of the Insolvency Act III of 1909 Consequently a security bond executed to the Court by a third party for the appearance of the judgment debtor in the course of the exe cution proceedings carried on without the leave of the High Court was obtained without juris diction and was void in law A reference to the High Court under s 69 of the Presidency Small Cause Courts Act should state clearly the points on which there is a difference of opinion among the Judges of the Small Cause Court EASWARA v GOVINDARAJULU NAIDU (1915) **I L R 39 Mad. 689**

——— ss 17 22 and 51—*Adjudication by different Courts—Later adjudication based on earlier acts of insolvency—Vesting of property under prior adjudication—Official Assignee whether divested by later adjudication—Convenience of administration of assets by one Court—Annulment of adjudication in the other necessity for—Order of adjudication—Sp cification of acts of insolvency therein necessity for* Where there are successive adjudications in in olvency by two Courts all the property of the insolvent vests in the Official A sig ee appointed by the Court in which the prior adjudication was made and it will not be divested from him by the subsequent adjudica tion of the other Court even if the later adjudica tion be based on acts of insolvency committed

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*contd*

——— ss 17 22 and 51—*concld*

earlier in date than those upon which the prior adjudication was made Where it is found con venient that the estate should be administered by the Court in which the later adjudication was made steps should be taken to annul the prior adjudication S 51 of the Presidency Towns Insolvency Act (III of 1909) which enacts the doctrine of relation back is intended to enable the Official A ignee to recover property in the han ls of third parties and has not the effect of divesting property vested in an Official Assignee under a prior adjudication Ex parte *Geddes* In re *Mauat 1 G & J 414* followed An order of adjudication should specify the precise acts of insolvency on which it is made as the insol vency relates back to the date of the acts of insolvency which are found to have been proved OFFICIAL ASSIGNEE OF MADRAS v OFFICIAL ASSIGNEE OF RANGOON (1918) **I L P 42 Mad 121**

——— ss 17 103 and 104—*Adjudged insol vent—Criminal proceedings against the insolvent—Penal Code (Act XLV of 1860) s 421—Sanction of Insolvency Court not obtained—Jurisdiction of Magistrate— Suit or other legal proceeding interpretation of* A person in insolvent circum stances applied to the Insolvent Debtors Court at Bombay for relief under the provisions of the Presidency Towns Insolvency Act 1909 and was adjudicated an insolvent Ten days later a creditor of the in olvent without having obtained any sanction from the Insolvent Debtors Court filed a complaint against the insolvent in the Presidency Magistrate s Court for an offence punishable under s 421 of the Indian Penal Code 1860 It was contended that the Magistrate had no jurisdiction to entertain the complaint *Held* that the Magistrate s jurisdiction to try the insolvent for an offence under s 421 of the Indian Penal Code 1860 was not taken away by anything contained in the Presidency Towns Insolvency Act 1909 The expression or other legal proceeding in s 17 of the Presidency Towns Insolvency Act 1909 coming after the word suit a word of more limited application must be construed on the principle of *ejusdem generis* It therefore includes only proceedings of a civil nature EMPEROR v MULSHANKAR HARINAND BHAT (1910) **I. L. R. 35 Bom. 63**

——— ss 17 126—

See INSOLVENCY **I. L. R 40 Calc. 78**

——— s 18 (3)—*Suit on a promissory note against an adjudged insolvent—Proceedings against an insolvent may be stayed although not pending at the time of the order of adjudication—Proceedings against an insolvent stayed althou h leave to sue was obtained under s 17—Discret on of the trial Court in staying proceedings not to be inte fered with where interference would involve abuse of jud cial proceedings* The wording of s 18 (3) of the Presidency Towns Insolvency Act III of 1909 is wide enough to justify a stay of proceedings in an action which was not pending at th time of the order of adjudication. S 10 of the Engl h Bankruptcy Act and *Brownscombe v Fa r 58 L T 85* referred to MAHOMED HAJI ESSACK v ABDUL RAHMAN (1916) **I. L. R. 41 Bom 312**

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*contd*

——— s 21—

See s 13 I L R 38 Bom 200

See ADJUDICATION ANNULMENT OF I L R 47 Calc 914

——— ss 21 28 to 30—*Private arrangement of insolvent with creditors for full discharge on part payment whether payment in full or composition under the Act* A private arrangement of the insolvents to pay four annas in the rupee in full satisfaction of their claims even though made with all their creditors is neither a payment in full nor a composition within the meaning of the Act so as to entitle the insolvents to an annulment of an order of adjudication An order of adjudication under the Presidency Towns Insolvency Act made on an application of the insolvents who were unable to pay their debts can be annulled by payment in full to the creditors as provided for by s 21 of the Act or as the result of a composition with the creditors in the manner provided for by ss 28 to 30 of the Act BRIJI KESSOOR LAUL v OFFICIAL ASSIGNEE MADRAS (1920) I L R 43 Mad 71

——— s 22—

See s 17 I L R 42 Mad 121

——— s 25—

See s 6 I L R 40 Bom 461

——— *Protection order—Previous decisions on applications for interim orders—Discretion—Practice* It has never been the practice of Commissioners in Insolvency under the Indian Insolvency Act (11 and 12 Vict c 21) to consider themselves bound by their previous decisions on applications for *interim* orders when it has been a matter for their discretion and it by no means follows that because an application has been refused on the first occasion it must also be refused on the second occasion S 25 of the Presidency Towns Insolvency Act (III of 1909) clearly intends that while an insolvent diligently performs the duties prescribed by the Act he should not be harassed by execution creditors and should not be rendered liable to pressure wh[illegible] r by one creditor may get undue advanta[illegible] r anoth r The section does not d priv th [illegible] rt [illegible] its discretion in granting or r fu[illegible] t ti n but [illegible] (1) indicates [illegible] which that d[illegible] should [illegible] creditor [illegible]

——— ss 25 26 27 Sch II—*concld*

come forward and prove their claims before the Court MOOKERJEE J—The term creditor in the Presidency Towns Insolvency Act does not include the *benamdar* of a creditor Any person who makes an application to a Court for a decision or any person who is brought before the Court to submit to a decision is if the decision goes against him thereby a person aggrieved by that decision within the meaning of that expression in s 86 of the Act KETOKEY CHARAN BANERJEE v SARAT KUMARI DABEE (1916) 20 C W N 995

——— s 27—

See s 6 I L R 37 Bom 464

——— ss 28 29 30—

See s 21 I L R 43 Mad 71

——— s 30—*Indian Contract Act (IX of 1872) s 135—Surety—Dubash of a Company guaranteeing customers—Part payment of debt by surety to creditor—Insolvency of debtor—Composition effected by insolvent debtor with creditors—Subsequent approval by Court and annulment of insolvency—Right of surety to refund of money paid to creditor—Composition and annulment whether under s 30 of the Act* The dubash of a Company stood surety for customers introduced by him and deposited with them certain Government promissory notes as security One of such customers failing in business the Company sold the notes and appropriated the proceeds in part payment of the debt of the customer Both the customer and the dubash were adjudicated insolvents The customer entered directly without the Official Assignee s intervention into a composition with his creditors with a view to obtain the approval and sanction of the Insolvency Court, and subsequently applied to the Court for approval of the composition and annulment of the insolvency The Court annulled the insolvency but the order did not embody the term of the composition as required by s 30 of the Presidency Towns Insolvency Act The Company had agreed to the composition without the consent of the dubash and received a dividend on the full amount of their debt without giving credit for the money which was appropriated The Official Assignee acting on behalf of the insolvent dubash applied to the Court to direct the Company to refund the value of his Government Promissory Notes appropriated by them *Held* that a creditor was entitled to prove for the full amount of his debt in the insolvency of the principal debtor notwithstanding that the surety had paid a portion of the debt and that the surety could not prove until he had paid the full [illegible] which he was liable *Ell[illegible] v Em[illegible]* [illegible] and In re [illegible] *[illegible] of England (1896)* [illegible] Q [illegible] that th fact that the cred[illegible] [illegible] composition which the principal [illegible] th surety s consent [illegible] [illegible] a refund of payments already [illegible] the creditor although it [illegible] [illegible] future liability that th[illegible] [illegible] d not vitiate [illegible] [illegible] of th composition [illegible] [illegible] of the insolv[illegible] [illegible] Act and that [illegible] principal debtor in [illegible]

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*contd*

———— s 30—*concld*

being by operation of law and not by act of the creditor the surety would not be discharged from his obligation to the creditor under s 135 of the Indian Contract Act *Ex parte Jacobs In re Jacobs (1875) 10 Ch App 211* followed On the question whether the fact that the creditor had given receipts in full settlement of the debt without waiting until the composition was sanctioned by the Court discharged the creditor *Held* by SESHAGIRI AYYAR J (WALLIS C J not deciding the point) that where after notice to the surety the composition was accepted by the Court it became an act of the Court and the surety was not discharged from liability BOMBAY COMPANY LTD v OFFICIAL ASSIGNEE OF MADRAS (1921) I L R 44 Mad 361

———— s 33—

See INSOLVENCY I L R 47 Calc 56

———— ss 33 to 37 43—

See INSOLVENCY I L R 44 Calc 374

———— s 35—

See s 7 25 C W N 750

———— s 36—

See s 5 26 C W N 631

See s 6 I L R 37 Bom 464

See s 7 I L R 40 Mad. 810

See COSTS I L R 46 Calc 795

See INSOLVENCY I L R 42 Calc 109
I L R 44 Calc 286 374
I L R 48 Calc 1089

See INSOLVENT I L R 46 Calc 996

———— *Application under s 36 may be made* ex parte—*Calcutta High Court Insolvency rr 17 18 19 and 30* Applications under s 36 (*1*) of the Presidency Towns Insolvency Act for examination of persons thereunder are intended to be made *ex parte* under the rules framed by the Calcutta High Court under s 112 of the Act To such applications r 30 applies and not rr 17 18 and 19 and this view is supported by the English Bankruptcy Act (1914) 4 & 5 George V Ch 59 and the rules thereunder *In re* KISSORY MOHAN ROY (1916) 20 C W N 1155

———— *Order under section when can be properly made—Admission of proof of debt by Official Assignee a condition precedent* The words in s 36 any creditor who has proved his debt mean not merely a creditor who has lodged proof of his debt but a creditor whose proof has been admitted by the Official Assignee and unless this has been done no order can be made under the section The mere fact that a creditor s name was included in the schedule filed by the insolvent and that so far his claim has not been challenged does not assist him if his debt has not been admitted by the Official Assignee so that he becomes a creditor who has proved his debt within the meaning of s 36 of the Act *Re* ABDUL SAMAD 26 C W N 744

———— s. 36 (4) (5)—

———— *Proper proceedings under s 36 (4) and (5) for discovery of insolvent s property—Practice—Costs order for against Official Assignee—Indemnity* If the Official Assignee desires to proceed under s 36 (*4*) and (*5*) of the Presidency Towns Insolvency Act (III of 1909) for discovery of an insolvent s property known or suspected to be in possession of any person the only way he can do that is to take the examination of such person by itself and ask the Court for an order that he is justified by the admissions made or evidence given by such person and without looking to any further evidence at all to have the order In such case the proper procedure is not for the Official Assignee to present a petition and obtain from Court a rule in bankruptcy against such person to show cause There are two courses open to the Official Assignee in such cases The one is to start an action and the other is to proceed against the respondent by notice of motion in insolvency But it is discretionary with the Court in the latter case to direct at the hearing of the motion that the matter be dealt with by an action In the case of motion a notice of motion has to be sent to the respondent stating the grounds of the application supported by an affidavit giving the evidence relied upon The rule was discharged on the merits with liberty to the Official Assignee to proceed by motion on proper materials or by action if he so desired If the Official Assignee brings an unsuccessful motion however careful he may have been the order that the Court would make generally would be that he is to pay the respondent s costs and he will have the right of indemnity given him by the previous order of the Court Or he may obtain an indemnity from the creditor or other person in whose interest the motion is brought before he starts proceeding The order for costs should not be directed to be limited to the assets in the hands of the Official Assignee when the respondent is not in any way in default for which he may be partially mulcted in costs *Re* SURESH CHANDRA GOOYEE (1918) 23 C W N 431

———— *Examination by creditor of a mortgagee under s 36—Cost of mortgagee appearing by counsel if recoverable from creditor* A mortgagee of an insolvent (applicant) was examined under s 36 of the Presidency Towns Insolvency Act 1909 at the instance of a creditor (the respondents) who challenged the validity of the mortgage At the examination counsel and attorney appeared for the mortgagee Subsequently the respondents did not take any step to have the mortgage declared void Thereupon the applicant made the present application asking for costs of attending by solicitor and counsel upon his own examination against the respondents *Held* that the applicant was not entitled to the order asked for *In re Waddel 6 Ch D 328 (1877)* and *In re Appleton French and Scafe Ltd (1905) 1 Ch 749* referred to IN THE MATTER OF ANSHU PROKASH CHOSE 24 C W N 688

———— Scope of order—*An order under the section should not be made as circuit for justifying the institution of a regular suit* One R obtained a decree against J and Co for the recovery of the value of certain shares which according to him had been made over to J and Co in pursuance of an agreement of sale The

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*contd*

——— s 21—

See s 13 I L R 38 Bom 200

See ADJUDICATION ANNULMENT OF I L R 47 Calc 914

——— ss 21 28 to 30—*Private arrangement of insolvent with creditors for full discharg on part paym nt whether payment in full or composi tion under the Act* A private arrang ment of the insolvents to pay four annas in the rupee in full satisfaction of their claims even though made with all their creditors is neither a payment in full nor a composition within the meaning of the Act so as to entitle the insolvents to an annulment of an order of adjudication An order of adjudication under the Presidency Towns Insolvency Act made on an application of the insolvents who were unable to pay their debts can be annulled by payment in full to the creditors as provided for by s 21 of the Act or as the result of a compo ition with the creditors in the manner provided for by ss 28 to 30 of the Act BRIJI KESSOOR LAUL v OFFICIAL ASSIGNEE MADRAS (1920) I L R 43 Mad 71

——— s 22—

See s 17 I L R 42 Mad 121

——— s. 25—

See s 6 I L R 40 Bom 461

——— *Protection order—Previous d cisions on applications for interim orders—Discretion—Practice* It has never been the practice of Commissioners in Insolvency under the Indian Insolvency Act (11 and 12 Vict c 21) to consider themselves bound by their previous decisions on applications for *interim* orders when it has been a matter for their dis cretion and it by no means follows that because an application has been refused on the first occa sion it must also be refused on the second occa sion S 25 of the Presidency Towns Insolvency Act (III of 1909) clearly intends that while an insolvent diligently performs the duties prescribed by the Act he should not be harassed by execu tion creditors and should not be rendered liable to pressure whereby one creditor may get undue advantage over another The section does not deprive the Court of its discretion in granting or refusing protection but sub s (4) indicates clearly the lines along which that discretion should be exercised when a creditor oppos s the grant If an insolvent can produce the certificate referred to the onus is thrown on the opposing creditors of showing cause why the protection order should not be granted *In the matter of* MEGHRAJ GANGA BUX (1910) I. L. R 35 Bom 47

——— ss 25 26 27 Sch II—*Creditor if includes his b namidar—Ss 12 (1) (a) 13 as 8 (2) (b) and 86—Official Assignee if may examine pet tioning creditor s cla m and remove h s n me—B nam dar onus of pro f of ad ances on own behalf — Person aggri ved* It is open to the Official As ignee after the in olv ncy to examin the claim of the p titioning creditor and if he finds that in fact there is no d bt due to the petitioning creditor he must strike out the name of uch cre litor from the list A *b nam dar* is not entitled to claim as a creditor in the in olvency The persons who really advanced the moneys should

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*contd*

——— ss 25 26 27, Sch II—*concld*

come forward and prove their claims before the Court MOOKERJEE J—The term 'creditor in the Presidency Towns Insolvency Act does not include the *benamidar* of a creditor Any person who makes an application to a Court for a decision or any person who is brought before the Court to submit to a decision is if the decision go s against him thereby a person aggrieved by that deci ion within the meaning of that expression in 86 of the Act KETOKEY CHARAN BANERJEE v SARAT KUMARI DABEE (1916) 20 C W N 995

——— s 27—

See s 6 I L R 37 Bom 464

——— ss 28 29 30—

See s 21 I L R 43 Mad 71

——— s 30—*Indian Contract Act (IX of 1872) s 135—Surety—Dubash of a Company guaranteeing customers—Part payment of debt by surety to creditor—Insolvency of debtor—Composi tion effected by insolvent debtor with creditors—Subsequent approval by Court and annulment of insolvency—Right of surety to refund of mon y paid to creditor—Composition and annulment whether under s 30 of the Act* The dubash of a Company stood surety for customers introduced by him and deposited with them certain Govern ment promissory notes as security One of such customers failing in business the Company old the notes and appropriated the proceeds in part payment of the debt of the customer Both th customer and the dubash were adjudicated in ol vents The customer entered directly without the Official Assignee s intervention into a com position with his creditors with a view to obtain the approval and sanction of the Insolvency Court, and subsequently applied to the Court for approval of the composition and annulment of the insolvency The Court annulled the in ol vency but the order did not embody the terms of the composition as required by s 30 of the *Pre sidency Towns Insolvency Act* The Company had agreed to the composition without the consent of the dubash and received a dividend on the full amount of their debt without giving credit for the money which was appropriated. The Official Assignee acting on behalf of the in ol vent dubash applied to the Court to direct the Company to refund the value of his Government Promissory Notes appropriated by them *Held* that a creditor was entitled to prove for the full amount of his debt in the insolvency of th principal debtor notwithstanding that the surety had paid a portion of the debt and that the surety could not prove until he had paid the full amount for which he was liable *Ellis v Em manuel (1876) 1 Ex D* 157 and *In re Sir Ex parte National Bank of England (1895) 2 Q B* 12 followed that the fact that the creditor entered into a compo ition which the principal debtor without the sur ty s consent did not entitle the latter to a refund of payments already ma le by him to the creditor although it might relea e him from future liability that the irregu larities in the procedure did not vitiate the Court s approval of the terms of the compo ition and the consequent annulment of the insolvency under s 30 of the Insolvency Act and that the di charge of the principal d btor In such a ca e

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*contd*

——— s 30—*concld*

being by operation of law and not by act of the creditor the surety would not be discharged from his obligation to the creditor under s 13 of the *Indian Contract Act* *Ex parte Jacob* *In re Jacobs* (*1875*) *10 Ch App 211* followed On the question whether the fact that the creditor had given receipt in full settlement of the debt without waiting until the composition was sanctioned by the Court discharged the creditor *Held* by SESHAGIRI AYYAR J (WALLIS C J not deciding the point) that where after notice to the surety the composition was accepted by the Court it became an act of the Court and the surety was not discharged from liability BOMBAY COMPANY LTD *v* OFFICIAL ASSIGNEE OF MADRAS (1921) I L R 44 Mad 361

——— s 33—

See INSOLVENCY I L R 47 Calc 56

——— ss 33 to 37 43—

See INSOLVENCY I L R 44 Calc 374

——— s 35—

See s 7 25 C W N 750

——— s 36—

See s 5 26 C W N 631

See s 6 I L R 37 Bom 464

See s 7 I L R 40 Mad 810

See COSTS I L R 46 Calc 795

See INSOLVENCY I L R 42 Calc 109
I L R 44 Calc 286 374
I L R 48 Calc 1089

See INSOLVENT I L R 46 Calc 996

——— *Application under* — *may be made* ex parte—*Calcutta High Court Insolvency rr 17 18 19 and 30* Applications under s 36 (*1*) of the Presidency Towns Insolvency Act for examination of persons thereunder are intended to be made *ex parte* under the rules framed by the Calcutta High Court under s 112 of the Act To such applications r 30 applies and not rr 17 18 and 19 and this view is supported by the English Bankruptcy Act (1914) 4 & 5 George V Ch 59 and the rules thereunder *In re* KISSORY MOHAN ROY (1916) 20 C W N 1155

——— *Order under section when can be properly made—Admission of proof of debt by Official Assignee a condition precedent* The words in s 36 any creditor who has proved his debt mean not merely a creditor who has lodged proof of his debt but a creditor whose proof has been admitted by the Official Assignee and unless this has been done no order can be made under the section The mere fact that a creditor s name was included in the schedule filed by the insolvent and that so far his claim has not been challenged does not assist him if his debt has not been admitted by the Official Assignee so that he becomes a creditor who has proved his debt within the meaning of s 36 of the Act *Re* ABDUL SAMAD 26 C W N 744

——— s 36 (4) (5)—

——— *Proper proceedings under s 36 (4) and (5) for discovery of insolvent s property—Practice—Costs order for against Official Assignee—Indemnity* If the Official Assignee desires to proceed under s 36 (*4*) and (*5*) of the Presidency Towns Insolvency Act (III of 1909) for discovery of an insolvent s property known or suspected to be in possession of any person, the only way he can do that is to take the examination of such person by itself and ask the Court for an order that he is justified by the admissions made or evidence given by such person and without looking to any further evidence at all to have the order In such cases the proper procedure is not for the Official Assignee to present a petition and obtain from Court a rule in bankruptcy against such person to show cause There are two courses open to the Official Assignee in such cases The one is to start an action and the other is to proceed against the respondent by notice of motion in insolvency But it is discretionary with the Court in the latter case to direct at the hearing of the motion that the matter be dealt with by an action In the case of motion a notice of motion has to be sent to the respondent stating the grounds of the application supported by an affidavit giving the evidence relied upon The rule was discharged on the merits with liberty to the Official Assignee to proceed by motion on proper materials or by action if he so desired If the Official Assignee brings an unsuccessful motion however careful he may have been the order that the Court would make generally would be that he is to pay the respondent s costs and he will have the right of indemnity given him by the previous order of the Court Or he may obtain an indemnity from the creditor or other person in whose interest the motion is brought before he starts proceeding The order for costs should not be directed to be limited to *the assets in the hands of the Official Assignee when the respondent is not in any way in default* for which he may be partially mulcted in costs *Re* SURESH CHANDRA GOOYEE (1918) 23 C W N 431

——— *Examination by creditor of a mortgagee under s 36—Costs of mortgagee appearing by counsel if recoverable from creditor* A mortgagee of an insolvent (applicant) was examined under s 36 of the Presidency Towns Insolvency Act 1909 at the instance of a creditor (the respondents) who challenged the validity of the mortgage At the examination counsel and attorney appeared for the mortgagee Subsequently the respondents did not take any step to have the mortgage declared void Thereupon the applicant made the present application asking for costs of attending by solicitor and counsel upon his own examination against the respondents *Held* that the applicant was not entitled to the order asked for *In re Wadd* *6 Ch D 328* (*1877*) and *In re Appleton French and Scrafton Ltd* (*1905*) *1 Ch 749* referred to IN THE MATTER OF ASHUT PROKASH CHOSE 24 C W N 898

——— Scope of order—*An order under the section should not be made in circumstances justifying the institution of a regular suit* One *R* obtained a decree against *J* and Co for the recovery of the value of certain shares which according to him had been made over to *J* and Co in pursuance of an agreement of sale The

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*contd*

——— s 36 (4) (5)— *concld*

decree was affirmed in appeal and an appeal was also preferred to the Privy Council During the pendency of this litigation *J* and Co deposited with the Registrar of the Court some war bonds fo the satisfaction of the decree which might ultimately be binding on them The Official Assignee obtained an order from the Court under s 36 cl (5) in respect of these war bonds claiming them as part of the estate of the father of *R* who was an insolvent *Held*—That in the circumstances of the case the order in question should not have been made but the matter in issue should have been left to be decided in a regular suit The Court should not deal with the matter under s 36 if it really involves difficult questions of title but should leave the parties to litigate such matters in a regular suit RASH BEHARI GHOSE *v* THE OFFICIAL ASSIGNEE OF CALCUTTA 25 C W N 852

——— s 33 51 55—*Insolvency Rules Calcutta 5 (d)—Jurisdiction of Insolvency Court to enquire into fraudulent transfer of property and declare same void on application under s 36—suit for title for setting aside order under s 36—S 26 Insolvency Act of 1848 (11 and 12 Vict c 21)—13 Eliz c 5 principle of—Evidence of insolvent if admissible against transferee of property in view of insolvency—Burden of proof on person claiming by such transfer—Transfer by insolvent when good—Transfer or assignment by insolvent when fraudulent* Under the Presidency Towns Insolvency Act (III of 1909) the Insolvency Court has on an application by the Official Assignee jurisdiction under s 36 to inquire as to whether any sale of property by an insolvent is fraudulent or void and if so to make an order for the delivery of such property to the Official Assignee Any one aggrieved by such an order might bring a regular suit to vindicate his title SEEHASE *Re* A F C (1917) 22 C W N 335

——— *ss 36 103 104—Offences under the Insolvency Act—Notice of charges—Framing of charges—Discrepancy between notice and the charges framed—Finding of intention —Appeal Court it may make a finding of intention for the first time—Examination of the insolvent under s 36 of the Insolvency Act whether permissible—Voluntary examination of the insolvent—Admissibility of such evidence at the trial of the insolvent—Indian Evidence Act (I of 1872) s 132* The insolvent was adjudicated on the 5th March 1919 and on the same day he made over one book of account to the Official Assignee On the 6th March there was a search in the insolvent s room and amongst other things two diaries of 1918 and 1919 respectively and a stock book were taken charge of by the assistant of the Official Assignee and taken to the office On the 7th March the diary of 1918 and pages 5 to 22 of the stock book were alleged to be missing It was alleged by the Official Assignee that this was done by the insolvent Thereafter the insolvent was examined under s 36 of the Presidency Towns Insolvency Act to which no objection was taken by the insolvent Charges were framed against the insolvent on four counts viz that he fraudulently and with intent to conceal the state of his affairs and to defeat the object of the Act (1) withheld the production of his diary for 1918 and 1919

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*contd*

——— ss 36 103 104—*concld*

and his stock book (2) wilfully prevented the production of pages 5—22 of his stock book by removing and causing to be removed the said pages (3) destroyed the said stock book by removing or causing to be removed therefrom the said pages (4) wilfully prevented the production of his diary for 1918 *Held* that s 103 of the Presidency Towns Insolvency Act 1909 applies to offences committed both before and after the adjudication The section also applies to cases of wilfully withholding the production of books even after they have come to the possession of the Official Assignee *Per* WOODROFFE J —Though a charge under s 103 cannot be maintained if not framed in pursuance of the notice *under s 104 this must be taken as subject to the* principle which is embodied in s 537 of the Criminal Procedure Code 1898 namely that no error or irregularity in a charge will call for a reversal of an order unless it in fact has occasioned a failure of justice and in determining whether this is so the Court shall have regard to the fact whether the objection could and should have been raised in an earlier stage of the proceedings *J M Lucas v Official Assignee of Bengal 24 C W N 418 (1914)* referred to *Held* that with regard to charges (1) and (3) there was no material difference between the charges as framed and as mentioned in the notice and as regards charges (2) and (4) though there was no mention in the notice they were allowed to remain as under the circumstances of the case no prejudice was caused to the accused and as no objection was taken to them in the first instance *Per* WOODROFFE J —If an accused receives notice that the prosecution may seek to prove against him either of two alternative intentions he cannot as he must be ready to meet a charge in respect of both be prejudiced by a charge of having had both intentions *Quære* —Whether the insolvent could be charged both under charges (2) and (3) as the acts charged took place at one and the same place and were one alleged event The Appeal Court with all the materials before it can make a finding of intention if it has been omitted *per incuriam* by the Judge *The Queen v Ingham 29 L J (M C) 18 (1859)* distinguished *Held also* that as there was no objection on the part of the insolvent to his being examined under s 36 of the Presidency Towns Insolvency Act 1909 his examination was voluntary and as such was admissible at his trial under s 103 of the Act *Quære* —Whether an insolvent could be examined under s 36 of the Presidency Towns Insolvency Act 1909 *Held* on the facts that the charges against the insolvent had not been made out JOSEPH PERRY *v* OFFICIAL ASSIGNEE OF CALCUTTA I L R 47 Calc 254

24 C W N 425

——— s 37—

See INSOLVENCY I L R 44 Calc 374

——— s 38—

See s 6 I L R 40 Bom 461

——— *Adjudicated insolvent —discharge suspended—practice of Court requiring insolvents at endance to obtain final discharge—Suit against Official Assignee for an injunction to restrain threatened and imminent injury to property—Notice*

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*contd*

———— s 38—*contd*

no *recessary* The plaintiff was adjudicated in olvent on the 5th of September 1911 when an order was made ve ting his estate in the Official Assignee The plaintiff having sub equently applied for his dis harge an order was made on the 2nd of October 1912 in the following terms —

It is ordered that the insolvent s discharge be with protection suspended for one year and that he be di charged as from the 2nd day of October 1913 In 1916 and 1917 the plaintiff acquired property in the nature of a bu ine s No final order of di harge having been made the Official Assignee on the 2nd of January 1918 took po se ion of the plaintiff's stock in trade and then restored posses ion to the plaintiff on condition of his making payments for the benefit of his scheduled creditors On the 7th of March 1918 the Official Assignee threatened to re take po session and on the following day the plaintiff filed the suit (1) to recover the sums paid to the Official Assignee together with damages for the trespass already committed and (2) to re train the Official Assignee by an injunction from committing the threatened tre pa s The defendant contended *inter alia* that the suit was not maintainable as the plaintiff had not given notice as required by s 80 of the Civil Procedure Code and further that until a final order of dis charge was made at the expiration of the period mentioned in the order suspending di charge the property acquired by the plaintiff became divi ible amongst the plaintiff s creditors under s 52 (2) (a) of the Presidency Towns Insolvency Act In support of the latter contention the defendant relied upon the practice of the High Court to require the insolvent whose discharge has been suspended to appear and obtain the final and absolute discharge after the expiry of the period of suspension At the trial the plain tiff abandoned his claim on the first cause of action and elected to proceed only on the injunction in respect of the second cause of action —*Held* (1) that the suit was maintainable in respect of the injunction to restrain the threatened and imminent injury to the plaintiff s property in spite of the fact that no notice was given under s 80 of the Civil Procedure Code (2) that the order of 2nd October 1912 though su pending discharge for one year expressly provided that the plaintiff be discharged as from the 2nd day of October 1913 and that the said order having operated as a di charge under the Act from the 2nd of October 1913 the Official Assignee could not proceed against the property of the plaintiff acquired by him after that date (3) that the practice of the High Court to require the insolvent who e discharge has been suspended to appear and obtain the final and absolute dis charge after the expiry of the period of suspen ion being in contravention of the law was unlawful and ought not to be given effect to *Naginlal Chunilal* v *The Official Assignee Bombay (191) 37 Bom 943* followed though doubted *In re Dove (1884) 27 Ch D 687* referred to *Per* CURIAM —The words of s 38 (b) of the Presi dency Towns In olvency Act (III of 1909) imply that the discharge is granted though its operation is su pended It is not the making of the order that is suspended but the operation of the order made The Act makes no further proceedings necessary after an order of su pen ion under s 38 has been passed MURADALLY SHAMJI v B N LANG (1919) I L R 44 Bom 555

———— s 39—

See s 6 I L R 40 Bom 461

———— s 43—

See INSOLVENCY I L R 44 Calc 374

———— s 51—

See s 17 I L R 42 Mad 121

———— ss 52, 62, 64—

See SALE OF GOODS I L R 40 Calc 523

———— ss 53 (1) 108 109—

See INSOLVENCY I L R 44 Calc 1016

———— s 55—

See 36 22 C W N 335

———— *Provincial Insolvency Act (III of 1907) s 36—Mortgage within two years of in olvency of mortgagor—Good faith and consideration for mortgage—Onus of proof on mort gagee—Mortgagee admitted to proof by Official Assignee—Application by Official Assignee to ex punge proof of mortgage—Onus of proof* Under s 55 of the Pre idency Towns Insolvency Act as under s 36 of the Provincial Insolvency Act a mortgagee setting up a mortgage executed within two years of the insolvency of the mortgagor has the onus cast on him to show that the trans action was one executed in good faith and for consideration The fact that the Official Assignee is moving to expunge a proof which he has ad mitted under s 26 of the former Act does not shift the burden of proof from the mortgagee to the Official Assignee *The Official Assignee* v *Annapuranammal (1913) 20 I C 901* followed An admission of proof by the Official Assignee is in no sense an adjudication and it is open to him as well as to other creditors to have an ad judication by the Court on notice and in such adjudication the matter has to be decided with reference to the ordinary legal presumptions which arise OFFICIAL ASSIGNEE OF MADRAS v SAM BANDA MUDALIAR (1920) I L R 43 Mad. 739

———— ss 55 56—*Transfer of property by debtor to a creditor—Fraudulent preference— With a view of giving preference, meaning of—English Bankruptcy Act 1883 s 48—Construction adopted in English cases applicability of to the Indian Act* A trader being in very embarassed cir cumstances and unable to meet his obligations as they fell due sold to one of his creditors for what was found to be a fair price a large quantity of diamonds pledged by him with certain other creditors and thereby paid off the debts due to the latter and the purcha ing creditor the balance was paid to the debtor who kept his bu iness going by paying off other pressing credi tors with that amount The debtor was adjudged an insolvent on a petition presented within three months of this transaction On an application by the Official Assignee filed before a Jud e of the High Court in Insolvency to declare the trans fer void under ss 55 and 56 of the Presidency Towns Insolvency Act *Held* that the trans action was not void as a fraudulent preference

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*contd*

——— ss 55 56—*concld*

under s 56 of the Presidency Towns Insolvency Act nor was it void under s 55 of the Act as it was made in good faith and for valuable consideration *Per* CURIAM To bring a transaction within the scope of s 56 of the Act it must have been entered into with the *dominant view* of preferring a particular creditor The construction adopted in several English decisions and approved by the House of Lords in *Sharp v Jackson (1899) A C 419* on the corresponding provision in s 48 of the English Bankruptcy Act 1883 *should be* followed in construing similar language used in s 56 of the Presidency Towns Insolvency Act (III of 1909) *Sharp v Jackson (1899) A C 419 Ex parte Griffith* In re *Wilcoxon L R 23 Ch D 69 Ex parte Hill In re Bird 23 Ch D 695* followed *Valam Viswanathan v Official Assignee of Madras 32 I C 795* dissented from THE OFFICIAL ASSIGNEE MADRAS *v* T B MEHTA & SONS (1918) **I L R 42 Mad 510**

——— *Held* that an application under this section should be made by the Official Assignee *re* SURAJMULL MUNGLECHAND **26 C W N 803**

——— s 57—

1 ——— *Intimations to the creditor that debtor is about to suspend payment—Transfer of goods to creditor thereafter but before the filing of a petition for declaration of insolvency not a bona fide transfer—Bona fides a requisite under s 57 of the Act* After receiving notice from the debtors agent that the debtor was going to suspend payment a creditor took on the day previous to the debtors filing a petition in insolvency possession of the debtors *goods* by virtue of a letter of lien given by the debtor to secure past and future advances and overdrafts *Held* affirming the decision of WILLIS J (a) that giving notice to a creditor that the debtor *is about* to suspend payment is an act of insolvency (b) that though by the transaction of taking possession of the goods the creditor became the *transferee* of the goods he was not a *bonâ fide* transferee for value within s 57 of the Presidency Towns Insolvency Act (III of 1909) as the act of taking possession was after knowledge of the act of insolvency and (c) that though the body *of s 57 of the Act has not expressly prescribed* that the transfer should be *bona fide yet bonâ fides is* legally necessary to claim the benefit of the section *Per* CURIAM—The provisions and the wording *of the Presidency Towns Insolvency Act* being almost the same as those of the English Bankruptcy Act the rulings of the English Courts on the latter Act *are to be followed* in interpreting the Indian Act *Obiter* A mere intimation to a creditor by the debtor or his agent that the debtor *is insolvent* does not amount to an act of insolvency MERCANTILE BANK OF INDIA LD *v* THE OFFICIAL ASSIGNEE MADRAS (1913) **I L R 39 Mad 250**

2 ——— *Transfer by insolvent prior to insolvency to wife—Benami transaction—Transfer by wife to another after husband's adjudication* A husband transferred his share in his family dwelling house to his wife without consideration on the 11th November 1911 On the 2 th of February 1912 he was adjudicated insolvent and his wife on the 1 th of October 1912 transferred the property which had been so conveyed to her to the appellant *Held* that even assuming that the appellant had purchased the property for valuable consideration and without notice of the adjudication of the insolvent the transfer to the appellant subsequent to the adjudication was void under s 57 of the Presidency Towns Insolvency Act inasmuch as the transfer by the husband to the wife prior to his insolvency was found to be fictitious or *benami* and the consequence that the property had vested in the *Official Assignee* prior to the transfer to the appellant *Per* MOOKERJEE J—No title by estoppel accrued to the appellant as against the Official Assignee The Official Assignee to what extent representative of insolvent considered *In re Slobodinsky (1913) 2 K B 517* ... and *In re Hart (1912) 3 K B 6* distinguished *In re* LAKHI PRIYA DASI *v* PAI KISSORI DASSI (1916) **20 C W N 554**

——— ss 62, 64—

See SALE OF GOODS **I L R 40 Calc 523**

——— ss 70 and 82—

——— *Separate Creditor—Misfeasance neglect or omission—Distribution of assets—Notice of claim not disposed of—Personal liability of the Official Assignee—Method of ascertaining his liability—Costs* The Official Assignee distributed the assets of the insolvent after deducting commission etc to the two scheduled creditors though he had notice of claim by three other creditors and their claims were neither admitted nor rejected *Held*—That the Official Assignee was personally liable for the amount of which the three creditors had been deprived A creditor who lodges his proof in the statutory form is entitled that it should be dealt with without doing anything more *Re* ARCHIBALD GILCHRIST PEACE **26 C W N 653**

——— s 86—

See s 7 **I L R 35 Bom 473**

——— s 90—

See s 7 **I L R 40 Mad 810**

——— *Civil Procedure Code (Act V of 1908)* s 24—*Transfer of petition for insolvency to mufassil District Court for disposal—No jurisdiction* As the jurisdictions conferred by the Presidency Towns Insolvency Act on the High Court and by the Provincial Insolvency Act on the mufassal courts are distinct and the provisions of the two Acts differ in such important respects it is not competent for the High Court to transfer under s 90 of the Presidency Towns Insolvency Act and under s 24 Civil Procedure Code an Insolvency petition pending before it under the Presidency Towns Insolvency Act for disposal by a mufassal District Court under the Provincial Insolvency Act SRINIVASA AYYANGAR *v* THE OFFICIAL ASSIGNEE OF MADRAS (1913) **I L R 38 Mad 472**

——— s 101—

See s 5 **26 C W N 631**

See INSOLVENCY **I L R 47 Calc 721**

——— ss 103 104—

See s 17 **I L R 35 Bom 83**

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—c n l

———— s 103 104—*concld*

See s 36 24 C W N 425

See INSOLVENT I L R 47 Calc 254

———— *Offence under the Insolvency Act—Trial of offence—Notice of charge and the charges framed whether must agree—Undue preference where the creditor is not admitted as such—Undue preference whether must be made fraudulently—Criminal proceedings when to be taken* A charge framed under s 103 of the Presidency Towns Insolvency Act 1909 must be in pursuance of the notice required to be issued under s 104 When the Insolvent was charged with having withheld the production of the cash book or books for a certain period and the notice made no reference to the books *Held*—That the charge was not framed in pursuance of the notice and could not be maintained To establish a charge that books are being purposely withheld it must be shown that they exist and have not been destroyed The Insolvent was also charged that on or about January or February 1912 the Insolvent for the purpose of giving undue preference to one of his alleged creditors to wit A made away with a stock of shellac *Held*—The charge was bad inasmuch as it was not alleged that the making away was done fraudulently as was required by s 103 (*b*) of the Insolvency Act *Held also*—That the charge was bad as the creditor was not admitted as such by the Official Assignee *Per* JENKINS *C J*—Though no universal rule can be laid down it is ordinarily undesirable to institute criminal proceedings until determination of civil proceedings in which the same issues are involved. It is too well known to need elaboration that criminal proceedings lend themselves to the unscrupulous application of improper pressure with a view to influencing the course of the civil proceedings and beyond that there is the mischief of criminal proceedings being instituted with an imperfect appreciation of the facts where they have not been ascertained in the more searching investigation of a Civil Court J M LUCAS *v* OFFICIAL ASSIGNEE OF BENGAL

24 *C W N* 418

———— Offence under the Insolvency Act—Trial of offence—Notice of charge and charges framed if must agree *See* Head note under Insolvency in the Civil Index J M LUCAS *v* OFFICIAL ASSIGNEE OF BENGAL JOSEPH PERRY *v* OFFICIAL ASSIGNEE OF CALCUTTA

24 C W N 425

———— s 108—

See LETTERS OF ADMINISTRATION

15 C W N 350

———— s 115—*Immunity of Official Assignee from stamp duty whether applicable to his attorney—Nattukottai Chetti whether bankers—Loans advanced on or without deposit of goods—Entry in one account—Banker's lien on goods for general balance of accounts—Indian Contract Act (IX of 1872) s 171* An attorney representing the Official Assignee is entitled to the same privileges as to stamp duty as the latter has under s 115 of the Presidency Towns Insolvency Act Consequently the attorney need not pay stamp duty for a copy of the order passed by a Judge of the High Court in the exercise of its insolvency jurisdiction It is perfectly general knowledge and it

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*concld*

———— s 115—*concld*

has been recognised in judicial decision that Nattukkottai Chettis are the Indian bankers of this part of the country *Vellayappa Chettiar* v *Unnamalai Achi (1916) 6 L W 687* and *Annamali Chetti* v *Annamalai Chetti (1919) 10 L W 6* referred to The garnishee a Nattukkottai Chetti had in addition to money lending business customers who deposited money with him kept pass books and went with them and drew money and he paid interest on the deposits and bought and sold hundies and lent money on securities *Held* the garnishee was a banker It appeared that diamonds were deposited by a customer with the garnishee from time to time and advances made thereon and the diamonds were redeemed from time to time but also that loans were made by him without deposit of diamonds and entered in the same account *Held* on the insolvency of the customer that under s 171 Indian Contract Act the garnishee was entitled as a banker to retain the deposits as security for his general balance of account with the insolvent and that no contract to the contrary had been proved in the case OFFICIAL ASSIGNEE OF MADRAS *v* RAMASWAMY CHETTY (1920)

I L R 43 Mad 747

———— s 121—

See s 6 I L R 37 Bom 464

———— s 126—

See INSOLVENCY I L R 38 Calc 542
I L R 40 Calc 78

———— Sch II—

See s 25 20 C W N 995

See INSOLVENCY I L R 47 Calc 721

PRESIDING OFFICER

———— absence of—

See SALE IN EXECUTION OF DECREE
I L R 39 Calc 26

PRESS

———— *keeping a, whether a "licensed calling or common law right* —

See PRESS ACT (I OF 1910) s 3 (1) PROVISO I L R 39 Mad 1164

———— members of the—

See LIBEL I L R 41 Calc 1023

PRESS ACT (I OF 1910)

See PRINTING PRESSES AND NEWSPAPERS ACT (XXV OF 1867)

———— s 3—*Printing Press—Order to make deposit—Failure to make deposit—Liability—Deposit to be made within reasonable time* The Government of Bombay on the 13th September 191 issued to the applicant a notice calling upon him under s 3 sub s (?) of the Indian Press Act 1910 to deposit with the District Magistrate of Kaira security to the amount of Rs 3,000 It was served on the applicant on the afternoon of the 25th September On the 30th idem which was a Monday the applicant sent off by post letters to His Excellency the Governor and to the District Magistrate of Kaira stating that he had closed down the press On the 2nd October

PRESS ACT (I OF 1910)—*contd*

——— s 3—*contd*

the applicant sold the press and had his declaration in respect of the press cancelled the next day On the 5th October proceedings were taken against the applicant under s 23 (*1*) of the Act for keeping the press without making the deposit He was convicted of the offence The applicant having applied to the High Court *Held* that no limit of time having been given to the applicant *within which to make the deposit ordered* the notice and s 3 of the Indian Press Act 1910 must be construed as meaning that the deposit ordered should be made within a reasonable time *Held* also that the interval which elapsed between the afternoon of the 28th September and the 3rd October could not be reckoned as an unreasonable time EMPEROR *v* FULCHAND BAPUJI (1913)

I L R 37 Bom 555

——— *proviso construction of —Original order of Magistrate dispensing with security—Demand of security by Magistrate thereafter legality of—Government of India Act (5 & 6 Geo V) cap 61 ss 106 and 107—Criminal Procedure Code (Act V of 1898) s 435—High Court power of to issue writ of certiorari under to cancel Magistrate s order—Magistrate demanding security not a Court but executive officer—Writ of certiorari when can be issued— Judicial Act what is—Indian Press Act (I of 1910) s 22 whether a bar to issue of writ of certiorari — Proviso object of—Keeping a press whether a licensed calling or common law right* Per ABDUR RAHIM Offg C J and SESHAGIRI AYYAR J (AYLING J not dissenting) The Chief Presidency Magistrate acting under s 3 (*1*) of the Indian Press Act is not a Court but is only an executive officer entrusted with the performance of certain administrative duties whose details are left entirely to his discretion hence an order by him requiring security from the keeper of a press even if in excess of his powers is not capable of being revised by the High Court either by means of a writ of *certiorari* issued under ss 106 and 107 of the Government of India Act (5 and 6 Geo V) cap 61 or by the exercise of revisional powers as provided by s 435 Criminal Procedure Code (Act V of 1898) *Sivagami Achi* v *Subrahmania Ayyar I L R 27 Mad 259 Shanker Sarup* v *Mejo Mal I L R 23 All 313 Minakshi* v *Subramaniya I L R 11 Mad 26* and *Vijiaraghavalu Pillai* v *Theagaroya Chetti I L R 38 Mad 581* applied *Per* ABDUR RAHIM *Offg C J* and SESHAGIRI AYYAR J Whether an act is judicial or not depends on the nature of the powers conferred by the legislature the character of the act sought to be quashed and the nature and extent of the discretion vested with the authority and other similar considerations *Per* CURIAM — Every keeper of a printing press who makes a declaration under s 4 of the Press and Registration of Books Act (XXV of 1867) after the commencement of the Indian Press Act (I of 1910) is simultaneously liable to deposit such security as the Magistrate demands under s 3 (*1*) of the Indian Press Act even though the press and the newspapers published therein were in existence before the passing of the Press Act But the Magistrate may under the proviso to s 3 (*1*) make an order dispensing with a security *Per* ABDUR RAHIM *Offg C J* and SESHAGIRI AYYAR J (AYLING J *contra*)—If once a Magistrate dispenses with a security he cannot thereafter cancel

PRESS ACT (I OF 1910)—*contd*

——— s 3—*concld*

such order and demand security The words or may from time to time cancel or may make any order under this sub section which are to be found in the same proviso as that which enables a Magistrate to make an order dispensing with security cannot be construed to include an order dispensing with security A proviso appended to a section is either *an explanation or a qualification* of the section It does not add to or enlarge the scope of the section *West Derby Union* v *Metropolitan Life Assurance Society* (1897) *4 C 647* referred to *Per* AYLING J —The substance and not the form must be looked at and that which is in form a proviso may in substance be a fresh enactment adding to and not merely qualifying that which goes before and this proviso is really such a one *Per* ABDUR RAHIM, *Offg C J* and SESHAGIRI AYYAR J The Supreme Court of Madras had the right to issue writs of *certiorari* as the King s Bench in England and that right has been preserved to the High Court by the Charters of 1861 and 1865 the Letters Patent of 1865 and the Government of India Act of 1915 and no Act of any legislature, has taken away this right *Nundo Lal Bose* v *The Corporation for the Town of Calcutta I L R 11 Calc 275* referred to *In re* MRS BESANT (1916) **I L R 39 Mad. 1164**

——— s 3 sub s (*1*) and s 4 sub s (*1*) **Expl 2 ss 17 and 22**—*Order of Magistrate cancelling previous order dispensing with security if judicial or administrative order—Power to revise by certiorari—Power whether taken away—High Courts in India power to issue writs of certiorari when exercisable—Order of forfeiture by Local Government—Publication with intent to excite hatred etc —Intent how established—Attacks upon school of opinion and class distinguished—Government of India Act 1915 ss 656 106 and 107—S 27 Press Act if ultra vires—Statute interpretation of — Proviso* Under s 3 sub s (*1*) of the Press Act of 1910 the Magistrate has power to cancel a previous order dispensing with security the necessary consequence of which will be that security will have to be deposited according to the amount thereupon fixed by him within the limits prescribed as would be done in normal course on the first making of a declaration There is no magic in the words of the proviso and the plain meaning must be given to the words of the Legislature The action of the Magistrate in increasing or diminishing withdrawing or imposing the deposit of security under the Press Act is a pure matter of administrative discretion not a judicial order open to examination by a Court of law of superior jurisdiction In the only case in which he is to record his reasons the object of recording them is for the information of his superiors in the Government Where a Magistrate cancelled his previous order dispensing with the deposit of security without giving the owner of the printing press an opportunity to be heard *Held* that though it might have been a wiser exercise of the Magistrate s discretion to have given the owner such an opportunity it was not like a condemnation in which case justice requires that the person to be condemned should be first heard the act of the Magistrate amounting *only* to the withdrawal of a privilege which need never have been granted and the order would be irre-

PRESS ACT (I OF 1910)—*contd*

———— s 3 sub s (*1*) and s 4 sub s (*1*) Expl 2 ss 17 and 22—*concld*

vertible either upon process of *certiorari* or by way of revision assuming that the order was open to such examination *Held* further that if it were a judicial order it would be open to examination by way of a revision so that there being a more suitable remedy available a writ of *certiorari* would be excluded and that if it were an order of that quasi judicial kind to which *certiorari* has sometimes been applied in England or in India the Press Act may quite reasonably have intended to take it away ANNIE BESANT v THE ADVOCATE GENERAL OF MADRAS (1919)

I L R 43 Mad 146
23 C W N 986

———— ss 3 (1) 4 (1) 17 19 20 and 22—*Demand of security by Magistrate under proviso to s 3 (1) legality of—Order by Government under s 4 (1) forfeiting security and copies of newspaper legality of—Jurisdiction of High Court under s 17 extent of— Words which are likely or may have a tendency directly or indirectly whether by interference suggestion allusion metaphor implication or otherwise in s 4 (1) meaning of—Hatred or contempt and Government established by law in British India in s 4 (1) meaning of—Intention of writer whether essential under s 4 (1)—Onus under s 4 (1) whether on applicant—In aid of the proof of the nature of or tendency of the words in s 20 effect of—Ss 4 and 22 whether ultra vires of the Imperial Legislature of India as contravening s 43 of 3 & 4 Will IV cap 85 or s 22 of 24 & 25 Vict cap 67 or s 65 of the Government of India Act 5 & 6 Geo V cap 61* The petitioner in this case who was the keeper of a printing press and publisher of a news paper therein made his application to the High Court under s 17 of the Indian Press Act (I of 1910) for cancellation of (*a*) an order of the Chief Presidency Magistrate of Madras demanding from her under s 3 (*1*) of the Act security for two thousand rupees in supersession of a previous order made by him dispensing with security and (*b*) an order of the Governor in Council Madras declaring under s 4 (*1*) the security of the two thousand rupees so deposited and all copies of the newspapers wherever found to be forfeited to His Majesty In dismissing the application on the ground that some of the specified articles (hereinafter called extracts) of the newspapers were of the objectionable nature described in s 4 (*1*) of the Press Act their Lordships of the Special Bench *held* as follows —In an application made under s 17 of the Indian Press Act the only question which the Special Bench of the High Court can determine is whether the extracts complained of did not contain any words of the nature described in s. 4 (*1*) and the Court has no jurisdiction to determine any other question such as (*a*) whether the particular order of the Magistrate demanding security was beyond his powers or (*b*) whether s 4 or 22 of the Press Act is *ultra vires* of the powers of the Imperial Legislature of India as contravening any Act of Parliament, or (*c*) whether the order of forfeiture was legally made *In re Mahomed Ali I L R 41 Calc 466* referred to Advocating Home Rule for India is not *per se* objectionable But such advocacy must not offend against existing laws Hatred and contempt towards the Government occurring in s 4 may be created by articles imputing to the Government base dishonourable corrupt or malicious motives in the discharge of its duties or by articles unjustly accusing the Government of hostility or indifference to the welfare of the people Though the operative or enacting portion of s 4 (*1*) (*c*) does not make the intention or motive of the writer of the articles complained of material in considering whether the words are not of the nature described in s 4 (*1*) Explanation 2 thereto requires that the writer must *intend* to excite hatred contempt or disaffection if his writings are to be brought within cl (c) the intention being deducible mainly from the words used The words the Government established by law of India occurring in s 4 are not to be construed as indicating only the supremacy of the British Crown over India and the British connection with it as opposed to independence MRS BESANT v EMPEROR (1916)

I L R 39 Mad 1085)

———— s 4—

See FORFEITURE

I L R 42 Calc 730

———— *Interpretation of Statute — Government established by law in British India meaning of—S 4 of Act No I of 1910 not ultra vires of the Indian Legislature Held* that s 4 of the Indian Press Act 1910 is not *ultra vires* of the Indian Legislature *Besant v Advocate General of Madras I L R 53 Mad 146* referred to In cl (I) (c) of that section the expression Government established by law in British India means the established authority which governs the country and administers its public affairs and includes the representatives to whom the task of government is entrusted The word Government in ss 2 and 4 of the Act is equivalent to Government established by law in British India *Besant v King Emperor I L P 39 Mad 1085* referred to In an application under s 17 of the Indian Press Act 1910 against an order under s 4 forfeiting the applicant s security the Court on a consideration of the articles upon which the order complained of was based found that they were such as would convey to an ordinary person that the rules of this country in addition to incompetence cowardice and heartlessness were guilty of the slaughter of innocent people in order to terrorize them into subjection and to crush out all kinds of political movements and national aspirations and further that they were perfidious enough to pervert and misapply the Defence of India Act with the like object and to invent the Rowlatt Act for a similar purpose The Court accordingly *held* that the order for forfeiture of the applicant s security was completely justified *In the matter of the petition of* SUNDAR LAL

I. L. R 42 All. 233

———— s 4 (*1*) cl (e) Expl. II, ss. 17 21 23—*Ground for setting aside forfeiture of security defect in notice if—Seditious intent proof of if necessary to justify forfeiture under s 4 (1) (c)—Intention how far material— Intention and tendency distinguished—Truth of facts alleged if justification—What evidence admissible under s 20—Extrinsic evidence of intention if admissible when meaning of writing plain—Evidence Act*

PRESS ACT (I OF 1910)—*contd*

——— s 4 (1) cl (e) Expl II ss 17 21 23—*contd*

(I of 1872) ss 92 98 and 14—Effect on probable readers of may be considered—Order of forfeiture how far conclusive—Onus of proof on an application under s 17— Government established by law in British India meaning of— Class members of the Indian Services recruited in England of a Per CURIAM —Upon an application under s 17 of the Indian Press Act I of 1910 to set aside an order of forfeiture of security deposited by a newspaper the Court has to see whether the article in question is obnoxious to the provisions of s 4 of the Act D fect in the form of the notice under s 4 sub s *(1)* is no ground for setting aside the order of forfeiture It is only Expln II to s 4 which according to the decision of the Judicial Committee in *Annie Besant v The Advocate General of the Government of Madras 35 T L R 500 s c 23 C W N 986* imports consideration of the writer s intention The explanation does not cover all the cases comprehended in cl (c) The explanation does not apply where the words used have a tendency to bring into hatred or contempt or excite disaffection towards the Government established by law in British India or where the words used tend to bring into hatred or contempt a class or section of His Majesty s subjects in British India *e g* the officers of the Government recruited in England *Per* WOODROFFE *J* (FLETCHER *J* agreeing)—The question of intention is only material if the Court has to deal with comments on the measures (meaning thereby legislative measures) or action of the Government or the administration of justice These comments again are not protected if they in fact excite or attempt to excite hatred contempt or disaffection but are protected if the disapproving comments on the measures of Government are made with a view to obtain their alteration by lawful means or if they are made on the actions of Government or administration of justice and if in both cases there is no attempt to excite hatred contempt or disaffection *Per* MOOKERJEE *J* —Comments of the character mentioned in Expln II to s 4 of the Act may be permissible even though they are likely or may have a tendency to produce the corresponding result mentioned in cl (c) but they must not excite or constitute an attempt to excite hatred contempt or disaffection The term measures in the explanation was intended to apply to legislative measures *Per* WOODROFFE *J* (FLETCHER *J* agreeing) —An offence under the Press Act is not sedition as such but the printing or publishing of matter of the nature and tendency mentioned in s 4 which attracts to itself the penalty of forfeiture *Per* MOOKERJEE *J* —Whether the offending article justifies a conviction under s 124A of the Penal Code is no test of the validity of an order of forfeiture under s 4 of the Press Act An article may well be beyond the bounds of the Penal Code and yet be drawn into the net of the Indian Press Act *Per* CURIAM —The truth of the facts alleged in the article is no ground for taking the case out of the operation of s 4 of the Press Act and evidence is not admissible to prove their truth Both the Crown and the accused may under s 20 of the Press Act give in evidence other copies of the newspaper published after the commencement of the Act in aid of the proof of the nature and tendency of the matter contained in the offending article *Per* WOODROFFE *J* (FLETCHER *J* agreeing)—S 20 applies where if the offending article stood alone there might be doubt or ambiguity as to the character nature or tendency of the words used and not where the meaning of the article is apparent on its face. Other articles which appeared in the newspaper cannot be put in to prove its policy *In the matter of the* AMRITA BAZAR PATRIKA PRESS LD (1919)

23 C W N 1057

——— ss 4 12 17 19 22—

See FORFEITURE I L R 41 Calc 466
I L R 47 Calc 190

——— ss 4 (1) 17 and 19—*Forfeiture of deposit and pamphlet—application to set aside forfeiture grounds for* A notification under s 4 *(1)* of the Press Act 1910 forfeiting the security deposited under s 3 *(1)* can only be challenged by means of an application under s 17 and in order to succeed the applicant must show that the newspaper book or other document in respect of which action is taken is not of the nature described in s 4 Per MANUK *J* —The High Court has to look to the reasonably possible effects which the words complained of may produce Where there is a particular enactment and a general enactment in the same Statute and the latter taken in its most comprehensive sense would overrule the former the particular enactment must be operative PUROSUTTAM NARYAN NANDE v CHIEF SECRETARY TO GOVERNMENT OF BIHAR AND ORISSA

5 P L 4 Pat L J 174

——— ss 17 19 20 and 22—

See s 3 I L R 39 Mad 1035

PRESUMPTION

See ACQUIESCENCE
I L R 37 All 412

See ADVERSE POSSESSION
I L R 33 All 229

See AGRA TENANCY ACT (II OF 1901)
ss 166 201 I L R 34 All 250
s 201 I L R 33 All 789

See BENGAL TENANCY ACT (VIII OF 1885) s 5 CL (5)
I L R 44 Calc 555

See CUSTOM I L R 33 All 257

See DEPOSITION I L R 45 Calc 825

See EVIDENCE ACT (I OF 1872)—s 105

See FORFEITURE I L R 47 Calc 190

See HINDU LAW—ADOPTION
I L R 37 Mad 529
I L R 42 Bom 277

See HINDU LAW—JOINT FAMILY
I L R 33 All 677
I L R 36 Bom 275

See HINDU LAW—MARRIAGE
I L R 38 Calc 700

See HINDU LAW—PARTITION
I L R 36 Bom 379

PRESUMPTION—*contd*

See LANDLORD AND TENANT (MISC) I L R 33 All 757
I Pat L J 604

See MADRAS REGULATION XXX OF 1802 s 4 I L R 38 Mad. 620

See MAHOMEDAN LAW—DOWER I L R 33 All. 291

See MAHOMEDAN LAW—LEGITIMACY I L R 48 Calc 856

See MAHOMEDAN LAW—MARRIAGE I L R 32 All 345

See MALABAR LAW I L R 39 Mad 317

See MORTGAGE (PRIORITY) I L R 34 All. 102

See PENAL CODE (ACT XLV OF 1860)—
ss 82 AND 83 I L R 37 All 187
s 76 I L R 32 All 451

See POSSESSION I L R 37 All 203

See PUBLIC GAMBLING ACT (III OF 1867) ss 3 4 I L R 35 All 1

See REGISTRATION ACT (III OF 1877) s 32 I L R 34 All 253 331

See SECOND APPEAL I L R 38 All. 122

See STANDARD OF PROOF I L R 40 Calc 898

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 101 I L R 34 All. 268

See WILL I L R 47 Calc 1043
I L R 45 Bom 906

———As to ancient document applied to copy—

See EVIDENCE ACT 1872 s 65 I L R 41 All 592

——— ancient and uninterrupted user—

See EASEMENTS ACT (V OF 1882) ss 2 (c) AND 17 (c) I L R 42 Bom 288

——— Difference between—Vatan and Inam and Saranjam grants—

See BOMBAY HEREDITARY OFFICERS ACT (BOM ACT 3 OF 1874) s 15 I L R 44 Bom 237

——— Record of Rights—entries in—

See BOMBAY LAND REVENUE CODE 1879 s. 135 I L R 44 Bom 214

——— nature of—

See EVIDENCE ACT (I OF 187) ss 107 108 I L R 37 Mad 440

——— of commission of offence

See OPIUM ILLEGAL POSSESSION OF I L R 37 Calc 24

——— of death—

See EVIDENCE ACT 187 s 108

See PRACTICE I L R 40 Bom 220

——— of annual tenancy—

See BOMBAY LAND REVENUE CODE (BOM ACT V OF 1879) s. 83 I L R 45 Bom 350

PRESUMPTION—*contd*

——— of permanent tenancy—

See BOMBAY LAND REVENUE CODE (BOM ACT I OF 1879) s 83 I L R 45 Bom 303 350

——— Property which has descended from one granthi to another—

See CUSTOMS I L R 1 Lah 540

——— In favour of continuance of life—

See HINDU LAW—SUCCESSION I L R 1 Lah 554

——— of Right arising from occupation—

See EJECTMENT SUIT FOR I L R 38 Bom 240

PREVAILING RATE

See LANDLORD AND TENANT I L R 37 Calc 742
I L R 45 Calc 930

PREVENTION OF CRUELTY TO ANIMALS ACT (XI OF 1890)

See BOMBAY DISTRICT POLICE ACT (BOM ACT IV OF 1890) s 62 I L R 45 Bom 203

——— s 3—

——— *Whether the offence must be committed within sight of any person—Preparation of piri dye from cow's urine* Where it was found that the petitioner tortured his cows by depriving them of water and these cows were tied up where the sufferings of the animals could be witnessed by persons from the lane on which the house of the petitioner was situated *Held* that the offence comes within the purview of s 3 of the Prevention of Cruelty to Animals Act (XI of 1890) MISRI GOPE *v* ABDUL LATIF (1912) 17 C W N 332

——— *Owner turning out horse into street to starve* Accused abandoned his horse by turning it out into the street and some days after it was found in a starving condition and accused was charged under s 3 *Held* that accused could not be convicted under the section as he must in fact be able to exercise control over the animal at the time of ill treatment EMPEROR *v* NASIR WAZIR I L R 44 Bom 159

——— s. 3, cl (b)—*Cruelty to animals—Cranes having their eyes sealed up—Carriage by railway in that condition* The accused purchased at Indore certain cranes (*saras*) which had their eyes sealed up He was carrying them in that condition by rail from Indore to Kolhapur At Poona an intermediate station it was found that the bird's eyes were bleeding from the stitches He was therefore convicted of an offence punishable under s 3 cl (*b*) of the Prevention of Cruelty to Animals Act 1890 *Held* that the accused had committed no offence under the section for the cruelty if any was caused by the antecedent stitching up of the eyes and not by the manner or position in which the birds were carried in the train EMPEROR *v* IBRAHIM MEER SHIKARI (191) I L R 41 Bom 654

PREVENTION OF GAMBLING ACT

See BOMBAY PREVENTION OF GAMBLING ACT 1887

——— *Belonging to a Gang of Thieves—Habit—Evidence of habit—Admissibility of evidence of previous convictions of offences against prop rty and of bad livelihood—Penal Code (Act XLV of 1860) s 401* Where the other evidence in a case under s 401 of the Penal Code estab lishes association for the purpose of habitually committing theft evidence of previous convic tions of offences against property and of bad livelihood is admissible to prove habit and for this purpose convictions of bad livelihood are more cogent than those of isolated thefts *Em press* v *Naba Kumar Patnaik 1 C W N 146 Meh r Ali Sarkar* v *Emperor* (*Cr App 742 of 1909*) decided 20th March 1901 by PRINSEP and HILL *JJ*) (unreported) *Madhu Dhari* v *Emp ror* (Cr App 582 of 1905 decided 26th July 1905 by RAMPINI and MOOKERJEE *JJ*) (unreported) *Khanta Karwal* v *Emperor* (Cr App 78 of 1909 decided 28th January 1909 by HOLMWOOD and RYVES *JJ*) (unreported) *Gobar dhan* v *Emperor* (Cr App 958 of 1910 decided 21st November 1910 by HOLMWOOD and FLET CHER *JJ*) (unreported) referred to *Mankura Pasi* v *Queen Empress I L R 27 Calc 139* doubted and explained BHONA *v* EMPEROR (1911) I L R 38 Calc 408

——— A finger mark expert was called as a witness who compared certain finger prints of the accused taken in Court with some other finger prints on a paper which con tained a record of certain convictions which purported to be the convictions of the accused and pronounced them to be similar This was taken as proof of the previous convictions of the accused *Held* that the previous convic tions were not properly proved RAM DAS SINGH *v* KING EMPEROR (1916) 21 C W N 469

PRINCIPAL AND AGENT—*contd*

See COMPANY I L R 36 Bom 564

See CONTRACT ACT (IX OF 1872)—

ss 178 179 I L R 42 Bom 205

s 235 I L R 34 All 168

ss 182 TO 237

See CONTRACT WITH ENEMY I L R 44 Bom 631

See COSTS I L R 43 Calc 190

See LIMITATION ACT (IX OF 1908) SCH I ART 115 I L R 39 All 81

ART 116 I L R 39 All 355

See OATHS ACT (X OF 1873) ss 8 9 10 I L R 38 All 131

See PRACTICE (30)

See SALE OF GOODS I L R 42 Calc 1050
I L R 42 Bom 16

———Agent s power in disposing of land—

See ESTOPPEL 2 Pat L J 600

———Agent s power to refer dispute to arbitration—

See JURISDICTION I L R 34 Bom 13

——— Lambardar not agent for co sharers—

See AGRA TENANCY ACT 1901 s 194 I L R 34 All 93

——— suit for negligence occasioning loss—

See CIVIL PROCEDURE CODE 1908 s 20 I L R 34 All 49

ACCOUNTS

1 ——— *Limitation Act (XV of 1877) Sch II Arts 89 115 116—Accounts suit for against sons of gomastha—Covenant to furnish annual accounts—Neglect to do so if re fusal—Suit by co sharer for accounts of his share if lies* A suit for money found due on an account and a suit for an account are really one and the same thing *Shib Chandra v Chandra Narain I C L J 23 I L R 32 Calc 719* followed Such a suit lies on the death of an agent against his legal representatives *Lawless v The Calcutta Landing and Shipping Co Ld I L R 7 Calc 627 Jogesh Chandra v Benode Lal Raj 14 C W N 23* followed *Held* (COXE J *dubitante*) that a suit for accounts not against the agent personally but against his legal representative is governed by Art 115 or Art 116 of the Limita tion Act and not by Art 89 The objection that a co sharer cannot sue the *gomastha* of all the co sharers for the accounts of his share only does not apply where the remaining co sharers have been made parties defendants and a decree pa sed for an account of the whole agency *Quære* Whether when there is a covenant by the agent to furnish accounts year by year the neglect on the part of the agent to furnish the accounts in respect of any particular year amounts to refusal to render accounts within the mean ing of Art 89 *Quære* Whether where there is such a covenant a suit against an agent for accounts of particular years when the agent has neglected to furnish accounts or for the sum found due thereon can be regarded as a suit for compensation for the breach of a contract as contemplated by Arts 115 and 116 of the Limitation Act JHAPPAJHANESSA BIBI *v* BAMA SUNDARI CHOUDHURANI (1912)

16 C W N 1042

2 ——— *Agent s death—Liability of legal representatives to render accounts—Liability of agent s assets—Remedy of principal—Suit for damages—Onus—Limitation—Limitation Act (IX of 1908) Sch I Arts 89 115 120* The legal representatives of an agent cannot be called upon to render accounts to the principal in the same sense as the agent himself as they cannot be required to explain matters of which they have no personal knowledge and to assist the principal in the investigation of the management of his estate of which they are ignorant The estate of the agent however continues to be liable and the remedy of the principal is to sue the representa tives for any loss he may have suffered by reason of the negligence or misconduct misfeasance or malfeasance of his agent The maxim *actio per sonalis moritur persona* would be no bar to an action where the act complained of was not a mere tort but was a breach of a *quasi* contract where the claim was founded on a breach of a fiduciary relation or on failure to perform a duty *Concha v Murrieta 40 Ch D 543 Philips v Homfray 24 Ch D 439* relied on A claim by the principal against the legal representative of the agent for money misappropriated by the agent and for damages for loss suffered by reason of the agent s negligence or misconduct is therefore main tainable—the suit being one not for accounts strictly so called but for money payable to the principal by the representatives of the agent out of the assets in their hands *Manmothonath Bose v Basonto Kumar Bose I L R 22 All 332* relied on In such a suit the burden will be on the plaintiff to prove his case Such a suit is not governed by Art 89 of the Limitation Act but by either Art 115 or Art 120 *Lawless v Calcutta L & S Co I L R 7 Cal 627 Harend r v Administrator General I L R 12 Calc 35 Brindraban v Jamuna I L R 25 All 5* referred to KUMEDA CHARAN BALA *v* ASUTOSH CHATTO PADHAYA (1912) 17 C W N 5

3. ——— *Death of agent—Suit for accounts if lies or may be conti ued against heirs* A suit for accounts brought against an agent may be continued on his death pending suit against his legal representatives *Semble* A suit for accounts lies against the heirs of a deceased agent *Manmatha Nath Bose Mullick v Basanta Kumar Bose Mullick I L R 22 All 332* doubted *Kumuda Charan v Ashuto h 16 C L J 28* referred to BAHADUR SINGH *v* BASANTA KUMAR ROY (1913) 17 C W N 695

PREVIOUS ACQUITTAL

See ACQUITTAL I L R 37 Calc 680

See CRIMINAL PROCEDURE CODE s 403
I L R 37 All 107
I L R 40 Bom 97

PREVIOUS CONVICTION

See CHARGE I L R 47 Calc. 154

See CRIMINAL PROCEDURE CODE s 413
I L R 39 All. 293

See PRACTICE I L R 39 Bom. 326

——— proof of—

See SECURITY FOR GOOD BEHAVIOUR
I L R 43 Calc 1128

——— when passed in a Native State—

See PENAL CODE s 75
I L R 42 All. 136

——— *Belonging to a Gang of Thieves—Habit—Evidence of habit—Admissibility of evidence of previous convictions of offences against property and of bad livelihood—Penal Code (Act XLV of 1860) s 401* Where the other evidence in a case under s 401 of the Penal Code establishes association for the purpose of habitually committing theft evidence of previous convictions of offences against property and of bad livelihood is admissible to prove habit and for this purpose convictions of bad livelihood are more cogent than those of isolated thefts *Empress* v *Naba Kumar Patnail 1 C W N 146 Meh r Ali Sarkar* v *Emperor (Cr App 742 of 1900)* decided 20th March 1901 by PRINSEP and HILL *JJ*) (unreported) *Madhu Dhari* v *Emperor* (Cr App 582 of 1905 decided 26th July 1905 by RAMPINI and MOOKERJEE *JJ*) (unreported) *Khanta Karwal* v *Emperor* (Cr App 78 of 1909 decided 28th January 1909 by HOLMWOOD and RYVES *JJ*) (unreported) *Gobardhan* v *Emperor* (Cr App 958 of 1910 decided 21st November 1910 by HOLMWOOD and FLETCHER *JJ*) (unreported) referred to *Mankura Pasi* v *Queen Empress I L R 27 Calc 139* doubted and explained BHONA v EMPEROR (1911) I L R 33 Calc 408

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PREVIOUS DEPOSITIONS

See ADMISSION
I L R 41 Calc 601

PREVIOUS ENJOYMENT

See EASEMENT
I L R 39 Calc. 59

PRICE

——— oral agreement as to—

See EVIDENCE ACT (I OF 1872) s 92
I L R 38 Mad. 514

PRICE—*contd*

——— of goods sold, suit for—

See CONTRACT ACT ss 39 73 180
I L R 34 Bom. 19?

PRIEST

——— Panchas preventing hereditary priest from giving his ministrations—

See VRITTI I L R 45 Bom. 234

PRIMARY COURT

——— jurisdiction of—

See EX PARTE DECREE
I L R 48 Calc 153

PRIMOGENITURE

See CUSTOM 24 C W N 601
1 Pat. L J 109

See HINDU LAW—IMPARTIBLE ESTATE
I L R 38 All. 590

See HINDU LAW—INHERITANCE
I L R 34 All. 65
I L R 42 Calc. 1179

See HINDU LAW—SUCCESSION
18 C W N 65
I L R 48 Calc 997

See KUNJPURA STATE OF
I L R 39 Calc. 711

See OUDH ESTATES ACT (I OF 1869)—

ss 8 10 I L R 33 All. 552

ss 8 AND 22 SUB S (11)
I L R 32 All. 599

ss 14 15 AND 22
I L R 43 All 245

See TALUQDARI ESTATE
I L R 43 All 297

PRINCIPAL

See HUNDI SUIT ON
I L R 46 Calc 663

See UNDISCLOSED PRINCIPAL.

——— death of—

See PRINCIPAL AND AGENT
I L R 43 Calc 248

——— liability of—

See PRINCIPAL AND AGENT
14 C W N 414
I L R 43 Calc 511

——— part-payment of—

See PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882) s 69
I L R 38 Mad. 438

——— suit by for money received by agent—

See PRINCIPAL AND AGENT
I L R 41 All. 254

PRINCIPAL AND AGENT

See ACCOUNT 15 C W N 930
I L R 40 Calc. 108
I L R 44 Calc. 1

See CIVIL PROCEDURE CODE 188 ss 215A AND 216 I L R 32 All 525

See CIVIL PROCEDURE CODE 1908 s 20 (c) I L R 34 All. 49

PRINCIPAL AND AGENT—*contd*

See Company I L R 36 Bom 564

See Contract Act (IX of 1872)—

ss 178 179 I L R 42 Bom. 205

s 235 I L R 34 All 168

ss 182 to 237

See Contract with Enemy
I L R 44 Bom 631

See Costs I L R 43 Calc 190

See Limitation Act (IX of 1908) Sch I Art 115 I L R 39 All 81

Art 116 I L R 39 All. 355

See Oaths Act (X of 1878) ss 8 9 10
I L R 38 All 131

See Practice (30)

See Sale of Goods
I L R 42 Calc 1050
I L R 42 Bom 16

————Agent s power in disposing of land—

See Estoppel 2 Pat L J 600

————Agent s power to refer dispute to arbitration—

See Jurisdiction I L R 34 Bom 13

———— Lambardar not agent for co-sharers—

See Agra Tenancy Act 1901 s 194
I L R 34 All 98

———— suit for negligence occasioning loss—

See Civil Procedure Code 1908 s 20
I L R 34 All 49

ACCOUNTS

1 ———————— *Limitation Act (XV of 1877) Sch II Arts 89 115 116—Accounts suit for against sons of gomastha—Covenant to furnish annual accounts—Neglect to do so if refusal—Suit by co sharer for accounts of his share if lies* A suit for money found due on an account and a suit for an account are really one and the same thing *Shib Chandra* v *Chandra Narain I C L J 232 I L R 32 Calc 719* followed Such a suit lies on the death of an agent again t his legal representatives *Lawless* v *The Calcutta Landing and Shipping Co Ld I L R 7 Calc 627 Jogesh Chandra* v *Benode Lal Ray 14 C W N 3* followed *Held* (Coxe J *dubitante*) that a suit for accounts not against the agent personally but against his legal representative is governed by Art 115 or Art 116 of the Limitation Act and not by Art 89 The objection that a co sharer cannot sue the *gomastha* of all the co sharers for the accounts of his share only does not apply where the remaining co sharers have been made parties defendants and a decree passed for an account of the whole agency *Quære* Whether when there is a covenant by the agent to furnish accounts year by year the neglect on the part of the agent to furnish the accounts in respect of any particular year amounts to refusal to render accounts within the meaning of Art 89 *Quære* Whether where there is such a covenant a suit against an agent for accounts of particular years when the agent has neglected to furnish accounts or for the sum found due thereon can be regarded as a suit for compensation for the breach of a contract as contemplated by Arts 115 and 116 of the Limitation Act Jhappajhanessa Bibi *v* Bama Sundari Choudhurani (1912)
16 C W N 1042

2 ———————— *Agent s death—Liability of legal representatives to render accounts—Liability of agent s assets—Remedy of principal—Suit for damages—Onus—Limitation—Limitation Act (IX of 1908) Sch I Arts 89 115 120* The legal representatives of an agent cannot be called upon to render accounts to the principal in the same sense as the agent himself as they cannot be required to explain matters of which they have no personal knowledge and to assist the principal in the investigation of the management of his estate of which they are ignorant The estate of the agent however continues to be liable and the remedy of the principal is to sue the representatives for any loss he may have suffered by reason of the negligence or misconduct misfeasance or malfeasance of his agent The maxim *actio personalis moritur persona* would be no bar to an action where the act complained of was not a mere tort but was a breach of a *quasi* contract where the claim was founded on a breach of a fiduciary relation or on failure to perform a duty *Concha* v *Murrieta 40 Ch D 543 Philips* v *Homfray 24 Ch D 439* relied on A claim by the principal against the legal representative of the agent for money misappropriated by the agent and for damages for loss suffered by reason of the agent s negligence or misconduct is therefore maintainable—the suit being one not for accounts strictly so called but for money payable to the principal by the representatives of the agent out of the assets in their hand *Manmothonath Bose* v *Basanto Kumer Bose I L R 22 All 332* relied on In such a suit the burden will be on the plaintiff to prove his case Such a suit is not governed by Art 89 of the Limitation Act but by either Art 115 or Art 120 *Lawless* v *Calcutta L & S Co I L R 7 Calc 627 Harender* v *Administrator General I L R 12 Calc 357 Bindraban* v *Jamuna I L R 25 All 55* referred to Kumeda Charan Bala *v* Asutosh Chattopadhaya (1912) 17 C W N 5

3 ———————— *Death of agent—Suit for accounts if lies or may be continued against heirs* A suit for accounts brought against an agent may be continued on his death pending suit against his legal representatives *Semble* A suit for accounts lies against the heirs of a deceased agent *Manmatha Nath Bose Mullick* v *Bosanta Kumer Bose Mullick I L R 22 All 332* doubted. *Kumeda Charan* v *Ashutosh 16 C L J 252* referred to Bahadur Singh *v* Basunta Kumar Roy (1913) 17 C W N 695

PRINCIPAL AND AGENT—contd

ACCOUNTS—contd

4 ——————— *Principal suit by against agent for accounts—Limitation—Limitation Act (IX of 1908) Art 89* The plaintiff as principal sued the defendant as agent for accounts The agency was created in 1896 by a registered document which provided that accounts were to be rendered at the end of each year the agent also hypothecating immovable property as security In 1897 the plaintiff transferred the property to his wife who in 1899 re transferred the property to her husband The agency was terminated in 1910 and the suit was brought in 1911 for accounts from 1899 *Held* that a new agency was created in 1899 irrespective of the agreement of 1896 That Art 89 of the Limitation Act was applicable to the case and as in this case there was no demand and refusal during the continuance of the agency and as the suit was instituted within three years of the date when the agency terminated the plaintiff was entitled to the accounts claimed SURESH KANTA BANERJEE CHOUDHURY v NAWAB ALI SIKDAR (1915) **20 C W N 356**

5 ——————— *Suit for account—Hypothecation of property as security for the proper discharge of his duties by the agent—Agreement to render account annually—Limitation Act (IX of 1908) Sch I Arts 89 115 132—Death of the principal effect of—Agent continuing in service of the heir—Contract Act (IX of 1872) ss 207 253 cl (10)—Method to be adopted for rendering account* Where certain immovable properties were hypothecated to the principal by the defendant as security for the valid discharge of duty as agent in a suit for accounts by the principal *Held* that Art 132 of the Limitation Act will apply inasmuch as it is also by implication a suit to enforce a charge *Hafezuddin Mandal* v *Jadu Nath Saha I L R 35 Calc 298* followed *Jogesh Chandra* v *Benode Lal Roy 14 C W N 192* dissented from On the death of the principal an agency is terminated and a new agency is created if the agent continues in service of his principal s heir Where there is an agreement to submit accounts annually in a suit against the agent for an account Art 89 and not Art 115 of the Limitation Act will apply *Shib Chandra Roy* v *Chandra Narain Mookerjee I L R 32 Calc 719* and *Ashgar Ali Khan* v *Khurshed Ali Khan I L R 24 All 27* followed *Easin* v *Baroda Kishore 11 C L J 43* dissented from Duty of an agent does not end by merely submitting papers when accounts are demanded but a failure to explain them when called upon to do so will amount to a refusal under Art 89 of the Limitation Act *Hurrinath Rai* v *Krishna Kumar Bakshi I L R 14 Calc 147* relied on *Chand Ram* v *Brojo Gobind 19 W R 14 Upendra Kishore* v *Ramtara Debya 13 C W N 696* not followed MADHUSUDAN SEN v RAKHAL CHANDRA DAS BASAK (1915) **I L R 43 Calc 248**

6 ——————— *Ordinary money account—Lending of money to persons to whom agent is not authorised to lend—Suit for account—Limitation Act (IX of 1908) Arts 89 and 90—Termination of agency* A suit by a principal against an agent for the recovery of money lent to persons to whom the agent was not authorised to lend is a suit for an ordinary money account and is governed by Art 89 and not Art 90 of the Limitation Act The question when an agency terminates is a question of fact *Great Western Insurance Co* v *Cunliffe 9 Ch Ap 525* distinguished *Venkatachalam* v *Narayanan I L R 39 Mad 376* referred to MUTHIAH v ALAGAPPA (1917) **I L R 41 Mad 1**

7 ——————— *Indian Trust Act (II of 1882) s 88—Suit against agent for account of profits of private business—Limitation—Re opening of accounts once settled between principal and agent reasons for* Where the main allegation on which a suit was based was that the defendant being an agent of the plaintiff had for some time been carrying on on his own account and to the detriment of the plaintiffs a business similar to that of the plaintiffs and the object of the suit was to compel the defendant to account for the profits which he had received from his own private business it was *held* that the article of sch I to the Indian Limitation Act 1908 which was applicable was either art 62 or art 90 On the facts it was found that whichever article applied the suit was barred Where fiduciary relations have subsisted between the parties a Court will not re open accounts which have long been settled between the parties unless the plaintiff can show definitely at least one fraudulent omission or insertion in the account The principles laid down in *Williamson* v *Barbour L R 9 Ch D 529* and *Boo Jinatboo* v *Sha Nagar Valab Kanji I L R 11 Bom 78* followed PURAN MAL v FORD MACDONALD AND COMPANY LD (1919) **I L R 41 All 635**

8 ——————— *Suit by principal for money received on his behalf by agent—Interest—Costs—Appeal against allotment of costs on wrong principles* *Held* that where money is recoverable by a principal from an agent as having been received by the agent on the principal s behalf the agent is not as a rule liable for interest unless by virtue of an express agreement or of some mercantile usage *Held* also that an appeal as to the allotment of costs will lie from an appellate decree when the Court below has exercised its discretion as to costs arbitrarily and not according to general principles *Daulat Ram* v *Durga Prasad I L R 15 All 333* and *Radhe Sham* v *Behari Lal I L R 40 All 558 562* followed LALMAN v CHINTAMANI (1918) **I L R 41 All 254**

9 ——————— *Committee for collection of subscriptions to rebuild a mosque—Neglect of treasurer to pay his own subscription and to collect other subscriptions promised—Treasurer not legally liable* A movement having been set on foot for re constructing a mosque *A* and *J* promised to subscribe Rs 500 each *A* was appointed treasurer of the committee for collecting subscriptions *J* gave a cheque for his promised subscription of Rs 500 but owing first to some defect in the endorsement and later on to its having become out of date it was never cashed The mosque also was never re constructed *A* having died his heirs were sued by the members of the committee for the amount of the unpaid subscriptions *Held* that neither *A* nor his heirs were liable for payment of the money ABDUL AZIZ v MASUM ALI (1914) **I L R 36 All 268**

PRINCIPAL AND AGENT—*contd*

ACCOUNTS—*contd*

10 ——————— *Obligation of agent not only to submit accounts but to explain account papers* The obligation of an agent towards his principal does not terminate merely by submission of account papers He is bound to explain those papers and if on accounts taken it is found that he had in his hands money which belongs to his principal he is bound to pay that sum MADHUSUDDAN SEN v PARHAL CHANDRA DAS BASAK (1915) 19 C W N 1070

AUTHORITY OF AGENT

1 ——————— *Lease by agent—Apparent authority—Ratification—Knowledge of principal if necessary for ratification* Every act done by an agent in the course of his employment on behalf of his principal and within the apparent scope of his authority binds the principal unless agent is in fact unauthorised to do the particular act and the person dealing with him has notice that in doing so he is exceeding his authority The grantees in this case were entitled to presume that the agent who had admittedly authority to grant reclamation leases had acted with regularity and within the scope of his authority Where ratification is established as to a part it operates as a confirmation of the whole of that particular transaction by the agent Before the principal can be held bound by ratification he must be proved to have had full knowledge or at any rate means of knowledge of all the essential facts of the transaction into which his agent had entered on his behalf KATYAYANI DEBI v PORT CANNING AND LAND IMPROVEMENT CO (1914) 19 C W N 56

2 ——————— *Construction of Power of Attorney—Denial of authority of agent—Chetty money lending firm business of—Power implied from nature of business which could not be carried on without it—Proof of similar previous transactions with objection by principal—Account books presumption to be drawn from—Evidence Act (I of 1872) s 114* The defendant was a Chetty and had a large money lending business in Rangoon which he carried on by an agent to whom he gave a power of attorney for the general management of his business in which he stated the duties and powers entrusted to him as being to transact conduct and manage all affairs concerns matters and things in which he may be in anywise interested and concerned and for that purpose to use or sign my name to any document or writing whatsoever to borrow money from any bank or banks firm or firms person or persons either with or without pledge of securities for money advanced to various persons and to make draw sign accept endorse negotiate and transfer all and every or any bills of exchange promissory notes hundis cheques drafts bills of lading and all other negotiable securities whatsoever which my signature or endorsement may be required or which my said attorney may in his absolute discretion think fit to make draw sign accept endorse negotiate and transfer in my name and in my behalf Under this power the agent pledged the firms credit with the plaintiff Bank to enable a client who applied to him for financial assistance to have a cash credit account opened in his name and obtain from the Bank advances to secure due repayment of which he executed a promissory note in favour of defendant s firm which the agent endorsed over to the Bank in conformity with the provisions of the Presidency Banks Act (XI of 1876) s 37 cl (e) the agent at the same time giving the Bank a letter of guarantee on behalf of his firm The client after drawing large sums of money on the cash credit account thus opened having become insolvent the Bank brought an action for the amount due to which the defence was a denial of authority on the part of the agent to enter into the transactions so as to bind the defendant s firm *Held* (reversing the decision of an Appellate Bench of the Chief Court) that applying the principles of construction of powers of attorney laid down in *Bryant Powis and Bryant v La Banque du Peuple (1893) A C 170* the authority to enter into transactions of the nature in dispute in the present case was to be found in the document itself by necessary implication from the nature of the business with the general management of which the agent was entrusted without such authority it would hardly have been possible to carry on the business of a money lender and financier On the evidence moreover it was proved that amongst such Chetty money lending firms it was the practice for the agent to pledge the credit of the firm and that for a considerable time similar transactions had been entered into previously by the agent without this authority being questioned The mere fact that the defendant did not receive any benefit on the transaction would not (if it were the case) relieve him of liability if the authority of the agent was established but the defendant s books of accounts which were called for and not produced would presumably have shown such transactions and the receipt of commission on them BANK OF BENGAL v RAMANATHAN CHETTY (1915) I L R 43 Calc 527

——————— *Limited authority of latter known to third party—Holding out principle of if applies—Estoppel—Negligent or improper act of principal apparently investing the agent with extended authority not proved—Misdirections* A person who deals with an agent whose authority he knows to be limited does so at his peril in this sense that should the agent be found to have exceeded his authority the principal cannot be made responsible In order that the principle of holding out should in any given case of agency apply to the act done by the agent and relied upon to bind the principal must be an act of that particular class of acts which the agent is held out as having a general authority on behalf of his principal to do But if the agent be held out as having a limited authority to do on behalf of his principal acts of a particular class then the principal is not bound by an act done outside that authority even though it be an act of that particular class because the authority being thus represented to be so limited, the party prejudiced has notice and should ascertain whether or not the act is authorised Where the principal did not by any negligent or improper act allow the agent to be apparently invested with an authority beyond or greater than the limited authority which the customer knew him to possess there could not be any estoppel as against the principal in respect of any of the steps in a transaction whereby the customer was deceived

PRINCIPAL AND AGENT—*contd*

ACCOUNTS—*contd*

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PRINCIPAL AND AGENT—*contd*

LIABILITY OF PRINCIPAL—*contd*

perty but that agent was authorised by defendant No 2 generally to raise money for the management of the state *Held* that the defendant No 2 was liable for the entire debt SATYA PRIYA GHOSAL v GOBINDA MOHUN ROY CHOWDHURY (1909) **14 C W N 414**

——————— *Liability of principal for fraudulent conduct of the agent—Scope of the agent s or servant s employment—Unauthorised acts —Scope of agency Tort* The principal is liable to third persons in a civil suit for the frauds deceits concealments misrepresentations torts negligence and other malfeasances or misfeasances and omissions of duty of his agent in the course of his employment although the principal did not authorise or justify or participate in or indeed know of such misconduct or even if he forbade the acts or disapproved of them The principal is not liable for the torts or negligences of his agent in any matter beyond the scope of the agency unless he has expressly authorised them to be done or he has subsequently adopted them for his own use and benefit *McGowan* v *Dyer L R 8 Q B D 141 Hern* v *Nichols 1 Salkeld 289 National Exchange Co* v *Drew 2 Macq H L 103 Brocklesby* v *Temperance P B Society (1895) A C 173 Pearson* v *Pearson* v *Dublin Corporation (1907) A C 351 Citizen s Life Assurance Co* v *Brown (1904) A C 423 Glasgow Corporation* v *Lorimer (1911) A C 209 Bowles* v *Stewart 1 Sch & Lef 209 Fit Simons* v *Duncan 2 I R 483 Subjan Bibi* v *Sariatulla 3 B L R 413 Morrison* v *Verschoyle 6 C W N 429 Iswar Chunder* v *Satish Chunder I L R 30 Calc 207 Gopal Chandra* v *Secretary of State I L R 36 Calc 647 Motilal* v *Govindram I L R 30 Bom 83 British M B Co* v *Charnwood Forest Ry Co 18 Q B D 714 Mackay* v *Commercial Bank L R 5 P C 394 Swire* v *Francis 3 A C 106 Houldsworth* v *City of Glasgow 5 A C 317* referred to *Lloyd* v *Grace (1912) A C 716* and *Rubens* v *Great Fingall (1906) A C 439* followed *Barwick* v *English Joint Stock Bank L R 2 Ex 259* and *Burma Trading Corporation* v *Mirza Mahomed Ally I L P 4 Calc 116* explained Acts of fraud by the agent committed in the course and scope of his employment form no exception to the rule whereby the principal is held liable for the torts of his agent even though he did not in fact authorise the commission of the fraudulent act This rule of liability is based upon grounds of public policy It seems more reasonable that where one of the two innocent persons must suffer from the wrongful act of a third person the principal who has employed and retained a dishonest agent and has placed him in a position of trust and confidence should suffer for his misdeed rather than a stranger SHERJAN KHAN v ALIMUDDI (1915)

I. L. R 43 Calc. 611

NOTICE.

——————— *Agent paying debts owed to principal from money belonging to a third person—Principal if affected with notice of trust—Payment by cheque drawn by person connected with the third person s business if amounts to such notice —Sub agency—Privity with principal absent—Contract Act s 194* V a servant of a Banking

PRINCIPAL AND AGENT—*contd*

NOTICE—*contd*

Company was also the sole agent of the Texas Oil Company for sale of the latter s oil The Banking Company having pressed *V* to pay moneys owed to it by *V* *V* discharged some of his debts to the Bank by a cheque drawn in its favour on another Bank by *M* who was the head clerk and manager of *V s* agency for the Oil Company *per pro V* sole agent for Bengal and United Provinces Some of this money might presumably be money held by V in trust for the Oil Company *Held* that there was nothing on the face of the cheque that would lead the Bank to doubt that *V* was perfectly entitled to deal with the moneys to which they related in whatever manner he thought fit To affect a Bank with knowledge of the ownership of moneys paid into the accounts of their customers by the mere form of the signature on the negotiable documents by which such moneys are transferred is to proceed far beyond the recognised limits of the doctrine of notice and such a doctrine if accepted would create a serious embarrassment to the conduct of banking business *Coleman* v *Bucks (1897) 2 Ch 243* and *Gray* v *Johnston I L R 3 H L I (1868)* referred to *Held* further that the fact that V was a servant or agent of the Banking Company did not affect it with notice of the trust Knowledge communicated to an agent of a fact which it was not the agent s interest to disclose and which he did not disclose to the principal cannot be imputed to the principal V had appointed sub agents for sale of the Texas Oil Company s oils on terms similar to those which bound him to the Company *Held* on the facts that no privity was established between the Company and the sub agents THE TEXAS COMPANY v THE BOMBAY BANKING COMPANY]

L R 46 I A 250
I L. R 44 Bom. 139
24 C W N 469

MISCELLANEOUS

——————— *Claim and cross claim —Business of principal Company transferred to another Company set up by former and closely identified with it but business conducted as before by former—Latter Company if may sue without reference to set off claimed by the agent* A & Co were entitled to receive from the respondents the price of sugar purporting to have been sold by the latter on their behalf and the respondents had a larger sum of money in deposit with A & Co as bankers A. & Co it appeared had incorporated another Company called the Mysore Sugar Company which as to *personnel* and otherwise was closely identified with A & Co and completely controlled by them the object being that the Mysore Sugar Company would take over the sugar factory of A & Co and though this was technically done the factory continued to be run and maintained in the same way as before and the respondents never knew of what had happened. The Official Trustee in whom the assets of the Mysore Sugar Company vested upon insolvency having sued the respondents for the price of sugar sold out of the factory without reference to the cross-claim and set off of the respondents against A. & Co *Held* that if the Mysore Sugar Company could bring actions for sums due

PRINCIPAL AND AGENT—*contd*

AUTHORITY OF AGENT—*contd*

by the agent acting beyond his authority THE RUSSO CHINESE BANK *v* LI YAU SAM (1909)
14 C W N 381

FRAUDULENT REPRESENTATIONS BY AGENT

——————— *Principal and Agent—Bribe or secret commission accepted by Agent after transaction completed—Contracts obtained by fraud voidable but not void—Limitation Act (XV of 1877) Sch II Art 95* The plaintiff instituted a suit against the defendants within three years from the date when the fraud as alleged in the suit became first known to him though he had suspicions of the fraud prior to the three years The suit was for setting aside a lease which the plaintiff alleged he had been induced to grant to the defendant No 1 under fraudulent representations made to the plaintiff by the defendant No 2 who whilst purporting to act as the plaintiff's servant or agent received after the lease had been duly drawn up executed and registered the sum of Rs 500 from the defendant No 1 as a bribe or secret commission by way of payment for the service rendered to the latter in connection with the making of the arrangements for the execution of the lease *Held* that mere suspicion is not knowledge and the suit was not barred by limitation *Held* further that a bribe is nevertheless a bribe because its payment is postponed When a bribe has been given it is immaterial to inquire what if any effect the bribe had on the mind of the receiver and whether he was influenced thereby to recommend to the plaintiff an arrangement with the appellant which he would otherwise have recommended *Harrington* v *Victoria Graving Dock Company L R 3 Q B D 549* and *Shipway* v *Broadwood (1899) 1 Q B 369* referred to *Held* further that a contract induced by fraud is only voidable and the remedy by rescission is open only so long as the parties can be restored to the relative position which they originally occupied *Urquhart* v *Macpherson L R 3 App Cas 831* followed *Clough* v *London and North Western Railway Company L R 7 Ex 26* referred to INDRA NATH BANERJEE *v* ROOKE (1909) **I L R 37 Calc 81**

LIABILITY OF AGENT

1 ——————— **Misconduct**—*Agent with irrevocable authority may be removed for misconduct—Suit abatement of* In every contract of service there is an implied condition that if the services be not faithfully performed the employer is entitled to put an end to the contract and an irrevocable contract of agency is no exception to this rule An agent appointed under an irrevocable contract of agency may be removed if he is guilty of misconduct in the performance of his duties The above principle will apply whether the person employed be a servant or agent or a person occupying a fiduciary position A suit brought against such an agent for his removal and for recovering damages for his misconduct does not abate with the death of such agent MOYIL KOTTA KUNCHUNNI NAIR *v* SUBRAMANIAN PATTAR (1909)
I L R 33 Mad 162

2. ——————— **Construction of Contract**—*Indian Contract Act (IX of 1872) ss 215 216—Agent appointed to sell goods buying them on his own account* S 216 of the Indian Contract Act is merely enabling and confers upon the principal the right to claim from his agent the benefit of the transaction to which the agency business related where the agent without the knowledge of the principal has dealt with the business on his own account instead of on account of the latter The principal is free to exercise that right or not The law is that where a party elects to adopt a transaction he must take its benefit with its burden He cannot, as is said, ' both approbate and reprobate But both the benefit and the burden must for that purpose be attached to and incidents of the transaction which the principal has affirmed by election Where an agent appointed to sell his principal s goods for a fixed price buys them on his own account without the previous consent of the latter it is competent for the principal either to repudiate the transaction under the circumstances mentioned in s *215 of the Contract Act or to affirm it* If he elects to *affirm* the principal will be liable to pay to the agent *such charges only as are incidents of the transaction of purchase* that is such as the vendor under the contract would have been liable to pay to the purchaser because what is affirmed is the *relation of vendor and purchaser* But if *those charges are annexed by the terms of the contract to the agency so as to regulate* the relation of principal and agent as distinguished from the relation of vendor and purchaser the agent is not entitled to recover them *Solomons* v *Pender 3 H & C 639,* and *Andrews* v *Ramsay & Co* (1903) *2 K B 635* referred to JOACHIMSON *v* MEGHJEE VALLABHDAS (1909)
I L R 34 Bom. 292

LIABILITY OF PRINCIPAL

——————— *Contract Act (IX of 1872) s 230—Liability of principal and agent—Principal when may be sued—Negotiable Instruments Act (XXVI of 1881) ss 4 ill (b) and 28—Negotiable instrument what is not—Debt incurred on behalf of several co sharers—If everyone bound for every part of the debt—Apportionment if allowable according to the properties in respect of which debt incurred* Where an agent is personally liable for a debt the creditor has the option to proceed either against the principal or the agent Where it did not appear that in lending the money the lender (who knew that the money was being borrowed on behalf of certain principals) looked exclusively to the agent for repayment *Held that he could* proceed to realise the money from the principals *In the matter of the Ganges Steam Tug Co Ld I L R 18 Calc 31 36 Paterson* v *Gardasegui 15 East 62 Thomson* v *Davenport 9 B & C 78* referred to As the authority to the agent contemplated a joint and reciprocal liability of all the principals *Held* that the liability could *not be* distributed so as to hold each of the principals liable for his own apportioned share of *the debt* Where an agent took loans upon notes of hand under letters of authority in order to pay the Government revenue in respect of certain properties and it was found as a fact that in one of these properties defendant No 2 had no interest and that he had not given any power of attorney for raising loan to meet dues in respect of that pro

PRINCIPAL AND AGENT—*contd*

LIABILITY OF PRINCIPAL—*contd*

perty but that agent was authorised by defendant No 2 generally to raise money for the management of the state *Held* that the defendant No 2 was liable for the entire debt SATYA PRIYA GHOSAL v GOBINDA MOHUN ROY CHOWDHURY (1909) **14 C W N 414**

———————— *Liability of principal for fraudulent conduct of the agent—Scope of the agent s or servant s employment—Unauthorised acts—Scope of agency Tort* The principal is liable to third persons in a civil suit for the frauds deceits concealments misrepresentations torts negligence and other malfeasances or misfeasances and omissions of duty of his agent in the course of his employment although the principal did not authorise or justify or participate in or indeed know of such misconduct or even if he forbade the acts or disapproved of them The principal is not liable for the torts or negligences of his agent in any matter beyond the scope of the agency unless he has expressly authorised them to be done or he has subsequently adopted them for his own use and benefit *McGowan* v *Dyer L R 8 Q B D 141 Hern* v *Nichols 1 Salkeld 289 National Exchange Co* v *Drew 2 Macq H L 103 Brocklesby* v *Temperance P B Society (1895) A C 173 Pearson* v *Pearson* v *Dublin Corporation (1907) A C 851 Citizen s Life Assurance Co* v *Brown (1904) A C 4‿3 Glasgow Corporation* v *Lorimer (1911) A C 209 Bowles* v *Stewart 1 Sch & Lef 209 FitzSimons* v *Duncan 2 I R 483 Subjan Bibi* v *Sariatulla 3 B L R 413 Morrison* v *Verschoyle 6 C W N 429 Iswar Chunder* v *Satish Chunder I L R 30 Calc 207 Gopal Chandra* v *Secretary of State I L R 36 Calc 647 Motilal* v *Govindram I L R 30 Bom 83 British M B Co* v *Charnwood Forest Ry Co 18 Q B D 714 Mackay* v *Commercial Bank L R 5 P C 394 Swire* v *Francis 3 A C 106 Houldsworth* v *City of Glasgow 5 A C 317* referred to *Lloyd* v *Grace (1912) A C 716* and *Rubens* v *Great Fingall (1906) A C 439* followed. *Barwick* v *English Joint Stock Bank L R 2 Ex 259* and *Burma Trading Corporation* v *Mirza Mahomed Ally I L P 4 Calc 116* explained Acts of fraud by the agent committed in the course and scope of his employment form no exception to the rule whereby the principal is held liable for the torts of his agent even though he did not in fact authorise the commission of the fraudulent act This rule of liability is based upon grounds of public policy It seems more reasonable that where one of the two innocent persons must suffer from the wrongful act of a third person the principal who has employed and retained a dishonest agent and has placed him in a position of trust and confidence should suffer for his misdeed rather than a stranger SHERJAN KHAN v ALIMUDDI (1915)

I L R 43 Calc. 511

NOTICE.

———————— *Agent paying debts owed to principal from money belonging to a third person—Principal if affected with notice of trust—Payment by cheque drawn by person connected with the third person s business if amounts to such notice—Sub-agency—Privity with principal absent—Contract Act s 194* V a servant of a Banking

PRINCIPAL AND AGENT—*contd*

NOTICE—*contd*

Company was also the sole agent of the Texas Oil Company for sale of the latter s oils The Banking Company having pressed V to pay moneys owed to it by V V discharged some of his debts to the Bank by a cheque drawn in its favour on another Bank by M who was head clerk and manager of V s agency for the Oil Company *per pro* V sole agent Bengal and United Provinces Some of this money might presumably be money held by V in trust for the Oil Company *Held* that there was nothing on the face of the cheque that would lead the Bank to doubt that V was perfectly entitled to deal with the moneys to which they related in whatever manner he thought fit To affect a Bank with knowledge of the ownership of moneys paid into the accounts of their customers by the mere form of the signature on the negotiable documents by which such moneys are transferred is to proceed far beyond the recognised limits of the doctrine of notice and such a doctrine if accepted would create a serious embarrassment to the conduct of banking business *Coleman* v *Bucks (1897) 2 Ch 243* and *Gray* v *Johnston I L R 3 H L 1 (1868)* referred to *Held* further that the fact that V was a servant or agent of the Banking Company did not affect it with notice of the trust Knowledge communicated to an agent of a fact which it was not the agent s interest to disclose and which he did not disclose to the principal cannot be imputed to the principal V had appointed sub agents for sale of the Texas Oil Company s oils on terms similar to those which bound him to the Company *Held* on the facts that no privity was established between the Company and the sub agents THE TEXAS COMPANY v THE BOMBAY BANKING COMPANY]

L R 46 I A 250
I L R 44 Bom. 139
24 C W N 469

MISCELLANEOUS

———————— *Claim and cross claim—Business of principal Company transferred to another Company set up by former and closely identified with it but business conducted as before by former—Latter Company if may sue without reference to set off claimed by the agent* A & Co were entitled to receive from the respondents the price of sugar purporting to have been sold by the latter on their behalf and the respondents had a larger sum of money in deposit with A & Co as bankers A & Co it appeared had incorporated another Company called the Mysore Sugar Company which as to *personnel* and otherwise was closely identified with A & Co and completely controlled by them the object being that the Mysore Sugar Company would take over the sugar factory of A & Co and though this was technically done the factory continued to be run and maintained in the same way as before and the respondents never knew of what had happened. The Official Trustee in whom the assets of the Mysore Sugar Company vested upon insolvency having sued the respondents for the price of sugar sold out of the factory without reference to the cross-claim and set off of the respondents against A & Co *Held* that if the Mysore Sugar Company could bring actions for sums due

PRINCIPAL AND AGENT—*contd*

AUTHORITY OF AGENT—*contd*

by the agent acting beyond his authority THE RUSSO CHINESE BANK v LI YAU SAM (1909)
14 C W N 381

FRAUDULENT REPRESENTATIONS BY AGENT

———— *Principal and Agent—Bribe or secret commission accepted by Agent after transaction completed—Contracts obtained by fraud voidable but not void—Limitation Act (XV of 1877) Sch II, Art 95* The plaintiff instituted a suit against the defendants within three years from the date when the fraud as alleged in the suit became first known to him though he had suspicions of the fraud prior to the three years The suit was for setting aside a lease which the plaintiff alleged he had been induced to grant to the defendant No 1 under fraudulent representations made to the plaintiff by the defendant No 2 who whilst purporting to act as the plaintiff s servant or agent received after the lease had been duly drawn up executed and registered the sum of Rs 500 from the defendant No 1 as a bribe or secret commission by way of payment for the service rendered to the latter in connection with the making of the arrangements for the execution of the lease *Held* that mere suspicion is not knowledge and the suit was not barred by limitation *Held* further that a bribe is nevertheless a bribe because its payment is postponed When a bribe has been given it is immaterial to inquire what if any effect the bribe had on the mind of the receiver and whether he was influenced thereby to recommend to the plaintiff an arrangement with the appellant which he would otherwise have recommended *Harrington* v *Victoria Graving Dock Company L R 3 Q B D 549* and *Shipway* v *Broadwood (1899) 1 Q B 369* referred to *Held* further that a contract induced by fraud is only voidable and the remedy by rescission is open only so long as the parties can be restored to the relative position which they originally occupied *Urquhart* v *Macpherson L R 3 App Cas 831* followed *Clough* v *London and North Western Railway Company L R 7 Ex 26* referred to INDRA NATH BANERJEE v POOKE (1909) **I L R 37 Calc 81**

LIABILITY OF AGENT

1 ———— **Misconduct**—*Agent with irrevocable authority may be removed for misconduct—Suit abatement of* In every contract of service there is an implied condition that if the services be not faithfully performed the employer is entitled to put an end to the contract and an irrevocable contract of agency is no exception to this rule An agent appointed under an irrevocable contract of agency may be removed if he is guilty of misconduct in the performance of his duties The above principle will apply whether the person employed be a servant or agent or a person occupying a fiduciary position A suit brought against such an agent for his removal and for recovering damages for his misconduct does not abate with the death of such agent MOYIL KOTTA KUNCHUNNI NAIR v SUBRAMANIAN PATTAR (1909)
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2 ———— **Construction of Contract**—*Indian Contract Act (IX of 1872) ss 215 216—Agent appointed to sell goods buying them on his own account* S 216 of the Indian Contract Act is merely enabling and confers upon the principal the right to claim from his agent the benefit of the transaction to which the agency business related where the agent without the knowledge of the principal has dealt with the business on his own account instead of on account of the latter The principal is free to exercise that right or not The law is that where a party elects to adopt a transaction he must take its benefit with its burden He cannot, as is said, both approbate and reprobate But both the benefit and the burden must for that purpose be attached to and incidents of the transaction which the principal has affirmed by election Where an agent appointed to sell his principal s goods for a fixed price buys them on his own account without the previous consent of the latter it is competent for the principal either to repudiate the transaction under the circumstances mentioned in s 215 of the Contract Act or to affirm it If he elects to affirm the principal will be liable to pay to the agent such charges only as are incidents of the transaction of purchase that is such as the vendor under the contract would have been liable to pay to the purchaser because what is affirmed is the relation of vendor and purchaser But if those charges are annexed by the terms of the contract to the agency so as to regulate the relation of principal and agent as distinguished from the relation of vendor and purchaser the agent is not entitled to recover them *Solomons* v *Pender 3 H & C 639* and *Andrews* v *Ramsay & Co (1903) 2 K B 635* referred to JOACHIMSON v MEGHJEE VALLABHDAS (1909)
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LIABILITY OF PRINCIPAL

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PRINCIPAL AND AGENT—*contd*

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I L R 43 Calc. 511

NOTICE

———— *Agent paying debts owed to principal from money belonging to a third person—Principal if affected with notice of trust—Payment by cheque drawn by person connected with the third person s business if amounts to such notice —Sub-agency—Privity with principal absent—Contract Act s 194* V a servant of a Banking

PRINCIPAL AND AGENT—*contd*

NOTICE—*contd*

Company was also the sole agent of the Texas Oil Company for sale of the latter s oil The Banking Company having pressed *V* to pay moneys owed to it by *V* *V* discharged some of his debts to the Bank by a cheque drawn in its favour on another Bank by *M* who was the head clerk and manager of *V s* agency for the Oil Company *per pro V* sole agent for Bengal and United Provinces Some of this money might presumably be money held by *V* in trust for the Oil Company *Held* that there was nothing on the face of the cheque that would lead the Bank to doubt that *V* was perfectly entitled to deal with the moneys to which they related in whatever manner he thought fit To affect a Bank with knowledge of the ownership of moneys paid into the accounts of their customers by the mere form of the signature on the negotiable documents by which such moneys are transferred is to proceed far beyond the recognised limits of the doctrine of notice and such a doctrine if accepted would create a serious embarrassment to the conduct of banking business *Coleman* v *Bucks (1897) 2 Ch* °*43* and *Gray* v *Johnston I L R 3 H L I (1868)* referred to *Held* further that the fact that *V* was a servant or agent of the Banking Company did not affect it with notice of the trust Knowledge communicated to an agent of a fact which it was not the agent s interest to disclose and which he did not disclose to the principal cannot be imputed to the principal *V* had appointed sub agents for sale of the Texas Oil Company s oils on terms similar to those which bound him to the Company *Held* on the facts that no privity was established between the Company and the sub agents THE TEXAS COMPANY v THE BOMBAY BANKING COMPANY

L R 46 I A 250
I L R 44 Bom. 139
24 C W N 469

MISCELLANEOUS

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PRINCIPAL AND AGENT—*contd*

MISCELLANEOUS—*contd*

from the respondents in respect of sales of sugar they could bring them only as principals in this sense that they could take the benefit of these sums subject to every equity which affected these sums in the hands of A & Co THE OFFICIAL TRUSTEE OF MADRAS v A SUNDARAMURTHI MUDALIAR **24 C W N 1004**

——— *Contract—Undisclosed principal—Contract Act (IX of 1872) ss 230 (2) 236* To enable an agent to sue on a contract under s 230 (2) of the Contract Act there must in fact have been a principal though undisclosed for whom he was acting in entering into the con tract Where a person in entering into a contract purported to act as agent for an undisclosed prin cipal but in fact no such principal existed and the person was in reality acting on his own ac count he is debarred from suing on the contract by s 236 of the Contract Act RAMJI DAS v JANKI DAS (1912) **I L R 39 Calc 802**

——— *Suit for declaration of title to the benefits of a decree—Maintainability of the suit* Where an agent entered into a contract in his own name with a third party and brought a suit to recover damages for breach of the same and obtained a decree thereon a suit subsequently brought by the principal against the agent for declaration of title to the decree was not maintainable The principal before the suit was brought by his agent might have adopted the contract made by the latter and sued on it but if he did so he was bound to adopt the contract cum onere *Udell* v *Atherton 7 H & N 172* and *Bristow* v *Whitmore 9 H L C 391* approved He might also have intervened at any stage in the action which had been commenced by his agent *Sadler* v *Leigh 4 Camp 195* approved GODHANRAM v JAHARMULL POGLIA (1912) **I L R 40 Calc 335**

PRINCIPAL AND INTEREST

See ACCOUNT **I L R 41 Mad 570**

See DEKKHAN AGRICULTURISTS RELIEF ACT (XVII OF 1879) **I L R 35 Bom 204**

See LIMITATION ACT (IX OF 1908) ARTS 132 AND 75 **I L R 39 Mad 931**

PRINCIPAL AND SURETY

See CONTRACT ACT (IX OF 1872) ss 126 TO 147

——— debt barred against principal whether surety liable for—

See HINDU LAW—JOINT FAMILY **1 Pat L J 497**

——— *Promissory note payable on demand—Limitation—Payment of interest by principal—Acknowledgment of debt—Liability of surety—Contract of grantee—Limitation Act (IX of 1908) ss 18 20 21 Sch I Arts 65 73 115—Contract Act (IX of 1872) ss 126 128* Where an on demand promissory note was executed by the debtor and bore an endorsement on it repayment guaranteed by me signed by the person

PRINCIPAL AND SURETY—*contd*

purporting to make the guarantee and where the said promissory note was unaccompanied by any writing restraining or postponing the right to sue *Held* that the endorsement must be treated as a contract of guarantee by the person purporting to make the guarantee *Held* also that the promissory note was a present debt payable without demand that the liability of the surety on the guarantee accrued from the date of the promissory note that the Statute of Limitation began to run in favour of the surety from the date of the note and that for the purposes of this case it mattered not whether Art 65 or Art 115 of the Limitation Act applied *Norton* v *Ellam 2 M & W 461 Rowe* v *Young 2 Brod & Bing 165 Maltby* v *Murrells 5 H & N 813 In re George 44 Ch D 627 Perumal Ayyan* v *Alagirisami Bhagavathar I L R 20 Mad 245 Holl* v *Hadley 2 Ad & El 758 Colvin* v *Buckle 8 M & W 680 Srinath Roy* v *Peary Mohan Mookerjee 25 C L J 91* and *Dwarka Dass Govardhana Doss* v *Chirakala Krishnaiya 21 Mad L J 457* referred to Where payment of interest on an *on demand* promissory note was made by the principal debtor with the knowledge and consent of the surety and even at his request but where there was no evidence that it was made on behalf of such surety *Held* that the fresh period of limitation created under s 20 of the Limitation Act by the payment of interest by the principal debtor could be only in respect of the debt upon which the interest was paid *viz* the debt of the principal debtor The fact that the interest was paid with the knowledge and consent of the surety and even at his request made no difference unless the circumstances could be said to render the payment one on behalf of the surety *Doms Lal Sahu* v *Roshan Dobay I L R 33 Calc 1278 In re Powers Lindsell* v *Phillips 30 Ch D 291 In re Frisby 43 Ch D 106 Lewin* v *Wilson 11 App Cas 639* distinguished *Krishto Kishori Chowdhrani* v *Radha Romun Munshi I L R 12 Calc 330 Hajarimal* v *Krishnarav I L R 5 Bom 647 Cooper* v *Creswell L R 2 Eq 106 Morgan* v *Rowlands L R 7 Q B 493 Green* v *Humphreys 26 Ch D 474 In re Boswell (1916) 2 Ch 359 Astbury* v *Astbury (1898) 2 Ch 111 In re The Estate of William Seager 3 Jur N S 481 26 L J Ch 809* and *Gardner* v *Brooke 2 I R 6* referred to *Per* MOOKERJEE J—Though the liabilities of the debtor and the surety arise out of the same transaction the liabilities of the two persons are distinct for the purposes of the application of s 20 of the Limitation Act. *Gopal Daji Sathe* v *Gopal bin Sonu Bait I L R 23 Bom 248* and *Srinivasa Varadachariar* v *Echammal 21 Mad L J 455* followed The surety under the terms of the contract is either jointly or separately liable along with the principal debtor if the debts are deemed joint s 21 (2) of the Limitation Act shows that the payment by one of them (the debtor) does not extend the time on the other hand if the debts are deemed distinct the same result follows upon a true construction of s 20 itself S 128 of the Contract Act which makes the liability of the surety co extensive with that of the principal debtor is of no assistance to the plaintiff as it must be read along with the provisions of the Limitation Act it defines the measure of the liability and has no reference to the extinction of liability by operation

PRINCIPAL AND SURETY—contd

of the Statute of Limitation A payment by one person cannot keep alive the remedy against another unless the circumstances are such that payment by the one may be regarded as a payment for the others There is nothing in the relation of principal and surety itself which makes payment by the principal binding as a payment by the surety *Cockrill* v *Sparks 1 H & C 699 130 R R 639 Re Wolmerhausen 62 L T 541* and *Henton* v *Paddison 68 L T 405* referred to BRAJENDRA KISHORE ROY CHOWDHURY v HINDUSTAN CO OPERATIVE INSURANCE SOCIETY LD (1917) **I L R 44 Calc 978**

PRINCIPAL CONTRACT

See CONTRACT **I L R 46 Calc. 831**

PRINTER AND PUBLISHER

See CONTEMPT **15 C W N 771**
I L R 45 Calc 169

See SEDITION
I L R 33 Calc 227 253

PRINTING PRESS

See PRESS ACT (I OF 1910)

——— *Newspaper definition of—Paper not containing periodically public news or comments thereon—Onus of proof of character of the paper—Formal proof of newspaper and offending matter— Incitement to murder and acts of violence—Use of seditious language—Newspapers (Incitement to offences) Act (VII of 1908) s 2 (1) (b) 3—Power of third Judge on difference of opinion between Judges of the Court of Appeal to deal with the whole case against an accused—Criminal Procedure Code (Act V of 1898) s 429* The definition of a newspaper in s 2 (1) (b) of Act VII of 1908 must be read as a whole It refers to a work which publishes periodically public news or comments thereon It is not enough to take a single issue of it and to pick out an isolated sentence or a paragraph therein which might by stretch of language be interpreted to contain public news or comments thereon When it is disputed whether a work is a newspaper the prosecution ought to establish its alleged character by proof of the contents of more than one issue To bring a case under s 3 (1) of the Act the character of the offending paper as a newspaper has to be first established and this may not always be possible by the production and proof of the contents of one issue only In a proceeding under s 3 of the Act the newspaper and the offending matter must be regularly proved In such cases it is essential that the proceedings should be regularly conducted and the forms of law observed S 3 (1) of the Act confers very limited powers of forfeiture and applies only to the cases of presses used for the printing of newspapers which contain an incitement to the particular crimes or class of crimes specified therein The word incitement clearly implies the idea of rousing to action instigation or stimulation The use of seditious language sufficient to bring the case under s 124A of the Penal Code is not equivalent to an incitement to offences mentioned in s 3 (1) of Act VII of 1908 A thinly veiled glorification of rebellion implying a desire on the part of the writer that there should be a successful rebellion though it may amount to sedition under s 124A of the Penal Code is not sufficient to bring the case within s 3 (1) of the Act There must be some thing more direct and specific for that purpose In the case of two prisoners regarding the guilt of one of whom only the Judges of the Appellate Court are divided in opinion it may be that what has to be laid before another Judge is the case of such prisoner alone But where they are equally divided as to the guilt of one accused though in certain aspects they may be agreed the whole case as regards the accused is laid before the third Judge and not merely the point or points on which there is a difference of opinion and it is his duty to consider all the points involved before delivering his opinion upon the case SARAT CHANDRA MITRA v EMPEROR (1910)

I L R 38 Calc 202

PRINTING PRESSES AND NEWSPAPERS ACT (XXV OF 1867)—

——— *Indian Press Act (I of 1910) s 3 sub s (1)—Control of press owners—Deposit of security power of Magistrate to dispense with—Order for deposit made after dispensing with it—Declarations made by keeper of printing presses —Publishing objectionable matter in newspaper or other periodical—Order by Governor in Council for feiting security and newspaper with all copies wherever found and annulling declarations made—Petitions by owner of press to set aside or revise orders of Magistrate and Governor in Council—Articles in newspaper bringing Government into hatred and contempt—Criminal Procedure Code 1898 s 435—Writ of* certiorari*—Appeal in criminal case—Practice in Privy Council—Indian Press Act (I of 1910) ss 3 sub s (1) 4 sub s (1) 17 and 22* Under the Printing Presses and Newspapers Act (XXV of 1867) s 4 any person who keeps a printing press in his possession must make and subscribe a declaration before a Magistrate stating that he has a press for printing and where it is situated and by s 5 no printed newspapers or other periodical shall be published without the printer or publisher making a declaration that he is the printer or publisher the name of the periodical and the place where the printing is conducted Under the Indian Press Act (I of 1910 of the Government of India) s 3 sub s (1) the person making such declaration is required to deposit before a Magistrate a sum of money or other security not less than Rs 500 but not more than Rs 2 000 as the Magistrate thinks fit to require The Magistrate however may for special reasons dispense with the deposit and has certain powers of cancelling or varying any order made under this sub section By s 4 sub s (1) the Local Government in case of anything objectionable appearing in the paper may by notice in writing addressed to the owner of the press declare the security deposit the newspaper in which the objectionable matter appears and all copies of it wherever found to be considered forfeited to the Crown and the declaration made as above by the keeper of the press annulled Ss 17 and 18 give power to any person interested in any property so forfeited to make an application to a Special Bench of the High Court to set aside such order on the ground that the newspaper did not contain anything of an objectionable nature such as is described in s 4 sub s (1) The appellant

PRIVATE DEFENCE—*contd*

may be justified if the right of self defence was exercised reasonably and properly but the measure of self defence must always be proportionate to the *quantum* of force used by the attacker and which it is necessary to repel A Court should not convict where it finds that the prosecution case is in the main untrue but each case must depend upon its own facts as to the applicability of this general principle Where the prosecution case is found to be substantially untrue but there is a residium of evidence with regard to ome othe charge incidental to the main charge which after careful judicial enquiry is found to be true and trustworthy the accused may be convicted on such incidental charge RAM PRASAD MAHTON v KING EMPEROR 4 Pat L. J 289

———— *Right of whether may be pleaded in the alternative* An accused person is not debarred from denying that he committed the act of which he is accused and at the same time pleading the right of private defence LAUDI KEOT v THE KING EMPEROR 5 Pat L J 64

PRIVATE FERRY

See FERRY I L. R 37 Calc 543

PRIVATE FISHERIES ACT (II OF 1889)

———— s 3—*Conviction without ascertaining boundary of fishery which is in dispute and bona fides of a cused propriety of—Purcha evidentiary value of—Certified copy of Rubakari admissibility of* The petitioner a fisherman was convicted under s 3 of the Private Fisheries Act for having fished in a river It was in dispute whether the river appertained to a Khas Mahal or to a mouzah belonging to the zemindars under the orders of whose ijaradars the petitioner acted The complainant the ijaradar under Government produced a Government *purcha* or extract from a record of rights prepared under the Bengal Tenancy Act and the defence produced a certified copy of a Rubakari issued by the Commissioner containing an adjudication of the disputed boundary *Held* that in the absence of a determination of the true boundary of the fishery and the *bonâ fides* of the petitioner the conviction was not proper That the extract from the record of rights at most rai ed a rebuttable presumption in favour of the complainant That the Magistrate s order that the Rubakari was inadmissible in evidence on the ground that a certified copy not the original order was produced was wrong RADHANATH KAIBARTA v EMPEROR (1917) 22 C W N 742

PRIVATE INTERNATIONAL LAW

See FOREIGN JUDGMENT SUIT ON
I L. R 37 Mad 163

———— *Jurisdiction—Power of Foreign Court to sell debt which has arisen in British India—lex loci rei sitae* Where a pledge of moveable property or of a debt is allowed by the law of the territory where the transaction took place the Court of that territory has jurisdiction to sell the property in execution of its decree so as to pass a valid title to it even if the property in situate outside of its jurisdiction *Ghaneshamdas v Bhan ali I L R 5 Bom 249* distinguished D COUTHA v ASSAN KUNHU (1913)
I L. R 36 Mad 1

PRIVATE KNOWLEDGE

———— of facts by Judge—

See EVIDENCE I L R 36 Mad 168

PRIVATE LAND

See MADRAS ESTATES LAND ACT (I OF 1908) ss 3 8 AND 185
I L R 39 Mad 341

PRIVATE PARTITION

See JOINT ESTATE
I L. R 43 Calc 103

PRIVATE PATHWAY

See MUNICIPALITY
I L R 43 Calc. 130

PRIVATE REFERENCE

See ARBITRATION I L R 37 Calc 63

PRIVATE SALE

See ATTACHMENT BEFORE JUDGMENT
I L. R 45 Calc 780

PRIVATE STREET

See BOMBAY CITY MUNICIPAL ACT (BOM ACT III OF 1888) ss 305
I L. R 43 Bom 122
I L. R 34 Bom 593

PRIVATE TRIBUNAL

See HINDU LAW 25 C W N 201

PRIVILEGE

See DEFAMATION I L. R 48 Calc. 388
I L R 33 Mad 67

See DEFAMATION—STATEMENT BY ACCUSED I L. R 40 Calc 433

See EVIDENCE ACT (I OF 1872) s 1 6
I L. R 41 All 125

See FALSE EVIDENCE
I L. R 37 Calc 878

See LIBEL I L R 40 All. 341
I L. R 39 All. 661
I L R 48 Calc. 304

See LIMITATION I L. R 40 Calc 898

See MALICIOUS PROSECUTION
I L R 38 Calc 880

See PENAL CODE s 499

See SECRETARY OF STATE FOR INDIA
I L. R 39 Mad 781

———— against Court—

See INSTRUCTIONS TO COUNSEL
I L R 40 Calc. 898

———— for statement in complaint to Magistrate—

See PENAL CODE (ACT XLV OF 1860) s 498 I L. R 37 Mad. 110

PRIVILEGE OF COUNSEL

See LIMITATION I L. R 40 Calc. 898

PRIVILEGE OF WITNESS

See EVIDENCE ACT (I OF 1872) s 132
I L. R 40 All. 271

PRIVITY

———— between parties—

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 11 I. L. R. 40 Bom 679

PRIVITY—*contd*

——— meaning of—

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 108 (j)
I L R. 40 Mad 1111

PRIVITY OF CONTRACT

See CONTRACT I L R 37 All 115

PRIVITY OF CONTRACT AND ESTATE

See JURISDICTION
I L R 39 Calc 739

PRIVITY OF ESTATE

See LESSOR AND LESSEE
I L R 37 Calc 683

PRIVY COUNCIL.

See APPEALS TO HIS MAJESTY IN COUNCIL

See APPEALS TO PRIVY COUNCIL

See CIVIL PROCEDURE CODE 1908—

s 13 I L R 40 Mad 112

ss 105 108 109 O XLI R 23
I L R 33 All 391

s 110 I L R 40 Bom 477
I L R 42 All 445
I L R 44 Bom 104

O XLV R 15 I L R 37 All 567

See COSTS I L R 47 Calc 415

See COURT MARTIAL
25 C W N 95

See LAND ACQUISITION ACT (I OF 1894) s 54 I L R 37 Bom 506

See LEAVE TO APPEAL TO PRIVY COUNCIL.

See PRACTICE
I L R 48 Calc 834

See PRIVY COUNCIL APPEALS

——— appeal to against conviction by Court Martial Commissioners—

See CRIMINAL LAW 25 C W N 701

——— Certificate of High Court

See PROCEDURE
I L R 44 Mad 293

——— decision of—

See BILL OF LADING
I L R 38 Mad 941

See WAKF OF VALIDITY OF
I L R 43 Calc 158

——— judgment of—

See HINDU LAW—WILL
I L R 38 Calc 188

——— order of His Majesty in—

See LIMITATION ACT (XV OF 1877) SCH II ART 180 I L R 33 All. 154

——— *order of transmitted to the original Court*

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XLV RR 15 AND 16
I L R 38 Mad. 832

——— Restoration of property alienated pending appeal—

See CIVIL PROCEDURE CODE 1908 O XLV R 15 I L R 37 All. 567

PRIVY COUNCIL—*contd*

——— whether new point may be taken on appeal to—

See COMPROMISE I L R 42 Mad. 581

See PRIVY COUNCIL PRACTICE OF
I L R 34 All 57

——— When will interfere in Criminal cases—

See PENAL CODE S 89
25 C W N 514

1 ——— New case—*Practice* The hearing of the appeal being *ex parte* the Judicial Committee refused to depart from the established practice of not allowing the appellant to make a new case based on grounds which were not urged in the Courts in India were not specified in the petition to the High Court for leave to appeal and were not suggested in the reasons contained in the case for the appellant SONI RAM *v* KANHAIYA LAL (1913)
I L R 35 All 227
17 C W N 605

2 ——— Decision inconsistent with former one—*Binding character* The fact of a decision of the Judicial Committee not being consistent with an earlier one cannot affect its binding character and the High Court is bound to follow it MADHU SUDAN MONDAL *v* RADHIKA PRASANNO DAS (1912)
17 C W N 873

3 ——— Valuation—*Application for leave to appeal—Appealable value—Decision in directly involving amount* Defendants who were co sharers of the plaintiff in the zemindari having purchased certain holding from the tenants the plaintiff sued them for their share of the rent due from one such holding amounting to Rs 230 The High Court reversing the decree of the lower Court dismissed the suit on the ground that as there was no contract of tenancy between the parties there was no relation of landlord and tenant between them The plaintiff in applying for leave to appeal to the Privy Council proved that there were other holdings similarly purchased by the defendants and that the decision of the High Court would have the effect of depriving him of rents of all such holding amounting to Rs 800 a year which capitalized came up to over Rs 10 000 *Held* that the decision indirectly involved a claim or question to or respecting property of the value of Rs 10 000 or upwards and leave ought to be granted SRINATH PAL CHOWDHURY *v* GIRINDRA CHANDRA LAL CHOWDHURY (1909)
14 C W N 651

4 ——— *Leave to appeal—Appealable value—Right of party to prove value of subject matter contrary to valuation in plaint or memo of appeal—Mesne profits pending suit if to be added* The valuation made in conformity with the stamp law do not prevent a party from obtaining leave to appeal by proving that the real value of the subject matter does not fall short of the appealable amount But a defendant who had previously adopted the value given in the plaint for the purpose of an appeal preferred by him should not be allowed to contest that valuation on the principle that a party cannot both approbate and reprobate In a suit for recovery of possession of immovable property with mesne profits the subject matter to be valued would include mesne profits claimable from the institu

PRIVY COUNCIL, PRACTICE OF—*contd*

5 ———— *In Criminal case—Grounds for refusing special leave to appeal* In this case the main grounds of appeal were that the Judge had during the trial wrongly amended the charge to the prejudice of the petitioners improper admission of evidence misdirection and that the sentences contravened the provisions of s 71 of the Penal Code (Act XLV of 1860) But their Lordships were of opinion that in what had been done there was nothing grossly contrary to the forms of justice nor any violation of fundamental principles and therefore refused to grant special leave to appeal to His Majesty in Council on the ground that they had no power to interfere *Dillet In re L R 12 A C 459* followed CLIFFORD *v* KING EMPEROR (1913)

I L R 41 Calc 568

6 ———— *Of newspaper for publication of criminal libels—Penal Code (Act XLV of 1860) s 499 Exceptions 1 2 9 and s 52—Position of members of the Press and of Judges—Libel on Magistrate in respect of conduct of criminal trial—Charge to Jury—Misdirection—Powers and functions of Judicial Committee in criminal cases* No kind of privilege attaches to the profession of the Press as distinguished from the members of the public The freedom of the journalist is an ordinary part of the freedom of the subject and to whatever length the subject in general may go so also may the journalist but apart from statute law his privilege is no other and no higher The responsibilities which attach to his power of dissemination of printed matter may and in the case of a conscientious journalist do make him more careful but the range of his assertions his criticisms or his comments is as wide as and no wider than that of any other subject No privilege attaches to his position Nor does any privilege or protection attach to the public acts of a Judge which exempts him in regard to these from free and adverse comment He is not above criticism his conduct and utterances may demand it Freedom would be seriously impaired if the judicial tribunals were outside of the range of such comment The appellant the Editor of the *Burma Critic* a newspaper published in Rangoon was charged under s 499 of the Penal Code with having in certain articles entitled A Mockery of British Justice defamed a District Magistrate with reference to his alleged conduct in the trial of a case in which a European resident in the district was acquitted on charges of abduction and rape of a native girl of 11 or 12 years His defence was under the 9th exception to s 499 and he pleaded admitting the libels to be false that he published them in good faith for the public good and believing them to be true after having taken due care and attention in the matter of their publication He did not however disclose what were the actual things upon which he founded his own beliefs nor what the steps if any were he took to investigate their truth before giving them to the public He was tried in the Chief Court of Lower Burma before the Chief Judge with a jury and was found guilty and sentenced to one year s imprisonment after serving four months of which he was discharged the rest of the sentence being remitted. He obtained special leave to appeal mainly on the ground that there had been misdirection resulting in an exceptional miscarriage of justice which had caused him substantial wrong *Held* on the facts that a fair and statable case in support of the statutory defence and his belief that the libels were true had been put forward for the appellant and for the respondent a case was made which was also fair and statable so that there was material before the jury on both sides and the determination was *on a subject peculiarly within the jury s province* The case was not improperly withdrawn from the jury s domain on fact and they were not misdirected in law A charge to a jury must be read as a whole If there are salient propositions of law in it these will of course be the subject of separate analysis But in a protected narrative of fact the determination of which is ultimately left to the jury it must needs be that the view of the Judge may not coincide with the view of others who look upon the whole proceedings in *black type* *It would however not be in accord*ance with usual or good practice to treat such cases as cases of misdirection if upon the general view taken the case has been fairly left within the jury's province But in any case in the region of fact their Lordships of the Judicial Committee would not interfere unless something gross amounting to a complete misdescription of the whole bearing of the evidence has occurred The appellant s defence being as above and involving an admission that the libels were *false* his counsel at the trial by *statements* and innuendoes which were reiterated throughout the case endeavoured to withdraw the pleaded defence and to persuade the jury that what was stated in the defamatory articles was true *Held* that it could not be considered misdirection for the Judge in charging the jury to put before them a narrative of the real facts of the case as disclosed by the evidence showing what was in accordance with the pleaded defence namely the falsity of the libels and the consequent innocence of the *Magistrate* on the charges against him The *letters* put in evidence as to the charges that *the Magistrate had conspired* to suddenly leave the complainants in the abduction and rape case without an advocate and to furnish them with a false interpreter though *not* before the appellant when he wrote the defamatory articles were before him in the course of his trial and when it was discovered that they were not true and that a gross mistake on a matter of fact had been made those libels should not have been adhered to for a moment the mistake should have been acknowledged and an apology tendered instead of which the case was conducted to its close upon the footing that an unstated defence was the real and good defence namely that all the libels were true The question of the special position and functions of the Judicial Committee and their powers and practice as advisers of the King in criminal matters is not truly one of jurisdiction The power of His Majesty under his Royal authority to review proceedings of a criminal nature unless where such power and authority have been parted with by Statute is undoubted On the other hand there are reasons both constitutional and administrative which make it manifest that this power should not be lightly exercised The overruling consideration upon the topic has reference to justice itself If throughout the Empire it were supposed that the course and execution of justice could suffer serious impediment which in many cases might amount to practical obstruction by an appeal to the Royal Prerogative of review on judicial grounds then it becomes plain that a severe blow would have been dealt to the ordered administration of law within the King s dominions

PRIVY COUNCIL, PRACTICE OF—*contd*

The views expressed by Dr Lushington in *The Queen v Joykissen Mookerjee 1 Moo P C N S 272* and the principle and practice laid down by Lord Kingsdown in *The Falkland Islands Company v The Queen 1 Moo P C N S 299* still remain those which are followed by the Judicial Committee in appeals in criminal matters The principle laid down in *Re Dillet L R 12 A C 459* that the course of criminal proceedings will not be reviewed or interfered with by the Privy Council unless it is shown that by a disregard of the forms of legal process or by some violation of the principles of natural justice or otherwise substantial or grave injustice has been done is not to be interpreted in the sense that wherever there had been a misdirection in any criminal case leaving it uncertain whether that misdirection did or did not affect the jury's mind that then in such case a miscarriage of justice could be affirmed or assumed The Judicial Committee is not a Court of Criminal Appeal In general its practice is to the following effect It will not interfere with the course of criminal law unless there has been such an interference with the elementary right of an accused as has placed him outside of the pale of the regular law or within that pale there has been a violation of the natural principles of justice so demonstratively manifest as to convince their Lordships *first* that the result arrived at was opposite to the result which they themselves would have reached and *secondly* that the same opposite result would have been reached by the local tribunal also if the alleged defect or misdirection had been avoided *Makin v Attorney General for New South Wales (1894) A C 57 Vaithinatha Pillai v The King Emperor I L R 36 Mad 501 L R 40 I A 193* and *Lanier v The King (1914) A C 221* distinguished It must be established demonstratively that justice itself in its very foundations has been subverted and that it is therefore a matter of general Imperial concern that by way of an appeal to the King it can be restored to its rightful position in that part of the Empire The authority of decisions of the Court of Criminal Appeal in England which apply to a different system a different procedure and a different structure of principle must stand out of the reckoning of any body of authority in the matter of the procedure of the Judicial Committee in advising His Majesty *Clifford v The King Emperor I L R 41 Calc 568 L R 40 I A 241* approved ARNOLD v KING EMPEROR (1914)

I L R 41 Calc 1023

7 ——— *Criminal cases—application for—Petitioners sentenced to death—Stay of execution of sentences pending hearing of petition refusal of—Tendering advice as to exercise of King's Prerogative of Pardon* On an application for special leave to appeal in a case in which the petitioners had been sentenced to death their Lordships of the Judicial Committee not being a Court of Criminal Appeal declined to interfere with regard to staying execution of the sentences pending the hearing or to express any opinion as to whether they ought to be suspended. The tendering of advice to His Majesty as to the exercise of His Prerogative of pardon is a matter for the Executive Government and is outside their Lordships province PALMUKUND v KING EMPEROR (1915) **I L R 42 Calc 739**

8 ——— *Invasion of liberty and just rights of a citizen—Embezzlement—Criminal and Civil liability distinction between—Costs against Crown in criminal appeal* The appellant who was a member of a firm was authorised by the guardian of two minors by a power of attorney to act for the guardian in collecting and investing the minors property Acting under this authority funds were received and remittances made from time to time by the appellant's firm with whom an account was opened in the name of the minors A certain amount due to the minors from a creditor was paid by him in the shape of crediting it to the appellant's firm in their account with their bankers which account was overdrawn The minors account with the appellant's firm was duly credited with that amount The appellant being thereafter asked to give a guarantee for the funds of the minor in his hand gave security to the satisfaction of the authorities Thereafter criminal proceedings were instituted against the appellant who was tried by the Chief Justice without a jury and convicted of having embezzled the minor's money *Held* that the facts did not on any just or legal view of them warrant a conviction and the grounds of distinction between the categories of liability in a civil as distinguished from a criminal suit appeared in the present case to have been left out of judicial view That the Judicial Committee of the Privy Council does not lightly interfere in criminal cases but in the present case although the proceedings taken were unobjectionable in form justice had gravely and injuriously miscarried and the sentence pronounced against the appellant formed such an invasion of liberty and such denial of his just rights as a citizen that their Lordships felt called upon to interfere Having regard to the exceptional nature of the case their Lordships directed the Crown to pay to the appellant the costs of the appeal LANIER v THE KING (1913) **18 C W N 98**

9 ——— The general principle is established that the King in Council does not act in exercise of his prerogative to review in criminal cases in the free fashion of a fully constituted Court of Criminal Appeal The exercise of the prerogative takes place only where it is shown that injustice of a serious and substantial character has occurred A mere mistake on the part of the Court below as for example in the admission of improper evidence will not suffice if it has not led to injustice of a grave character Nor do the Judicial Committee advise interference merely because they themselves would have taken a different view of evidence admitted Such questions are as a general rule treated as being for the final decision of the Courts below Under s 172 of the Criminal Procedure Code (Act V of 1898) every police officer making an investigation is to enter his proceedings in a diary which may be used at the trial or inquiry not as evidence in the case but to aid the Court in such inquiry or trial And by s 374 when the Court of Session passes sentence of death the proceedings are to be submitted to the High Court for confirmation and the sentence is not to be executed unless it is confirmed by that Court In this case which was one of murder the accused was convicted by the Sessions Judge and sentenced to death and that sentence was substantially in every material particular confirmed by the Court of the Judicial Commissioner (as the High Court) on appeal After confirming the sentence the High Court of Appeal took into consideration the police diary made

5 ———— *In Criminal case—Grounds for refusing special leave to appeal* In this case the main grounds of appeal were that the Judge had during the trial wrongly amended the charge to the prejudice of the petitioners improper admission of evidence misdirection and that the sentences contravened the provisions of s 71 of the Penal Code (Act XLV of 1860) But their Lordships were of opinion that in what had been done there was nothing grossly contrary to the forms of justice nor any violation of fundamental principles and therefore refused to grant special leave to appeal to His Majesty in Council on the ground that they had no power to interfere *Dillet In re L R 12 A C* 459 followed CLIFFORD v KING EMPEROR (1913)

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on fact and they were not misdirected in law A charge to a jury must be read as a whole If there are salient propositions of law in it these will of course be the subject of separate analysis But in a protected narrative of fact the determination of which is ultimately left to the jury it must needs be that the view of the Judge may not coincide with the view of others who look upon the whole proceedings in black type It would however not be in accordance with usual or good practice to treat such cases as cases of misdirection if upon the general view taken the case has been fairly left within the jury's province But in any case in the region of fact their Lordships of the Judicial Committee would not interfere unless something gross amounting to a complete misdescription of the whole bearing of the evidence has occurred The appellant s defence being as above and involving an admission that the libels were false his counsel at the trial by statements and innuendoes which were reiterated throughout the case endeavoured to withdraw the pleaded defence and to persuade the jury that what was stated in the defamatory articles was true *Held* that it could not be considered misdirection for the Judge in charging the jury to put before them a narrative of the real facts of the case as disclosed by the evidence showing what was in accordance with the pleaded defence namely the falsity of the libels and the consequent innocence of the Magistrate on the charges against him The letters put in evidence as to the charges that the Magistrate had conspired to suddenly leave the complainants in the abduction and rape case without an advocate and to furnish them with a false interpreter though not before the appellant when he wrote the defamatory articles were before him in the course of his trial and when it was discovered that they were not true and that a gross mistake on a matter of fact had been made those libels should not have been adhered to for a moment the mistake should have been acknowledged and an apology tendered Instead of which the case was conducted to its close upon the footing that an unstated defence was the real and good defence namely that all the libels were true The question of the special position and functions of the Judicial Committee and their powers and practice as advisers of the King in criminal matters is not truly one of jurisdiction The power of His Majesty under his Royal authority to review proceedings of a criminal nature unless where such power and authority have been parted with by Statute is undoubted On the other hand there are reasons both constitutional and administrative which make it manifest that this power should not be lightly exercised The over ruling consideration upon the topic has reference to justice itself If throughout the Empire it were supposed that the course and execution of justice could suffer serious impediment which in many cases might amount to practical obstruction by an appeal to the Royal Prerogative of review on judicial grounds then it becomes plain that a severe blow would have been dealt to the ordered administration of law within the King's dominions

PRIVY COUNCIL, PRACTICE OF—*contd*

of the High Court says of it that the appellants advocate stated that he did not desire to press it, and so no more is said about it KALYAN DAS v MAQBUL AHMAD (1918)
I L R 40 All. 497

15 ———— Directions—*application for*—All applications for directions for the preparation of paper books in Privy Council appeals should be made to the Bench taking Privy Council business SHIVA PROSAD SINGH v RANI PRAYAG KUMARI DEBI
26 C W N 840

PRIZE

See CONFISCATION I L R 42 Calc 334

PRIZE COURT

———— adjudication by—

See SALE OF GOODS
I L R 45 Calc 28

———————— *Seizure of ship as prize*—*Claimant a Persian subject*—*Commercial domicile of the claimant in enemy territory*—*Claimant failing to establish intention of removing domicile to a neutral country*—*Declaration of London Article 57 effect of*—*Condemnation of ship as lawful prize* On the 5th November 1914 war was declared between Great Britain and Turkey On the 13th November 1914 the S S *Karadeniz* then lying in Bombay Harbour was captured as an enemy vessel under Government Orders On the 19th November 1914 the ship's papers were lodged in Court with the usual affidavit. On the 21st November 1914 the writ was issued against the ship and the goods laden therein for the condemnation thereof as lawful prize On the 15th January 1915 the claimant filed his claim to the ship His petition in support of his claim alleged that he was a Persian subject and had purchased the ship on the 15th August 1914 from a Turkish Company at Constantinople where he resided and carried on business that the sale had been completed the same day that the ship on its arrival in Bombay on the 19th August 1914 was not permitted to leave the Port by the Port Officer at Bombay and that at the time of its capture or at any other times material to the matter in cause no subject of the Turkish Government or enemy of Great Britain had any share right title or interest in the said ship He prayed for the restitution of the ship and damages for her detention *Held* that the ship must be condemned as lawful prize inasmuch as on the outbreak of war the claimant had his commercial domicile in Turkey and that at the time of the capture and for months after he had no intention of removing that domicile to a neutral country and preventing the ship from reaching enemy territory Decisions of the English and American Prize Courts referred to Effect of Art 57 of the Declaration of London considered in view of the decisions in *The Zamora (1916) 2 A C 77* and *The Proton (1918) A C 578* The "KARADENIZ (1919) I L R 44 Bom 61

PROBATE

See COURT FEES ACT 1870—
s 19 (c) 5 Pat L J 36
ss. 19 AND 1191 SCH I AND III
I L R 43 All 279

PROBATE—*contd*

See EVIDENCE ACT (I OF 1872) s 41
I L R 38 Bom 309

See EXECUTOR 14 C W N 256

See GUARDIAN I L R 42 Calc 953

See HINDU LAW—STRIDHAN
I L R 40 Calc 83

See HINDU WILLS ACT (XXI OF 1870) ss 2 AND 5 I L R 34 Bom 606

See INAM LANDS I L R 38 Bom 272

See JOINT PROBATE

See LIMITATION L R 43 I A 113
20 C W N 830

See LIMITATION ACT (XV OF 1877) ss 6 AND 7 I L R 34 Bom 589

See LIMITATION ACT 1908, s 17
I L R 37 Mad 175

SCH I ART 9[illegible]
I L R 37 Bom 158

See MAHOMEDAN LAW—WILL
I L R 37 Calc 839

See OFFICIAL TRUSTEE
I L R 38 Calc 53

See PRACTICE (13)

See PROBATE AND ADMINISTRATION ACT

See PROBATE PROCEEDINGS

See SECOND PROBATE
I L R 43 Calc 625

See SUCCESSION ACT (X OF 1865) s 214
I L R 35 All 443

See WILL I L R 38 Calc 427

———— as evidence of right—

See SUCCESSION ACT (X OF 1865), s 187
I L R 38 Mad 988

———— conditional order for grant of—

See SUCCESSION ACT (X OF 1865) s 187
I L R 38 Mad 988

———— dismissal of application for default—

See WILL 14 C W N 924

———— obtained by one executor—

See HINDU LAW—WILL
I L R 39 Mad 365

———— suit to revoke—

See DECLARATORY DECREE SUIT FOR
I L R 43 Calc 694

———— will signed by 3rd party in presence and by direction of Testator—

See SUCCESSION ACT 186[illegible] s 50
I L R 45 Bom 989

1 ———— Jurisdiction of High Court—*Letters of Administration*—*High Court and District Court jurisdiction of*—*Concurrent jurisdiction*—*Probate and Administration Act (V of 1881) ss [illegible] 51 [illegible] 87*—*High Court meaning of in s 87*—*Practice*—*Rule 749 of the High Court Rules and Orders* The High Court has jurisdiction to grant probate and letters of administration on the Original Side in any case which [illegible] been brought before any District Judge [illegible] the two Provinces of Bengal [illegible] mentioned in s 87 of the Probate [illegible] ion A[illegible]

— ATE—*contd*

(V of 1881) is not merely confined to the Appellate Jurisdiction of the Court but it includes its Original Jurisdiction *In the goods of Mahendra Narain Roy 5 C W N 377*, referred to S 87 of the Probate and Administration Act does not require that any portion of the property should be within the limits of the Original Jurisdiction of the High Court and Rule 740 of the High Court cannot override the express provisions of this section giving the High Court concurrent jurisdiction with the District Court NAGENDRABALA DEBI v KASHIPATI CHOWDHRY (1909)

I L R 37 Calc 224

2 ———— **Jurisdiction**—*Testamentary and Intestate Jurisdiction of High Court—Revocation—Probate and Administration Act (V of 1881) s 50—Official Trustee of Bengal—Official Trustee s Act (XVII of 1864)* Where a Judge exercising the original testamentary and intestate jurisdiction of the High Court granted probate to the Official Trustee of Bengal the probate being expressed to be granted to the Official Trustee of Bengal for the time being assuming the order to have been erroneous it cannot be said that the Judge acted without jurisdiction so as to bring the matter within the scope of s 50 of the Probate and Administration Act OFFICIAL TRUSTEE OF BENGAL v KUMUDINI DASI (1910) **I L R 37 Calc 387**

3 ———— **Grant of probate on compromise if may be revoked**—*Persons not parties but cognisant of grant if bound—Infant if bound—Acquiescence—Delegation of powers by District Judge to District Delegate—Probate and Administration Act (V of 1881) 52* Proceedings in a Court of probate are proceedings *quasi in rem* and a probate granted in solemn form is binding not only on the parties who have appeared or have been formally cited but also on privies i e persons who being cognisant of the proceedings and having an opportunity to intervene have chosen not to do so *Newell v Weeks 2 Phillim 224 Wytcherley v Andrew L R 2 P & D 327 Young v Holloway (1895) P 87* relied on It may be taken as settled law that in a contentious proceeding probate may be granted in common form in consequence of a compromise between the disputants resulting in the withdrawal of opposition and that it cannot afterwards be revoked except on proof of fraud or circumvention practised either upon the Court or upon the parties *Nccol v Askew 2 Moo P C C 88* followed When a probate is granted in common form by reason of a compromise between the parties the terms of the compromise cannot be embodied in the order for the reason that a Court of Probate cannot in many instances enforce the terms *Evans v Saunders 30 L J P M & A 184 Roadnight v Carter 3 Sw & Tr 41 Carritt v Christian L R 2 P & D 181* referred to But they may be enforced by an action if otherwise unobjectionable But though a probate obtained in common form as the result of a compromise is binding upon the parties to the compromise it is not binding upon those who are not parties to it even though they have been cognisant of the former proceedings *Wytcherley v Andrews L R 2 P & D 3* referred to When the terms of the compromise are agreed to by the parties who are *sui juris* the Court of probate will not make an order binding infants to the terms of the compromise *Norman v Strains L R 6 P D 219* referred to But though an infant has a right in such cases to apply after he comes of age for revocation of probate obtained by consent yet he may be barred by acquiescence and delay for a long time or by the subsequent ratification of the dispositions of the will from putting the executor to the proof of the will in solemn form or from contesting its genuineness *Hoffman v Norris 2 Phillim 230 note Mohan v Broughton (1900) P 56* relied on Where the caveators having by reason of a compromise withdrawn their opposition the District Judge sent the case to the District Delegate for enquiry and report *Held* that the District Judge had acted within the powers conferred on him by s 52 of the Probate and Administration Act KUNJA LAL CHOWDHRY v KAILASH CHANDRA CHOWDHRY (1910)

14 C W N 1063

4 ———— **Bequest to Idol**—*Probate and Administration Act (V of 1881)—Shebait appointed executor by implication—Letters of administration with will annexed if should be revoked and probate ordered to issue* Where the testator having bequeathed his estate to an idol the *shebait* who was opposed by the testator s heirs was granted letters of administration with the will annexed —*Held* that although the applicant might probably have been granted probate as being executor by implication the estate being very small and letters of administration having been actually issued and the objector who appealed having no sort of interest in the matter the order of the District Judge should be maintained *Brojo v Raj Kumar, 6 C W N 310* referred to KALI CHARAN BHATTACHARJEE THAKUR v ANNANDA KANTA (1910) **15 C W N 1**

4 (a) ———— **Mahomedan Will**—It is not necessary to take out probate to a Mahomedan Will which may be tendered in evidence and proved in any proceeding although no Probate has been taken out in respect of it SAKINA BIBEE v MAHOMED ISHAK **15 C W N 185**

5 ———— **Party entitled to object to grant of**—*Attaching creditor has interest sufficient to oppose grant* Where an application is made for the grant of probate of the will of A a judgment creditor of A s son who in execution has attached the son s interest in the property of his deceased father has an interest sufficient to justify him in opposing the grant APAKAI BASTIAN AMMAL v NARAYANA AIYAR (1910) **I L R 34 Mad 405**

6 ———— **Standard of proof**—*Testamentary capacity—Evidence as to execution—Presumption—Expert evidence relevancy and weight of—Succession Act (X of 1865) s 46 48—Evidence Act (I of 1872) ss 3 10 45 101 1 5* The standard of proof to establish a will required by the Indian Statute is that of the prudent man and not an absolute or conclusive one The doctrine in *Tyrrell v Painton (1894) P 151* and *Barry v Butlin 2 Moo P C 480* discussed *Shama Churn Kundu v Khetromoni Dasi I L R 27 Calc 521 L R 27 I A 10* referred to The presumption against misconduct exists in a Civil case though it may be rebutted by a lower standard of proof than that in a criminal trial *Cooper v Slade 6 H L Cas 746* and *Devine v Wilson 10 Moo P C 502* referred to The admissibility relevancy and weight of the evidence of expert

PROBATE—*contd*

discussed *Per* WOODROFFE J—If the cross examining counsel after putting a paper into the hands of a witness merely asks him some question as to its general nature or identity his adversary will have no right to see the document but if the paper be used for the purpose of refreshing the memory of the witness or if any question be put respecting its contents or as to the hand writing in which it is written a sight of it may then be demanded by the opposite counsel *Peck v Peck 21 L T R 6,0* referred to JARAT KUMARI DASI v BISSESSUR DUTT (1911)
I L R 39 Calc 245

7 ———— **Caveat**—*if may be entered by widow of a predeceased son—Maintenance of widow of predeceased son if may be affected by probate proceedings—Obligation of the heir—Sufficient interest* The widow of a predeceased son of the testator has in fact no interest sufficient to enable her to appear on probate proceedings Her right to maintenance will not be affected by anything that may take place on the hearing of an application for probate *Bai Parbati v Tarundi Dolatram I L R 25 Bom 263* dissented from *Yamunbai v Manubai I L R 2, Bom 608* approved *Rangammal v Echammal I L R 2, Mad 305* followed *Seddeshury Dassi v Janardan Sarkar I L R 29 Calc 55, 6 C W N 530* referred to *In the goods of* GOVINDA CHANDRA BABAJEE (1913) **17 C W N 1141**

8 ———— **Limitation**—*Limitation Act (IX of 1908) s 164—Its applicability to probate proceedings—Probate and Administration Act (V of 1881) s 83* S 164 of the Limitation Act does not apply to the case of one who is not a defendant in a probate proceeding Merely citing a person in a probate application does not make him a defendant Under s 83 of the Probate and Administration Act the case must be contentious and the person cited must appear to oppose the grant before he becomes a defendant The limitation laid down in Art 164 of the Limitation Act applies to the case of a defendant as understood by s 83 of the Probate and Administration Act *Bai Manekbai v Manekji Kavasji I L R 7 Bom 213 Tiluck Singh v Parsotein Prosad I L R 22 Calc 924 Rahmat Karim v Abdul Karim I L R 31 Calc 672* referred to SAROJA SUNDARI BASAK v ABHOY CHARAN BASAK (1914)
I L R 41 Calc. 819

9 ———— **Joint Hindu family Ancestral property**—*Will—Payment of full probate duty* In a case where there was admittedly a joint Hindu family consisting of a father and a minor son the father made a will in effect bequeathing the whole property to his minor son It was not disputed that the property covered by the will was joint family property The executors contended that the deceased testator had no beneficial interest in any part of the property devised and therefore they were exempted from the payment of any probate duty *Held* that where the matter in question was probate the parties claiming under the will could not go behind its terms or claim any exemption whatsoever upon allegations utterly inconsistent not only with the fact of the will itself but with the express statements made therein and that the executors must pay full probate duty upon the will *Collector of Kaira v Chunilal I L R 29 Bom 161* distinguished KASHINATH PARSHARAM v GOURAVA BAI (1914) **I L R 39 Bom 245**

10 ———— **Revocation**—*Will validity of—Proof in common form—Knowledge—Acquiescence—Delay—Probate and Administration Act (V of 1881) s 50* It does not matter by what facts knowledge of the grant of probate and acquiescence in it are established for neither knowledge nor acquiescence nor lapse of time are of themselves operative as a bar to the proceeding which every person interested in the estate of the testator has a right to bring if he was not made a party in the probate proceeding His application must be *bona fide* and he must give some reasonable and true explanation of the delay *Hoffman v Norris 2 Phillim 230 Merryweather v Turner 3 Curt 802* and *Kunja Lal Choudhury v Kaila h Chandra Choudhury 14 C W N 1068* referred to MANORAMA CHOWDHURANI v SHIVA SUNDARI MOZUMDAR (1914) **I L R 42 Calc 480**

11 ———— **Revocation**—*Probate or letters of administration revocation of—Effect on alienation under revoked grant—Void or voidable grant—Mortgage to pay off debt due by estate if subsists after revocation* A purchaser of property sold under a grant of probate or letters of administration subsequently revoked in order to discharge a debt which the true executor or administrator was compellable to pay acquires an indefeasible title There has been a divergence of judicial opinion on the question of the effect of revocation of a probate or letters of administration the effect being made to depend upon whether the grant was void or voidable A view more favourable to the rights of a *bona fide* transferee for value without notice has been taken in recent decisions where grants have been treated as operative until revoked even when obtained by fraud and by suppression of the fact that the deceased had left a will *Debendra Nath Dutt v Administrator General of Bengal I A 35 I A 109 s c I L R 35 Calc 955 12 C W N 802* referred to Where a co-proprietor of the executor having satisfied the entire Government revenue obtained a decree for contribution against him and in execution thereof a property belonging to the estate was sold at an inadequate price and meanwhile the probate having been revoked administrators *appointed in his place with the Court s sanction* mortgaged the property to procure money which they applied in setting aside the sale under s 310A of the Civil Procedure Code of 1882 and subsequently on appeal by the executor the latter was restored to office and the letters of administration were cancelled *Held* that the mortgage held good SAILAJA PROSAD CHATTERJEE v JADU NATH BOSE (1914) **19 C W N 240**

12 ———— **Succession duty**—*Court Fees Act (VII of 1870) s 19 (c) as amended by Act XIII of 1875 s 19 ( )—Death of the first executrix—Application for second probate—Duty payable if any on second probate* When an executor to whom probate has been granted dies leaving a part of the testator s estate unadministered and a new representative is appointed for the purpose of completing the administration there being no new succession and no new devolution of the estate no fresh succession duty should be levied What the legislature appears to have intended is that where the full fee chargeable under the Court Fees Act on a probate at the time it is granted

... ee shall be chargeable ... grant is made in respect of that property as comprised in that estate *In the goods of Chalmers 21 W R 246n In the goods of Gasper I L R 4 Calc 735 In the goods of Innes 16 W R 253 In the goods of Balthazar (1908) L B R 255 In the goods of Ameerun 15 W R 496 Webster v Spencer 3 B & Ald 360 Cummins 3 Jo & Lat 65 In the goods of Bell L R 2 P & D 247 Anon 1 Freeman 313 Anon 1 Ch Ca 265* and *Watkins v Brent 1 My & Cr 104* referred to SWARNA IAYEE DEBI v SECRETARY OF STATE FOR INDIA (1915)

I L R 43 Calc 625

13 ———— **Executor not renouncing on citation must take out probate**—*Letters of Administration can otherwise issue* An executor called upon by citation to accept or renounce is clearly compellable if he accept to take out probate within a limited time If he does not do so Letters of Administration with copy of the will annexed may be granted to any competent applicant KAVASJI SORABJI v BAI DINBAI (1916)

I L R 40 Bom 666

14 ———— **Granted after service of citation upon father of testator's childless widow who was appointed her guardian ad litem**—*Application for revocation by widow who received benefits under Will—Proceedings whether can be re opened—Appointment of guardian* ad litem—*His consent whether necessary—Civil Procedure Code (Act V of 1908) O XXXII r 4 effect and applicability of—Citation whether summons—Object of citation—Probate and Administration Act (V of 1881) s 83* Where the mother of the testator as executrix applied for probate citation was issued upon the father of the testator s childless widow who was appointed guardian *ad litem* for the widow The father refused to accept the citation and it was fixed on the door of his house Probate was granted on the 13th March 1912 The widow came of age in 1913 On the 18th November 1918 a petition for revocation of probate was filed The District Judge revoked the probate on the ground that the father of the widow entered no appearance *Held* that the widow for several years having received benefits under the Will the proceedings could not be re opened *Kunja Lal v Kailash 14 C W N 1068 (1910)* and *Monorama v Shiva 19 C W N 566 (1914)* referred to Where a Will of which probate is sought affects the interests of a minor it may be expedient as a rule of practice to appoint a guardian *ad litem* for the minor But it does not follow that every rule in O XXXII is thus made strictly and legally applicable A citation for probate is not a summons to appear The object of citations whether general or special is to give those interested an opportunity of coming in if they so chose and contesting the application for probate Until a caveat is entered the proceedings are not contentious S 83 of the Probate and Administration Act shows that up to that stage there is no *lis* and no suit Until contest arises, O XXXII of the Civil Procedure Code would seem to have no application to the proceedings The effect of r 4 O XXXII is that no person can be appointed a guardian *ad litem* without his express consent The question whether the person appointed guardian *ad litem* consented to act will always be one of importance on the merits PADHASHYAM DAS v PANGA SUNDARI DASSI 24 C W N 541

15 ———— **Compromise**—*of probate proceeding validity of—withdrawal of application for probate effect of—whether second application for probate can be made* An application for probate cannot legally be disposed of by a compromise The law imposes on the court itself the duty of determining whether the will is genuine or not The provision in O XXIII r 1 to the effect that if a plaintiff withdraws from a suit he shall be precluded from instituting a fresh suit in respect of the same subject matter does not apply to an application for probate The circumstances of a probate case do not properly admit of the withdrawal of an application for probate by an Executor JUGESHWAR NATH SAHAI v JAGAT PRASAD 2 Pat L J 535

16 ———— **Will by two persons.** Two persons can make a joint will. JETHABHAI GOKALDAS v PARSHOTAM HAV A (1920)

I L R 45 Bom 987

17 ———— **Executors**—*Executor under a Hindu will carrying on family business—Debts incurred therein—Creditor s remedy against executor personally Executor s right to indemnity—Executor if sufficiently represents estate when his interest adverse to beneficiary s—Minor represented by nominee of party having adverse interest* An executor appointed under Act V of 1881 is in many respects in a different position from a Hindu widow succeeding to her husband s estate a guardian of a minor or a *shebait* of an idol. The executor who borrows money in the course of the administration for the purposes of the estate is personally responsible for the payment of such debts though he is entitled to be indemnified out of the estate for such borrowing if he shows it was reasonably and properly made This principle has been accepted by the Calcutta High Court as applicable to Hindu executors The principle applies equally to borrowings by the executors in conducting a family business which in India is regarded as a heritable asset and the executor is personally responsible for them subject to his right of indemnity against the estate upon proof that the borrowing was in all respects proper and for the benefit of the estate Where certain hundi sued on were rejected as being insufficiently stamped *Held* that the plaintiffs were entitled to sue for the consideration Ordinarily speaking executors would fully represent the estate but not in a case where their personal interest as executors were diametrically opposed to those of the beneficiary and the estate. A minor represented as guardian by a nominee of a party whose interest is adverse to the minor s is not properly represented in the suit SUDHIR CHANDRA DAS v GOBINDA CHANDRA ROY (1917)

I L R 45 Calc 538
21 C W N 1043

18 ———— **Delay**—*Delay in taking out probate of a will if justified by circumstances and reasons—Probate applied for on necessity arising* Where a long time elapsed between the death of the testatrix and the date on which the will was put forward for probate and the testatrix was an illiterate Hindu lady the prior history of the case was worthy of consideration When there were reasons for the delay in propounding the will

PROBATE—*contd*

although in such a case the Court was bound to scrutinize the evidence very carefully there was no rule of the law of evidence that such a will was incapable of being proved TINODINI DEBYA v HRIDAY NATH GHOSAL (1921) 22 C W N 424

19 ———— Accounts—*Probate and Administration (Act V of 1881) s 50 clause 5 of the explanation and s 98 sub s (1)—Liability to submit accounts if periodical—Incorrect account for period antecedent to the final grant of probate if just cause for revoking the probate* The statute contemplates the submission of one account only and the executors are under no liability to submit accounts periodically Untrue accounts submitted for the period antecedent to the final grant of probate is not a just cause for revoking the probate under clause 5 of the explanation to s 50 of the Probate and Administration Act CHANDRA KUMAR CHAKRAVARTI v PRASANNA KUMAR CHAKRAVARTI (1921)

I L R 48 Calc 1051

PROBATE AND ADMINISTRATION ACT (V OF 1881)

See HINDU LAW—WILL

See LIMITATION ACT

I L R 37 Mad 175

See RECEIVER I L R 37 Calc 754

———— Sale by executor before probate—

See EXECUTOR SALE BY

I L R 36 Mad 575

———— whether obtaining of Probate necessary before Executor can sue—

See LIMITATION ACT (IX OF 1908)

I L R 37 Mad 175

———— ss. 2 and 4—

See EXECUTOR SALE BY

I L R 36 Mad 575

See HINDU LAW—WILL

I L R 39 Mad 365

———— ss 2 51 56 87

See PROBATE I L R 37 Calc 224

———— s 3—

See WILL I L R 43 Bom 641

———— ss 3 51 53—

See TRANSFER

I L R 42 Calc 842

———— s 4—

See EXECUTOR SALE BY

I L R 36 Mad. 575

See HINDU LAW—WILL.

I L R 38 Mad. 369

See LIMITATION ACT 1908

I L R 37 Mad 175

See MAHOMEDAN LAW—PROBATE

I L R 37 Calc 839

See SETTLEMENT BY A HINDU WOMAN ON TRUSTS I L R 40 Bom 341

———— s 5— *Deposited in Court meaning of—Will proved in French Court and kept with Notary if deposit within the meaning of section—Copy given by Notary if authenticated copy within the meaning of section* A French subject of Chandernagore executed a mystic will according to the provisions of the French Code On his death a general legatee applied to the Court at Chandernagore for having the will deposited according to the French law After the usual proceedings were taken the French Court recognised the will and made it over to a Notary with power to give copies to the parties The trustees under the will applied to the District Judge of Hughly for letters of administration with a copy of the will annexed *Held* that s 5 of the Probate and Administration Act does not require that the will should have been deposited once and remain in Court for all time The fact that the will was deposited in the French Court and the Court had before it the original will at the time it made a judicial pronouncement as to the validity of the will under the French law was a sufficient deposit within the meaning of s 5 That the French Court having so provided a copy authenticated by the notarial seal was a properly authenticated copy within the meaning of s 5 SUSHILABALA DASSI v ANUKUL CHANDRA CHOUDHURY (1918)

22 C W N 713

———— ss 5 59 62 64 and 76—Probate valuation for—

See PROBATE DUTY 6 Pat L J 411

———— ss 13 19 31 33 and 41— *Legal guardian —disqualified proprietor whether entitled to grant—Procedure when grant applied for by minor's guardian—Statutory person powers of—Court of Wards whether manager of is entitled to grant* The words legal guardian in s 31 of the Probate and Administration Act 1881 mean a guardian appointed under the authority of law i e a guardian appointed under the Guardian and Wards Act S 19 does not deprive a disqualified proprietor from obtaining a grant of letters of administration provided such proprietor is not a minor or a lunatic Letters of administration cannot be granted to a minor but under s 31 they may be granted to the legal guardian of minor if the minor is the sole residuary legatee and under s 33 they may be granted to the person to whom the care of the minor's estate has been committed by competent authority if the minor is the sole universal or residuary legatee or a person who would be solely entitled to the estate of the intestate When an application is made under s 31 or 33 it must be made on behalf of the guardian and not on behalf of the minor through the guardian and the guardian must in the first place apply to be appointed the minor's guardian for the purpose of enabling him to obtain letters of administration for the use and benefit of the minor Until he has obtained an order of the Court appointing him guardian he cannot be considered a legal guardian within the meaning of s 31 or a person to whom the care of the minor's estate has been committed by a competent authority within the meaning of s 33 Although the granting of letters of administration is discretionary the discretion must be exercised in accordance with rules formulated and acted upon in the courts for many years The main object of a grant being the protection and benefit of the estate the court has a discretion to refuse [illegible] the person having the largest inte[illegible] [illegible] that in

—ADMINISTRATION ACT (V —OF 1881)—contd

——— ss 13 19 31 33 and 41—contd

his hands the estate will suffer irretrievable loss and damage but the court is not entitled to pass over a person entitled to the grant on the ground that it is more satisfactory to make the grant to someone else When dealing with a statutory p rson such as the manager of the Court of Wards it is nece sary to examine the statute to see what pow rs he can properly exercise under the statute and to regard that as impliedly prohibited which is not conferred on him expre sly or by neces ary implication Although the manager of the Court of Wards has wide powers of management over the estate of a disqualified proprietor there is nothing in the Act which entitles him as such manager and by virtue of his *office* to apply for letters of administration to the estate of a decea ed person in which the disqualified proprietor has a larger interest BHAGWATI KUER v BAHURIA RAMSAKHI KUER **5 Pat L J 347**

——— s. 16—

See LETTERS OF ADMINISTRATION **I L R 47 Calc. 838**

——— s. 19—

See s 13 **5 Pat L J 347**

——— ss 19 and 24—

See WILL **18 C W N 527**

——— s 23—*Grant of Letters of Administration—Title to property if Court would go into in granting administration—Practice* It is not the practice of the Court in its Testamentary and Intestate jurisdiction to go into questions of title in a application for the grant of letters of administration The Court would not frame is ues or go into evidence to decide as to who is entitled to the property Letters of administration were ordered to be issued to the husband in re pect of his deceased wife s estate upon furnishing se curity upon allegation in the husband petition that part of such estate was *jautuka tridhan* al hough it was denied by his wife s brother who ent re l caveat but did not apply for letters of administration himself *In the goods of Paghubar H i am 3 C W N celxxiii Raghunath Mi er v Mus t Pate Koer 6 C W N 345* and *Ochara ram v Dolatram I L P 28 Bom 644* relied on NISHI KANTA CHATTERJEE v ASHUTOSH MUKERJEE (1912) **17 C W N 613**

——— ss. 23 64, 69 70 and 73—

See LETTERS OF ADMINISTRATION **5 Pat L J 107**

——— ss. 26 64

See LETTERS OF ADMINISTRATION **14 C W N 463**

——— ss. 31 33 and 23—

See s 13 **5 Pat L J 347**

——— s. 34—*Wrongful alienat on of deceased esta e apprehended by caveator—Temporary injunction application for if lies—Civil Procedure Code (Act V of 1908) O XXXIX rr 1 2—Administrator pendente lite, appointment of proper course —Injunct on when may be granted—English practice* A probate proceeding is not a suit in which there is property in dispute as contemplated by r 1 of O XXXIX of the Civil Procedure Code as the

PROBATE AND ADMINISTRATION ACT (V OF 1881)—contd

——— s 34—contd

only question in controver y in such a proceeding is that of repre entation of the e tate of the de ceased and no que tion of title *thereto i e* the title of the decea ed or of the conflicting titles alleged by the parties to the proceeding can be investigated by the court But the Court of p o bate is not therefore incompetent to grant a tem po ary injunction in any circum tance The proper procedure to follow in ca es of this des cription is for the aggrieved party to apply to the Court for the appointment of an admini trator *pendente lite* When such an application has been made the Court may in ca e of nece ity grant a temporary injunction either in exercise of its inherent power or under r 7 of O XXXIX of the Civil Procedure Code Engli h practice referred to and contrasted NIROD BARANI DEBI v CHAMATKARINI DEBI (1914) **19 C W N 205**

——— s. 37—*Mohunt of math—Death—Application by claimant to office for letters of administration—Trust estate—Beneficiary—Shebait and idol relation of* A mohunt is not the owner of the property of the *math* and on his death a per on claiming to be his succe or in office cannot apply under Act V of 1881 for letters of admini tration in respect of the *math* property s 37 of the Act is intended to apply only to property in which the decea ed per on had owner hip o as to constitute it a portion of his e tate althou h he held it in trust *Ranjit Singh v Jagannath Prosad Gupta I L R 12 Calc 3 5* distingui hed MOHUNT JIB LAL GIR v MOHUNT JAGA MOHUN GIR (1898) **16 C W N 798**

——— s. 41—This section does not apply where there is no want of persons entitled to letters of admini tration It does not empower the court to make a merely arbitrary selection from among per ons contending for the grant In a proper ca e but not merely by virtue of his office a nominee of the Court of Wards may come within the phrase some person within the meaning of s 41 BHAGWATI KUER v BAHURIA RAMSAKHI KUER **5 Pat. L J 347**

——— S 50—

See LETTERS OF ADMINISTRATION **3 Pat L J 415**
I L R 40 Calc 50

See PROBATE **I L R 37 Calc. 887**
I L R 42 Calc. 480
I L R 43 Calc. 1051

——— *Revocation of grant — Just cau e — Joint administration of — Quarrels between co administrators making grant w le and inoperative if ground for annulment* Mal admin s tration is not under s 50 Expl (1) of the Pr bate and Administration Act a ju t cause for reve a tion of probate *Innoda Prosad v Ka hi ... I L P 24 Calc 95* followed The words be come usele s and inoperative in s. 50 Expl (4) of the Act imply the di covery of something which if known at the date of the grant would have been a ground for refusing it *e g* the di covery of a later will or codicil or a subsequent di covery that the will was forged or that the alleged te tator wa still living *Lal Cangadhar Tilak v Salvar las I L P 26 Bom 92* approved One of two joint admini trators applied for the revocati n of

PROBATE AND ADMINISTRATION ACT (V OF 1881)—*contd*

——— s 50—*contd*

the grant to the other on the ground that in consequence of quarrels between them it had become impossible to carry on the administration and the grant had in this way become inoperative and useless *Held* that this was no ground for revoking the grant GOUR CHANDRA DAS v SARAT SUNDARI DASSYA (1912) I L R 40 Calc 50
16 C W N 883

——— *Grant revocation of—Creditor s rights to contest Will propounded in fraud of creditors—Order holding applicant has right if appealable—Interlocutory order* Where eight years after the death of *B* one of his sons *L* obtained letters of administration with a copy annexed of an alleged will left by *B* which if genuine would deprive another son *S* who had meanwhile become heavily involved in debt of a very large share of his inheritance *Held* that the creditors of *S* were entitled to apply for revocation of the will their application being based on the ground that the probate had been obtained in fraud of creditor *Sheikh Azim v Chandra Nath Namdas 8 C W N 748 Nilmoni Singh Deo v Umanath Mookerjee I L R 10 Calc 19 Kishan Das v Satyendra Nath Dutt I L R 28 Calc 441* referred to *Semble* No appeal lay from an order of the trial judge holding that the creditors had *locus standi* to contest the will the same being merely interlocutory *Sheikh Azim v Chandra Nath Namdas 8 C W N 748 Abhiram Das v Gopal Das I L R 17 Calc 48* referred to LAKHI NARAIN SHAW v MULTAN CHAND DAGA (1912)
16 C W N 1099

——— *Civil Procedure Code (1908) ss 114 and 151—Letters of Administration—Cancellation of order—Procedure* A Court which has once granted letters of administration cannot revoke them without notice to the person in whose favour they have been granted Where letters of administration have been granted *ex parte* and an application is made to revoke them it is open to the court concerned to proceed either under s 114 or s 151 of the Code of Civil Procedure or under s 50 of the Probate and Administration Act (1881) PARMAN v BOHRA NEK RAM (1915)
I L R 37 All 380

——— *Revocation application for—Question of genuineness of will if arises—Just cause—Fraudulent concealment from Court by person cited of transfer of his interests—Assignee not cited in consequence—Assignee if may apply for revocation when assignment subsequent to testator s death* No question of the genuineness of the will arises for consideration till the Court has decided that the probate must be revoked on one or more of the grounds specified in s 50 of the Probate and Administration Act The only matter for consideration upon an application for revocation of probate is whether the applicants have made out a just cause for revocation The application could not be thrown out at this stage on the ground that the evidence adduced by the applicant was not sufficient to throw doubt upon the genuineness of the will A person interested by assignment in the estate of the deceased may where a will has been set up and proved at variance with his interests apply for revocation of the probate of the will so set up He need not show that he had an interest in the estate of the deceased at the time of his death An interest acquired subsequently by purchase of a part of the estate is sufficient Where *A* having applied for probate of a will caused citation to be issued on *B* his father who but for the will would inherit a portion of the estate but the notice was served on *B* a week after *B* had assigned his interests to *C* but neither *B* nor *A* who presumably knew of the transfer by *B* brought the fact of the assignment to the Court s notice and probate was granted without the assignee s getting any notice of the proceedings *Held* that the proceeding if not defective in substance was bad because the grant was obtained fraudulently by making a false suggestion or by concealing from the Court something material to the case MOKHADASINI DASSI v KARNADHAR MANDAL (1914)
19 C W N 1108

——— *Application for revocation of grant of probate—Explanation cl 4, circumstances in which a grant of probate is to be deemed to have become useless and inoperative—cl 5 exhibiting inventory and accounts significance of the expression—Period during which executor entitled to continue in possession—s 98 (1) executor if liable to submit accounts periodically—Necessity of giving full and specific details in objections to executor s inventory and accounts* An application under sec 50 of the Probate and Administration Act for revocation of a probate was made on the allegations firstly that the grant had become useless and inoperative through circumstances and secondly that the persons to whom the grant had been made had wilfully omitted to exhibit an inventory and accounts in accordance with the provisions of Chap VII of the Probate Act and had further exhibited an inventory and accounts which were untrue in material respects *Held*—That so long as the person entitled to the estate has not taken it out of the possession of the executors they are entitled to continue in occupation of the estate *Bombay Burma Trading Corporation Ltd v Frederick York Smith L R 21 I A 139 s c I L R 19 Bom 1 at p 9 (1894)* referred to That as under the terms of the will there were duties still to be performed by the executors it could not be maintained that the grant had become inoperative through circumstances *Taran Singh v Ramratan Tewari I L R 31 Calc 89 1903)* and *Sankarnath v Biddullata 28 C L J 261 (1918)* distinguished *Held further*—That the statute contemplates the submission of one inventory and one account and not periodical accounts What is contemplated is that an account should be filed within one year from the grant showing the assets which have come to the hands of the executor or administrator and the manner in which such assets have been applied or disposed of The fact that time has been extended by the Court does not enlarge the scope of the account The account of the estate which is required to be exhibited whether it is exhibited within a year or thereafter is the account contemplated by the second paragraph of sub sec 1 of sec 98 *Mohesh v Biswa Nath I L R 25 Calc 20 s c 7 C W N 646 (1897)* and *Sarat Sundari v Uma Prasad I L R 31 Calc 698 s c 8 C W N 578 (* followed It is

—ADMINISTRATION ACT (V —contd

——— ss 13 19 31 33 and 41—*contd*

his hands the estate will suffer irretrievable lo s and damage but the court is not entitled to pass over a person entitled to the grant on the ground that it is more satisfactory to make the grant to someone else When dealing with a statutory person such as the manager of the Court of Wards it is necessary to examine the statute to see what powers he can properly exercise under the statute and to regard that as impliedly prohibited which is not conferred on him expressly or by neces ary implication Although the manager of the Court of Wards has wide powers of management over the estate of a disqualified proprietor there is no hing in the Act which entitles him as such manager and by virtue of his office to apply for letters of administration to the estate of a deceased person in which the disqualified proprietor has a larger interest BHAGWATI KUER v BAHURIA RAMSAKHI KUER 5 Pat L J 347

——— s 16—

See LETTERS OF ADMINISTRATION I L R 47 Calc 838

——— s 19—

See s 13 5 Pat L J 347

——— ss 19 and 24—

See WILL 18 C W N 527

——— s 23—*Grant of Letters of Administration—Title to property if Court would go into in granting administration—Practice* It is not the practice of the Court in its Testamentary and Intestate jurisdiction to go into que tions of title in a application for the grant of letters of administration The Court would not frame issues or go into evidence to decide as to who is entitled to the property Letters of administration were ordered to be issued to the husband in respect of his deceased wife s estate upon furnishing se curity upon allegation in the husband s petition that part of such estate was *jautuka stridhan* although it was denied by his wife s brother who entered caveat but did not apply for letters of administration himself *In the goods of Raghubar Hazam 3 C W N cclxxvii Raghunath Mi ser v Musst Pate Koer 6 C W N 345* and *Ocharam v Dolatram I L R 28 Bom 644* relied on NISHI KANTA CHATTERJEE v ASHUTOSH MUKERJEE (1912) 17 C W N 613

——— ss 23 64, 69 70 and 73—

See LETTERS OF ADMINISTRATION 5 Pat L J 107

——— ss 26 64

See LETTERS OF ADMINISTRATION 14 C W N 463

——— ss 31 33 and 23—

See s 13 5 Pat L J 347

——— s. 34—*Wrongful alienation of deceased estate appreh nded by caveator—Temporary inj nc tion application for if lies—Civil Procedu e Code (Act V of 1908) O XXXIX rr 1 —Administ ator pendente lite appointment of p oper course —Injunct on when may be granted—English pract ce* A probate proceeding is not a suit in which there is property in dispute as contemplated by r 1 of O XXXIX of the Civil Procedure Code as the

PROBATE AND ADMINISTRATION ACT (V OF 1881)—contd

——— s 34—*contd*

only question in controversy in such a proceeding is that of representation of the e tate of the de ceased and no question of title thereto i e the title of the deceased or of the conflicting titles alleged by the parties to the proceeding can be investigated by the court But the Court of pro bate is not therefore incompetent to grant a tem porary injunction in any circum tance The proper procedure to follow in cases of this des cription is for the aggrieved party to apply to the Court for the appointment of an admini trator *pendente lite* When such an application has been made the Court may in case of nece ity grant a temporary injunction either in exerci e of its inherent power or under r 7 of O XXXIX of the Civil Procedure Code Engl h practice referred to and contrasted NIROD BARANI DEBI v CHAMATKARINI DEBI (1914) 19 C W N 205

——— s 37—*Mohunt of math—Death—Application by claimant to office for letters of ad ministration—Trust estate—Beneficiary—Shebait and idol relation of* A mohunt is not the owner of the property of the *math* and on his death a person claiming to be his succe sor in office cannot apply under Act V of 1881 for letters of adminis tration in respect of the *math* property S 37 of the Act is intended to apply only to property in which the deceased person had owner hip so as to constitute it a portion of his estate al hou h be held it in trust *Ranjit Singh v Jagannath Prosad Gupta I L R 12 Calc 375* distingui hed MOHUNT JIB LAL GIR v MOHUNT JAGA MOHUN GIR (1898) 16 C W N 798

——— s 41—This sec ion does not apply where there is no want of per ons entitled to letters of admini tration It does not empower the court to make a merely arbitrary selection from among persons contending for the grant In a proper case but not merely by virtue of his office a nominee of the Court of Wards may come within the phrase some per on within the meaning of s 41 BHAGWATI KUER v BAHURIA RAMSAKHI KUER 5 Pat L J 347

——— S 50—

See LETTERS OF ADMINISTRATION 3 Pat L J 415
I L R 40 Calc 50

See PROBATE I L R 37 Calc. 387
I L R 42 Calc. 480
I L R 43 Calc 1051

——— *Revocation of grant — Just cau e mal admini tration if—Quarrels between co administrators making grant u eless and inoperative if ground for annulment* Mal adminis tration is not under s 50 Expl (1) of the Probate and Administration Act a just cause for revoca tion of probate *Annoda Prosad v Kalikrishna I L R 24 Calc 95* followed The words be come u eless and inoperative in s 50 Expl (1) of the Act imply the di covery of something which if known at the date of the grant would have been a ground for refusing it e g the discovery of a later will or codicil or a sub equent di covery that the will was forged or that the alleged te tator was still living *Bal Ganjadhar Tilak v Sakwar bai I L R 26 Bom 792* approved One of two joint administrators applied for the revocation of

PROBATE AND ADMINISTRATION ACT (V OF 1881)—*contd*

——— s. 62 —

See s. 50 19 C W N 882

——— ss. 62, 64 and 76—

See PROBATE VALUATION FOR I L R 43 All. 411

——— s. 64—

See LETTERS OF ADMINISTRATION 14 C W N 463
5 Pat L J 107

——— s. 69—

See s 50 14 C. W N 119
19 C. W N 882

See LETTERS OF ADMINISTRATION 5 Pat L J 107

——— ss. 70 and 73—

See LETTERS OF ADMINISTRATION 5 Pat L J 107

——— s. 78—

See s 50 23 C W N 763
I L. R 47 Calc 115

——— ss. 78 79 86—

See ADMINISTRATION BOND I. L. R 39 Calc 563

——— ss. 79 80—*Administration bond—Assignee not enforcing bond—Second assignment if valid—Order if appealable* An administration bond can be assigned by the District Judge upon conditions under s 79 of the Probate and Administration Act But there is no provision in the law authorising the District Judge to assign it again while the first assignment is still in force Where the first assignee having come to terms with the administrator other persons interested in the estate applied to have the bond transferred to them and the application was granted *Held* that no appeal lay from the order but the order being without jurisdiction could be set aside in revision *Brojo Nath Pal* v *Dasmoni Dasi 2 C L R 589 Abhiram Das* v *Gopal Dass I L R 17 Calc 48* followed *Umacharn* v *Muktakeshi I L P 28 Calc 149* commented on SHEIKH KALIMUDDIN *v* MUSSAMMAT MAHURNI (1912) 16 C W N 662

——— s. 81—*Indian Succession Act (X of 1865) s 250—Will—Probate—Caveator—Interest possessed by the caveator* The provision of s 81 of the Probate and Administration Act 1881 (which correspond with those of s 250 of the Indian Succession Act 1865) enact that the interest which entitles a person to put in a caveat must be an interest in the estate of the deceased person that is there should be no dispute whatever as to the title of the deceased to the estate but that the person who wishes to come in as the caveator must show some interest in the estate derived from the deceased by inheritance or otherwise *Abhirum Dass* v *Gopal Dass I L R 17 Calc 48* followed PIROJSHAH BHIKAJI *v* PESTONJI MERWANJI (1910) I L R 34 Bom 459

——— s. 82—

See HINDU LAW—WILL. I L R 39 Mad 365

——— ss 82 and 92—

See HINDU LAW—WILL I L R 39 Mad 365

PROBATE AND ADMINISTRATION ACT (V OF 1881)—*contd*

——— s. 83—

See EVIDENCE ACT (I OF 1872) s 41 I L R 39 Bom 309

See PLEADER S FEE I L R 41 Calc 637

See PROBATE I L R 41 Calc 819

See WILL 14 C W N 921

——— *Probate case—Procedure* S 83 of the Probate and Administration Act read with O XXXIII r 3 Civil Procedure Code merely means that in a probate case the Civil Procedure Code so far as possible determines the procedure of the Court These sections no where say that it is competent to the Court to allow the parties to divide the testator s property without proving the will. *Kunja Lall Choudhuri* v *Kailash Chandra Chowdhury 14 C W N 1068* and *Saroda Kanta Dass* v *Gobinda Mohan Dass 12 C L J 91* referred to There can be no dismissal of a probate case in accordance with the terms of a petition of compromise between the propounder and objector The main issue in such a case is whether or not the will has been proved and the only effect of a compromise is to reduce a contentious proceeding into one which is not contentious but this does not absolve the Court from the task of their granting probate or refusing it If a compromise has been made and the objector withdraws from the contest the Court will grant probate in common form but the Court cannot dismiss the case altogether and embody the terms of the compromise as if the decree was one capable of execution by him JANAKBATI THAKURAIN *v* GAJANAND (1916) 20 C W N 986
1 Pat L J 377

——— s 86—

See ADMINISTRATION BOND I L R 39 Calc 563

——— ss 86 90—*Administrator s application to sell granted against opposition—Appeal—Order if appealable as decree or irrespective of whether order decree or not—Interlocutory orders under the Act if appealable* A Hindu widow who had obtained Letters of Administration to the estate of her deceased husband applied under s 90 of the Probate and Administration Act for permission to sell the dwelling house for the purpose of satisfying debts The application which was opposed by the reversioner having been granted the latter appealed *Held per* D CHATTERJEE J that the order was a decree as defined in the Civil Procedure Code and was appealable as such *Quære* Whether s 86 of the Probate and Administration Act in making orders of the Probate Court appealable under the rules contained in the Civil Procedure Code means only that the procedure in such appeals would be as in appeals under the Civil Procedure Code *Per* BEACHCROFT J —An appeal lay under the terms of s 86 of the Probate and Administration Act irrespective of whether the order was a decree or not SARAT CHANDRA PAL *v* BINODE KUMARI DASSI (1915) 20 C W N 28

——— s 87—

See PROBATE I L R 37 Calc 224

——— s. 89—

See CIVIL PROCEDURE CODE O XXII r. 1 I 44 Mad. 357

s 89—*contd*

See MAHOMEDAN LAW—PRE EMPTION
I L R 36 Bom 144
I L R 41 Bom 636

See MALICIOUS PROSECUTION
4 Pat L J 676

See PENAL CODE s 323
I L R 44 Mad 417

ss 304 323 I L R 1 Lab 27

——————— *Executors also appointed shebaits—Heirs of such Shebaits if liable to render accounts de bonis non* S by will appointed *A* and *B* his executors as well as Shebaits of an idol in whose favour the will created a trust in respect of the whole of his properties *S* left a widow and a daughter The daughter obtained administration *de bonis non* of the estate of *S* and brought a *suit against* the heirs of *A* for delivery to her of the *Debutter* estate and for accounts *Held* that the suit was misconceived As soon as debts legacies and funeral expenses were paid the executors would hold the property upon the trusts of the Will and there would be no property administered by the executors which would pass to any administratrix *de bonis non* appointed by the Probate Court If the property became trust property it was not for the administrator to ask for accounts and the administratrix *de bonis non* could not maintain a suit of this nature GOUR CHANDRA DAS v SREEMATI MONMOHINI
25 C W N 332

——— s. 90—

See s 86 20 C W N 28

See COMPROMISE DECREE
14 C W N 451

See HINDU LAW—PARTITION
I L R 43 Calc 1118

——————— *Sanction of Court obtained in respect of principal but not of interest—Stipulation as to interest if binding—Post diem interest* S 90 of the Probate and Administration Act which authorises an administrator to grant a mortgage of immoveable property vested in him only with the previous permission of the Probate Court implies that sanction of the Court should be taken for all the essential elements of the mortgage transaction including the provision for payment of interest Where the principal amount only was mentioned in the application for sanction but in the mortgage actually executed the administrators stipulated to pay compound interest at 30 per cent per annum with half yearly rests the Court reduced it to simple interest at 9 per cent per annum and it was directed that the interest should be added to the mortgage money as was done in *Chajmal v Brij Bhukan L R 22 I A 199 s c I L R 17 All 511* SAILAJA PROSAD CHATTERJEE v JADU NATH BOSE (1914)
19 C W N 240

——————— *Power of Hindu widow heiress to sell as administratrix if restricted—Order of Judge granting her leave to sell if may be collaterally attacked in Land Acquisition proceedings* There is nothing in the Probate and Administration Act which would justify a differentiation between the powers of an administratrix who happens also to be a Hindu widow and heiress

PROBATE AND ADMINISTRATION ACT (V OF 1881)—*concld*

——— s. 90—*contd*

of her husband and those of any other administrator under the Act *Kamikhya Nath v Hari Churn I L R 26 Calc 607* followed. The validity of an order by a District Judge granting leave to an administrator to sell property cannot be challenged collaterally in Land Acquisition proceedings *Quære* Whether the order can be so challenged on the ground of fraud. CHUNI LAL HALDAR v MUKSHADA DEBI (1919)
23 C W N 652

——— s 92—

See HINDU LAW—WILL
I L R 39 Mad 365

——— s 98—

See COURT FEES AMENDMENT ACT 1899 s 19H I L R 41 Calc 558

——— s 112—

See LEGACY I L R 36 Bom 111

PROBATE DUTY

See COURT FEES ACT 1870
2 Pat L J 611

——————— *Valuation of estate for—Probate and Administration Act (V of 1881) ss 5 59 62 64 and 76—Court Fees Act (VII of 1870) Sch 1 Art 11 Sch III* Probate duty is calculated on the value of the estate at time of application for Probate or Administration and not at the date of the death of the Testator or intestate and for purposes of Court fee the present value is the basis of reckoning and not possible future value THE DEPUTY COMMISSIONER OF SINGHBHUM v JAGADISH CHANDRA DEO DHABAL DEB 6 Pat L J 411

PROBATE PROCEEDINGS

See INTERROGATORIES
I L R 43 Calc. 300

See LETTERS OF ADMINISTRATION
3 Pat L J 415

See PLEADER S FEE.
I L R 41 Calc. 637

See PROBATE.

——————— *Issue of citations on infant—Guardian of infant if must consent to appointment—Proof of consent—Civil Procedure Code (Act V of 1908) O XXXII r 4—Probate and Administration Act (V of 1881) s 50* O XXXII r 4 of the Civil Procedure Code which provides that no person shall without his consent be appointed guardian *ad litem* of a minor does not apply to probate proceedings which have not arrived at the contentious stage Nevertheless when citation is issued upon an infant it is necessary for the protection of the interest of the infant that the Court should see that the person appointed guardian to receive such citation on behalf of the infant has consented to accept the appointment and take upon himself the onus that by virtue of the appointment falls upon him on behalf of the infant and it is for the person who got the guardian appointed to show the Court that that person accepted the appointment and took upon himself the burden thereof SACHINDRO NARAYAN SAHA v HIROMOYEE DASSI 24 C W N 538

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I. L. R. 44 Calc. 890

See APPEAL TO PRIVY COUNCIL

See ARBITRATION I. L. R. 33 All. 743

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s 373 3 I. L. R. 36 All. 1?2

See CIVIL PROCEDURE CODE 1908—

4 I. L. R. 45 Bom 718

s 4 I. L. R. 35 All. 243

4 ... I. L. R. 39 All 47

s 9 ... I. L. R. 35 All. 93

s 98 I. L. R. 43 Bom. 433

105 O XLI RR 23 AND ?
I. L. R. 43 All. 377

s 151 O IX R 13
I. L. R. 39 All 8

O I R 3 O XXIII R 1
I. L. R. 40 All. 7

O II R ... O XXXIV R 14
I. L. R. 36 All 264

R 2 I. L. R. 37 All. 646

O X RR 1 AND 2 O IX R 13
I. L. R. 35 All. 163

O XI

O IX RR 3 6 I. L. R. 40 All. 590

R 8 I. L. R. 35 All. 105

RR 8 AND 9 O XXII RR 3 9
I. L. R. 35 All 331

R 13 O XVII R 3
I. L. R. 39 All. 143

O XI R 21 I. L. R. 38 All. 5

O XVII R 3 O IX R 4
I. L. R. 34 All 123
I. L. R. 41 All 663

O XXI R 23 I. L. R. 34 All. 612

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I. L. R. 39 All. 114

O XXXIV R 8
I. L. R. 39 All 396

O XLI R 21 I. L. R. 39 All 388

R 33 I. L. R. 34 All. 32

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See CONTEMPT OF COURT
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ss 1?7 159 AND 476
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ss 195 537 I. L. R. 37 All 283

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s ... I. L. R. 3? All 331
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s 3?0 I. L. R. 40 All. 30?

s 4?6 I. L. R. 43 All 180

s 4 I. L. R. 41 All. 197

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See DEFENCE OF INDIA ACT (IV OF 1915)
s 2 I. L. R. 41 All 164

See EXCISE I. L. R. 41 Calc 694

See EXECUTION OF DECREE
I. L. R. 44 Calc 10?2
I. L. R. 35 All. 119

See FALSE INFORMATION
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See GUARDIANS AND WARDS ACT (VIII OF 1890) ss 5 to 20 CHAP II
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See INSOLVENCY I. L. R. 47 Calc 56

See LAND ACQUISITION ACT (I OF 1894)—
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ss 9 18 AND 25 I. L. R. 37 All 69

See LETTERS OF ADMINISTRATION
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See LIMITATION ACT (IX OF 1908) s ...
I. L. R. 36 All 235

See LUNACY ACT (IV OF 1912)
I. L. R. 43 All 459

See MAHOMEDAN LAW—MARRIAGE.
I. L. R. 42 Calc. 351

See MINOR I. L. R. 32 All 287

See OFFENCE COMMITTED ON THE HIGH SEAS I. L. R. 39 Calc 487

See PARTIES I. L. R. 46 Calc 48

See PARTITION SUIT FOR
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ss 182 211 I. L. R. 34 All 522
s 494 I. L. R. 40 All 615
I. L. R. 32 All. 78

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ss 13 (3) 4? I. L. R. 36 All 65
ss 18 36 AND 4
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ss 2? 26 46 I. L. R. 36 All. 8
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I L R 42 Calc 1

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ss 87 152 I L R 36 All 329

s 187 I L R 35 All 450

See WASTE LANDS ACT 1813 s 18
I L R 44 Calc 328

See WORKMEN S BREACH OF CONTRACT (XIII OF 1859) I L R 35 All 61

——— in partition Suit

See CIVIL PROCEDURE CODE ss 110 AND 112 I L R 42 All 646

——— Security for good behaviour—

See CRIMINAL PROCEDURE CODE ss 110 AND 112 I L R 42 All. 648

——— When accused believed of unsound mind—

See CRIMINAL PROCEDURE CODE ss 464 465 I L R 42 All. 137

——— When question at issue in Criminal proceedings is also sub judice in a Civil case—

See CRIMINAL PROCEDURE CODE s 476
I L R 43 All. 180

1 ——— Right to set aside consent decree.—A consent decree once duly obtained cannot be set aside by a rule but if it is sought to impeach it upon grounds of fraud that must be done in a regular suit The only alternative which the law allows is an application for review of judgment FATMABAI v SONBAI (1911)
I L R 36 Bom 77

2 ——— Appeal to High Court—*Jurisdiction—Record of rights—Standard of Measurement—Code of Civil Procedure (Act XIV of 1882) s 581—Bengal Tenancy Act (VIII of 1885) s 109 A sub s (3)* The right of appeal to the High Court given by s 109A sub s (3) of the Bengal Tenancy Act 1885 is subject to s 581 of the Code of Civil Procedure 1882 and can only be exercised upon the grounds therein mentioned. The High Court has therefore no jurisdiction under the sub section to set aside the decree of a District Judge upon the ground that he had applied the wrong standard of measurement to land of which the rent was in question. NAFAR CHANDRA PAL v SHUKUR (1918)
L R 45 I A 183

3. ——— Appeal—Security Bond to Decree Holder—*Duration of Liability—Obligee not named in Bond—Enforcement—Civil Procedure Code (XIV of 1882) s 546—Civil Procedure Code (V of 1908) ss 47 144* An appeal to the Court of the Judicial Commissioner having been preferred against a decree of the Subordinate Judge for possession the Judge ordered under s 545 of the Code of Civil Procedure 1882 that the successful plaintiff should be let into possession in execution of the decree upon furnishing security so that any order made by the said Appellate Court might be made binding upon the security for the sum secured The present appellants entered into a bond reciting the order and hypothecating property to secure the sum provided no obligee was named in the bond The Appellate Court in the first instance affirmed the decree but as the result of a successful appeal to the Privy Council, they subsequently dismissed the suit save as to certain villages and directed the Subordinate Judge to ascertain the mesne profits due to the defendants Upon an application made to the Subordinate Judge in 1909 the appellants being made parties he made a decree finding the amount of the mesne profits and declaring the liability of the appellants upon the bond to the amount secured *Held* that the liability upon the bond (which was not a personal liability) did not terminate upon the first order of the Appellate [illegible] it extended to the final determi[illegible] the Subordinate Judge had [illegible] clare the appellants liability upon [illegible] RAGHUBAR SINGH v JAI INDRA BAHADUR [illegible] (1919)
L R 46 I A 228

4. ——— Failure to comply with order for security for costs—*Application for leave to appeal in forma pauperis—Civil Procedure Code (Act V of 1908) O XLI r 10* The Code of Civil Procedure 1908 and the rules therein contained apply to proceedings in the High Court at Calcutta under the Letters Patent save so far as the Code expressly provides to the contrary The appellant appealed to the High Court at Calcutta under s 15 of the Letters Patent of 1865 against the rejection by the Court in its original civil jurisdiction of a petition under the Probate and Administration Act (V of 1881) She failed to comply with an order that she should give security for costs within two months and subsequently applied for leave to continue the appeal *in forma pauperis* The High Court acting under O XLI r 10 of the Code of Civil Procedure 1908 dismissed the application and the appeal That rule provides that upon a failure to comply with an order for security of costs the Court shall dismiss the appeal —*Held* that O XLI r 10 applied to the appeal and that under that rule the High Court was bound to dismiss the application and the appeal for even if the inherent power declared by s 151 to make such orders as may be necessary for the ends of justice could be exercised in the face of the imperative words of the rule the circumstances did not admit of an exercise of that inherent power Decision of the High Court affirmed. SABITRI THAKURAIN v SAVI (1921)
L R 48 I A 76
I L R 48 Calc. 481

5 ——— Appeal to Privy Council—Certificate of High Court—*Code of Civil Procedure (V of 1908) sec 109 (c) O XLV r 3—Madras Estates Land Act (Madras Act of 1908) sec 5 sub sec (3)—Pattah decreed under earlier Act—Res judicata—Special leave to appeal refused* A certificate granted by a High Court upon a petition under O XLV r 3 Code of Civil

PROCEDURE—*contd*

Procedure for leave to appeal to the Privy Council should show clearly whether it is intended to certify merely that the case falls within s 110 of the Code or that it falls within s 109 (c) and s 110 as a case otherwise fit for appeal Upon a petition under O XLV r 3 for leave to appeal from a decree of the High Court in a suit for the recovery of Rs 4 C0 rent the High Court certified that as regards the subject matter and the nature of the questions involved the case fulfils the requirements of ss 109 and 110 of the Code of Civil Procedure and that the case is a fit one for appeal to His Majesty in Council *Held* that the appeal could not be maintained, since the value of the subject matter was under Rs 10 000 and there was nothing in the certificate to show that the discretion conferred on the High Court by section109 (c) was invoked or exercised *Held* further that a contention that the provision in s 52 sub s 3 of the Madras Estates Land Act 1908 for the remaining in force of decreed puttahs and muchalkas referred only to puttahs and muchalkas decreed under that Act was not of sufficient weight to justify their Lordships in granting special leave to appeal PADHAKRISHNA AYYAR v SWAMINATHA AYYAR (1921) L R 48 I A 31 I L R 44 Mad 293

6 ———— Amendment of Plaint—*New Case —Civil Procedure Code (V of 1908) s 153 O VI r 17—Limitation—Breach of Contract—Contract to sell three out of twelve sites to be granted—Time for performance—Limitation Act (IX of 1908) Sch I Art 115* The appellant contracted in 1903 to sell to the respondent three out of twelve sites for oil wells which she expected to be allotted to her by Government for that year In 1904 four sites were allotted for 1903 but the appellant did not obtain the whole twelve till 1912 The respondent in 1904 or 1905 after the four sites were allotted asked the appellant to transfer three to him but she refused no sites were transferred to him In 1913 the appellant sued the respondent for specific performance of a verbal agreement which he alleged that the appellant had made in 1912 in reference to the 1903 contract to transfer to him three sites allotted in 1912 but not being among those allotted for 1903 Both Courts found against the alleged verbal agreement but the Appellate Court allowed the respondent to amend his plaint by claiming damages for the failure to deliver sites under the agreement of 1903 *Held* that it was not open to the Cour under the Code of Civil Procedure s 153 and O VI r 17 to allow the amendment as it altered the real matter in controversy between the parties *Held* further that the claim as amended was barred by limitation since the appellant became liable to perform the contract of 1903 as soon as three sites had been allotted to her for 1903 and there was a refusal by her to transfer in 1904 or 1905 Judgment of the Court of the Judicial Commissioner reversed MA SHWE MYA v MAUNG MO HNAUNG (1921) L R 48 I A 214 I L R 48 Calc 832

PROCEEDINGS

———— pendency of—

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XXI R 63 I L R 38 Mad. 535

PROCESS OF COURT

———— abuse of—

See INSOLVENCY I L R 44 Calc. 599

PROCESSION

See HIGHWAY I L R 35 Mad 28

See PUBLIC ROAD, RIGHT TO USE I L R 34 Bom 571

See SPECIFIC RELIEF ACT (I OF 1877) s 42 I L R 42 Bom 438

———— Right to be carried in cross palanquin procession—

See CIVIL PROCEDURE CODE 1908 s 9 I L R 45 Bom. 591

———— Commissioner of Police —*Orders prohibiting a public procession and a particular individual from joining it—Legality of such orders—Public notice of order necessity of—Power of Indian Legislature to make police regulations regarding public processions—Calcutta Police Act (Beng IV of 1866) ss 62A (4) 102A—Calcutta Suburban Police Act (Beng II of 1866) ss 39A (4) 49A—Calcutta and Suburban Police (Amendment) Act (Beng III of 1910) ss 16 and 31* Sub s (4) of s 62A of the Calcutta Police Act and of s 39A of the Suburban Police Act must be strictly construed It empowers the Commissioner of Police when he considers it necessary to do so for the preservation of the public peace or public safety to prohibit a procession or public assembly but not a particular individual from taking part in the same The sub section does not require any public notice of an order passed thereunder to be given within the meaning of ss 102A of the Calcutta and 49A of the Suburban Police Acts *Semble* Indian Legislature is competent to make police regulations of the kind in the interests of public peace and safety LEAKAT HOSSAIN v EMPEROR (1913) I L R 40 Calc 470

PROCLAMATION

See MORTGAGE I L R 37 Calc 897

See SALE FOR ARREARS OF RENT I L R 44 Calc 715

———— dated 5th August 1914—

See BILL OF EXCHANGE I L R 41 Bom. 566

PROCLAMATION OF SALE

See CIVIL PROCEDURE CODE 1882 ss 287 293 I L R 36 Bom. 329

See HIGH COURT (RULES AND ORDERS) I L R 37 Bom. 631

See SALE IN EXECUTION OF DECREE I L R 39 Calc 26

———— irregularities in—

See APPEAL TO PRIVY COUNCIL I L R 40 Calc 635

See CIVIL PROCEDURE CODE O XXI R 54 I L R 44 Mad 293

PRODUCE RENT

See APPRAISEMENT I L R 48 Calc 1086

PROFESSION

See PROSTITUTION I L R 37 Mad. 585

PROFESSIONAL CONDUCT OF COUNSEL.

See BAR COUNCIL, RESOLUTIONS OF
I. L. R. 40 Calc. 898

PROFESSIONAL ETIQUETTE

See COUNSEL I. L. R. 47 Calc. 828

See COUNSEL PROFESSIONAL CONDUCT OF
I. L. R. 40 Calc. 898

See PLEADER I. L. R. 47 Calc. 1115

PROFESSIONAL MISCONDUCT

See LEGAL PRACTITIONER
I. L. R. 42 All. 125

See LETTERS PATENT (ALL) s 8
I. L. R. 42 All. 450

See PLEADER I. L. R. 47 Calc 1115

See UNPROFESSIONAL CONDUCT

——— *Attorney disciplinary jurisdiction over—Striking off the rolls—Letters Patent 1865 cl 10—Right of aggrieved person—Practice—Verification* Disciplinary action against an attorney rests on the principle that the Court deems him an unfit person to act as an attorney and is not by way of punishment Any person aggrieved by the misconduct of an attorney has the right to invoke the disciplinary jurisdiction of the Court *In re A Solicitor L R 25 Q B D 17* followed On an application by an aggrieved party to have an attorney struck off the rolls of attorneys on the ground of professional misconduct *Held* that where there was a positive sworn denial of the misconduct by the attorney coupled with an explanation which was not demonstrably false even a strong case of suspicion would not justify disciplinary action against the attorney on a summary proceeding The procedure to be adopted in invoking the disciplinary jurisdiction of the Court against an attorney enunciated. *In the Matter of* AN ATTORNEY (1913)
I. L. R. 41 Calc. 113

——— *Legal Practitioners Act (XVIII of 1879 as amended by Act XI of 1896) ss 13 14—Scope of s 14—Contempt of Court—Court meaning of* S 14 of the Legal Practitioners Act is not limited in its application to cases covered by cl. (a) and (b) only but covers cases of misconduct under all the clauses of s 13 Misconduct in the presence of the Court which shows disrespect of its authority and which obstructs and has a tendency to interfere with the due administration of justice is contempt The principle is not limited to misconduct in the actual presence of the Judge the Court is deemed to be present in every part of the place set apart for its use and for the use of its officers jurors and witnesses and therefore misbehaviour in such places is misconduct in the presence of the Court *In the matter of Purna Chunder Pal I L R 27 Calc 1023 In the matter of Southekal Krishna Rao I L R 15 Calc 15 Le Mesurier v Wajid Hossain I L R 29 Calc 890 In the matter of Muhammad Abdul Hai I L R 29 All 61 In the matter of the Second grade Pleaders I L R 34 Mad 29 In the matter of Gholab Khan 7 B L R 1 9 In the matter of Bajrangi Sahai 15 C W N 969 In the matter of Kali Prasanna Chowdhury 11 C L J 161 In the matter of Radha Charan Chakravarti 4 C L J 2 9 In the matter of an Advocat a Vakil a Pleader and a Mukhtear 4 C L J 76 The District Judge of Kistna v Hanumanulu (1915) Mad W P 1060 In the matter of Ganapathi Sastri 19 Mad L J 594 French v French 1 Hogan 138 Rex v Carroll 1 Wilson 75 Roach v Hall 2 Atk 469 Ex parte Burrows 8 Ves 535 Ex parte Jones 13 Ves 23 In re Johnson 20 Q B D 68 Ex parte Wilson 1 Dowling N S 805 Kirby v Webb 3 T L R 763 Charlton s Case 3 My & Cr 16 Helmore v Smith 35 Ch 449* referred to PASIK LAL NAG *In the matter of* (1916) I. L. R. 44 Calc. 639

——— *Letters Patent cl 10—Vakil—Improper advice to client—Obtaining from client a nominal sale-deed for a low value—His appropriation of client s property—Setting up false defence of ownership in a suit against him by the client for its recovery—Giving false evidence and suborning perjury* A vakil was found guilty of (a) improperly suggesting to a client seeking his advice as to how to recover his properties from his adversary the execution in his (vakil s) own favour of a nominal sale deed thereof for a low value (b) setting up after the execution of such a sale-deed a title in himself contrary to the terms of the agreement with the client (c) setting up a false defence of his ownership in a suit against him by the client for a cancellation of the sale deed (d) supporting the false defence by his own false evidence and (e) suborning perjured evidence in support of the same Their Lordships held that the vakil was guilty of misconduct and suspended him under cl 10 of the Letters Patent from practice for a period of two years *In the matter of a* VAKIL OF THE HIGH COURT (1916)
I. L. R. 40 Mad 69

PROFITS

See OFFERINGS TO DEITY
I. L. R 38 Calc 387

——— derived from joint family property—

See HINDU LAW—JOINT FAMILY
14 C W N 221

——— suit for—

See ADVERSE POSSESSION
I. L. R 32 All. 389

See AGRA TENANCY ACT (II OF 1901)
ss 165 201 I. L. R 34 All. 250

——— suit for against lambardar—

See AGRA TENANCY ACT (II OF 1901)
ss 164 166 I. L. R 40 All. 248

PROFITS A PRENDRE.

——— *Profits a prendre in gross acquisition of by fluctuating body* A right on the part of the members of a tribe such as the Sonthals or a class such as the Chatwals inhabiting the villages on and adjacent to the Parasnath Hill to hunt in a certain jungle for one day in the year cannot be acquired by 20 years enjoyment under s 26 of the Limitation Act 1908 Neither such a tribe nor such a class is a person within the meaning of the General Clauses Act 1897 Village communities in India bear the strongest resemblance to corporations and they may be regarded as corporate bodies capable of administering a trust in favour of particular classes residing within their jurisdictions The law of India does not preclude the inference of legal origin in respect of such a right by grant in trust for the benefit of such a fluctuating body In India there

PROFITS A PRENDRE—*contd*

is nothing to prevent the acquisition by custom, by such a fluctuating body of a *profit a prendre* in gross so long as it can be shown that the exercise of the right is not unreasonable Where the *zamindar* of Palganj bound himself and his heirs by an *ekrarnama* to convey free of costs to the Sitambari Jain Community land for the purpose of constructing temples and guest houses and further agreed that in the event of the executant and his heirs failing to convey such land the Sitambari Jains should be entitled to take such land *held* that this *ekrarnama* did not prevent the *zamindar* from permitting other persons to hunt in the jungles until the Sitambari Jains should select a plot for their buildings *Held further* that the court ought not to give a party possessing such a remote interest a declaration affecting an entry in the Record of Rights A person who sues under s 42 of the Specific Relief Act 1877 for a declaration that an easement recorded in a Record-of Rights under s 81 of the Chota Nagpur Tenancy Act 1908 is incorrect must shew that he has some legal title or interest in the land over which the easement exists *Query* whether the manager of an unincorporated society is competent to sue on behalf of the society on an *ekrarnama* executed in favour of a previous manager of the society MAHARAJ BAHADUR SINGH *v* GANDAURI SINGH 2 Pat L J 323

PRO FORMA DEFENDANT

See MORTGAGE I L R 38 Calc 342

PROGRESSIVE RENT

———— reservation of—

See LAND TENURE IN BENGAL.
L R 46 I A 279

PROHIBITORY ORDER

———— *Excavation of a tank—Injury to adjoining house—Likelihood of a breach of the peace—Order passed on personal apprehension of the Magistrate without evidence taken or urgency recorded—Criminal Procedure Code (Act V of 1898) s 144* The petitioner excavated a tank on his own land adjoining the house of the opposite party and the latter objected to the excavation on the ground that his house would be thereby rendered unsafe No likelihood of a breach of the peace appeared from the police report or the written statements of the parties but the Magistrate made the order under s 144 of the Criminal Procedure Code without inquiry or recording any urgency *Held* that the order was illegal and that s 144 was not applicable without inquiry or recording any urgency KAMINI MOHAN DAS GUPTA *v* HARENDRA KUMAR SARKAR (1911)
I L R 38 Calc. 876

———— *Jurisdiction—Execution of decree—Civil Procedure Code (Act V of 1908) O XXI r 46—Competency of Court to issue prohibitory order outside its jurisdiction restraining a person from paying a debt due to the judgment debtor* It is not competent to a Court in execution of a decree for money to attach at the instance of the decree holder a debt payable to the judgment debtor outside the jurisdiction by a person not resident within the jurisdiction of that Court BEGG DUNLOP & Co *v* JAGANNATH MARWARI (1911) I L R 39 Calc. 104

PROJECTION

See BOMBAY DISTRICT MUNICIPALITIES ACT (BOM III OF 1901) ss 70 113 122 I L R 42 Bom 454

See FIXTURE I L R 48 Calc 602

PROMISE

———— breach of—

See CONTRACT I L R 42 Bom. 499

PROMISOR

———— heirs of—

See PRE EMPTION I L R 38 Mad 114

PROMISSORY NOTE

See CAUSE OF ACTION
I L R 42 All. 193

See DEKKHAN AGRICULTURISTS RELIEF ACT (XVII OF 1879) ss 13 15D 16
I L R 39 Bom 73

See EVIDENCE I L R 33 All 571

See EVIDENCE ACT (I OF 1872) s 91
I L R 34 All. 158

See HINDU LAW—MINOR
I L R 34 Bom. 72

See KUMAON RULES (1894) R 17
I L R 42 All. 642

See LIMITATION ACT 1908 ARTS 73 AND 80 I L R 42 All. 55

See NEGOTIABLE INSTRUMENT ACT 1885 ss 4 and 80 5 Pat. L J 536

See PARTNERSHIP
I L R 40 Mad 727

See PRACTICE—CAUSE OF ACTION
L R 41 I A 142

See VARTHAMANAM
I L R 38 Mad. 660

———— acknowledgment contained in—

See LIMITATION ACT (IX OF 1908) SCH I ARTS 116 AND 66 s 19
I L R 38 Bom 177

————Contemporaneous oral arrangement

See EVIDENCE ACT (I OF 1872) s 92 PROV 3 I L R 45 Bom 1155

———— executed by father before partition—

See HINDU LAW—DEBT
I L R 41 Mad. 136

———— payable on demand—

Se LIMITATION ACT (IX OF 1908) SCH I ART 80 I L R 39 Mad. 129

See PRINCIPAL AND SURETY
I L R 44 Calc 978

———— payable to a person or order or bearer illegality of—

See PAPER CURRENCY ACT s. 26
I L R 40 Mad. 585

———— suit on—

See ALIENS ENEMY
I L R 46 Calc. 526

See EVIDENCE ACT (I OF 1872) s. 92 AND PROV R. 39 Bom. 399

See

2 W N 223
2 T

PROMISSORY NOTE—*contd*

1 ———— **Construction**—*Acknowledgment—Deed construction of—Unconditional undertaking and the document styled as promissory note* It is no doubt true that the question whether an instrument is a promissory note or not should be judged by the words used and the instrument must contain in words an unconditional undertaking to pay a sum of money and it is not enough that the substantial effect of the instrument should be to make the executant liable to pay a sum of money *Held* that the following document wherein the executant not only made an unconditional undertaking to pay but also styled it a promissory note was a promissory note and not a mere recital of a liability, and as such was not admissible in evidence for want of a proper stamp

Promissory note executed on in favour of by In the matter of the purchase of piece goods by me from your shop on this date, the sum found due by me as per *patty* (list) is Rs 600 which sum I promise to you or to your order on demand with interest at 1¼ per cent To this effect *Tirupathi Goundan* v *Rama Reddi I L R 21 Mad 49 Govind* v *Balvant Rao I L R 22 Bom 986 Horne* v *Redfearn, 4 Bing N C 433* and *White* v *North 3 Exch 689* distinguished *Morris* v *Lee 92 F R 409* referred to KARUTHAPPA ROWTHAN *v* BAVA MOIDEEN SAHIB (1913)

I L R 36 Mad. 370

2 ———— **Joint execution**—*Consideration—Surety* The consideration paid to any one of several joint promisors is legally sufficient to support the promise of all the joint promisors *Narasimha* v *Ramaswami 24 Mad L J 91* applied, *Sesha Aiyar* v *Mangal Doss Jee 20 Mad L J 144* distinguished *Per* CURIAM S 92 of the Indian Evidence Act precludes an executant from setting up a contemporaneous oral agreement that he should not be made liable on the promissory note *Per* SPENCER J —S 127 of the Indian Contract Act shows that the value received by the principal debtor is a sufficient consideration to bind the surety and s 128 makes his liability co extensive SORNALINGA MUDALI *v* PACHAI NAICKAN (1913)

I L R 38 Mad. 680

3 ———— **Suit by Assignee** *of promissory note against executants—Payment of consideration by assigne irrelevant Held* that in a suit by the assignee of a promissory note against the executants the latter are not concerned with the question whether the assignment was for consideration or not All that they are entitled to have ascertained is that the plaintiff is the legal holder of the note and able to give them a good discharge BALDEO SAHAI *v* BEHARI LAL (1914)

I L R 37 All 99

4 ———— **By guardian** *of minor not signing as such whether binding on minor s estate—Negotiable Instruments Act (XXVI of 1881) ss 28 and 30 scope of* A negotiable instrument executed by the guardian of a Hindu minor for purposes binding on the minor is enforceable against the minor's estate though the instrument was not signed by the executant in his capacity as guardian The minor is not personally liable on the instrument The case is governed by the principles of Hindu Law and ss 28 and 30 of the Negotiable Instruments Act (XXVI of 1881) are not applicable. *Subramania Aiyar* v *Arumuga Chetty I L R 26 Mad 330* followed KRISHNA CHETTIAR *v* NAGAMANI AMMAL (1915)

I L R 39 Mad. 915

5 ———— **Surety**—*Promissory Note payable on demand—Liability of surety—Guaranteeing such note when arises Held* that the liability of the surety rose immediately on the execution of the guarantee and limitation ran from that date SREENATH ROY *v* PEARY MOHAN MUKHERJI (1896)

21 C W N 419

6 ———— **Executed in Hyderabad State** *but stamped with British India Stamp—Hyderabad State Stamp Act s 35—Suit on the promissory note in British Indian Court—Maintainability of suit in British India—Lex Fori—Lex Loci Contractus* A promissory note was executed in Hyderabad State It was stamped with a British India Stamp A suit having been brought on the promissory note in a Court in British India it was contended that the promissory note not having been stamped with the stamp required by the laws of the Hyderabad State no suit will lie upon it in the British Indian Court *Held* that though the promissory note be inadmissible in evidence under Hyderabad State Stamp Act that law did not declare the agreement as void and the agreement could therefore be sued upon and enforced in a Court in British India. *Bristow* v *Sequeville 5 Exch 275* relied on If the law of the foreign country in which the document was executed provides no more than that the agreement shall not be received in evidence because it is not stamped then the agreement may be used upon and enforced in a Court in British India but if the law of the foreign country provides that by reason of the want of stamp the agreement itself which is contained in the unstamped document shall be void then the plaintiff cannot succeed in a Court of British India DHONDIRAM CHATRABHUJ *v* SADASUK SAVATRAM (1918)

I L R. 42 Bom 522

7 ———— **In favour of the managing trustee of a charity**—*The trustee succeeded by another—Latter s right to sue on the note without any assignment or endorsement* A promissory note executed in favour of a trustee can be sued on by his successor without endorsement or assignment the Negotiable Instruments Act not affecting devolution of rights by operation of law *Cathcartwood* v *Chabaud 1 B & C 150* applied and followed *Sowcar Lodd Govinda Doss* v *Muniswamy Naidu I L R 31 Mad 634* referred to PANANADHAN CHETTY *v* KATHA VELAN (1917)

I L R 41 Mad 353

8 ———— **When overdue**—*Negotiable Instruments Act (XX of 1882) s 118* Where a promissory note payable on demand is negotiated it is not deemed to be overdue for the purpose of affecting the holder with defects of title of which he had no notice by reason that it appears that reasonable time for presenting it for payment has elapsed since its issue The analogy of the rules applicable to questions of limitation is not to be followed in such cases *Norton* v *Ellam 2 M & W 461 Rose* v *Young 2 B & B 165 Maltby* v *Murrells 5 H & N 813 Brooks* v *Mitchell 9 M & W 15 Barough* v *White 4 B & C 325 Glasscock* v *Balls 24 Q B D 13* referred to *Prayendra Kishore* v *Hindusthan Co-operative Insurance Society I L R 44 Calc 978* distin

PROMISSORY NOTE—contd

guished D N SHAHA & Co v THE BENGAL NATIONAL BANK LTD (1920)
I L R 47 Calc 861

PROMPT DOWER

See MAHOMEDAN LAW—DOWER
I L R 35 Bom 386

PROOF

See CUSTOM I L R 45 Calc 450 835
See CUSTOM OR USAGE.
I L R 45 Calc 285
See MAHOMEDAN LAW—LEGITIMACY
I L R 48 Calc 856

———— standard of—

See LIMITATION I L R 40 Calc 898
See PROBATE I L R 39 Calc 245

1 ———— *Per* WOODROFFE J —A Court cannot assume that a document was proved from the refusal of opposing counsel to cross examine on it The latter is entitled to wait until the Court ruled whether the document was proved or not *In the goods of* GOPESSUR DUTT (1911) I L R 39 Calc 245
16 C W N 265

2 ———— *Title evidence of direct proof when not available—Conduct and admissions of defendant as proof of title—Mulki papers evidentiary value of—Registers kept under Reg VIII of 1800 entries in—Statements against proprietary interest—Statements in read-cess returns as to character of interest—Burden of proof when shifted—Effect of erroneous statement as to nature of tenure by unauthorised person—Purchase at execution sale held under s 124 (Beng Act I of 1879) limited to interests actually sold* When owing to lapse of time and other causes direct evidence of title e g a *sanad* or grant is not available it is enough for the plaintiff to establish a *primâ facie* case if the evidence on which it is based is corroborated by the conduct and admissions of the defendant or his predecessors in interest or unrebutted by any positive evidence which can be relied on KALI SANKAR SAHAI v PRATAP UDAI NATH SAHI DO (1911)
16 C W N 683

3 ———— *Penal Code (Act XLV of 1860) s 147 s 304 read with s 149—Prosecution evidence mostly disbelieved—Hypothetical case made by the Court—Propriety of conviction* Where the Sessions Judge discarded almost in their entirety the accounts of the occurrence given by the witnesses for the prosecution and substituted a narrative of his own founded for the most part on surmise and conjecture and the story of the origin of the occurrence and the course of events as reconstructed by the Sessions Judge were wholly inconsistent with the story told by the witnesses and the appellants were convicted under s 147 and s 304 read with s 149 Penal Code *Held* that the conviction should be set aside. KALU KHALASHI v THE KING EMPEROR (1912) 17 C W N 538

4 ———— *Suspicion and proof difference between* Where a decree holder sued for a declaration against a purchaser for the judgment debtor that the purchase was a *benami* *Held* that the burden of proof lay on the decree holder and though there were elements of suspicion the burden had not been discharged

PROOF—contd

It is essential to take care that the decision of the Court does not vest on suspicion but legal testimony SETH MANIKLAL MANSUKHBHAI v RAJA BIJOY SINGH DUDHORIA 25 C W N 409

PROOF IN COMMON FORM

See PROBATE I L R 42 Calc 480

PROOF OF DOCUMENT

See EVIDENCE ACT 1872 s 68
1 Pat. L J 369

PROOF OF TITLE

See EJECTMENT SUIT
I L R 42 Bom 357

PROPAGATION OF DISEASE

See NUISANCE I L R 38 Calc 296

PROPER COURT

See LIMITATION ACT (IX OF 1908) ART 182 EXPL II I L R 45 Bom 453

PROPERTY

See ANCESTRAL PROPERTY
I L R 39 Mad 930
See CRIMINAL PROCEDURE CODE (ACT V OF 1908) s 520
I L R 42 Bom. 664

———— disposal of—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 517
I L R 40 Bom 186

———— transfer of, to another jurisdiction—

See CIVIL PROCEDURE CODE (ACT V OF 1908) ss 37 38 150
I L R 37 Mad. 462

———— vesting of—

See EVIDENCE ACT (I OF 1872) s 92 PROVS 1 AND 3
I L R 38 Mad. 226

PROPERTY TITLE

———— question of—

See AGRA TENANCY ACT (II OF 1901), s 177 (e) I L R 36 All. 183

PROPRIETARY TITLE.

See AGRA TENANCY ACT (II OF 1901)—
ss 58 200 I L R 35 All. 157
s 199 I L R 37 All. 94
See UNITED PROVINCES LAND REVENUE ACT (III OF 1901) s. 111 (1) (b)
I L R 41 All. 211

———— question of—

See AGRA TENANCY ACT (II OF 1901) s 58 1‥ (e)
I L R 38 All. 465

PROPRIETOR

See ... R.
See L ...PRIETOR.

PROSECUTION

See COLLECTOR I. L. R. 40 Calc 465
See CRIMINAL PROCEDURE CODE s 476 15 C W N 691
See EVIDENCE I. L. R. 42 Calc 784
See FIXTURE I. L. R 48 Calc 602
See JUDGES PROSECUTION BY I L R 45 Calc 169
See RECEIVER I L. R 46 Calc 432

——— duty of—

See CHARGE I. L. R 42 Calc 957
See EVIDENCE ACT 1872 s 33 I. L. R 39 Mad. 449

——— duty of, to call all witnesses—

See PENAL CODE s 114 19 C W N 28

——— for instituting a false case—

See JURISDICTION OF CRIMINAL COURT I. L R 37 Calc 250

——— onus on—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 256 I L. R 39 Mad. 503

——— order for—

See JURISDICTION OF CRIMINAL COURT I L. R 40 Calc 360

——— what amounts to—

See MALICIOUS PROSECUTION I L R 37 Mad 181

——— withdrawing from—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898)—
ss 248 258 345 I L R 37 Bom 376
s 494 25 C W N 615
See WITNESS I L. R. 46 Calc 700
See WITHDRAWAL OF PROSECUTION I L R 48 Calc 1105

——— *Prosecution—Calcutta Municipal Act (Beng III of 1899) ss 559 (18) 561 (b) 631—Non compliance with notice to remove encroachment on public street—Institution of prosecution more than three months after expiry of notice—Limitation—Continuing offence—Bye laws validity of—Ultra vires* A prosecution for failure to comply with a notice by the Chairman to remove an obstruction on a public street instituted more than three months after the expiry of the date fixed therein is barred under s 631 of the Calcutta Municipal Act A bye law must conform to the provisions of the law under which it purports to be made Rule (1) of the bye laws framed under s 559 (18) of the Act is *ultra vires* in so far as it creates a continuing breach after notice in violation of the terms of s 561 (b) NARAIN CHANDRA CHATTERJEE *v* CORPORATION OF CALCUTTA (1909) I L. R 37 Calc 545

——— *To prove charge truth or falsehood of defence immaterial* If the case for the prosecution is false on the whole the accused is entitled to an acquittal whether his defence be true or not GOURI NARAYAN BARRULA *v* TILBAHAM CHETRI 25 C W N 838

PROSECUTION WITNESSES

——— cross-examination of.

See CROSS EXAMINATION I. L. R. 37 Calc. 236
See CHARGE CANCELLATION OF I L. R 39 Calc 885

——— right of accused to recall and cross examine—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 256 I. L. R. 39 Mad. 503

PROSECUTOR

See CONTEMPT OF COURT I. L. R. 41 Calc. 173

PROSPECTIVE LEGISLATION

See ASSESSMENT I. L. R 43 Calc. 973

PROSTITUTE'S PROPERTY

See HINDU LAW—STRIDHAN I. L. R 40 Calc. 650
See HINDU LAW—SUCCESSION I. L. R 38 Calc 493

PROSTITUTION

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 488 (1) I L. R 37 Mad. 565
See HINDU LAW—INHERITANCE I. L. R 38 Mad. 1144

PROTECTION

——— doctrine of—

See OCCUPANCY HOLDING I L. R 42 Calc 745

PROTECTION OF JUDICIAL OFFICERS

See TRESPASS I L. R 39 Calc 953

PROTECTION ORDER

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909) ss 6 8 25 38 39 (2) (a) (b) (c) (d) (f) (j) I. L. R 40 Bom 461

——— *Presidency Towns Insolvency Act (III of 1909) s 25—Previous decisions on applications for interim orders—Discretion—Practice* It has never been the practice of Commissioners in Insolvency under the Indian Insolvency Act (11 and 12 Vict c 21) to consider themselves bound by their previous decisions on applications for *interim* orders when it has been a matter for their discretion and it by no means follows that because an application has been refused on the first occasion it must also be refused on the second occasion S 25 of the Presidency Towns Insolvency Act (III of 1909) clearly intends that while an insolvent deligently performs the duties prescribed by the Act he should not be harassed by execution creditors and should not be rendered liable to pressure whereby one creditor may get undue advantage over another The section does not deprive the Court of its discretion in granting or refusing protection but sub s (4) indicates clearly the lines along which that discretion should be exercised when a creditor opposes the grant If an insolvent can produce the certificate referred to the onus is thrown on the opposing creditor of showing cause why the

PROTECTION ORDER—*contd*

protection order should not be granted *In the matter of* MEGHRAJ GANGABUX (1910)
I. L. R. 35 Bom. 47

PROTHONOTARY

See HIGH COURT RULES BOMBAY RR. 81 321 I L. R. 36 Bom. 418

PROTRACTION OF LITIGATION

See GRANT I. L. R 44 Calc 585

PROVIDENT FUND ACT (IX OF 1897 AS AMENDED BY ACT IV OF 1903)

See EXECUTION OF DECREE
I L. R 46 Calc 962

See PROVINCIAL INSOLVENCY ACT (III OF 1907) s 43 I. L. R 44 Bom. 673

PROVIDENT INSURANCE

——— *Company with share capital carrying on business of a provident insurance society—Liability to registration as such before receiving premiums—Provident Insurance Societies Act (V of 1912) ss 2 (8) 6 7 21* A company having a share capital divided into shares must if it intends to carry on the business of a provident insurance society be registered under the Provident Insurance Societies Act (V of 1912) before it receives any premium or contribution *Oriental Government Security Life Assurance Co v Oriental Assurance Co I L R 40 Calc 570* explained DEPUTY LEGAL REMEMBRANCER *v* SITAL CHANDRA PAL (1914)
I L. R 42 Calc 300

PROVIDENT INSURANCE SOCIETIES ACT (V OF 1912)

——— ss. 2 (8) 6 7 21—

See PROVIDENT INSURANCE
I L R 42 Calc. 300

——— ss. 5 6—

See TRADE NAME I L. R 40 Calc 570

PROVIDENT INSURANCE SOCIETY

See TRADE NAME I L. R 40 Calc 570

PROVINCIAL INSOLVENCY ACT (III OF 1907)

See LIMITATION ACT (IX OF 1908) s 20 (1) (b) I L. R 41 Mad. 169

——— No bar to a suit to establish rights to property attached by Insolvency Court as belonging to the insolvent—

See INSOLVENCY I. L. R. 2 Lah. 147

——— *One petition in Insolvency against several joint debtors if proper—Application against partners of a firm—Amendment* A declaration of insolvency cannot be asked for in one petition against several joint debtors There is no provision in the Provincial Insolvency Act for proceeding against two or more persons being partners in the name of the firm KALI CHARAN SAHA *v* HARI MOHAN BASAK
24 C W N 461

——— ss 2 (c) and (g), 22, 46 and 52—*Dismissal of insolvency petition by Official Receiver—Application to District Court to revise under s 22 whether an appeal—Official Receiver whether a Court—Appeal to High Court from order of*

PROVINCIAL INSOLVENCY ACT (III OF 1907)—*contd*

——— ss 2 (c) and (g), 22 46 and 52—*contd*

District Court maintainability of A District Judge transferred a petition of a debtor to be adjudged an insolvent to the Official Receiver The petition was dismissed by the Receiver on the grounds that the debtor had no realizable assets that he might be concealing his assets ready cash and outstandings that he was not likely eventually to get his discharge and that therefore the petition was an abuse of process of Court On an application by the debtor under s 22 of the Provincial Insolvency Act (III of 1907) the District court confirmed the order *Held* that an appeal lay to the High Court under s 46 of the Act from the order of the High Court *Held* further that the Official Receiver is not a Court subordinate to the District Court within s 46 (1) of the Act and that an application to the District Court under s 22 of the Act to revise the order of the Official Receiver is not an appeal within s 46 *Held* also that the order of dismissal was based on a misconception of the Insolvency Procedure and should be set aside *Jeer Chetti v Rangaswami Chetti 29 Mad L J 52* followed ALLA *v* KUPPAI (1916)
I L R 40 Mad. 752

——— ss 2 (1) (g) 18 20 (o) 40 (1), 44 47—

See RECEIVER I L. R 40 Calc 678

——— ss 3 16 18 36 and 37—*Order of adjudication—Appointment of Receiver by District Court—Sale in execution of money decree held by District Munsif's Court subsequent to appointment of Receiver—Application by Receiver to the District Court for cancellation of sale and for delivery of possession—Application whether competent—Jurisdiction of District Court* Where after the appointment of a Receiver for the estate of an insolvent had been made by a District Court some of the properties of the insolvent were sold in auction by a District Munsif's Court in execution of a decree for money passed by the latter Court prior to the order of adjudication *Held* it was competent to the Receiver to make an application to the District Court for annulment of the sale and for delivery of possession of the properties from the purchaser under s 18 cl (3) of the Provincial Insolvency Act (III of 1907) OFFICIAL RECEIVER TINNEVELLY *v* SANKARALINGA MUDALIAR (1921)
I L. R 44 Mad 524

——— ss. 3, 43 (2)—*Subordinate Judge invested with jurisdiction under s 3 declines to take action under s 43 (2) against insolvent—Whether appeal lies to District Judge against the order under s 46—Creditor if an aggrieved person* The appellant was adjudicated an insolvent by a Subordinate Judge invested with jurisdiction under the proviso to s 3 of the Provincial Insolvency Act and thereafter certain creditors of the insolvent made applications before the Subordinate Judge to the effect that the insolvent had concealed certain properties and prayed that he should be punished under s 43 (2) The Subordinate Judge after hearing the creditors and the insolvent rejected the applications whereupon some of the creditors applied to the District Judge who, after examining witnesses on both sides sentenced the insolvent to three months simple imprisonment *Held*,

PROVINCIAL INSOLVENCY ACT (III OF 1907) —contd

———— ss 3, 43 (2)—contd

per Teunon J The orders made by the Subordinate Judge while he has seisin of the case could be interfered with by the District Court only under the provisions of s 46 which in the matters therein dealt with subordinates all other Courts to the District Court or under the powers conferred by the Code of Civil Procedure in regard to Civil suits as provided in s 47 That no appeal lay against the order of the Subordinate Judge declining to take action against the insolvent under s 43 (2) Per Newbould J The word Court in s 43 of the Act does not mean the Court of original jurisdiction only and the District Judge's order in this case was an original and not an appellate order Digendra Chandra Basak v Ramani Mohan Goswami (1916)

22 C W N 958

———— s 4—*Decision of question of title how far discretionary with Court—Sub sec (5) Court if bound to take evidence or give reasons for refusing to decide questions of title or for holding that the insolvent has a saleable interest in any property and ordering its sale—Nature of materials upon which Court may come to such decision* A was adjudicated an insolvent and a Receiver was appointed After various intermediate proceedings the insolvent's brother B appeared in Court and laid claim to certain properties The Judge put to him certain questions and elicited certain answers The Receiver also submitted a report and a petition on the same date The Judge after considering the report and the petitions submitted and after hearing pleaders refused to go into the question of title and decided that the insolvent had a saleable interest in the properties He thereupon directed the Receiver to sell the insolvent's right title and interest in the properties under the provisions of sub sec (5) of s 4 of the Provincial Insolvency Act Power under sub sec (1) of sec 4 to decide a question of title it had full discretion to follow the course laid down in sub sec (5) i e to refuse to decide questions of title and to direct sale of insolvent's right title and interest whatever that might be Where the Court has reason to believe that the debtor has a saleable interest in any property it may without further enquiry sell such interest The matters stated in the report of the Receiver and the answers given by the claimant when questioned by the Judge were sufficient materials for his coming to the conclusion that the debtor had a saleable interest in the property Jitendra Nath Bhattacharjee v Fateh Singh Naher

26 C W N 922

———— ss 4 to 6 11 to 16 26 43 44 and 47—*What matters are necessary to be enquired into before adjudication —What are proper subjects of enquiry before deciding on final discharge* Before passing an order of adjudication under the Provincial Insolvency Act it is not for a Court to decide whether the debts stated in the petition for insolvency are real whether the petitioner has not concealed any property of his from his lists of assets or whether he is unable to pay his debts and similar questions All these are properly subject that ought to be enquired into before giving a discharge The only things that are necessary to be decided before adjudication are whether the creditor or debtor is entitled to present the petition, whether the required notices have been served and whether the debtor has committed the alleged act of insolvency Per Curiam S 14 (2) provides that the Court shall also examine the debtor if he is present as to his conduct dealings and property in the presence of such creditors as appear at the hearing and the creditors have the right to question the debtor thereon There is no doubt that both these clauses require that the acts referred to therein should be done But it does not follow that every matter which forms the subject of the examination of the debtor should be decided *before* an order of adjudication is made The scheme of Act III of 1907 is to make an order of adjudication at first and then to make a full enquiry into all matters connected with the insolvency before the final discharge is decided The Court has power to refuse to make an order not only on non compliance of matters stated in s 14 (1) but also on other grounds (*e g*) prevention of abuse of process of the Court unnecessary harassing of a debtor by the creditor Per Sundara Ayyar J—The object of the provision for examination in s 14 (2) is as in England to obtain information at as early a stage as possible of the property and the whole conduct of the debtor in their relations to the insolvency proceedings *Udai Chand Maiti v Ram Kumar Khara 15 C W N 213 Ghiruadhari v Jai Narain I L R 32 All 645* and *Nathu v The District Judge of Benares I L R 32 All 547* disapproved Various sections of the Act and of the English Bankruptcy Act considered Jehr v Rengaswami (1913)

I L R 36 Mad. 402

———— ss 4 cls (b) (9) 16—

See Minor I L R 42 Calc 225

———— s 5—

See s 4 I L R 36 Mad. 402

———— ss 5 6 15 16—

See Insolvency I L R 44 Calc 535

———— *Insolvency—Petition by debtor—Grounds for dismissing petition—Possibility of assets exceeding liabilities* Where an insolvency petition is presented by a debtor whose debts amount to Rs 500 and such petition fulfils the requirements of s 11 of the Provincial Insolvency Act 1907 *it is not a valid ground for dismissing the petition that there may exist some reason for supposing that the debtor may not after all be unable to pay his debts in full unless there are circumstances indicating that the presentation of the petition was fraudulent and an abuse of the process of the Court* The provisions of s 15 of the Act are intended to apply to a creditor's petition and not to one presented by a debtor *Udai Chand Maiti v Ram Kumar Khara 15 C W N 213 Kali Kumar Das v Gopi Krishna day 15 C W N 990 Giruadhari v Jai Narain I L R 32 All 645 Bidhata Din v Jagannath 9 All L J 699* referred to *Nathu Mal v The District Judge of Benares I L R 32 All 547* distinguished *Ponnusami Chetti v Narasimma Chetti 25 Mad L J 545* not followed Triloki Nath v Badri Dass (1914)

I L R 36 All. 250

PROVINCIAL INSOLVENCY ACT (III OF 1907) —contd.

——— ss 5, 6 15, 16 43—*Insolvency—Petition by debtor—Debtor's right to order of adjudication—Dismissal of application on ground of alleged misappropriation of property belonging to a creditor* It is no ground for the rejection of a petition to be declared insolvent filed by the debtor that the petitioner may perhaps have been guilty of criminal misappropriation in respect of property belonging to one of his creditors *Chhatrapat Singh Dugar v Kharag Singh Lachmi ram I L R 44 Calc 535* and *Triloki Nath v Badri Das I L R 36 All 250* referred to JAGAN NATH v GANGA DAT DUBE (1919) I. L. R 41 All 486

——— ss 5 15 16—*Insolvency—Grounds for dismissing petition to be adjudged an insolvent* A petition to be adjudged an insolvent presented under the provisions of the Provincial Insolvency Act 1907 can be dismissed only upon one or other of the grounds mentioned in s 15 of the Act It is not a good ground for dismissing such a petition that the petitioner's brother being joint with the petitioner has not been made a party to it *Chhatrapat Singh Dugar v Kalray Singh Lachmiram 15 A L J 87* and *Triloki Nath v Badri Das I L R 36 All 250* referred to NET RAM v BHAGIRATHI SAH (1917) I. L. R 40 All. 75

——— s 6—

See INSOLVENCY I. L. R 44 Calc 535

——— *Application by debtor—Residence within jurisdiction—Temporary residence* It is not necessary for a petitioner applying to be declared an insolvent to have resided for a long time at a place within the jurisdiction of the Court Even temporary residence for a time and for a particular purpose is enough to give the Court jurisdiction to deal with an application for insolvency *Ex parte Hecquard 24 Q B D 71* followed ABDUL REZAK v BASIRUDDIN AHMED (1911) 17 C W N 405

——— *Jurisdiction of Court—Ordinarily resides meaning of—Order of adjudication by Court not having jurisdiction—S 47 sub s (1) effect of—Civil Procedure Code (Act V of 1908) s 21 if applies to proceedings under the Provincial Insolvency Act* The respondent lodged an application for insolvency in the Court of the District Judge of Midnapur and obtained an order of adjudication It appeared that the respondent who was employed as a guard on the Bengal Nagpur Railway resided at Dungagarh in the Central Provinces and ran his train ordinarily from Dungagarh to Nagpur and only occasionally from Dungagarh to Kharagpur where he stopped with his son in law having no permanent residence there The application for insolvency was filed immediately after the appellant had obtained a decree against the respondent in the Court of the Munsif of Midnapur *Held* that it could not be held that the respondent ordinarily resided or personally worked for gain at Kharagpur within the meaning of sub s (2) of s 6 of the Provincial Insolvency Act and consequently the Court of the District Judge of Midnapur had no jurisdiction to deal with the application for insolvency filed by the respondent That sub s (1) of s 47 of the Provincial Insolvency Act does not directly or by implication make s. 21 of the Civil Procedure Code of 1908 applicable to proceedings under the Provincial Insolvency Act and consequently the doctrine that no objection as to the place of suing shall be allowed by an Appellate Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and unless there has been a failure of justice could not be applied to proceedings under the Provincial Insolvency Act Meaning of the term resides in sub s (2) of s 6 considered MADHO PERSHAND v A L WALTON (1913) 18 C W N 1050

——— ss 6 15 16—*Insolvency—Petitioner examined and evidence taken—Case adjourned—Petitioner absent on adjourned date—Petition dismissed for want of prosecution* When a petition for a declaration of insolvency has once been presented conformably to the requirements of Act No III of 1907 the Court is bound after completing the necessary inquiries to come to a decision in respect of the various matters spoken of in s 15 of the Act and either to dismiss the petition under the provisions of that section or to make an order of adjudication But it cannot dismiss the petition merely because on an adjourned date the petitioner does not appear LACHMI NARAIN DUBE v KISHAN LAL (1918) I L R 40 All 665

——— s 11—

See s 4 I L R 36 Mad 402

——— s 12—

See s 4 I L. R 36 Mad. 402

See s 16 I L. R 39 Mad. 693

——— s 13—

See s 4 I L. R 36 Mad. 402

——— ss. 13 16 34—

See INSOLVENCY I. L. R 42 Calc 289

——— ss 13 (3) 47—*Attachment of property as that of the insolvent before adjudication of insolvency—Civil Procedure Code (1908) O XXI r 58 O XXXVIII rr 5 to 12—Procedure—Appeal* Where certain property was attached under s 13 (3) of the Provincial Insolvency Act 1907 by a Court exercising jurisdiction under that Act before the petitioner was declared an insolvent and a receiver appointed it was *held* that the Court was bound to hear and adjudicate upon any claims which might be preferred by persons alleging themselves to be in fact the owners of such property Procedure under s 13 (3) of the abovementioned Act was analogous to attachment before judgment under the Code of Civil Procedure It might have been open to the objectors to wait until the receiver had taken some action in respect of the property attached and then to apply under s 22 of the Act but this they were not bound to do HASHMAT BIBI v BHAGWAN DAS (1913) I. L. R. 36 All. 65

——— s 14—

See s 4 I. L. R. 36 Mad. 402

——— *Provincial Insolvency Act (III of 1907) s 15—Debtor's application for adjudication if may be refused because of his acts of bad faith—Adjudication as of course when ss 5 and 6 complied with—Civil Procedure Code (Act XIV of 1882) Chap XX* Where an application by a debtor to be declared an insolvent being

PROVINCIAL INSOLVENCY ACT (III OF 1907) —*contd.*

——— s 14—*contd*

opposed by a creditor the debtor was examined under s 14 cl (3) of the Provincial Insolvency Act and the application was dismissed on the ground that one of the creditors mentioned in the application was fictitious and that the applicant was concealing the real facts *Held* that where the requirements of ss 5 and 6 of the Act have been complied with an order of adjudication *should follow almost as a matter of course* and the application dismissed on the grounds stated Whether the debtor has or has not committed acts of bad faith is to be determined by the Court not at the stage when the order of adjudication has to be made but at the final stage when an application is made for an order of discharge the provisions of the Provincial Insolvency Act differing in this respect from those of Chap XX of Act XIV of 1892 which have been repealed by the Act *In re Button* [1907] *1 K B 397* relied on UDAY CHAND MAITI *v* RAM KUMAR KHARA (1910)
15 C W N 213

——— ss 14 5 and 47—*Civil Procedure Code (Act V of 1908) O I r 3—Single petition by creditor to adjudicate debtors as insolvents—Debtors members of a joint Hindu family—Joint debt—Joint acts of insolvency—Single petition against joint debtors whether maintainable—Multifariousness in suits—Test of* The members of a joint Hindu family can be adjudicated insolvents on a single petition by a creditor if they are liable on a joint debt and have been guilty of a joint act or acts of insolvency The test is whether if the application were treated as a suit the suit would be bad for multifariousness that is for misjoinder of different causes of action against different defendants if no such objection can be successfully advanced a single application for adjudication is maintainable *Sarada Prasad Ukil* v *Ram Sukh Chandra* (1905) 2 C L J 318 dissented from MAMAYYA *v* K. P RICE MILL Co (1921) **I L R 44 Mad 810**

——— s 15—

See s 4 **I L R 36 Mad 402**
See s 5 **I L R 40 All 75**
See s 6 **I L R 40 All. 665**
See INSOLVENCY **I L R 44 Calc 535**

1 ——— *Insolvency—Grounds for dismissing petition* Under the Provincial Insolvency Act 1907 transfer of property by the debtor with intent to defraud his creditors or reckless contracting of debts or giving unfair preference to any of his creditors or committing any other act of bad faith are grounds for refusing an absolute order of discharge but not grounds for refusing to make an order of adjudication Where therefore a petitioner for a declaration of insolvency feigned ignorance about the existence of his account books and prevaricated about other matters *Held* that his petition could not be dismissed on these grounds the object of the Legislature by enacting the Insolvency Act being to make it easier to obtain an order of adjudication *Ex parte King Re Davies L R 3 Ch D 461 Ex parte Griffin Re Adams L R 12 Ch D 480* and *Ex parte Tynte L R 15 Ch D 125* referred to GIRWARDHARI *v* JAI NARAIN (1910) **I L R 32 All. 645**

PROVINCIAL INSOLVENCY ACT (III OF 1907) —*contd*

——— s 15—*contd*

2 ——— *Debtor s application for adjudication—Inability to pay debts if must be proved* A debtor s application to be adjudicated an insolvent cannot be dismissed on the ground that he could not satisfy the Judge that he was unable to pay his debts KALI KUMAR DAS *v* GOPI KRISHNA RAY (1911)
15 C W N 990

3 ——— *Debtor s application for insolvency not made bonâ fide—Adjudication if may be refused Quære* Whether if upon the facts before the Court it is clear to the Judge that the debtor applying for insolvency is not an insolvent he is bound to adjudicate him an insolvent *Girwardhari* v *Joy Narain I L R 32 All 645 Uday Chand Maity* v *Ram Kumar Khara 15 C W N 213 Sheikh Samiruddin* v *Srimati Kadumoyi Dasi 15 C W N 244* and *Kali Kumar Das* v *Gopi Krishna Ray 15 C W N 990* referred to SHEIKH GOLAM I AHMAN *v* SHAIKH WAHED ALI (1912) **16 C W N 853**

4 ——— *Application by debtor to be declared insolvent—Acts of bad faith if ground for rejecting petition* An application by a debtor to be declared an insolvent cannot be rejected on the ground of his having committed acts of bad faith *Uday Chand Maiti* v *Ram Kumar Khara 15 C W N 213 12 C L J 400* and *Samiruddin* v *Kadumoyi 15 C W N 244 12 C L J 445* followed ABDUL PIZAK *v* BASHIRUDDIN AHMED (1911) **17 C W N 405**

5 ——— *Provincial Insolvency Act (III of 1907) ss 15 44 46—Order for adjudication if may be refused on ground of improper alienation of property by debtor—Fictitious statement of debt* Neither an order for adjudication nor one dismissing a petition for declaring a person an insolvent can be treated as a decree between the parties in a contested or uncontested suit and a creditor who did not oppose the debtor s application to be declared an insolvent need not be added as a respondent in an appeal preferred by the debtor under s 46 of the Indian Insolvency Act against an order dismissing the application Where an application by a debtor to be adjudged an insolvent was refused on the ground that the debtor had transferred a portion of his property in lieu of dower and had thus committed an act of bad faith *Held* that questions of bad faith or improper dealing by the debtor with his property do not arise for consideration until after the order for adjudication has been made and the insolvent applies for final discharge and the order for adjudication could not have been refused on the ground stated *Uday Chand Maiti* v *Ram Kumar Khara 15 C W N 213* and *Girwardhari v Jai Narain I L R 32 All 645* referred to *Nathumal* v *District Judge of Benares I L R 30 All 547* disapproved That it was open to the opposing creditor to prove that the debt shown to be due to another creditor was fictitious so as to show that the petitioner s debts did not really amount to Rs *500 as required by s* 5 of the Act SAMIRUDDIN *v* KADUMOYI DASI (1910)
15 C W N 244

——— ss 15 16 18 20 22, 46 and 52—

——— *Official Receiver s order dismissing insolvency petition—No appeal direct to*

PROVINCIAL INSOLVENCY ACT (III OF 1907) —*contd.*

——— ss 15, 16, 18, 20 22, 46 and 52—*contd.*

High Court—Practice—No interference in revision where other remedy open No appeal lies under s 46 cl (2) of the Provincial Insolvency Act to the High Court from the order of an Official Receiver dismissing an insolvency petition but an appeal against orders passed by the Official Receiver lies under s 22 only to the District Court The language of s. 22 read with s 46 cl (2) shows that such right of appeal is not confined to orders made under ss 18 19 and 20 but extends to all orders of the Receiver *Obiter* An Official Receiver invested with the power mentioned in cl (a) of s. 52 (1) has the power to dismiss an insolvency petition under s 15 The Court will not interfere under s 115 Civil Procedure Code in a case where other adequate remedy was open CHIDAMABARAM *v* NAGAPPA (1912)
I L. R 38 Mad 15

——— s 16—

See s 3 I L. R. 44 Mad. 524
See s 4 I L. R. 36 Mad. 402
See s 5 I L R 40 All. 75
See s 6 I L. R 40 All. 665
See s 15 I L. R 38 Mad. 15
See INSOLVENCY I L. R 42 Calc 289
I. L. R 44 Calc 535
See LIMITATION ACT 1908. s 15 I L. R 42 Mad. 319
See MINOR I. L. R 42 Calc 225
See RAILWAY RECEIPT I L R 38 Mad. 664

——— sub-s (1)—*Adjudication by Official Receiver—No order vesting property in Receiver effect of—Action for money had and received scope of—Privity of plaintiff and defendant necessity for—Nature of privity* The Official Receiver in the insolvency of *R* put up for sale the debts of a firm in which *R* and the second third and fourth defendants were partners and the first defendant purchased them from the Receiver and afterwards recovered a debt due to the firm The plaintiff having attached three fourths of the money so recovered by the first defendant in execution of a decree obtained by him against the second third and fourth defendants for a debt due by the firm and having been appointed Receiver in the execution proceedings sued the first defendant to recover the said three fourths of the money as money had and received to the use of the second third and fourth defendants *Held* that the plaintiff had no cause of action against the first defendant because in an action for money had and received there must be as shown by the English decisions privity of a legally recognizable nature between the plaintiff and the defendant and no such privity existed in this case and that the suit also failed as regards the shares of the second and third defendants by reason of their adjudications as insolvents prior to the attachment Scope of the action for money had and received pointed out English and Indian cases reviewed *Sinclair* v *Brougham [1914] A C 398* explained *Sankunni* v *Govinda I L R 37 Mad 381* referred to *Per* SADASIVA AYYAR J While privity of *contract* between the parties is of course not necessary to sustain an action for money had and received there must be what might be called some privity of a legally recognizable nature as such some knowledge of particular facts in the man who received the money and some mistake or ignorance of fact on the part of the man who paid the money or some relation of trust and confidence between them on which the Court could fasten as creating the relation of principal and agent (though by fiction) between the plaintiff and the defendant *Per* OLDFIELD J *Obiter* It may be permissible in India as it is in England to sue only the solvent members of a firm when a decree is sought against it *Hawkins* v *Ramsbottam 6 Taunton 1 9* referred to RAMASAMI NAIDU *v* MUTHUSAMI PILLAI (1918) I L. R 41 Mad 923

——— sub-s (2)—*Whether bar to the passing of a decree in a pending suit—Meaning of the words 'remedy and commence any suit or legal proceeding' in the section explained* *K C* was adjudicated insolvent in January 1911 At that time he was defending a case for recovery of Rs 69 346 on a mortgage deed In spite of his adjudication he continued the defence of the suit and the first court decreed it against him On appeal to the Chief Court the decree was modified to this extent that a preliminary decree for the sale of the mortgaged property was passed but plaintiff was left at liberty to apply subsequently for a personal decree against *K C* in the event of the sale proceeds proving insufficient to meet the mortgage debt The sale proceeds did prove insufficient and the plaintiff moved the Court of first instance to take action under O XXXIV r 6 Civil Procedure Code and a personal decree for the balance due issued against *K C* the defendant who appealed against that decree *Held* that the application by the plaintiff under O XXXIV r 6 was not a new proceeding but a continuation of the original suit and the decree passed thereon was not a remedy against the person of the insolvent and did not therefore contravene the provisions of s 16 (2) of the Provincial Insolvency Act 1907 *Held* further that a decree is not a remedy for a civil wrong but merely a step towards the remedy The remedy is the benefit accruing to the creditor through the execution of his decree and that remedy he can secure only through the Insolvency Court by proving his debt *Mamraj* v *Brij Lal (I L R 34 All 106)* dissented from KISHAN CHAND *v* SOHAN LAL
I. L. R. 2 Lah 95

——— *Secured Creditor—Landholder and tenant—Suit for arrears of rent—Declaration of insolvency in force at date of suit* A land holder is not as regards an agricultural tenant a secured creditor within the meaning of s 16 (5) of the Provincial Insolvency Act 1907 Although he possibly may be in a position to distrain even whilst a declaration of insolvency is in force he cannot without the leave of the Court sue for arrears of rent RAGHUBIR SINGH *v* RAM CHANDAR (1911) I. L. R 34 All. 121

——— *Civil Procedure Code (1908) s 60—Insolvency—Attachment of half the salary of the insolvent* One of the creditors of a person who had been declared an insolvent by the Small Cause Court of Cawnpore but who had since obtained employment in the Government Press in

PROVINCIAL INSOLVENCY ACT (III OF 1907) —*contd.*

——— s 16—*contd*

Calcutta applied to the Court for attachment of half the insolvent s salary for the benefit of his creditors *Held* that it was no valid reason for rejecting the creditor s application that its allowance would not leave the insolvent enough to live on *Ram Chandra Neogi* v *Shyama Charan Bose* 18 C W N 1050 and *Tulsi Lal* v *Girsham* 38 Indian Cases 410 followed DEBI PRASAD v LEWIS (1918) I. L. R. 40 All. 213

——— *Effect of order of adjudication on institution of suits by creditors to set aside fraudulent alienations by insolvent* The effect of an order adjudicating a person an insolvent under s 16 (*1*) of the Provincial Insolvency Act is to vest the administration of his estate including the realization of his assets under the control of the Court Hence after such an order a creditor (whether decree holder or otherwise) is by s 16 (*2*) (*b*) of the Act prevented from instituting without the leave of the Court of Insolvency a suit to set aside a transfer made by the insolvent as being in fraud of creditors VASUDEVA KAMATH v LAKSHMINARAYANA RAO (1918)
I. L. R. 42 Mad. 684

——— *Mortgage executed without objection on the part of either the receiver or the Court by insolvent to pay off principal or only creditor—Heirs of insolvent not entitled to object* During the pendency of proceedings in insolvency the insolvents whose principal if not the only creditor was a mortgagee executed another mortgage in favour of a third party and paid off the first mortgage Neither the receiver nor the court in which the insolvency proceedings were took any objection to the execution of the second mortgage *Held* on suit brought by the second mortgagee on the mortgage in his favour against the heirs of the mortgagors that it was not open to the defendants to contest the suit upon the ground that the execution of the mortgage involved a breach of the insolvency law SHIAM SARUP v NAND RAM I L R 43 All 555

——— ss 16 (c) 18 (3)—*Property alleged to be held by stranger in benami for insolvent if may be recovered without suit—Judge s power to order inquiry by Receiver* Where a creditor of an insolvent alleged that certain Government promissory notes were being held by the insolvent s brother in *benami* for the insolvent and the insolvent s brother denied that the insolvent had any title to the Government promissory notes and alleged that they were his own property and the Judge called for a report on the matter from the Receiver *Held* that it was open to the Judge to direct the Receiver to enquire and report to him for his own information That on receipt of such report it was for the Judge to consider whether upon the facts before him he should direct the Receiver to bring a suit in order that the question of title may be decided or whether the case is so clear (that is to say the title is not really in dispute) that it can be dealt with in the insolvency without the necessity of a suit If the question of title be seriously in dispute the Judge should direct the Receiver to bring a suit to have the question determined SATYA KUMAR MUKHERJI v MANAGER BENARES BANK LD (1917)
22 C W N 700

PROVINCIAL INSOLVENCY ACT (III OF 1907) —*contd*

——— s 16, sub-s (2) cl (a) ss. 27, 42 sub-s. (1)—*Direction for deposit in Court of one fourth of insolvent s monthly salary which exceeded Rs 40 if legal—Order for adjudication when can be subsequently annulled—'Salary' if 'property' of insolvent—Jurisdiction of High Court to give directions regarding order of adjudication when only the order annulling it is under appeal* A debtor who was arrested in execution of a decree applied to be and was adjudged an insolvent In the order of adjudication the insolvent was directed pending realisation by sale of his assets to pay a quarter of his monthly salary of Rs 100 a month into Court until the sum realised from him should equal one third of the debts for which the creditor had obtained a decree Subsequently the District Judge annulled the order of adjudication on the ground that the insolvent had failed to abide by the condition regarding payment of one fourth of his salary *Held* that the direction regarding the payment of one fourth of the insolvent s salary could not have been given under the Provincial Insolvency Act The proper course for the District Judge would have been to direct the Receiver to arrange for payment to him of one half of the salary earned by the insolvent salary being property of the insolvent within the meaning of s 16 sub s (2) cl (*a*) only one half of the salary which exceeded Rs 40 a month being exempt from attachment under s 60 Civil Procedure Code That the sub equent order of the District Judge annulling the order of adjudication could not have been made under sub s (*1*) of s 42 the conditions required by that section being absent in the present case That when setting aside at the instance of the insolvent the order of the lower Court whereby it annulled the adjudication and which was the only order under appeal it was open to the High Court to consider what directions should be given regarding the order of adjudication which was modified to the extent that the condition imposed was discharged the District Judge being ordered to give the necessary direction according to law RAM CHANDRA NEOGI v SHYAMA CHARAN BOSE (1913)
18 C W N 1052

——— ss 16 (2 and 6) and 28—*Insolvency—Date of vesting of insolvent s property in the Receiver—Alienation of property by insolvent between the dates of the representation of the petition and the order of adjudication* The effect of sub ss (2) and (6) of s 16 of the Provincial In olvency Act 1907, is that while no ve ting of the property of the insolvent in the Receiver takes place until an order of adjudication is made and it is order of adjudication which vests the property nevertheless by a legal fiction the vesting of the property of the insolvent in the Receiver must be deemed to have taken place when once an order of adjudication has been made at the date of the presentation of the petition or in other words the commencement of the insolvency It follows therefore that the insolvent cannot make a valid alienation of his property between the dates of the presentation of the petition and the order of adjudication *T V Sankaranarayana v Alagiri Aiyar* 49 Indian Cases 283 referred to SHEONATH SINGH v MUNSHI RAM
I. L. R. 42 All. 433

——— ss 16 (2) 18 (2), and 19 (2)—*Adjudication of a person as insolvent—Necessity of an*

PROVINCIAL INSOLVENCY ACT (III OF 1907)
—contd

——— ss. 16 (2) 18 (°) and 19 (°)—*contd*

order appointing a person as Receiver of the insolvent's estate S 18 (°) of the Provincial Insolvency Act (III of 190) contemplates on every adjudication of insolvency an order by the Court appointing a Receiver for the insolvent's estate and without such an order the estate does not vest in the Official Receiver under s. 19 (2) Hence a sale of the estate by the Official Receiver without such an order does not give the vendee any title *Official Receiver of Trichinopoly* v *Somasundaram Chetty (1916) 30 M L J 415* followed MUTHUSWAMI SWAMIAR v SOMOO KANDIAR (19 0)
I. L. R 43 Mad. 869

——— Sub-s 4—*Muhammadan law—Bequest to an heir—Consent of other heirs to bequest—Such consent not affected by insolvency of other heirs* When the consent of the heirs of a Muhammadan to a bequest in a will in favour of an heir has been signified the legatee takes from the testator and the consent does not operate as a transfer by the heirs of a right which has in the meantime vested in them Such consent would not be affected by the fact of the consenting heirs being insolvents AZIZ UN NISSA BIBI v CHIENE
I L. R. 42 All. 593

——— ss 16 (6) 36—

See INSOLVENCY **I. L. R 46 Calc 991**

——— *Order of insolvency if relates back to date of presentation of petition—Transfer made within two years of date of petition if comes within s 36* The provisions of s 36 are to be read with s 16 (6) of the Act and an order of adjudication relates back to and takes effect from the date of the presentation of the petition for the purpose of making the properties of the insolvent liable to the creditors and a transfer made within two years of the date of the petition comes within the provisions of s 36 RAKHAL CHANDRA PURKAIT v SUDHINDRO NATH BOSE
24 C W N 172

——— ss 16 22—*Mortgage of factory—Decree for sale—Appointment of receiver to get in profits for benefit to decree holder—Insolvency of judgment debtor—Profits appropriated by creditors of insolvent—Suit by mortgagee decree holder to recover profits* One *J L* being the mortgagee of a cotton ginning factory obtained a decree for sale on his mortgage but instead of the factory being sold in execution of this decree a receiver was appointed for the period of one year by consent of the decree holder The receiver was to work the factory receive the profits and hand them over to the decree holder Notwithstanding that no fresh order was passed by the executing court the receiver remained in possession of the factory for more than two years He received the profits but in accordance with the local practice of the trade made them over to a certain association for the collection and distribution of the profits of cotton ginning factories Meanwhile the mortgagor became insolvent and creditors holding simple money decrees against him proceeded to attach the profits of the factory in the hands of the association and the profits were divided rateably between these creditors The mortgagee then sued to recover the profits of the factory earned whilst the receiver had been in charge making defendants (i) the receiver originally appointed by the Court (ii) the creditors of the insolvent mortgagor and (iii) the receiver in insolvency *Held* that the appointment of the original receiver having been made with the consent of the decree holder and the judgment debtor was not made without jurisdiction that the profits of the factory for the year for which the receiver was appointed were assignable entirely to the satisfaction of the mortgage decree and that the suit as against the receiver in insolvency was not barred by either s 16 or s 22 of the Provincial Insolvency Act 1907 *In re Watts Ex parte Taylor [1893] 1 Q B 648* and *Croshaw* v *Lyndhurst Ship Company [1897] 2 Ch D 154* distinguished JHUNKU LAL v PIARI LAL (1916) **I. L R 39 All 204**

——— ss 16 31—*Civil Procedure Code 1908 O XXXIV r 6—Application for decree over against two judgment debtors one of whom had been declared insolvent* Where one of two mortgagors against whom a decree under O XXXIV r 6 of the Code of Civil Procedure was otherwise obtainable had been declared an insolvent under the provisions of the Provincial Insolvency Act 1907 but the other had not *Held* that the decree holders could not be granted a decree over as against the insolvent but could only prove their debt in the insolvency proceedings *Barter* v *Dubeux and Company L R 7 Q B D 413* referred to MAMRAJ v BRIJ LAL CHAKRAVART (1911) **I L. R 34 All. 106**

——— ss 16 and 34—

——— *Decree holder and Receiver priority between title of in respect of asset realized by date of adjudication* S 16 of the Provincial Insolvency Act 1907 is controlled by s 34 of that Act The title of a decree holder in respect of assets realized before the date of the order of Insolvency prevails over the title of a Receiver appointed on or after such date PALI RAM v SHEONATH PRASAD **2 Pat L. J 235**

——— *Execution of decree against insolvent during pendency of insolvency proceedings—Right of decree holder in respect of property attached and sold and money attached before adjudication* Whilst proceedings in insolvency under the Provincial Insolvency Act 1907 were pending certain immoveable property of the insolvent was attached and sold in execution of a decree against him and the proceeds deposited in Court for the benefit of the decree holder The decree holder also attached certain moneys which had been paid into Court to the credit of the insolvent but up to the date of the order of adjudication had taken no further steps to possess himself thereof *Held* that the decree holder was entitled as against the receiver to the benefit of the proceeds of execution of his own decree but not to the money of the insolvent which he had attached *Peacock* v *Madan Gopal I L R 29 Calc 428* followed SRI CHAND v MURARI LAL (1912)
I. L. R 34 All. 628.

——— ss. 16 and 35—

See TRANSFER OF PROPERTY ACT 1882 s 56 **I. L. R. 42 All. 336**

——— ss 16 36, 43—*Insolvent—Property of insolvent which does not vest in the receiver—Occu*

PROVINCIAL INSOLVENCY ACT (III OF 1907) —*contd*

——— ss 16 36 43—*contd*

pancy holding—House of agriculturist A person who was an agriculturist by occupation was adjudicated an insolvent Shortly before his insolvency he had granted a lease of his occupancy holding The zamindar was the principal creditor The District Judge ordered the land to be surrendered to the zamindar and the insolvent's house to be sold *Held* that the property of the insolvent which is exempted by any enactment for the time being in force from liability to attachment and sale in execution of a decree does not vest in the Court or the receiver therefore the District Judge had no jurisdiction to direct the receiver to surrender the tenancy and to set aside the lease Further the order directing the sale of the house was illegal inasmuch as the house being that of an agriculturist and being exempted from attachment and sale in execution of a decree never vested in the Court or the receiver SAGAR MAL v RAO GIRRAJ SINGH (1916)

I. L. R 39 All. 120

——— ss 16 41 42, 45—*Insolvent—Assets declared by receiver not realisable—Discharge of insolvent—Subsequent sale by insolvent of assets so declared unrealisable* Part of the apparent assets of an insolvent consisted of mortgage rights in certain property These rights were not dealt with by the receiver because he considered that it would be impossible to realize anything on them The insolvent was accordingly discharged. Thereafter the insolvent managed to sell the mortgagee rights which had been declared unsaleable by the receiver *Held* that in the circumstances the sale was good and passed whatever rights the discharged insolvent had to the purchaser SHEONANDAN v KASHI (1916)

I. L. R 39 All. 223

——— ss 16 47 12, cl (3) and 51—*Insolvency Rules XXI cl (3) and V cls (2) and (3)—Civil Procedure Code (V of 1908) O III r 3 and O V r 12—Petition by creditor to adjudicate debtor an insolvent—Service of notice on agent if sufficient—No notice sent by Court through registered post effect of—Acts of insolvency committed by agent if sufficient—Difference between English and Indian Law* Where a petition was filed in a District Court by a creditor praying for an order to adjudicate his debtor an insolvent under s 16 of the Provincial Insolvency Act and a notice of such petition was served on his local agent with a general power of attorney from the debtor who was residing outside the jurisdiction of the Court *Held* that the service of notice on the agent was in law sufficient though no notice was sent by the Court to the debtor through registered post Effect of s 47 of the Provincial Insolvency Act and r XXI cls (2) and (3) and r V cl (2) of the Insolvency Rules considered Under s 4 of the Provincial Insolvency Act a debtor can be adjudicated an insolvent upon acts of insolvency committed by his agent *In the matter of Brijmohun Dobay 2 C W N 306* referred to Under the English law an act of bankruptcy must be a personal act or default of the debtor and could not be committed through an agent *Ex parte Blain 12 Ch D 522* and *Cooke v Charles A Vogeler Co [1901] A C 102* Though under s 16 of the Provincial Insolvency Act an adjudication of the debtor as an insolvent relates back to the date of the petition the power of the debtor's agent under a general power of attorney ceases only with reference to his dealings with the debtor's property and the carrying on of the trade but not with reference to other acts of the agent and one of those acts must be taken to be to stave off bankruptcy orders against the principal *In re Follit [1893] 1 Q B 445* referred to KALIANJI v THE BANK OF MADRAS (1916)

I. L. R 39 Mad. 693

——— ss. 16 and 56—*Act (Local) No II of 1901 (Agra Tenancy Act) ss 193 and 20—Insolvency—Occupancy holding—Position of insolvent occupancy tenant* An occupancy holding being altogether outside the provisions of the Provincial Insolvency Act 1907 that Act is no bar to a suit for arrears of rent brought by the zamindar pending proceedings in insolvency *Raghubir Singh v Ram Chandar I L R 34 All 121* overruled KALKA DAS v CAJJU SINGH

I. L. R 43 All. 510

——— s. 18—

See s 3	I. L. R 44 Mad. 524
See s 15	I L. R 38 Mad 15
See s 16	22 C W N 700 I L R 43 Mad 869
see Receiver	I L. R. 40 Calc 678

1 ——— *Sale-deed executed benami by the insolvent—Receiver entitled to remove the so-called purchasers from possession of properties sold—Indian Limitation Act (IX of 1908) Sch I Art 91* Where insolvents in order to save their property from their creditor had executed fictitious sale deeds thereof in favour of relations but never gave and never intended to give the so called purchasers possession *Held* that such transaction was no bar to the receiver taking possession of the property comprised in the said sale deeds as the property of the insolvents *Patherpermal Chetty v Muniandi Servai I L R 35 Calc 551* referred to JAGRUP SAHU v RAMANAND SAHU (1917)

I. L. R 39 All 633

2 ——— *Decree obtained by insolvent before adjudication—Attachment of decree—Effect of subsequent adjudication on right of attaching creditor to execute decree* Where a decree has been attached by a creditor of the decree holder and subsequently the decree holder is adjudged an insolvent the right to execute such decree vests in the receiver in insolvency and is not retained by the attaching creditor *Raghunath Das v Sundar Das Khetri I L R 42 Calc 72* referred to DAMBAR SINGH v MUNAWAR ALI KHAN (1917)

I L R 40 All. 86

3 ——— *Creditor alleging property of insolvent being kept in benami by his wife—Court if may summarily enquire into allegation—Proper procedure—Court to authorise Receiver to sue on creditor putting him in funds and indemnifying him for costs* Where a creditor of an insolvent applied to the District Judge complaining that the insolvent had concealed certain properties by having them vested in the name of his wife and prayed that certain persons and the insolvent and his wife be examined in regard to the matter

PROVINCIAL INSOLVENCY ACT (III OF 1907) —contd.

——— s 18—contd

Held that such a summary inquiry is not supported by any provision of the Provincial Insolvency Act and the Judge was right in refusing to order such an inquiry But the creditor could not be told to bring a suit for title against the alleged b namidar The proper procedure was for the creditor to apply to the Court to direct the Receiver to institute and continue a suit against the wife of the insolvent to recover the property in question making it a condition precedent that the creditor so applying put the Official Receiver in funds and properly indemnify him against the costs of the suit and the Court should made such an order if in its opinion the creditor has a prima facie case JOY CHANDRA DAS v MAHOMED AMIR (1917) 22 C W N 702

——— ss 18 (3) 20—*Transfer by insolvent challenged as benami—Judge if may order transferee to be dispossessed without suit—Judge if may direct Receiver of insolvent s properties to hold a judicial inquiry—Receiver may report administratively—Judge when he directs a suit should order creditor to put Receiver in funds and indemnify him* Where a transfer dated the 16th March 1913 by a person who was adjudicated an insolvent on 11th February 1916 having been attacked in the interest of his creditors as *benami* the Judge ordered the Receiver appointed to take over the insolvent s properties (who was not the Official Receiver appointed by the Local Government under s 19 of the Provincial Insolvency Act) to enquire and report and the Receiver after holding an enquiry of a judicial character submitted his report which however the Judge did not accept but directed the enquiry to be reopened in Court *Held* that the duties of an ordinary Receiver under s 20 of the Act are executive in their character and the Receiver is not a Judicial Officer and has no jurisdiction to make anything in the nature of a judicial inquiry S 18 (3) of the Act is not intended to authorise the removal of any person whom the insolvent himself could not remove without the aid of legal proceedings When the *benami* character of the title is admitted or when the veil is transparent and the insolvent is in substantial beneficial possession the Court may order the delivery of the property to the Receiver But where the alleged *benamidar* is in possession claiming adversely to the insolvent then any claim made by the Receiver or the creditor that the property is really the property of the insolvent can only be enforced by suit in the regular court The Court may direct an administrative inquiry by the Receiver for the purpose of informing his mind and deciding what action should be taken and if in the result he is of opinion that a suit should be brought he should make the order on terms requiring the creditor at whose instance the suit is directed to put the Receiver in funds and indemnify against the costs of the suit NILMONI CHOWDHURY v DURGA CHARAN CHOWDHURY (1918) 22 C W N 704

——— ss 18 20 (a)—*Receiver sale of insolvent s properties by—Procedure* Sales by the Receiver in whom the property of an insolvent vests under s 18 of the Provincial Insolvency Act are really sales by the owner and may be held either by public auction or by private treaty The procedure for sales in execution of decrees

PROVINCIAL INSOLVENCY ACT (III OF 1907) —contd

——— ss 18, 20 (a)—contd

under the Civil Procedure Code does not apply to them ENTAZUDDI SHEIKH v RAM KRISHNA BANIK 24 C W N 1072

——— ss. 18 20 (a) (e) and 23—*Vesting order in favour of Receiver—Order to Official Receiver to adjudicate and administer the insolvent s estate effect of* On an application for adjudication of insolvency the District Court passed the following order — The petition is transferred to the Official Receiver for adjudication and for the administration of the estate After adjudication by the Receiver no separate order vesting the insolvent s estate in the Receiver was passed by the District Court under s 18 of the Provincial Insolvency Act *Held* that by the combined effect of s 20 (a) and (e) and s 23 of the Act the order to administer the estate empowered the Receiver to sell the insolvent s estate *Muthuswami Swamiar v Somoo Kandiar (1920) I L R 43 Mad 869* distinguished SUBBA AIYAR v RAMASWAMI AIYANGAR (1921) I L R 44 Mad. 54

——— ss 18 36 47—*Power of Court to dispossess third person of property belonging to an insolvent—Inquiry as to ownership of property alleged to belong to the insolvent—Procedure* A Court exercising jurisdiction under the Provincial Insolvency Act 1907 has power to inquire whether property in the possession of a third party and alleged by the receiver to be property of the insolvent is really so or not and if it finds that such property is the property of the insolvent to order its delivery to the receiver But in making such an inquiry the Court should follow the procedure of a Civil Court in a civil suit should require the receiver and the party in possession to state their respective cases in writing should fix issues and should give the parties an opportunity of producing evidence BANSIDHAR v KHARAGJIT (1914) I L R 37 All 65

——— s 19 (2)—

See s 16 (2) I L R 43 Mad 869

——— ss 19—20 suit against a Receiver —Necessity of notice—

See CIVIL PROCEDURE CODE 1908 ss 2 AND 80 I L R 44 Bom 895

——— s 20—

See s 2 I L R 40 Calc 678

See s 15 I L R 38 Mad. 15

See s 18 (3) 22 C W N 704
24 C W N 1072

——— ss 20 22—*Properties advertised for sale by the Official Receiver as subject to mortgage—Change in the sale proclamation on the day of sale—Sale free of incumbrance—Irregularity vitiating the sale* S 22 of the Provincial Insolvency Act gives unfettered discretion to the Court to set aside a sale held by the Official Receiver if the change in the conditions of the sale proclamation had the effect of preventing intending bidders from coming forward *In re Bhulkhandas 7 Bom L R 904* distinguished *Ex parte Lloyds Re Peters 47 L T 164* A creditor who is entitled to a decision in respect of the sale of the property of the insolvent is a person aggrieved if the decision goes against him *In re Laul Ex parte Board of Trade [1894] 2 Q B 805* and *ex parte Official Receiver 19*

PROVINCIAL INSOLVENCY ACT (III OF 1907) —*contd.*

——— ss 20, 22—*contd*

Q B D 174 followed TIRUVENKATACHARIAR v THANYAYIAMMAL (1915) I L R 39 Mad 479

——— ss. 20 22, 46—*Civil Procedure Code (1908) O XXI r 58—Insolvency—Property taken by receiver as property of insolvent—Objection by third party claiming to be owner—Procedure—Appeal* A receiver appointed under the Provincial Insolvency Act 1907 took possession at the instance of one of the creditors of certain property which was believed to be that of the insolvent A third party came into Court and applied under O XXI r 58 of the Code of Civil Procedure claiming the property as his and when his application was rejected appealed to the High Court *Held* that the applicant's proper remedy was under s 22 of the Provincial Insolvency Act and that an appeal did not lie as of right but only by leave of the District Court or of the High Court *Quære* Whether an Additional District Judge to whom a matter under the Provincial Insolvency Act had been made over by the District Judge was a District Court within the meaning of the Act MUL CHAND v MURARI LAL (1913)

I L R 36 All. 8

——— ss 20 47—*Sale by receiver of property alleged to belong to an insolvent—Property in possession of third person—Obstruction by such third person—Summary enquiry by District Judge—Order directing delivery of possession legality of— Proceedings in s 47 of the Act meaning of* Certain property alleged to belong to an insolvent was sold by the receiver under s 20 of the Provincial Insolvency Act The purchaser whilst attempting to take possession was obstructed by the appellants who claimed to be in possession of the property as owners thereof The District Judge purporting to act under s 47 of the Act after a summary enquiry ordered possession to be given to the purchaser *Held* that the District Judge had no jurisdiction to pass such an order as s 47 only lays down the procedure to be followed by the Insolvency Judge with regard to proceedings under the Act *Held* also that the word proceedings in s 47 of the Act means the proceedings of the Court and not the act of the receiver under s 20 of the Act *Minatoonnessa Bibee* v *Khatoonessa Bibee I L R 21 Calc 479* and *Golam Hossein Cassim Arif* v *Fatima Begam 6 I C 300* explained *Cheda Lal* v *Luchman Parshad 37 I C 830* approved NARASIMHAYA v VIRARAGHAVULU (1917) I L R 41 Mad 440

——— s 21—whether Insolvency Court can proceed against the land of an insolvent who is a member of an agricultural tribe—

See INSOLVENCY I L R 2 Lah 78

——— s 22—

See s 2	I L R 40 Mad 752
See s 15	I L R 38 Mad 15
See s 16	I L R 39 All. 204
See s 20	I L R 39 Mad. 479
	I L R 36 All. 8

1 ——— *Status of any person to bring conduct of Official Receiver to notice of Court—Inherent power of Court to rectify Receiver's errors—Limitation* *Held* that any person and not merely the insolvent or the creditors or any other aggrieved person can take action to bring the conduct of a Receiver in any particular respect to the notice of the Court with a view to having his act or decision in any particular matter reversed or modified Also that the Court has inherent powers to rectify the Receiver's errors or mistakes or to reverse or modify his acts or decisions *Haseshur* v *Rakhal Das 18 C W N 266* followed *Held* further that where the Court acts upon information supplied by persons who are outside the scope of s 22 of the Insolvency Act, the time limit prescribed in that section would be no bar to action being taken by the Court DATTA RAM v DEOKI NANDAN

I L R 1 Lah 307

2 ——— *Receiver of adjudicated insolvent's estate issue of sale proclamation by—Property belonging to stranger included in sale —Right of stranger to move Court—Stranger if a person aggrieved —Limitation—Inherent power of Court to restrain its officer from acting in excess of authority* When during the pendency of insolvency proceedings against the judgment debtor the decree holder executed his decree which was a mortgage decree and in execution purchased the mortgaged properties and the judgment-debtor was subsequently adjudicated an insolvent and a Receiver was appointed who sent to Court a sale proclamation which included the properties purchased by the mortgagee and more than 21 days after the sale proclamation was served the mortgagee presented a petition in Court urging that the Receiver had no authority to sell the properties purchased by him *Held* that the mortgagee was not a person aggrieved by the Receiver's act within the meaning of s 22 of the Insolvency Act and his objection was not subject to the limitation provided in that section That the Court was competent to deal with the objection as the Court has inherent authority to review the conduct of a Receiver appointed by it and to make an appropriate order so that a stranger may not be prejudiced by any act of the Receiver in excess of his authority That it was competent to such stranger to bring any such act of the Receiver to the notice of the Court and it was the duty of the Court to inquire into it "A person aggrieved" is a person who has suffered a legal grievance—a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully affected his title to something and does not mean a person who has lost a benefit which he might have obtained if an order had been made *Ex parte Sidebotham 14 Ch D 458* referred to HANSESHUR GHOSH v RAKHAL DAS GHOSH (1913)

18 C W N 366

3 ——— *Attachment of property as that of an insolvent—Decision of Insolvency Court as between rival claimants to property attached that the property belonged to one of the claimants—Suit by the other to recover possession—Res judicata* *Held* that the decision of an Insolvency Court as between two rival claimants to property attached by a receiver as the property of the insolvent that the property belongs to one or the other claimant does not operate as *res judicata* in respect of a suit on title by one claim

PROVINCIAL INSOLVENCY ACT (III OF 1907)
—contd.

———— s 22—contd

ant against the other for the recovery of such property HUKUMAT RAI v LADAM NARAIN (1917) I L R 39 All 353

4 ———— Insolvency—Execution of decree—Attachment—Objection of claimant to attach property disallowed—Judgment debtors declared insolvent—Suit by claimant for declaration of title Certain property was attached in execution of a decree M claiming that the property attached belonged to her and not to the judgment-debtors filed an objection to the attachment Her objection was disallowed She then filed a suit for a declaration of her title and as the judgment-debtors had meanwhile been adjudicated insolvents joined as a defendant the receiver of their property Held that the suit was maintainable and was not barred by s 22 of the Provincial Insolvency Act 1907 Mul Chand v Murari Lal I L R 36 All 8 distinguished. Jhunku Lal v Piari Lal I L R 39 All 204 referred to MOHNI v BAIJ NATH (1918) I L R 40 All 582

5 ———— Insolvency—Dismissal of objection to attachment of property by receiver—Subsequent suit by objector for declaration of title—Res judicata Upon certain property namely a share in a house having been attached by a receiver in insolvency as the property of the insolvent a claim thereto was preferred by the son and nephew of the insolvent who filed an application under s 22 of the Provincial Insolvency Act 1907 Evidence of the title of the applicants was produced before the Insolvency Court but the application was rejected and an appeal from the order of rejection was dismissed on the merits The applicants then filed a regular suit for a declaration of their title to the same property Held that the suit was barred by reason of the previous order of the Insolvency Court Pita Ram v Jujhar Singh I L R 39 All 626 referred to IRSHAD HUSAIN v GOPI NATH (1919) I L R 41 All 378

———— ss 22, 46—

See CIVIL PROCEDURE CODE (1908) s 11 I L R 39 All 626

1 ———— Person aggrieved —Right of appeal—Necessary parties Held that one creditor out of the general body of creditors of an insolvent has no *locus standi* in an application in the Insolvency Court made against the estate of the insolvent represented by the receiver by a person claiming adversely to the insolvent's estate He has therefore no right of appeal against the decision on such an application Ex parte Sidebotham 14 Ch D 458 and Balli v Nand Lal 33 Indian Cases 775 referred to Keto key Churan Banerjee v Sreemutty Sarat Kumari Debee 20 C W N 995 distinguished. JHABBA LAL v SHIB CHARAN DAS (1916) I L R 39 All 152

2 ———— Appeal— Person aggrieved In the course of proceedings in insolvency before a District Judge the insolvent filed an application in court complaining of a sale of property which had been held by order of the receiver and urging that it should not be confirmed His objections having been disallowed and the sale confirmed the insolvent appealed to the High Court having obtained leave to appeal under s 46 (3) of the Provincial Insolvency Act 1907 Held that no appeal lay inasmuch as the insolvent could not be held to be a "person aggrieved" in the legal sense of the term and the fact that he had obtained leave to appeal from the Court below could not give him a right which was not conferred by the Act Jhabba Lal v Shib Charan Das I L R 39 All 152 Ladu Ram v Mahabir Prasad I L R 39 All 171 Ex parte Sheffield 10 Ch D 434 and In re Leabitter 10 Ch D 358 referred to SAKHAWAT ALI v RADHA MOHAN (1918) I L R 41 All 243

PROVINCIAL INSOLVENCY ACT (III OF 1907)
—contd

———— ss 22, 36 52—Limitation Act (IX of 1908) s 5—Insolvency—Application to Court to reverse act of receiver—Limitation Held that s 5 of the Indian Limitation Act 1908 does not apply to applications contemplated by s 22 of the Provincial Insolvency Act 1907 Dropadi v Hira Lal I L R 34 All 496 distinguished THAKUR PRASAD v PANNO LAL (1913) I L R 35 All. 410

———— s 23—

See s 18 I L R 44 Mad 547

———— Insolvency— Attachment of applicant's property prior to adjudication—Effect of adjudication on the attachment After an adjudication in insolvency an attachment of property though made before the adjudication ceases to have any effect and the property of the insolvent vests in the receiver who is the person to maintain all proceedings Where no receiver is actually appointed the Court is the receiver under s 23 of the Provincial Insolvency Act GOBIND DAS v KARAN SINGH (1917) I L R 40 All 197

————ss 23 and 25—Where a plaint is returned under s 23 the High Court will not interfere under s 25 nor s 115 of the Civil Procedure Code nor s 107 of the Government of India Act unless the Court of first instance has exercised its discretion ignorantly or perversely or has refused to exercise it and thereby caused injury to the parties which would be irreparable if not set right GANGA PRASAD v NANDU RAM I Pat L J 465

———— ss 24 28—Insolvency—Application by a creditor to have his name entered in the schedule of creditors—Right of the scheduled creditors to make objections—Revision Creditors whose names are already in the schedule prepared under s 24 of the Provincial Insolvency Act 1907 are entitled to be heard before the debt of a creditor who comes in at the last minute under s 24 (3) of the Act is entered in the schedule ALLAHABAD BANK LD v MURLIDHAR (1912) I L R 34 All. 442

———— ss 24, 26 36 52—Rules—Official Receiver—Delegation of powers—Framing of schedule by Receiver—Enquiry nature of—Order of Receiver, if judicial or final—Entry of name of a creditor in schedule—Subsequent application by Receiver to Court to expunge name—Power of Court to entertain application An Official Receiver under the Provincial Insolvency Act in framing a schedule of creditors does not decide judicially or fi upon contested claims Where therefore Official Receiver passed an order upon the of a creditor of an insolvent to rank as a

PROVINCIAL INSOLVENCY ACT (III OF 1907) —contd

——— ss 24 26 36 52—contd

creditor under a mortgage which was disputed by another creditor the action of the Receiver amounted only to an entry of the name of the creditor in the schedule framed under s 24 of the Act and did not preclude the Court from entertaining an application by the Receiver under ss 26 and 36 of the Act to expunge the name of the creditor from the schedule KHADIRSHAW MARAIKAR v THE OFFICIAL RECEIVER, TINNEVELLY (1917) I L R 41 Mad 30

——— ss 24 27 47—

See INSOLVENCY I L R 48 Calc 87

——— s 26—

See s 4 I L R 36 Mad 402

See s 24 I L R 34 All. 442
I L R 41 Mad 30

——— s 27—

See s 16 (2) (a) 18 C W N 1052
I L R 48 Calc 87

———ss 28 38 24—*Proposal for composition subsequent to adjudication of insolvency rejected by District Judge—Private arrangement with creditors and payment in accordance therewith—Subsequent petition by creditors alleging inducement by misrepresentations—Such creditors if entitled to prove claim as on date of adjudication on deposit in Court of sums received by them—Person making payment to such creditors if entitled to be substituted in place of creditors—Duty of Court to prepare schedule of creditors and debts* After being adjudicated insolvents the Appellants proposed a scheme for composition which was rejected by the District Judge They subsequently represented to the Court that a majority of the creditors had accepted from one M half their respective dues in full satisfaction of their claims as suggested in the scheme for composition These creditors subsequently filed petitions in Court stating that they had been induced by false and fraudulent misrepresentations of the insolvents to accept from them half of the principal sums due to them and prayed that on payment by them into Court of the said sums they should be permitted to prove their claims —*Held*—That in view of the provisions of ss 28 and 38 of the Act these transactions could not be recognised in insolvency proceedings and the petitioning creditors were entitled to prove their claims as they stood on the date of adjudication That the framing of the schedule of creditors and debts under s 24 of the Act is the duty of the Court which is to decide on each claim on evidence and in case of contests after hearing necessary parties BEHARY LAL SIKDAR v HARSUKH DAS CHARMAL 25 C W N 137

——— s 30—

See SET OFF I. L R 45 Bom. 1219

——— s 31—

See s 16 I L R 34 All. 106

——— *Secured creditor — Insolvency—Agreement appointing creditor agent for sale of debtor's goods—Proceeds to be paid to creditor* The owners of a printing and publishing business who owed money to a bank entered into an agreement with the bank the substance of which was that all books then in stock and all books to be published thereafter were to be made over at once to the bank that a commission at a certain rate was to be allowed to the bank on the sale of the books and that the sale proceeds of the books were to be credited to the debtor's loan account every month after deducting the commission due to the bank. There was also other clauses and finally one Ram Charan Shukul agreed to act on behalf of the bank as sole agent for the sale of the debtor s books *Held* that the bank was on this agreement entitled to rank as a secured creditor of the owners of the printing and publishing business in the insolvency of the latter ALLAHABAD TRADING AND BANKING CORPORATION LD v GHULAM MUHAMMAD (1915)
I L. R 37 All. 383

——— s 34—

See s 16 I L. R 34 All. 628
2 Pat L J 235

See INSOLVENCY I L. R 42 Calc 289

1 ——— *Attachment before judgment—Plaintiff obtaining decree if acquires lien on money deposited to have attachment withdrawn—Defendant adjudicated insolvent before money could be realised in execution of decree—Receiver in insolvency if may claim money deposited* Where defendant s properties were attached before judgment in plaintiff s suit but the Court directed the attached properties to be released from attachment on the defendant s paying Rs 500 as cash security and after the same was paid and the properties released the defendant was adjudged an insolvent under Act III of 1907 but not before the plaintiff s suit was decreed *Held* that the plaintiff acquired no lien or charge upon the money deposited as security for getting the attachment before judgment withdrawn and the Receiver in solvency was entitled to have the money paid to him The money not having been realised in execution of a decree prior to the adjudication order s 34 of Act III of 1907 did not apply PROMOTHA NATH CHAKRAVARTI v MOHINI MOHAN SEN (1915) 19 C W N 1200

2 ——— *Decree for sale of certain property was obtained by one of the creditors —Prior to sale judgment debtor was adjudged insolvent—Position of other creditors* S 34 of the Provincial Insolvency Act was intended to put the creditors of the insolvent who have not actually attached the property before the date of the order of adjudication in as good a position as creditors of the insolvent who but for his insolvency would have been entitled to a rateable distribution of the assets realized on an execution sale Certain property was attached before judgment and a decree was subsequently obtained for its sale but prior to a sale actually taking place the judgment debtor was adjudged an insolvent *Held* that as the order of adjudication was passed prior to the sale of the property it must be regarded as the property of the judgment debtor and as such was available to the general body of creditors KASHI NATH v KANHAIYA LAL SHARMA (1915)
I L R 37 All. 452

3 ——— *Right of execution creditor to assets realised before adjudication* Where the assets have been realised in the course of execution by sale or otherwise as mentioned in s 34

PROVINCIAL INSOLVENCY ACT (III OF 1907)
—*contd.*

——— s 34—*contd.*

before the date of the order of adjudication an execution creditor is entitled to the benefit of the execution against the Receiver COUR CHARAN GANGA CHARAN SAHA v TOYEBUDDIN AHAMED (1918) 23 C. W N 461

——— ss. 34 35—*Application for declaration of insolvency—Property of applicant attached—Power of Insolvency Court to stay proceedings in execution* An Insolvency Court has no power to interfere with execution proceedings pending in another Court against a person who has filed his petition to be declared insolvent at least until either the debtor has been declared insolvent or until a receiver has been appointed ANUP KUMAR v KESHO DAS (1917)
I. L. R 39 All. 547

——— ss. 34, 35 and 37—

See INSOLVENCY PROCEEDINGS
3 Pat L. J 456

——— s. 35—

See TRANSFER OF PROPERTY ACT 1882
s 56 I L. R 42 All. 336

See s 34 I. L. R 39 All. 547

——— s. 36—

See s 3 I L R 44 Mad. 524

See s 16 I L R 39 All. 120
24 C W N 172

See s 18 I L R 37 All 65

See s 24 I L. R 41 Mad. 30

See INSOLVENCY I L R 46 Calc 991

1 ——— ss 36 46 (2) 50—*Order cancelling alienation of property by insolvent—Transferee if may appeal— Aggrieved person — Receiver if necessary party to appeal—Property outside local limits if may be dealt with—Calling in the aid of Court in whose jurisdiction property situate* Where an alienation of property made by an insolvent prior to his adjudication as such is annulled under s 36 of the Provincial Insolvency Act the transferee is an aggrieved person within s 46 (2) of the Act and is entitled to prefer an appeal against the order The transferee is moreover a necessary party to the proceeding and entitled to appeal as such The proper person to make an application under s 36 is the Receiver in whom the insolvent s properties have vested and he is a necessary party to such a proceeding and to an appeal arising out of it But where the application was made and prosecuted in the lower Court by the creditors the Receiver not having been joined as a party and the creditors were represented on the appeal and were fully heard in support of the order and the order proposed to be made did not in any way affect the position of the Receiver the appeal to avoid needless delay was heard and disposed of in the Receiver s absence Under s 36 of the Provincial Insolvency Act the Court had jurisdiction to deal with alienations made by the debtor of properties situated outside its local limits and such jurisdiction is not affected by the provisions of s 16 of the Civil Procedure Code A proceeding under s 36 of the Act is not in the nature of a suit It is only an incidental proceeding in the course of a more comprehensive one for adjudging a person an insolvent Regard being had to the fact that the petitioner under s 36 lived in Calcutta that the Court in which the proceedings in insolvency were pending was at Dacca that the property in question was situated at Monghyr and the transferee and the principal withnesses to the transfer were residents of that place and that three of the petitioners own witnesses were residents respectively of Bhagalpur Burdwan and Calcutta *held* that this was a fit case for proceeding under s 50 and the case was remanded to the lower Court with directions to call in the aid of the Court at Bhagalpur in regard to the matter LALJI SAHAI SINGH v ABDUL GANI (1910) 15 C W N 253

2 ——— *Insolvent — Question of bona fides of transfer by insolvent—District Judge not competent to refer to subordinate Court* *Held* that a Court exercising insolvency jurisdiction under Act No III of 1907 has no power to refer for inquiry to a subordinate Court a question arising under s 36 of the Act as to whether a mortgage executed by an insolvent was *bond fide* or not JAGANNATH v LACHMAN DAS (1914)
I. L. R 36 All 549

3 ——— *Insolvency—Right of one creditor to challenge claim of another—Duty of Court to inquire—Jurisdiction* *Held* that it is open to any creditor of an insolvent to challenge the validity of a debt set up by another creditor and if he does so the Judge is bound to inquire into the truth of his allegations in the insolvency and cannot merely refer the applicant to his remedy by suit KHUSHHALI RAM v BHOLAR MAL (1915)
I. L. R 37 All 252

4 ——— *Insolvent—Transfer of property by insolvent—Validity of such transfer* S 36 of the Provincial Insolvency Act is wider in its scope than s 53 of the Transfer of Property Act Under the former Act it is not necessary to show that the transfer was made with intent to defeat or delay a creditor All that it is necessary to show is that the transfer was made within two years of the adjudication of the insolvency of the debtor unless it is a transfer made before and in consideration of marriage In order to determine the validity of a transfer by a debtor of all his property in lieu of a debt it is a matter for consideration whether a real transfer was intended by the transferer or it was merely fictitious and whether it was made in good faith the onus of proving good faith being upon the transferee MUHAMMAD HABIB ULLAH v MUSHTAQ HUSAIN 1916) I L R 39 All 95

5 ——— *Insolvency—Procedure—Application by receiver to have annulled a transfer made by the insolvent* Where a receiver in insolvency seeks to have set aside under the provisions of s 36 of the Provincial Insolvency Act 1907 a transfer made by the insolvent he should file a written statement (similar to a plaint in ordinary suits) setting forth the grounds on which the transfer is challenged the transferee should put in a written reply and the proceeding should continue very much as in a suit Such matters should not and cannot properly be disposed of in a summary manner CHUNNOO LAL v LACHMAN SONAR (1917) I. L. R 39 All. 391

6 ——— *Mortgage if made in good faith—Onus* Under s 36 of the Provin-

PROVINCIAL INSOLVENCY ACT (III OF 1907) —contd

———— s 36—contd

cial Insolvency Act the onus of proving that a mortgage executed by an insolvent within two years before his adjudication as such was made in good faith and is therefore binding on the Receiver is on the mortgagee NILMONI CHAUDHURI v BASANTA KUMAR BANERJI (1914)
19 C W N 865

7 ———— *Proceeding questioning transfer—Onus* In a case arising under s 36 of the Provincial Insolvency Act the burden of proving that the transaction impugned was carried out in good faith and for valuable consideration is on the transferee BASIRUDDIN THANADAR v MOKIMA BIBI (1918) 22 C W N 709

8 ———— *Fraudulent transfer whether creditor may institute suit to set aside* Under s 36 of the Provincial Insolvency Act 1907 if a transaction by way of transfer of an insolvent s property takes place within two years prior to the act of insolvency or to the declaration of insolvency then nothing more is necessary on the part of the person impeaching the transaction than to prove that it took place within two years prior to the act itself When this has been done the onus is shifted on to the transferee to establish the *bona fides* of the transaction which he seeks to maintain S 36 contemplates that the Receiver is the proper person to impeach a fraudulent transfer by the insolvent of his property If the Receiver refuses to do so then it is open to any creditor to apply to the court for leave to institute a proceeding under s 36 on his own behalf and on behalf of the other creditors Until however the Receiver has refused or declined to act no one else is entitled to do so as the Receiver is the proper person to institute a proceeding under s 36 HEMRAJ SHAMPA LALL v RAMKESHUN RAM
2 Pat L J 101

9 ———— *Void meaning of—Exclusive jurisdiction of Insolvency Court to avoid transfers falling under the section* A transfer of property falling under s 36 of the Provincial Insolvency Act remains valid unless and until set aside at the instance of the Official Receiver The word void in that section means only voidable It is only the Official Receiver and not anybody else *e g* a purchaser from him that can get such a transfer set aside After an adjudication in insolvency the only Court that has jurisdiction to annul a transfer voidable under the Law of Insolvency is the Court of Insolvency and no other Court can adjudicate upon the voidable character of such a transfer in any other proceeding *e g* a suit either at the instance of a plaintiff or of a defendant MARIAPPA PILLAI v RAMAN CHETTIYAR (1918)
I L R 42 Mad. 322

———— s 37—

See s 3 I L R 44 Mad 524
See COMPANIES ACT 1913 s 2 1 I L R 2 Lah 102

See FRAUDULENT PREFERENCE
I L R 43 Calc 640

1 ———— *Subsections (1) (2)—Fraudulent preference how determined—Debtor s intention and motive material—Preference due to pressure from creditor if fraudulent—Creditor if may plead good faith—Onus* Under s 37 of the Provincial Insolvency Act good faith on the part of the creditor affords him no protection where the intention of the debtor to give him preference is established although sub s (2) of the section protects a person who in good faith and for valuable consideration has acquired title through or under a creditor of the insolvent Preference implies an act of free will and there can be no preference where the act is the result of pressure brought to bear on the debtor by the creditor though there would be fraudulent preference where notwithstanding that the payment or disposition might never have been made but for the importunity of the creditor it *is also a fact* that the payment never would have been made but for the desire to prefer The presumption of fraudulent intention may be repelled if it is apparent that the debtor acted in fulfilment of a prior agreement but it will not suffice to prove that the debtor was moved by a mere sense of honour or a sense of duty or of moral obligation or that he acted from motives of kindness or gratitude The intention of the debtor is the paramount consideration and if the transaction can be properly referred to some other motive than that of giving the particular creditor a *preference over* the others the payment is not *fraudulent* In the determination of the question *whether a person is* able or unable to pay his debts as they become due from his own money the fact that he *has money* locked up which at a later period may be available for the payment of his debts is immaterial Where an act *is impeached* as a fraudulent preference the onus of proof lies on the Receiver even if the debtor was insolvent at the time of the payment and knew himself to be so though *in such a case* the onus may shift NRIPENDRA NATH SAHU v ASHUTOSH GHOSH (1914) 19 C W N 157

2 ———— *Insolvent—Effect of lease of occupancy holding granted shortly before filing petition of insolvency* S 37 of the Provincial Insolvency Act 1907 has no application to the case of a lease granted *for* good consideration by an insolvent shortly *before* the filing of his petition unless the object thereof is to give a preference to one creditor *over* the others If the lease is found to be *a merely* colourable transaction the insolvent *still retaining* possession of the property leased it can be avoided *and the* property placed in the *hands* of the Receiver otherwise the rents should be paid to the Receiver for the benefit of the *creditors* The leased property being an occupancy holding *Held* that there was no reason for *directing* the surrender thereof to the zamindar DASRAJ v SAGAR MAL (1919) I L R 38 All. 37

3 ———— *Surety for debt of insolvent whether creditor* A person who stands surety for the payment of a debt by the insolvent is a creditor within the meaning of that expression in s 37 of the Provincial Insolvency Act (III of 1907) *Nalam Visvanatham v Official Assignee of Madras 32 I C 795* overruled RODERIQUES v RAMASWAMI CHETTIAR (1916)
I L R 40 Mad. 783

———— s 38—

See S 16 (2) AND (6) I L R 42 All. 438

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———— s. 40—

See RECEIVER I. L. R 40 Calc 678

———— s. 41—

See s 16 I. L. R 39 All. 223

———— s. 42—

See s 16 I. L. R. 39 All. 223

See s 16 (?) (a) 18 C W N 1052

———— *Adjudication annulment of if permissible on other than statutory grounds—Failure of Receiver to pay debts—Consent of opposing creditor* The Court has no power to annul an adjudication of insolvency otherwise than in exercise of the authority vested in it by the statute Where therefore none of the circumstances mentioned in s 42 of the Insolvency Act as grounds for annulment had been established the order of the Court annulling adjudication on the petition of the insolvents was erroneous and the fact that the Receiver of the insolvents property had been unable to satisfy the debts was no ground for annulment The fact that the opposing creditors was proved to have at one time consented to a composition was not sufficient to authorise the Court to annul an adjudication The consent of all the creditors is not by itself sufficient to justify an order of annulment The Court had to consider not merely that what they have agreed to is for the benefit of the creditors as a whole but also that the annulment would not be detrimental to commercial morality *Quære* Whether under s 42 of the Provincial Insolvency Act the Court has discretion to refuse to annul an adjudication when the circumstances mentioned in sub-s (*1*) to that section are established MOTI LAL *v* GANAPATRAM (1915) 21 C W N 936

———— s 43—

See s 4 I L R 36 Mad 402

See s 16 I L R 39 All 120

1 ———— *Insolvent acts of bad faith of—Proceedings in their nature criminal—Necessity of framing charge etc* A proceeding against a debtor under s 43 (2) of the Provincial Insolvency Act is in the nature of a criminal proceeding and as in all criminal cases it is necessary in such a proceeding that there should be a charge a finding and a conviction as a foundation for the sentence and everything should be strictly and accurately pursued and if on any of these three points a substantial defect should appear it would be a ground for reversing the proceeding HARIHAR SINGH *v* MAHESHUR PROSAD (1912)

18 C W N 692

2 ———— *Receiver's report—Insufficient to base a conviction on* On report by a Receiver of an insolvent's property to the effect that the insolvent had fraudulently transferred certain property of his just before he was declared an insolvent and that he had concealed the fact that he was the owner of a certain shop the Court convicted him under s 43 of the Provincial Insolvency Act *Held* that a Receiver's reports do not constitute legal evidence upon which an order under s 43 of the said Act can be based and therefore a conviction under s 43 based only on a Receiver's report is bad in law *Emperor* v *Chiranji Lal I L R 36 All 576* *Nathu Mal* v *The District Judge of Benares I L R 32 All 547*

PROVINCIAL INSOLVENCY ACT (III OF 1907) —*contd*

———— s 43—*contd*

Ex parte Campbell In re Wallace 15 Q B D 213 referred to NAND KISHORE *v* SURAJ MAL (1915) I L R 37 All. 429

3 ———— *Insolvency—Inquiry as to alleged fraudulent acts committed by debtor—Procedure—Evidence* *Held* that proceedings under s 43 (?) of the Provincial Insolvency Act 1907 should not be based merely upon the evidence given on behalf of the creditors when opposing the debtor's application to be adjudged an insolvent but evidence as to the specific acts alleged against the debtor should be recorded *de novo* *In the matter of Rash Behari Roy I L R 17 Calc ?09* referred to NATHU MAL *v* THE DISTRICT JUDGE OF BENARES (1910)

I L R 32 All 547

4 ———— *Provident Funds Act (IX of 1897) s 4—Provident Fund—Railway employé drawing his Provident Fund after his adjudication as insolvent—Payment of the money to his wife—Fraudulent transfer* The appellant who was in the employ of a Railway Company was adjudicated an insolvent under s 16 of the Provincial Insolvency Act 1907 and a Receiver was appointed Subsequently the insolvent resigned his appointment and drew his Provident Fund from the Railway Company A large portion of the amount so drawn was paid by the insolvent to his wife The District Judge held that the transaction amounted to a fraudulent act within the meaning of s 43 (2) of the Act and sentenced the insolvent to 3 months imprisonment He appealed *Held* setting aside conviction that there was no fraudulent dealing by the insolvent with s 43 in as much as neither the Receiver nor the creditor had any claim to the money drawn by insolvent for his Provident Fund having regard to the provision of the s 4 of the Provident Fund Act *Coher* v *Mitchell 1890 25 Q B D 62 and Official Receiver of Madras* v *Mary Daljaims 26 Mad 440* referred to NAGINDAS BRUKHANDAS *v* JHELABHAI GULABDAS (1919)

I L R 44 Bom 673

———— ss 43 46—

See CIVIL COURTS ACT 1887 ss 8 20

I L R 34 All 383

1 ———— *Additional District Judge—Order punishing debtor for fraudulent dealings with account books—Appeal whether civil or criminal and to what Court* *Held* by RICHARDS C J and BANERJI J (KNOX J dissenting) that an appeal from an order of Additional District Judge under s 43 (2) of the Provincial Insolvency Act 1907 lies directly to the High Court and not to the Court of the District Judge *Makhan Lal* v *Sri Lal I L R 34 All 383* followed *Held* also by RICHARDS C J and KNOX and BANERJI J J that such an appeal is an appeal on the civil side of the Court and not a criminal appeal EMPEROR *v* CHIRANJI LAL (1914) I L R 36 All 576

2 ———— *Creditor's petition to inquire into commission of an offence—Inquiry and refusal to frame a charge—Appeal right of* In the course of a proceeding in insolvency a creditor filed a petition alleging the commission of an offence by the insolvent and asking the Court to take action against him under s 43 cl. 2 (b) of the Provincial Insolvency Act (III of 1907) The Judge inquired into the petition but dismissed it

PROVINCIAL INSOLVENCY ACT (III OF 1907) —*contd*

——— ss 43, 46—*contd*

refusing to frame a charge *Held* that the creditor had no right of appeal as he is not a person aggrieved within the meaning of s 46 of the Act IYAPPA NAINAR *v* MANICKA ASARI (1914)

I L R 40 Mad. 630

3 ——— *Creditor— Person aggrieved —Appeal* One of the creditors of an insolvent in whose case no Receiver had been appointed applied to the Court making allegations that the insolvent had been guilty of an offence under s 43 sub s (2) of the Provincial Insolvency Act 1907 the Court however held that no case was made out and refused to move in the matter *Held* that the creditor applicant was not a person aggrieved within the meaning of s 46 sub s (2) of the Act and had no right of appeal against the Court s order *Iyappa Nainar* v *Manicka Asari 27 Indian Cases 451* referred to LADU RAM *v* MAHABIR PRASAD (1916)

I L R 39 All. 171

4 ——— *Order refusing application by a creditor to take action against the insolvent—Whether appealable* The appellant a creditor applied to the District Court to have action taken against the insolvent (the respondent) under s 43 of the Insolvency Act This application was rejected by the Court and the present appeal was lodged in the High Court against the order of rejection It was objected for the respondent that no appeal was competent *Held* that an order refusing an application by a creditor to take action against the insolvent is not appealable because—(*a*) the application is not one which the Insolvency Act entitles a creditor to make and the applicant is therefore not a person aggrieved by the order refusing the application within the meaning of s 46 and (*b*) the order is not one under s 43 (2) which makes provision only for an order sentencing the debtor *Iyappa Nainar* v *Manicka Asari (I L R 40 Mad 630)* and *Ladhu Ram* v *Mahabir Prasad (I L R 39 All 171)* followed *In re Burden ex parte Ward (21 Q B D 24)* distinguished *Baldwin s Law of Bankruptcy* and *Bills of Sale p 35* referred to and explained GUJAR SHAH *v* BARKAT ALI SHAH

I L R 1 Lah 213

——— s 44—

See s 4 I L R 36 Mad. 402

——— s. 45—

See s 16 I L R 39 All. 223

——— ss 45 46—*Appeal time for —Limitation Act applicability of—Period of limitation commencement of—General principles—General Clauses Act (X of 1897) ss 9 and 10 applicability of—Ninetieth day dies non—Exclusive of* In computing the time for preferring an appeal to the High Court under s 46 of the Provincial Insolvency Act (III of 1907) though the general provisions of the Indian Limitation Act do not apply the period of ninety days specified in s 45 of the Act should be reckoned from the date of the order appealed against and thereupon the general principles contained in s 9 of the General Clauses Act (X of 1897) should be applied and the day on which the order appealed against is passed should be excluded Further under s 10 of the General Clauses Act the ninetieth day if it be a *dies non* must be excluded RAMASWAMI PILLAI *v* VENKATESWARA AYYAR (1918)

I L R 42 Mad. 13

——— s 46—

See s 2	I L R. 40 Mad. 752
See s 15	I L R 38 Mad. 15
See s 20	I L R 36 All. 8
See s 22	I L R 41 All. 243
	I L R 35 All. 410
	I L R 39 All. 182
See s 43 (2)	I L R 39 All. 171
See s 43	I L R 36 All. 5,6
	I L R. 40 Mad 630
See s 45	I L R 42 Mad. 13
See BENGAL CIVIL COURTS ACT 1887 ss 8 20	I L R. 34 All. 383
See CIVIL PROCEDURE CODE 1908 s 11	I L R. 39 All. 625

1 ——— *Leave to appeal refused by District Judge—Concurrent jurisdiction of High Court to grant leave—Order to District Judge to be set aside before grant of leave—Practice—Civil Procedure Code (Act V of 1908) O XLI r 11 hearing under if necessary after leave granted* The High Court having concurrent jurisdiction with the District Judge to grant leave to appeal from an order under the Insolvency Act can do so when such leave has been refused by the District Judge Where such leave is granted there is no necessity for a further hearing under O XLI r 11 of the Civil Procedure Code MADHU SUDAN PAL *v* PARBATI SUNDARI DASYA (1914)

19 C W N 760

2 ——— *Appeal out of time—Deduction of time for obtaining copy if permissible—Delay if excusable—General Provisions of Limitation Act if applicable—Limitation Act (IX of 1908) ss 5 12 and 29—Conversion of Appeal into Civil Revision Petition when permissible—Order without notice to Official Receiver illegal* An appeal under s 46 cl (3) of the Provincial Insolvency Act which was preferred to the High Court beyond the period of time fixed therein is barred by limitation as the time requisite for obtaining a copy of the order appealed against cannot be deducted under that Act or under ss 12 (2) and 29 of the Limitation Act *Quære* Whether the Court can excuse the delay under s 5 of the Indian Limitation Act (IX of 1908) Case law on the subject considered The High Court is competent to convert such an appeal into a Civil Revision Petition under s 15 of the Charter Act and to set aside the order where the lower Court passed the order in favour of a creditor of an insolvent without the notice to the Official Receiver *Abdulla* v *Salaru I L R 18 All 4* followed SIVARAMAYYA *v* BHUJANGA RAO (1915)

I L R 39 Mad. 593

3 ——— *Limitation Act (IX of 1908) ss 12 and 29— Appeal—Limitation—Time requisite for obtaining copies* The Provincial Insolvency Act was intended to be and is so far as matters governed by it are concerned a complete code in itself and contains its own limitation law In computing therefore the period of limitation prescribed for presenting an appeal under the

PROVINCIAL INSOLVENCY ACT (III OF 1907)
—contd.

——— s. 45—contd

said Act the time requisite for obtaining a copy of the order complained of cannot be excluded *Behari Lall Mookerjee v Mungolanath Mookerjee I L R 5 Calc 110* and *Nogendra Nath Mullick v Mathura Mohun Parhi I L R 18 Calc 368* referred to *Beni Prasad Kuari v Dukhi Rai I L R 23 All 2 0* distinguished JUGAL KISHORE v GUR NARAIN (1911) **I L R 33 All. 738**

4 ——— *Appeal—Limitation—Application of general provisions of the law of limitation—Limitation Act (IX of 1908) s 1 and 29* The Provincial Insolvency Act is a special law within the meaning of s 29 of the Indian Limitation Act but inasmuch as it is not in itself a complete Code there is nothing to prevent the application thereto of the general provisions of the Indian Limitation Act Such general provisions do not affect or alter the period prescribed by a special law but only the manner in which that period is to be computed *Jugal Kishore v Gur Narain I L R 33 All 738* over ruled *Beni Prasad Kuari v Dharaka Rai I L R 23 All 2 7 Jati Sarup v Ram Chandar Singh, All Weekly Notes 190 34* and *Veeramma v Abbiah I L R 18 Mad 99* followed *Poul on v Modhoosoodun Paul Chowdhry 2 W R Act X 21 Unnoda Persaud Mookerjee v Kristo Coomar Moitro 15 B L R 60 note Nagendra Nath Mullick v Mathura Mohun Parhi I L R 18 Calc 368 Girija Nath Roy Bahadur v Patane Bibee I L R 17 Calc 263 Behari Lall Mookerjee v Mungolanath Mookerjee I L R 5 Calc 110 Golap Chand Nowlukha v Krishto Chunder Das Biswas I L R 5 Calc 314 Nujab Hoola v Ha r th I L R 8 Calc 910 Khetter Mohun Chuckerbutty v Dinabashi Shaha I L R 10 Calc 265 Gurucharya v President of the Belgaum Town Municipalities I L R 8 Bom 529 Kullayappa v Lakshmipathi I L R 12 Mad 467 Abdul Hakim v Latifunnessa Khatun I L R 30 Calc 5 2* and *Suraj Bal Prasad v Thoma I L R 28 All 48* referred to DROPADI v HIRA LAL (1912)
I L R 34 All. 496

——— ss 46 47—

See APPEAL TO PRIVY COUNCIL
I L R 40 Calc 685

——— ss 46 47 (1) and (2)—*Appeal under s 46 filed out of time—Dismissal of memorandum of objections right of respondent to file—Civil Procedure Code s 108 (2) O XLI r 22* S 47 (2) of the Provincial Insolvency Act and s 108 (2) Civil Procedure Code apply the procedure of the Civil Procedure Code to appeals filed under s 46 of the Provincial Insolvency Act hence a respondent in such an appeal is entitled to file a memorandum of cross objections under O XLI r 22 Civil Procedure Code When an appeal is dismissed as filed out of time a memorandum of objections filed by a respondent under O XLI r 22 cannot be heard *Ramjiwan Mal v Chand Mal I L R 10 All 587* followed Decisions on O XLI r 22 (formerly s 561 Civil Procedure Code) reviewed ALAGAPPA CHETTIAR v CHOCKALINGAM CHETTIAR (1918)
I L R 41 Mad 904

——— s 47—

See s 4 **I L R 36 Mad. 402**
See s 13 (3) **I L R 36 All. 65**
See s 16 **I L R 39 Mad. 693**

PROVINCIAL INSOLVENCY ACT (III OF 1907)
—contd

——— s 47—concld

See s 18 **I L R 37 All. 65**
See s 20 **I L R 41 Mad. 440**
See s 24 **I L R 48 Calc 87**
See s 46 **I L R 41 Mad. 904**
See APPEAL TO PRIVY COUNCIL.
I L R 40 Calc 685
See INSOLVENCY PROCEEDINGS
3 Pat L J 456
See RECEIVER **I L R 40 Calc 678**

——— *Civil Procedure Code (1908) O XXI r 71—Sale of property of insolvent by receiver—Default of purchaser—Re sale—Order by Court on purchaser to make good deficiency—Proceeding* S 47 of the Provincial Insolvency Act 1907 has not the effect of making the provisions of O XXI of the Code of Civil Procedure 1908 applicable to a sale of the property of an insolvent held by a Receiver under the orders of the District Judge If therefore the purchaser at such a sale defaults and the property is re sold for a sum less than the original bid the first purchaser cannot be called upon under O XXI, r 71 to make good the deficiency *Mul Chand v Murari Lal I L R 36 All 9* referred to CHEDA LAL v LACHMAN PRASAD (1916)
I L R 39 All. 267

——— s 50—

See INSOLVENCY **I L R 40 Calc 78**

——— s 51—

See s 16 **I L R 39 Mad 693**

——— s 52—

See s 2 **I L R 40 Mad 752**
See s 15 **I L R 38 Mad 15**
See s 24 **I L R. 41 Mad. 30**

——— s 56—

See s 16 **I L R 43 All 510**

PROVINCIAL INSOLVENCY ACT (V OF 1920)

See PROVINCIAL INSOLVENCY ACT 1907

Comparative Table of Acts III of 1907 and V of 1920

Section of Act III of 1907	Corresponding of Act V of 1920
1	1
2	-
3	3
4	6
5	7
6 (1)	12 and 18
6 (2)	11
6 (3)	10
6 (4)	9 (1)
6 (5)	9 (2)
6 (6)	8
7	14.
8	15
9	16
10	17
11	13
12	19
13	21
14	24

PROVINCIAL INSOLVENCY ACT (V OF 1920) —contd

Comparative Table of Acts III of 1907 and V of 1920—contd

Section of Act III of 1907	Corresponding of Act V of 1920
15 (1)	25
15 (2) (3)	26 (1) (2)
16 (1)	27
16 (2) to (6)	28
16 (7)	30
17	36
18	56
19	57
20	59
21	60
22	68
23	58
24	33
25	49
26	50
27	38
28	34
29	33 (3)
30	46
31	47
32	48
33	61
34	51
35	52
36	53
37	54
38	55
39	62
40	66
41	67
42	35
43	22 and 69
44	41
45	44
46	75
47	5
48	74
49	76
50	77
51	79
52	80
53	72
54	81
55	82
56	Sch III

——— ss 54 and 55—*Insolvent—Fraudulent preference—Intention of insolvent rather than actual effect the test whether a transaction amounts to a fraudulent preference* In order that a transaction entered into by an insolvent may be set aside as a fraudulent preference of one creditor over the others it is not sufficient merely that it should in fact lead to that result Where the transaction is entered into by the insolvent solely for the purpose of securing some ready money for himself it does not necessarily fall within the purview of s 54 of the Provincial Insolvency Act 1920 *Ex parte Hodgkin L R 20 Eq Ca 746 New France and Garrard's Trustee v Hunting 2 Q B 19* and *Sharp v Jackson A C 419* referred to S 55 of the Act protects all transactions, unless they are in themselves acts of insolvency or fraudulent preferences, entered into with a debtor by third persons for valuable consideration and *bonâ fide* namely *bonâ fide* in the sense that the person with whom such transaction takes place had not at the time notice of the presentation of any insolvency petition by or against the debtor BHAGWAN DAS & Co v CHUTTAN LAL I L R 43 All. 427

——— s 69 (c) (ii)—*Insolvent fraudulently making away with or concealing property—Not using means of ascertainment tantamount to active concealment* A man in the position of an insolvent who has the means of ascertaining where property of his has been disposed of even if he has not been actually a party to the making away with it and who does not use the means is just as guilty of concealment within the meaning of s 69 (c) (ii) of the Provincial Insolvency Act as if he actively conceals the locality in which the property actually is *In the matter of* QASIM ALI AN INSOLVENT I L R 43 All. 406

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887)

See CRIMINAL PROCEDURE CODE s 195 4 Pat L J 609

——— power of—

See ATTACHMENT BEFORE JUDGMENT I. L. R 46 Calc 717

——— s 1 (f)—*Security on application for order to set aside ex parte decree—Limitation Act (XV of 1877) Sch II Art 164—Notice under s 248 Civil Procedure Code (Act XIV of 1882)—Execution of process* When security is not deposited under s 17 of Act IX of 1887 until after the application to set aside the *ex parte* decree is disposed of the hearing of the application must be held to have been barred But where no objection is taken on this ground at the hearing the High Court will not set aside the order in revision *Ramaswami v Kuruvu I L R 13 Mad 178* explained A process is executed when notice under s 248 Civil Procedure Code (Act XIV of 1882) has been served and limitation under Sch II Art 164 of the Indian Limitation Act will run from the date of service of such notice *Bimola Soonduree Dassee v Kalee Kishen Mojoomdar 22 W R 5* followed SURYANARAYANA v PAMAMMA (1910) I L R 34 Mad. 89

——— s 15—

See CIVIL PROCEDURE CODE 1908 s 10 I L R 44 Mad. 697

——— ss 15 33—*Suit to recover a sum of money as the value of trees felled by the defendant—Ownership of the trees in the plaintiff because the land on which they stood belonged to him—Incidental issue as to title to immoveable property—Jurisdiction of the Small Causes Court* The plaintiff brought a suit in the Court of Small Causes to recover Rs 12 as the value of certain trees felled by the defendant The plaintiff's claim to relief proceeded on the basis that the trees belonged to him because the land on which they stood also belonged to him A question having arisen as to the jurisdiction of the Court of Small Causes to entertain the suit *Held* by the Full Bench that a Court of Small Causes could entertain a suit the principal purpose of which was to determine a right to immoveable property provided the suit in form did not ask for that relief but for payment of a sum of money PUTTANGOWDA v NILKANTH KALO DESHPANDE (1913) I L R 37 Bom 675

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887)—*contd.*

——— s. 16—

See CRIMINAL PROCEDURE CODE s. 10
2 Pat L J 1

——— ss. 16 27 32, Sch. II, cls. (2) and (3)—*Suit for the recovery of certain sum representing a share in the produce of immoveable property—Cognizance by the Court of Small Causes—Decree final—Appeal—Jurisdiction by consent of parties* A suit for the recovery of Rs.12 11 6 representing plaintiff's share in the produce of immoveable property is a suit for money had and received to the plaintiff's use and is cognizable by the Court of Small Causes and the decree in such a suit is final under s 27 of the Provincial Small Causes Courts Act (IX of 1887) Notwithstanding its finality an appeal was preferred to the District Court of Ahmedabad which Court entertained the appeal and reversing the decree allowed the plaintiff's claim The defendant thereupon preferred a second appeal and at the hearing prayed that the second appeal might be treated as an application for revision under s 115 of the Civil Procedure Code (Act V of 1908) on the ground that the District Court acted without jurisdiction in entertaining the appeal The respondent (plaintiff) urged that a second appeal lay and further that by reason of the conduct of the parties and the fact that the appellant (defendant) had not objected to the jurisdiction of the District Court it was too late in second appeal to take the point *Held* that the District Court had no jurisdiction to try the case and the conduct of the parties could not give it jurisdiction *Ledgard* v *Bull L R 13 I A 134* and *Meenakshi Naidoo* v *Subramaniya Sastri L R 14 I A 160* referred to Decree of the District Court reversed and that of the first Court restored DAVLATSINHJI (MAHARANA SHRI) v KHACHAR HAMIR MON (1909) I L R 34 Bom 171

——— s 17—

See LIMITATION ACT 1908—

SCH I ART 161 24 C W N 350

SCH I ART 164 15 C W N 102

See SMALL CAUSE COURT SUIT
I L R 44 Calc 950

1 ——— *Civil Procedure Code (1908) s 24—Suit transferred from Subordinate Judge with Small Cause Court powers to Munsif—Ex parte decree—Procedure* *Held* that s 24 sub cl (4) of the Code of Civil Procedure contemplates a Court vested with the powers of a Court of Small Causes and that when a suit is transferred from that Court to another Court the Court trying it is to be deemed a Court of Small Causes and its procedure is to be governed by the provisions of the Provincial Small Cause Courts Act There fore when such a suit is transferred to a Munsif from the Court of a Subordinate Judge vested with Small Cause Court powers and the former passes an *ex parte* decree in the suit an application to have the *ex parte* decree set aside must be accompanied by a deposit of the amount of the decree or a security in respect of the amount as required by s 17 of the Provincial Small Cause Courts Act the provisions of which are mandatory *Mangal Sen* v *Rup Chand I L R 13 All 324* *Jagan Nath* v *Chet Ram I L R 28 All 470* referred to *Sarju Prasad* v *Mahadeo Pande*

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887)—*contd*

——— s 17—*contd*

I L R 3 All 470 distinguished CHHOTEY LAL v LAKHMI CHAND MAGAN LAL (1916)
I L R 38 All 425

2 ——— *Decree ex parte—Claim decreed in full but incorrect amount entered—Application for re hearing—Deposit of amount named in decree* Where an *ex parte* decree passed by a Court of Small Causes was incorrectly drawn up inasmuch as the principal sum decreed was wrongly entered the costs were wrongly entered and no sum at all was entered on account of interest *pendente lite* it was *held* that the defendant in applying for a re hearing had sufficiently complied with the terms of the proviso to cl (1) of s 17 of the Provincial Small Cause Courts Act 1887 when he deposited in court the sum which was in fact named in the decree BASDEO RAM SAHAI v MUL CHAND NEMI CHAND
I L R 43 All 438

3 ——— *Proviso—Ex parte decree application to set aside—Whether proviso mandatory or directory—Time within which deposit to be made or security given* *By the Full Bench* (SESHAGIRI AYYAR J dissenting) The provisions of s 17 (1) Provincial Small Cause Courts Act are mandatory *By the Full Bench*—But the deposit of the decretal amount may be made or the security given within the period prescribed by the law of limitation for applications under the section namely thirty days from the date of the *ex parte* decree although it did not accompany the application itself *Jeun Muchi* v *Budhiram Muchi (1905) I L R 32 Calc 389* followed ASSAM MOHAMED SAHIB v RAHIM SAHIB (1920)
I. L. R 43 Mad (F B) 579

——— s 23—

See s 35 5 Pat L J 248

1 ——— *Plaint in suit of Small Cause Court nature involving question of title returned by Small Cause Court for presentation in Civil Court—Refusal of latter to receive plaint—Remedy is by appeal or revision—Civil Procedure Code (Act V of 1908) O VII r 10 O XLIII r 1 (a)* When a plaint originally presented in the Small Cause Court is under an order under s 23 of the Provincial Small Cause Courts Act presented in the ordinary Civil Court the latter has no authority to refuse to entertain the suit An order by the latter Court returning the plaint for presentation to the Small Cause Court was not an order under O VII r 10 of the Civil Procedure Code as the plaint had not been originally filed in that Court and such an order did not require to be set aside by an appeal under O XLIII r 1 (a) The High Court in revision set aside the order as one made in violation of the provisions of s 23 of the Provincial Small Cause Courts Act. CHANDERBODAN KOER v SHEODHOR PERSHAD (1912)
18 C W N 380

2 ——— *Return of a plaint under—High Court's power of interference—S 25 Provincial Small Cause Courts Act s 115 Civil Procedure Code (Act V of 1908) and s 10 Government of India Act of 1915* Where a Provincial Small Cause Court returned a plaint for presentation to a proper Court on the ground that the suit involved a question of title which should be tried in a regular suit and the plaintiff thereupon

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887)—*contd*

——— s 23—*contd*

moved the High Court and obtained a rule on a preliminary objection taken that the order under s 23 (*1*) is not covered by s 25 of the Provincial Small Cause Courts Act *Held* that there is a good deal of distinction between disposing of a case and deciding a case A case is something less definite than a suit The meaning of the word decided as held in *Subal Ram Dutt* v *Jagadananda 13 C W N 403* approved *Umesh Chandra* v *Rakhal Chandra 15 C W N 666* referred to Under s 11 of the Civil Procedure Code the High Court would only interfere if the question were one of jurisdiction The Calcutta High Court s powers under the Charter Act have been exercised with few exceptions only in cases where jurisdiction has been exceeded or the Judge has ignorantly or perversely refused to exercise or made only a colourable pretence at exercising jurisdiction vested in him by law This limited power should be exercised only when irreparable injury would be caused to one of the litigants if matters were not set right *Chandi Ray* v *Kripal Ray 15 C W N 69* and *Amajad Ali* v *Ali Husain Jolar 15 C W N 353* referred to S 23 (*1*) of the Provincial Small Cause Courts Act is designed to meet cases in which a Small Cause Court Judge is satisfied that the question of title raised is so intricate that it should not be decided summarily but in a Court in which the evidence is recorded in full and the decision is open to appeal the matter is one of discretion and where discretion is vested in a Court it is not open to interference unless it has been exercised ignorantly or perversely CANGA PRASAD v NANDURAM (1916) **20 C W N 1080**

——— ss 23 25—

——— *Jurisdiction*—*Suit for sacrificial goat based on plaintiff's title as shebait to a temple if may be decided by Small Cause Court* Where the plaintiff claiming to be the *shebait* of a goddess sued the defendant for damages for unlawfully taking away a goat sacrified at the altar of the goddess *Held* that the question could be properly tried in a Small Cause Court without any elaborate investigation into the general question of the title of the plaintiff as *shebait* The plaint having been returned by the Small Cause Court for presentation to the proper court under 23 of the Small Cause Courts Act *Held* that the High Court had jurisdiction to revise that order either under s 25 of the Provincial Small Cause Courts Act or under s 15 of the Charter Act *Quære* Whether decide in s 25 means finally adjudicate UMESH CHANDRA KALODHI v RAKHAL CHANDRA CHATTERJEE (1911) **15 C W N 666**

——— *Questions of title*—*Return of plaint*—*Revision* Where a plaint presented to a Small Cause Court is returned under s 23 (*1*) of the Provincial Small Cause Court Act the High Court will not interfere under s 2 of that Act, nor under s 115 of the Code of Civil Procedure 1908 nor under s 107 of the Government of India Act 1915 unless the Court of first instance has exercised its discretion ignorantly or perversely or unless the Court has exceeded its jurisdiction or has ignorantly or perversely refused to exercise or has made only a colourable pretence at exercising a jurisdiction vested in it by law and has thereby caused injury to the parties which would be irreparable if not set right GANGA PRASAD v NANDU RAM **1 Pat L J 465**

——— ss 23 27—*Small Cause suit*—*Question of title*—*Suit transferred to the ordinary jurisdiction of the Court*—*No substantial irregularity*—*Decision on title*—*Decree not final*—*Appeal* In a suit which was originally filed as a Small Cause Court suit in the Court of the Subordinate Judge having both Small Cause and regular jurisdictions the Judge transferred the suit at a very early stage to his file as ordinary Judge as the relief claimed by the plaintiffs depended upon proof or disproof of a title to immoveable property The Judge then passed a decree deciding the question of title *Held* that there was no substantial irregularity in thus effecting the transfer and that it must be taken that the powers conferred by s 23 of the Provincial Small Cause Courts Act (IX of 1887) were put in force in a regular manner *Held* also, that as it was a decree which could not be passed by a Court of Small Causes it was not a decree falling within the terms of s 27 of the Provincial Small Cause Courts Act (IX of 1887) and was therefore not final but appealable HARI BALU v GANPATRAO LAKHUJI RAO (1913) **I L R 38 Bom. 190**

——— s 25—

See s 23

See WITHDRAWAL OF SUIT **2 Pat L J 682**

1 ——— *Jurisdiction of High Court*—*Revision*—*Refusal of leave to amend plaint* *Held* that the refusal on the part of a Court of Small Causes of permission to amend a technical defect in the plaint amounted to an irregularity such as would justify the interference of the High Court in revision under s 25 of the Provincial Small Cause Courts Act 1887 HEYDORN AND COMPANY v MUHAMMAD SHAFI (191) **I L R 34 All. 348**

2 ——— *Revision*—*Jurisdiction of High Court*—*Execution of decree*—*Limitation*—*Application to Court to take a step in aid of execution*—*Application for extension of time* A *bonâ fide* application made by the decree holder praying for extension of time for the purpose of ascertaining the whereabouts of his judgment debtor is an application to take a step in aid of execution and saves limitation Where a Small Cause Court without any materials on the records gratuitously assumed that such an application presented by the decree holder was not *bonâ fide* and consequently that a subsequent application for the execution of the decree was time barred, it was *held* that there was ground for interference by the High Court in revision BHAIRON PRASAD v AMINA BEGAM (1915) **I. L. R. 38 All. 690**

3 ——— *Decision of a preliminary question of jurisdiction which does not dispose of the suit*—*Revision* *Held* that no revision would be under s 25 of the Provincial Small Cause Courts Act 1887 from an order of a Court of Small Causes deciding a question of jurisdiction, which decision still left the suit undisposed of in the Small Cause Court *Ramanathan Chetty* v *Morathappa Kone 25 Indian Cases 643* referred to MAKHAN LAL PARSOTAM DAS v CHUNNI LAL BRIJ LAL (1918) **I. L. R. 41 All. 4**

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887)—*contd*

——— s 25—*contd*

4. ——— *Revision—Suit filed before Munsif not having Small Cause Court powers but decided by one who had though as a regular suit—Appeal* A suit which according to the frame of it was a Small Cause Court suit was filed in the court of a Munsif at a time when the permanent incumbent who was invested with Small Cause Court powers, was on leave and the temporary incumbent was not invested with Small Cause Court powers Before the suit came to a hearing the permanent incumbent returned He tried the suit and tried it as an ordinary suit and not as a Small Cause Court suit *Held* that the Munsif was right in so doing and that an appeal lay from his decision to the Subordinate Judge *Jag Mohan Lal v Lalha 9 Indian Cases 761 Mahima Chandra Sirdar v Kali Mondal 12 C W N 167 Hari Kamayya v Hari Venkayya I L R 26 Mad 212* and *Sambhu Dhanaji v Ram Vithu I L R 28 Bom 241* referred to BINDESRI v GANGA PRASAD I. L. R. 42 All. 195

5 ——— *High Court—Revision—Jurisdiction to revise findings of fact* Under s 25 of the Provincial Small Cause Courts Act 1887 the High Court can interfere on questions of fact *Poona City Municipality v Ramji (1895) 21 Bom 250* and *Turner v Jagmohan Singh (1900) 27 All 531* referred to *Per* FAWCETT J Interference in regard to appreciation of evidence should in general only be exercised when there appears to the Court to be a very clear case of misappreciation which has resulted in injustice to a party and makes the decree one that cannot be regarded by a Revisional Court as according to law NATHURAM SHIVNARAYAN v DHULABAM HARIRAM (1920) I L. R 45 Bom 292

——— ss 25 and 23—*Provincial Small Cause Court Act 1887*—Deposit of arrears of revenue—*Held* that in order to determine whether a mortgagee was entitled to deposit the arrears of revenue *it was incumbent on the Court to determine whether* the bond was genuine or not and that omission to do so amounted to an error in law so that the High Court had power to transfer under s 25 of the Provincial Small Causes Act 1887 RAJ KUMAR LAL v JAIKARAN DAS

5 Pat L J 248

——— s 25 Sch II, Art 41—*Jurisdiction—Debt of deceased person paid in whole by one of the heirs—Suit for contribution* Two heirs of a deceased Mahomedan became entitled to the property left by him in the proportion of eight tenths and two tenths The owner of the eight tenths share paid off the whole of a debt due by the deceased and thereafter sued the owner of the two tenths share for contribution *Held* that the suit was not excluded from the jurisdiction of a Court of Small Causes by Art (41) of the second schedule to the Provincial Small Cause Courts Act 1887 MAHMUD ALI v TAMIZ UN NISSA BIBI (1918) I L. R 41 All 51

——— s 27—

I L R 38 Bom 190

——— ss 27 32, 33 and 35—

See CIVIL PROCEDURE CODE 1908 s 24 I L. R 38 Mad. 25

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887)—*contd*

——— s 32—

See s 16 I R L. 34 Bom 171

——— *Suits instituted in Court not invested with powers—Transfer of suits as money suit—Re transfer as Small Cause Court suits—Code of Civil Procedure (Act V of 1908) s 24* Fifty two suits were instituted against various tenants These suits were cognizable by a Court of Small Causes but they were instituted in the Court of the *Munsiff* of Motihari who had not been invested with Small Cause Court powers This *Munsiff* was transferred and another *Munsiff* invested with Small Cause Courts powers took his place The latter held that by virtue of s 32 (2) of the Provincial Small Cause Courts Act 1887 the suits were triable as money suits and he accordingly transferred them to the file of the Additional *Munsiff* Subsequently the plaintiff applied to the District Judge to re transfer the 52 suits under s 24 of the Civil Procedure Code 1908 to the Court of the *Munsiff* who had transferred them and to direct him to hear them as money suits The petition was filed with the *Munsiff's* order in one of the suits only The District Judge transferred all the suits to the *Munsiff's* Court to be treated as Small Cause Court suits *Held* (1) that as there was no Small Cause Court in existence at Motihari when the suits were instituted the procedure to be adopted with regard to them was the procedure laid down in the Civil Procedure Code (2) that the District Judge had power to transfer a money suit from the Court of one *Munsiff* to the Court of another *Munsiff* and (3) that the order transferring the 51 suits in which no separate stamped application was made was incompetent UGAR SINGH v MOTIHARI COMPANY LIMITED

4 Pat L. J 13

——— ss 32 to 35—

See CIVIL PROCEDURE CODE (1908) s 24 (4) I L R 39 All 214
I L R 38 Mad 25

——— s 33—

See s 15 I L R 37 Bom. 375

——— s 35—

See CIVIL PROCEDURE CODE (1908) s 24
I L R 40 All 525

1 ——— *Jurisdiction—Munsiff vested with the powers of a Judge of the Court of Small Causes succeeded by one not vested with such powers—Appeal* When a Munsiff vested with the powers of a Court of Small Causes is succeeded in office by a Munsiff not vested with such powers the latter under s 35 of the Provincial Small Cause Courts Act bound to try the suits pending on the file as regular suits and an appeal lies against his decision *Sham Behari Lal v Kali 12 All J R 109* followed *Mangal Sen v Rup Chand I L R 13 All 324* dissented from *Kamta Prosad v Mahabal Singh 6 O C 81 Dulal Chandra Deb v Ram Narain Deb I L R 31 Calc 1057 Ram Chandra v Ganesh I L R 23 Bom 382* referred to SARJU PRASAD v MAHADEO PANDE (1915) I L. R 37 All. 450

2. ——— *Decree passed by Small Cause Court—Small Cause Court abolished and execution transferred to a Munsiff—Jurisdiction—Appeal—Indian Limitation Act (IX of 1908) s 19—Acknowledgment* Where a Court of Small

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887)—*contd*

——— s 35—*contd*

Causes had passed a decree and was then abolished and the execution proceedings were taken in the Court of a Munsiff *Held* that the Munsiff s orders in execution were not the orders of a Court of Small Causes and were therefore open to appeal *Sarju Prasad* v *Mahadeo Pande I L R 37 All 450* followed *Mangal Sen* v *Rup Chand I L R 13 All 324* dissented from. *Held* also that an objection filed in answer to an application for execution of decree by the arrest of the judgment debtor upon which a warrant of arrest had been issued to the effect that the judgment debtor was a poor man and that the warrant should not be executed could not be construed into an acknowledgment of the decretal debt within the meaning of s 19 of the Indian Limitation Act 1908 *Ramhit Rai* v *Satgur Rai I L R 3 All 247* distinguished LACHMAN DAS v AHMAD HASAN (1917)

I L R 39 All. 357

——— ss. 35 and 23—*Deposit of arrears of revenue by mortgagee—Suit to recover amount of arrears—Whether Court bound to decide validity of mortgage—Bengal Revenue Sales Act (XI of 1859) s 9—Transfer of Property Act (IV of 1882) s 100—Code of Civil Procedure (Act V of 1908) O XXXIV r 15* A mortgagee who had paid the arrears of Government revenue in order to prevent the mortgaged property being sold sued the defendant who had purchased the property subsequently to the mortgage in the Court of Small Causes for recovery of the arrears paid The defendant pleaded that the mortgage was not genuine The court declined to decide the question of the genuineness of the bond on the ground that it was beyond the scope of the suit and decreed the suit *Held* (1) that in order to determine whether the mortgagee was entitled to deposit the arrears of revenue it was incumbent on the Court to determine whether the bond was genuine or not and that omission to do so amounted to an error in law so that the High Court had power to interfere under s 25 of the Provincial Small Cause Courts Act 1887 (2) that if the court was of opinion that the question of the genuineness of the bond was beyond the scope of the suit it was incumbent on the court to exercise the discretion vested in it by s 23 and to return the plaint to be presented to the proper court and failure to do so brought the case within the purview of s 25 (3) that if the alleged mortgage was genuine the amount paid as arrears of revenue should have been added to the mortgage debt under s 9 of the Bengal Revenue Sales Act 1859 and that even if the plaintiff s lien was not in fact a mortgage it was a charge upon immoveable property within the meaning of s 100 of the Transfer of Property Act 1882 read with O XXXIV r 15 of the Code of Civil Procedure 1908 and could only be enforced by a suit under O XXXIV (4) that even if the plaintiff was entitled to relinquish his lien and claim a money decree the present suit not having been framed as such he could not succeed RAJKUMAR LAL v JAIKARAN DAS 5 Pat L. J 248

——— Sch II, Arts 2 and 3—

See s 16 I L R 34 Bom 171

——— Sch II, Art 3—*Failure to perform a contract whether an act within Art 3—Suit to recover money under a contract with Government whether of a small cause nature—Second appeal* Failure by Government to carry out a contract under which the plaintiff was entitled to a sum of money on account of certain constructions made by him is not an act purporting to be done by an officer of Government in his official capacity within the meaning of Art 3 Sch II of the Provincial Small Cause Courts Act (IX of 1887) The article applies only to a suit relating to some distinct act done by an officer of Government *Rajmal Manikchand* v *Hanmant Anyaba I L R 20 Bom 697* and *Chaganlal Kishoredas* v *The Collector of Kaira I L R 35 Bom 42* applied *Banwari Lal Mookerjee* v *The Secretary of State for India I L R 17 Calc 290* and *Motti Rangayya Chetti* v *The Secretary of State for India I L R 28 Mad 213* referred to A suit to recover a sum of money being less than Rs 500 under such a contract is a suit of Small Cause Court nature and no second appeal lies SECRETARY OF STATE FOR INDIA v RAMABRAHMAM (1917)

I L R 37 Mad 533

——— Sch. II, Art 7—*Suit involving apportionment of rent whether a suit of small cause nature—Transfer of Property Act (IV of 1882) ss 2 (d) and 36 applicability of to transfer in execution* A suit the determination of which involves apportionment of rent by the Court falls within Art 7 of the second schedule of the Provincial Small Cause Courts Act and is exempted from the cognizance of a Provincial Small Cause Court Though according to s 2 (*d*) of the Transfer of Property Act the Act does not apply to sales in execution yet the principle of s 36 of the Act which embodies a rule of justice equity and good conscience can be applied and rent apportioned from day to day as between a lessor and the transferee of his right in execution in the course of a year of the lease PANCHU CHETTY v VAJRAVELU MUDALIAR (1917)

I. L R 41 Mad. 370

——— Sch II, Art 8—

See HOMESTEAD LAND I L R 42 Calc 633

See LANDLORD AND TENANT 2 Pat L J 97

1 ——— *Grant of forest rights—Suit for rent by grantor if may be entertained by Small Cause Court—Rent what is—Bengal Tenancy Act (VIII of 1885) ss 144 193* A grant under which the grantee becomes entitled to cut and remove during a specified period trees which might during that period attain a prescribed size (whether it creates an interest in land or not) is a grant of forest rights within the meaning of s 193 of the Bengal Tenancy Act The transaction cannot be regarded as a sale of timber and the consideration payable for such rights is rent within the meaning of the terms as used in cl. (8) of Sch II of the Provincial Small Cause Courts Act Such a suit cannot be entertained by a Small Cause Court and should be instituted under s 144 of the Bengal Tenancy Act in the Court which would have jurisdiction to entertain a suit for the possession of the trees BANDE ALI FAKIR v AMUD AKBAR (1914) 19 C W N 415

2 ——— *Special authority to try rent suits under Small Cause Court procedure if may be conferred generally on the Court* Cl 8

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887)—*contd.*

——— Sch II Art 8—*contd*

of Sch II of the Provincial Small Cause Courts Act requires that the Jud e personally should have been invested with authority to exerc e juris diction and not that juri diction should be con ferre l upon the Court A notifi ation of the Local Governm nt vestin all Munsiffs of certain places with power to try under the Small Cause Court procedure suits for recovery of rent of homestead lands within their respective juri dictions when the value did not exceed Rs 50 was insufficient to confer on the officers concerned the power referred to in cl 8 of Sch. II of the Provincial Small Cause Courts Act SAFER ALI MONDAL v GOLAM MONDAL (1915) **19 C W N 1236**

——— Sch II, Art 8—*Suit for rent—Suit of a nature cognizabl by the Court of Small Causes—Civil Procedure Code (Act V of 1908) s 102—Second appeal* A suit for rent for an amount less than Rs 500 was filed in the Second Class Subordinate Judge s Court By a Govern ment Notification contemplated by Art 8 of the Second Schedule of the Provincial Small Cause Courts Act 1887 the Subordinate Judges of all districts in the Bombay Pre idency proper were invested with authority to try on the Small Cau e Side of their Courts all suits for the recovery of rent arising within the local limits of the ordinary jurisdiction of their Courts and falling within the pecuniary limits up to which suits are cognisable by them as Judges of Courts of Small Causes Both the lower Courts decreed the claim In the High Court a preliminary objection was taken that no second appeal lay on the ground that the suit in which it was preferred was of a nature cognisable by Courts of Small Causes within the meaning of s. 102 of Civil Procedure Code 1908 *Held* allowing the objection that no second appeal lay PANKRISHNA YESHWANT v THE PRESIDENT OF THE VENGURLA MUNICIPALITY (1916) **I L R 41 Bom 367**

——— Sch II, Art 13—

See CIVIL PROCEDURE CODE 1908 s 100 **I L R 41 Mad 374**

See GENERAL CLAUSES ACT s 3 (25) **I L R 35 All. 156**

See LIMITATION ACT (IX OF 1908) SCH I0 ARTS 4 7 101 102 AND 1 0 **I L R 41 Mad. 528**

See MADRAS ESTATE LANDS ACT 1908 s 3 **I L R 36 Mad 126**

1 ——— *Land Cess—Suit by zamindar against inamdar for recovery of not a suit of small cause nature* A suit by a zamindar for the re overy of land cess from the inamdar is not a suit of a small cause nature within Art 13 of the Provin ial Small Cau e Courts Act MAHARAJA OF VIZIANAGRAM v VEERANNA (1913) **I L R 36 Mad 18**

2 ——— *Revenue Jurisdic tion Act (Bom X of 1876) s 5 cl (c)—Civil Proce dure Code (Act V of 1908) O VIII r 6—Suit by an Inamdar again t a Khat dar for recovery of sums —Dues—Suit not cogni able by a Small Cause Court—Set off claimed in a capacity different from that in suit not allowable* Sums payabl by a Khatedar to an Inamdar as superior holder are dues and a suit to recover such dues though less than R 500 is not cognizable by a Court of Small Cau es and a decree pa ed in such suit is subject to a second appeal In a suit brought by an Inamdar against a Khatedar for the recovery of dues in re pect of certain immoveable property payable by the Khatedar the defendant as a *pujari* (wor hipper) claimed to set off the stipend payable to him by the plaintiff *Held* that the defendant could not claim the set off which was due to him in a different capacity from that in which he held as tenant or Khatedar of the plain tiff MADHAVRAO MORESHVAR v RAMA KALU (1914) **I L R 39 Bom 131**

3 ——— *Small Cause Court—Jurisdiction—Suit by zemindar to recover a a haqq cess or due from tenant Held* that a suit by a zemindar to recover from one of his tenants dues payable in kind under the provi ions of the village wajib ul arz was excluded from the juris diction of a Court of Small Cau es by Art 13 of the second schedule to the Provincial Small Cause Courts Act 1887 BALDEO v PANNA LAL (1918) **I L R 40 All. 663**

4 ——— *Small Cause Court—Jurisdiction—Suit by zamindar to recover part of price of trees sold by tenant Held* that a suit brought by the zamindars of a village upon the basis of a custom recorded in the village wajib ul-arz to recover from a tenant half of the price of certain trees alleged to have been sold by him was not a suit excluded from the juri diction of a Court of Small Cau es BOHRA BHOJ RAJ v RAM CHANDRA **I L R 42 All 448**

5 ——— *Suit for recovery of* Haq chal arum *cogni able by a Small Cause Court—Custom—*Wajib ul arz— Halat dehi *—value of the* halat dehi *as evidence of the discontinuance of a custom recorded in the* Wajib ul arz A suit brought by a zamindar to recover money alleged to be due to him on account of *haq chaharum* is not a suit of the nature cognizable by a Court of Small Causes *Bohra Bhoj Raj v Ram Chandra* I L R 42 All 448 referred to The eviden tial value of the document known as *halat dehi* on the question of the discontinuance of a custom recorded in a *wajib ul arz* of earlier date discussed BECHAI v LADRI NARAIN **I L R 43 All 681**

——— Sch II Arts 15 and 16—

See SPECIFIC PERFORMANCE **I L R 43 Calc 59**

——— *Mortgage money un paid balance of suit by mortgagor for recovery of—Remedies—Small Cause Court juri diction of* A mort gagor cannot sue f recovery of the balance of th amount promi d to be advanced but not paid to him and such a suit is not cognizable by the Court of Small Causes but it is open to the mortgagor to ue in the Small Cause Court for damages for the brea h of contract provided the damages claimed are within the pecuniary juri diction of the Court SHAIK GALIM v SADARJAN BIBI (1915) **I L R 43 Calc 59** **19 C W N 1332**

——— Sch II, Arts 15 24—*Suit to enforce—part of an award partitioning immoveable properties whether cogni able in a Court of Small Cau es*

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887)—*contd*

——— Sch II Arts 15 24—*contd*

suit to enforce an award is in essence a suit for specific performance of a contract and is excluded from the cognisance of a Small Cause Court by Art 15 of the Provincial Small Cause Courts Act A suit to enforce part of an award which amongst other things partitions immoveable properties if it lies at all does not lie in a Provincial Court of Small Causes. KUNJA BEHARY BARDHAN v. GOSTA BEHARY BARDHAN (1917) I L R 38 All 570 22 C W N 66

——— Sch II Art 18—*Suits relating to Trust what are* Suit by a company by its President to recover from defendants Nos 2 to 4 the subscriptions due under the Articles of Association of the Company The first defendant was a trust defendants Nos 2 to 4 were the trustees of the trust and members of the plaintiff company in their capacity of trustees The plaint prayed that the moneys due may be recovered from the trust property in the first instance and if not so recoverable from the defendants Nos 2 to 4 personally The suit was instituted on the Small Cause side and the Subordinate Judge returned the plaints on the ground that the suit was one relating to a trust within the meaning of Art 18 of Sch II of the Provincial Small Cause Courts Act and was not triable on the Small Cause side The High Court was moved by petition under s 25 of the Act *Held per* WHITE C J and SANKARAN NAIR J (BENSON J dissenting) the suit was to enforce payment of moneys due under the Articles of Association and not one relating to a trust within the meaning of Art 18 The fact that issues relating to the trust and the rights and liabilities of the trustees may have to be tried will not make the suit one relating to a trust SRI VENKATACHALLAPATHY SAHAYA VIYAVASAYA COMPANY v. KANAGASABHAPATHIA PILLAI (1910) I L R 33 Mad 494

——— Sch II Art 24—

See SCH II, ART 15 I L R 38 All 570

——— *Suit for money due under an award—Jurisdiction of Small Cause Court* A suit to recover money made payable by the terms of a private award is not a suit which is excluded from the jurisdiction of a Court of Small Causes *Madho Prasad v Lalta Prasad Weekly Notes 1881 p 159* distinguished MIZAJI LAL v PARTAB KUNWAR I L. R 42 All. 169

——— Sch II Art 28—

1 ——— *Suit of a small cause nature—Second appeal* Plaintiff sued for the recovery of certain jewels which she had presented to her daughter and son in law at their marriage basing her claim on a caste custom by which she was entitled after the death of the pair to return of the jewels presented by her *Held* that the right claimed was not a right to inherit the jewels as the property of the bridegroom or the bride and Art 28 of Sch II of Act IX of 1887 did not apply to such a case No second appeal lay as the suit (being for the recovery of less than Rs 500) was within the cognizance of the Small Cause Court CHINNAYYA v ACHAMMAH (1912) I L. R 37 Mad. 538

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887)—*contd*

——— Sch II, Art 28—*contd*

2 ——— *Suit by heirs of intestate against wrongdoer if within* Suits for the whole or a share of the property of an intestate excluded by Art 28 of Sch II of the Provincial Small Cause Courts Act from cognisance by the Small Cause Court are suits for the recovery of the property of an intestate between rival claimants to the estate or against persons administering the estate The Article does not apply to suits by heirs against wrongdoers *Kapalee Beuah v Keshram Kooch 11 W R 93 Moheshur v Kailash Nath 7 C L R 71* and *Chedi v Gulab I L R 27 All 622* followed *Girish Chunder v Anna Dossee 17 W R 46 Nobin Chunder v Dribomoyee 17 W R 520* and *Kapalee Beuah v Keshram Kooch 11 W R 93* referred to TIKA SAHU v CHIBKAT SAHU (1914) 19 C W N 614

——— Sch. II Art 31—

See TRESPASS I L R 35 Mad 726

1 ——— *Small Cause Court—Jurisdiction—Suit by joint owner to recover rent of a house received by the other joint owner—Money had and received—Revision—Objection to jurisdiction not raised in the Court below Semble* That a suit by one or two joint owners to recover from the other a share of the rent of a house received in the first instance by the defendant with the plaintiff s consent is a suit for money had and received and as such within the jurisdiction of a Court of Small Causes But in any case the question of jurisdiction not having been raised in the Court below and the case having apparently been correctly decided the High Court was not bound to interfere in revision *Ram Lal v Kabul Singh I L R 25 All 135* followed SUKH LAL v NANNU PRASAD (1918) I L R 40 All 666

2 ——— *Suit for mesne profits of a grove—Jurisdiction Held* that a suit for recovery of mesne profits of a grove from which the plaintiff had been wrongfully dispossessed is a suit the cognizance of which by a Court of Small Causes is barred by Art 31 of Sch II to the Provincial Small Cause Courts Act 1887 *Prasadi Lal v Imdad Husen All Weekly Notes (1895) 10* distinguished *Sheo Bodh v Surjan 11 A L J 238* followed DRIGPAL SINGH v KUNJAL (1917) I L R 40 All 142

3 ——— *Jurisdiction of Court determination of—Suit for account whether claim for ascertained sum is* The question whether a particular suit is cognizable by a Small Cause Court or not must be determined on a consideration of the plaint irrespective of the allegations made in the written statement Where the plaintiffs claimed a definite ascertained sum representing money the profits and produce of their share of certain land under the sole management of the defendants *held* that the suit was not barred by Art 31 of the Second Schedule to the Provincial Small Cause Act 1887 It is not every case in which accounts have to be looked into which is a suit for accounts RAJIVA NARAYAN SAHAY v KIRAT NARAYAN SINGH 3 Pat L J 423

——— Sch II Art 32

See REDEMPTION SUIT FOR 14 C W N 1001

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887)—*contd.*

——— Sch. II, Art 35 (ii)— *Suit for compensation for removal of trees and crops— Jurisdiction—Want of jurisdiction not urged in defence—Decree if should be set aside on review— Objection if may be waived* A suit for compensation for a tree alleged by plaintiff to have been grown by him and cut by the defendant and for crops of mustard raised by him and misappropriated by the defendant from land alleged to be plaintiff's property and in his possession is excluded from the jurisdiction of the Small Cause Court under the Art 35 sub cl (?) of Sch II of the Provincial Small Cause Courts Act Where no objection to the Court's jurisdiction having been taken at the original trial the suit was decreed and an application by the defendant for review was dismissed on the ground that the objection was not raised at the trial *Held* that the review application should have been granted as where there is an entire absence of jurisdiction no action on the part of the plaintiff or inaction on the part of the defendant can invest the Court with jurisdiction PAMPROSAD PRAMANIK *v* SRICHARAN MANDAL (1917) **21 C W N 1109**

See CRIMINAL BREACH OF TRUST
I L R 48 Calc 879

——— Sch. II, Art 35 (g)—*Contract to marry breach of—Loss of provisions and articles* A suit by a father of a Mahomedan girl against the father of a minor boy for breach of contract to marry the boy to the plaintiff's daughter and for compensation for the loss sustained by the waste of articles and provisions in consequence of such breach is governed by Art 35 cl (g) of the second schedule to the Provincial Small Cause Courts Act (IX of 1887) and is therefore not cognizable by a Provincial Small Cause Court *Kali Sunker Dass* v *Koylash Chunder Dass I L R 15 Calc 833* followed MOIDIN KUTTI *v* LOKER (1913)
I L R 38 Mad 274

——— Sch II, Art 35 (i)—
See EXECUTION OF DECREE
I L R 33 All. 306

——— Sch. II, Art 35—(L)—*Threat to assault— Injury to the person —Exemption from the cognizance of the Court of Small Causes* A suit to recover damages from the defendant who ran after the plaintiff with a shoe in hand threatening to beat him and using abusive language but did not actually touch the plaintiff's person is a suit for injury to the person within the meaning of Art 35 sub cl (*l*) of the second schedule of the Provincial Small Causes Courts Act (IX of 1887) and is not within the cognizance of the Small Cause Court GOVIND BALKRISHNA *v* PANDURANG VINAYAK (1912) **I L R 36 Bom 443**

——— Sch II, Art 38—

1. ——— *Suit for money for maintenance under an agreement cognisable by a Small Cause Court* A suit to recover from the defendant paddy expended by the plaintiff for the maintenance of their grand mother for which under the agreement of partition between them the defendant was bound to pay a certain quantity is a suit of a small cause nature the basis of the suit being the agreement *Ramaswamy Pantulu* v *Narayanamoorthy 14 Mad L J 480* applied ANNASAMI SASTRIAL *v* RAMASAMI SASTRIAL (1913)
I L R 38 Mad. 553

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887)—*contd.*

——— Sch II, Art 38—*contd*

2 ——— *Suit relating to maintenance—Jurisdiction* Plaintiff's father in law left by his will certain property to plaintiff's three brothers in law charged with the payment of Rs 36 per annum to the plaintiff during her life Subsequently the brothers in law agreed amongst themselves to divide their liability for payment of this annuity so that each became liable individually for the payment of Rs 12 per annum *Held* on suit brought by the annuitant to recover arrears of her maintenance allowance against one of her brothers in law that the suit was a suit relating to maintenance and that the cognizance thereof by a Court of Small Causes was barred by Art 38 of sch II to the Provincial Small Cause Courts Act 1887 *Mahadeo Rai* v *Deo Narain Rai 2 A L J 637* and *Masum Ali* v *Mohsin Ali (1890) All. Weekly Notes 201* distinguished MUNIR UD DIN *v* SAMIR UN NISSA BIBI (1917)
I L R 40 All 52

——— Sch II Art 41—
See S 2.. **I L R 41 All 51**

——— *Contribution suit for —Rent decree—Execution by assignee against a joint tenant—Payment under compulsion—Suit if cognizable by Small Cause Court—Bengal Tenancy Act (VIII of 1885) s 148 (h)—Contract Act (IX of 1872) ss 69 70* Where an assignee of a rent decree having attached the moveables of plaintiffs who were joint tenants of the holding with the defendants the plaintiffs satisfied the decree and then sued the defendants for contribution *Held* that the suit was excluded from the cognizance of the Small Cause Court by Art 41 of the Second Schedule to the Provincial Small Cause Courts Act That if it were assumed that an assignee of a decree for rent is precluded from executing it even as a decree for money the decree itself was not extinguished and could be executed on the assignee obtaining an assignment of the landlord's interests or on his retransferring the decree to the landlord Where therefore on the assignee's application for execution the Court ordered execution to issue and the plaintiff paid in the decretal amount under compulsion of legal process *Held* that the plaintiff was entitled to sue for contribution under s 70 as also under s 69 of the Contract Act The benefit which the defendants got was that they were absolved from the liability to be pursued either by the assignee or assignor of the decree If a payment made to an assignee of a rent decree is accepted by him the decree is satisfied and there is nothing in s 148 (*l*) of the Bengal Tenancy Act to prevent it RAJANI KANTA GHOSH *v* RAMA NATH ROY (1914)
19 C W N 458

——— *Contribution*—Where a decree was obtained against 3 brothers for maintenance of fourth brother's widow and one paid and sued his brothers *Held* that the suit was one for contribution and cognizable by Small Causes Court ANT RAM *v* MITHAN LAL
I L R 40 All. 135

PROVISIONAL APPOINTMENT

See UNIVERSITY LECTURERSHIP
I L R 41 Calc. 518

PROVISO

———— object of—

See PRESS ACT (I OF 1910) s 3 (1) PROVISO **I L R 39 Mad 1164**

———— use of, to interpret section—

See LAND IMPROVEMENT LOANS ACT (XIX OF 1883) s 7 (1) (c) **I L R 41 Mad 691**

PROXY

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XXIII R 3 **I L R 38 Mad 850**

PUBLIC AUTHORITY

See NEGLIGENCE **5 Pat L J 359**

PUBLIC BODY

See ELECTION **I L R 40 Mad. 941**

PUBLIC CHARITY

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 92

See HINDU LAW-RELIGIOUS ENDOWMENTS.

———— **Suit respecting public charities**—*Civil Procedure Code (Act V of 1908) ss 92 115—Suit with Advocate General's sanction in respect of public charities—Court fee—Court Fees Act (VII of 1870) Sch II Art 17 (vi)—Striking off a prayer for relief—Advocate General's sanction if necessary—Interlocutory order—Revision by High Court* A plaint in a suit under s 92 of the Civil Procedure Code (relating to public charities) should bear a Court fee stamp of Rs 10 only as required by Art 17 cl (vi) of Sch II of the Court Fees Act *Thakuri* v *Brahma Narain I L R 19 All 60* *Girdhari Lal* v *Ram Lal I L R 21 All 200* relied on Where the plaintiffs in such a suit being ordered by the Judge to value the suit and pay *ad valorem* Court fee on such value moved the High Court without waiting for the dismissal of the suit for non compliance with the order *Held* that the order in effect amounted to a denial of jurisdiction and though interlocutory was a fit one for interference in revision by the High Court A prayer for relief in a plaint in such a suit not covered by those specified in s 92 may be struck off on the application of the plaintiff the sanction of the Advocate General for striking off such a prayer being unnecessary *Baijree Das* v *Choonı Lal I L R 32 Calc 789* referred to RAMRUP DAS *v* MOHUNT SHIYARAM DAS (1910) **14 C W N 932**

PUBLIC CONVEYANCE

See BOMBAY PUBLIC CONVEYING ACT

See HACKNEY CARRIAGE ACT

PUBLIC DEMANDS RECOVERY ACT (BENG I OF 1895)

See BIHAR AND ORISSA PUBLIC DEMANDS RECOVERY ACT 1914 **4 Pat L J 475**

See PESHKOSH **I L R 45 Calc 866**

See SALE FOR ARREARS OF REVENUE **I L R 42 Calc 765**

———— sale under—

See OCCUPANCY HOLDING **16 C W N 351**

PUBLIC DEMANDS RECOVERY ACT (BENG I OF 1895)—*contd.*

———— *Suit for recovery of possession on declaration that certificate sale void ab initio—Secretary of State if necessary party* Where a plaintiff sues to recover possession of property sold under the Public Demands Recovery Act on the ground that the certificate and sale under it had in no way affected his rights being *ab initio* null and void and does not seek to set aside the sale he is not bound to make the Secretary of State a party to the suit *Gobinda Chandra* v *Hemanta Kumari I L R 31 Calc 159 8 C W N 657* distinguished RAGHURAJ SINGH *v* MAHARAJ LAL (1910) **14 C W N 606**

———— **s 9 (2) (3)**—*Certificates sale when vitiated by irregularities—Nullity and irregularity distinction between—Requisition not signed—Certificate not in due form—Certificate signed mechanically—Certificate Officer to exercise discretion in issuing certificate—Proof of service of notice—Entry in order sheet if sufficient—Presumption in favour of regularity of official acts if arises when proceedings shewn to have been carried on carelessly and in slovenly manner* No hard and fast line can be drawn between a nullity and an irregularity and when the provision of a statute has been contravened if a question arises as to how far the proceedings are affected thereby it must be determined with regard to the nature scope and object of the particular provision violated An Appellate Court should not dismiss a suit on the ground only that the plaint was not duly signed and verified such a defect does not affect the merits of the case or the jurisdiction of the Court So also proceedings taken upon a certificate should not be treated as void merely because the requisition under s 9 (2) of the Public Demands Recovery Act was not duly signed and verified But there can be no valid sale on a certificate which did not specify the amount due and otherwise did not comply with the forms laid down by the Act and which the officer issuing the certificate appeared to have signed mechanically The obvious intention of s 9 (3) of the Public Demands Recovery Act is that the officer shall use his discretion as to the issue of a certificate determine whether the case is a proper one for it whether the money be due or not *Baijnath* v *Ramgat L R 23 I A 45 s c I L R 23 Calc 775* and *Baijnath* v *Ramgat 5 C L J 687* followed The mere entry in the order sheet of the certificate case that notice had been served is no proof that service was effected When the circumstances of the case show that the proceedings have been carried on in a careless or slovenly manner the Court will be slow to apply the maxim *omnia præsumuntur rite et solenniter esse acta donec probetur in contrarium* MOHIUDDIN *v* PIRTHICHAND LAL CHOWDHURY (1914) **19 C W N 1159**

———— **s 10**—*Public Demands Recovery Act (Beng I of 1895) ss 10 15 17—Arrears of road cess—Payment—Appropriation—Contract Act (IX of 1872) ss 59 60—Certificate and sale when no arrears if valid—Regular suit to set aside if lies—Limitation—Special limitation not applicable* A debt under the Public Demands Recovery Act is nothing but a debt and the law laid down in ss 59 and 60 of the Contract Act which is nothing more than a codified statement of the general law as to the appropriation of payments made by the debtor is applicable to payments made on account

PUBLIC DEMANDS RECOVERY ACT (BENG I OF 1895)—contd.

——— s 10—contd

of arrears of road cess in the Collectorate *Ganga Bishun Singh v Mahomed Jan I L R 33 Calc 1193 s c. 10 C W N 918 Jogendra Mohan Sen v Uma Nath Guha I L R 35 Calc 606 s c 12 C W N 646* referred to The Collector therefore has not authority to appropriate payments made in liquidation of specific arrears of road-cess towards previous arrears and a certificate issued under the Public Demands Recovery Act in respect of the later arrears so paid off is not a valid certificate under the Act A sale held in pursuance of such a certificate is without jurisdiction the foundation for the exercise of jurisdiction by the Revenue authority being wanting in such a case When the arrears in respect of which the certificate purports to have been issued did not exist a suit to set aside the sale held in execution of the certificate lies under the ordinary law s 15 of the Act and the special limitation provided therein for suits to modify or cancel a certificate not applying to such a suit *Januldhari Lal v Gosain Lal Bhaya 13 C W N 710* followed NANDAN MISSIR *v* LALA HARAKH NARAIN (1910) **14 C W N 607**

——— ss 10 and 31—*What is a proper notice —Onus of proper service—Public Demands Recovery Act (Beng I of 1895) ss 10 31* Service of notice under s 10 of the Public Demands Recovery Act 1895 must be effected in strict conformity with that section. Where service of notice is effected by fixing it on the outer door of the judgment debtor's house the onus is clearly upon the defendant relying on the notice to show that there was proper service as required by law *Rakhal Chandra Pal Chowdhury v The Secretary of State for India I L R 12 Calc 603* and *Jogeswar Sahu v Debi Prasad 5 C L J 555* followed NEMAI CHARAN DE *v* SECRETARY OF STATE FOR INDIA (1917) **I L R 45 Calc 496**

——— ss 12 15 17 24 26

See CERTIFICATE OF SALE **I L R 37 Calc 107**

——— ss 20 21—*Sale without notice to representatives of a deceased judgment debtor if a nullity —Failure of Collector to act under s 21 though deposit duly made if a ground for treating sale a nullity—Irregularity—Sale voidable only—Proper remedy* On 14th March 1898 a Court holding a sale under the Public Demands Recovery Act was apprised of the death on 10th March 1898 of one of the judgment debtors but the property was nevertheless sold without notice to the legal representatives of the deceased judgment debtor In a suit by the purchaser brought more than a year after to recover the land *Held* that the legal representatives of the deceased judgment debtor could not ask the sale to be treated as a nullity on this ground by way of defence in this suit It was an irregularity which made the sale voidable by either a proceeding under s 311 of Act XIV of 1882 or a suit brought within one year as contemplated by Art 12 (a) of the Limitation Act of 1877 Nor could the sale be declared a nullity in such a suit upon proof only of improper rejection by the Collector of an application to set aside the sale although the amounts mentioned in s 21 of the Public Demands Recovery Act were duly deposited BEPIN BEHARY BERA *v* SASI BHUSAN DATTA (1913) **18 C W N 766**

PUBLIC DOCUMENT

See EVIDENCE ACT (I OF 1872) s 35 **I L R 36 All. 161**

See LIBEL **I L R 48 Calc. 304**

See REGISTER OF DEATHS **I L R 46 Calc 152**

PUBLIC DRAIN

——— *House drain—Title—Calcutta Municipal Act (Beng III of 1899) ss 3 cl (16) 286 33 —Vesting of a street in a municipality—its effect—Rights of the owner* The legal effect of the statutory vesting of a street in a municipality is not to transfer to the municipality the ownership in the site or soil over which the street exists The effect of the statutory provision is merely to vest in them the property in the surface of the street road or drain and in so much of the actual soil below and air above as may reasonably be required for its control protection and maintenance as a highway or drain for the use of the public The Court will not presume that the intention of the Legislature was to confiscate private property and vest it in a public corporation without compensation granted to the proprietor The right of the owner was intended to be abridged only to the extent necessary for the discharge of the statutory duties imposed on the Corporation for the benefit of the public The property of the local authority concerned does not extend further than is necessary for the maintenance and use of the highway as a highway that subject to this qualification the original owner s rights and property remain and that if the highway ceases to be a highway the owner becomes entitled to full and unabridged rights of ownership in the property *Sundaram Ayyar v Municipal Council of Madura I L R 25 Mad 635* and *Madathapu Ramaya v Secretary of State for India I L R 27 Mad 386* followed *Chairman of the Naihati Municipality v Kishori Lal Goswami I L R 13 Calc 171 Modhu Sudan Kundu v Promoda Nath Roy I L R 20 Calc 73 Chairman of the Howrah Municipality v Khetra Krishna Mitter I L R 33 Calc 1290 Nihal Chand v Azmat Ali I L R 7 All 362 Nagar Valab Narsi v The Municipality of Dhandluka I L R 12 Bom 490 The Municipal Commissioners of Madras v Sarangapani Mudaliar I L R 19 Mad 154 Sundaram Ayyar v The Municipal Council of Madura I L R 25 Mad 635 Madathapu Ramaya v Secretary of State for India I L R 27 Mad 386 The Mayor of Tunbridge Wells v Baird [1896] A C 434 Municipal Council of Sydney v Young [1898] A C 457 Finchley Electric Light Co v Finchley Urban Council [1903] 1 Ch 437 Foley s Charity Trustees v Dudley Corporation [1910] 1 K B 317 London and N W Ry Co v Westminster Corporation [1905] A C 426 Lodge Holes Colliery Co v Wednesbury Corporation [1908] A C 323 Battersea Vestry v County of London [1899] 1 Ch 474* referred to CUNENDRA MOHAN GHOSH *v* CORPORATION OF CALCUTTA (1916) **I L R 44 Calc 689**

PUBLIC FERRY

——— declaration of limits of—

See FERRY **I L R 37 Calc 543**

PUBLIC GAMBLING ACT (III OF 1867)

——— ss 1 3— *Place —Bullock run of disused well surrounded by low wall of loose bricks— Common gaming house* *Held* that the lower

PUBLIC GAMBLING ACT (III OF 1867)—*contd*

———— ss 1, 3—*contd*

end of a bullock run round which in the shape of a semi circle was raised a low wall of loose bricks was a place within the meaning of the public Gambling Act, 1867 *King Emperor* v *Fattoo Mahomed Shermahomed I L R 37 Bom 651* followed *Powell* v *The Kempton Park Race Course Co Ld [1899] A C 143* referred to EMPEROR *v* MIAN DIN (1915)
I L R 38 All. 47

———— ss 3 4—

1 ———— *Presumption—Warrant not in accordance with provisions of Act Held* that a warrant authorising the search of any house which the police officer to whom it was issued might think proper to search was not a legal warrant within the provisions of the Public Gambling Act 1867 EMPEROR *v* HARGOBIND (1912)
I L R 35 All. 1

2 ———— *Common gaming house—Order for confiscation of money found on the persons of accused* In the case of men convicted under s 3 or 4 of the Public Gambling Act 1867 the law does not contemplate the confiscation of money found on the persons of the accused *Emperor* v *Maturwa I L R 40 All 517* referred to EMPEROR *v* TULLA (1919)
I L R 41 All. 366

———— ss 3 4 5 10 and 11—*Search warrant—Endorsement of warrant by officer to whom it was issued—Procedure—Examination under s 10 of persons sent up as accused under s 4—Effect of order passed under s 11* When a search warrant has been issued by a Magistrate under the provisions of s 5 of the Public Gambling Act 1867 the police officer to whom it is addressed may endorse it over to another police officer provided that the latter is an officer to whom such a warrant might have been issued in the first instance *Emperor* v *Kashi Nath I L R 30 All 60* followed Effect of an order under s 11 of the Public Gambling Act 1867 and procedure necessary to terminate the legal liability of persons in whose favour such an order is passed whilst proceedings under s 4 of the Act are still pending against them discussed EMPEROR *v* MAHADEO
I L R 42 All. 385

———— ss 3 and 10—*Act (Local) No 1 of 1917 United Provinces Public Gambling (Amendment) Act s 2— Instruments of gaming —Cowries—Value of evidence of person examined under s 10 Cowries* if used for the purpose of carrying on gaming are instruments of gaming within the meaning of s 1 of the Public Gambling Act 1867 as amended by s 2 of Local Act No 1 of 1917 A person examined as a witness under the provisions of s 10 of Act III of 1867 is not examined as an approver within the meaning of the Code of Criminal Procedure EMPEROR *v* BHAGGI LAL
I L R 42 All 470

———— ss 4 8—*Conviction for being found in a common gaming house—Forfeiture of money found in the house legal* A conviction under s 3 or s 4 of the Public Gambling Act 1867 differs from a conviction under s 13 in that in the case of the latter the forfeiture of money found with the persons convicted is not lawful but in the case of the former the forfeiture of money or securities for money found in a common gaming house is lawful *Emperor* v *Tota I L R 26 All 270* referred to EMPEROR *v* KIFAYAT (1918)
I L R 41 All. 272

———— s 5—

See S 3 I L R 42 All 385

———— *Jurisdiction—Power to issue search warrant— Officer invested with the full powers of a Magistrate —Sub divisional officer issuing warrant for search outside his sub division Held* that a search warrant issued under s 5 of the Public Gambling Act 1867 by a first class Magistrate was not invalid by reason of the fact that the house to be searched was situated outside the limits of the *tahsils* in respect of which such Magistrate had been appointed sub-divisional officer EMPEROR *v* ABDU SINGH (1912)
I L R 34 All. 597

———— s 8—

See S 4 I L R 41 All. 272

———— ss 10 and 11—

See S 3 I L R 42 All 385 470

———— s 12— *Mere game of skill —Game of chance Held* that a game which is in fact only to a very slight extent a game of skill and almost entirely a game of chance is not a game which is excluded by reason of s 12 of the Gambling Act 1867 from the previous provisions of that Act *Hari Singh* v *King Emperor 6 C L J 708* distinguished EMPEROR *v* AHMAD KHAN (1911)
I L R 34 All 96

———— s 13—

———— *Gaming in public place—Seizure of money as well as instruments of gaming illegal* Where persons are found gambling in a public place in circumstances to which s 13 of the Gambling Act 1867 is applicable although instruments of gambling etc may be seized by the police there is no authority for the confiscation of money found with the persons arrested *Emperor* v *Tota I L R 26 All 270* followed EMPEROR *v* MATURWA (1918)
I L R 40 All. 517

PUBLIC GOOD

See DEFAMATION I L R 41 Calc 514

PUBLIC NAVIGABLE RIVER

———— *Dry land appearing through recession assessed with revenue—Suit to declare beds formed parts of permanently settled estate—Onus—Plaintiff to prove river non navigable at permanent settlement—River beds shown within boundaries of mouzahs in thak and revenue maps of sufficient to prove beds parts of estates—Thak and survey maps evidentiary value of* Rennell's map which was based on surveys made between 1764 and 1773 indicated the existence of Kalganga and Dhulia (which were surveyed in 1859 60 as large navigable rivers) as large navigable rivers and the map prepared by Alexander Hodges in 1831 indicated that at that time Dhulia was a large navigable river *Held* that it lay on the Plaintiff who sued for a declaration that lands recently the beds of these rivers but now dry by reason of the rivers receding from their beds were included in their permanently settled estates to prove their allegation that at the date of the Permanent settlement of their adjoining zemindaries in 1793

PUBLIC NAVIGABLE RIVER—*contd*

they were narrow channels Plaintiff having failed *Held* that the rivers must be held to have been navigable at the date of the permanent settlement *Held further* that the fact that in the thak and survey maps of 1853 60 the beds of the rivers were shown as within the boundaries wholly or in part of plaintiff's permanently settled estate was not sufficient to establish the plaintiff's case that the beds were included in lands charged with the assessment permanently fixed in 1793 *Jagadindra v Secretary of State for India L R 29 I A 44 s c I L R 30 Calc 291 7 C W N 193 (1902)* *Nobo Coomar v Gobinda Chandra 9 C L R 505 (1881)* and *Secretary of State v Bijoy Chand 22 C W N 572 (1918)* referred to The decisions in *Kali Krishna v Secretary of State L R 16 I A 186 s c I L R 16 Calc 173 (1888)* *Abdul Hamid v Kiran Chandra 7 C W N 819 (1903)* *Mainuddin v Isan 15 C W N 96 s c 13 C L J 293 (1910)* *Gokul Chandra v Hara Sundari 9 C W N 383 (1904)* *Ananda Hari v Secretary of State 3 C L J 316 (1906)* *Dumne v Dharani Kanta I L R 35 Calc 621 (1908)* *Fazlar Rahim v Nalendra Krishna 17 C W N 151 (1912)* *Shyam Lal v Lachman I L R 15 Calc 353 (1888)* and *Hari Das v Secretary of State 26 C L J 590 (P C) (1917)* do not lay down any general inflexible rule of law that the facts stated on the thak or survey map must be presumed to have been in existence at the time of the permanent settlement The question is essentially one of fact and must be determined on the facts and circumstances of each case PROFULLANATH TAGORE v SECRETARY OF STATE FOR INDIA

24 C W N 639

PUBLIC NUISANCE

See CIVIL PROCEDURE CODE 1908 s 91

See CRIMINAL PROCEDURE CODE 133
I L R 34 All 345

See NUISANCE

See TORT I L R 33 All 287

——— In respect of the carrying on of a trade—

See CRIMINAL PROCEDURE CODE 1898 s 133 I L R 1 Lah 163

1 ——— *Encroachment on public pathway—Application to District Magistrate by letter—Reference of applicant by letter to Civil Court—Subsequent petition to the Subdivisional Magistrate regarding the same pathway—Issue of conditional order—Appearance of opposite party and claim of title to the path—Dropping proceedings without taking evidence—Criminal Procedure Code (Act V of 1898) ss 133 137* When a Magistrate makes a conditional order under s 133 of the Criminal Procedure Code against a party who appears and shows cause he is bound under s 137 to take evidence as in a summons case It is open to him thereafter to consider whether there is a complete answer to the case or whether it is not a proper one for reference to the Civil Court SAROJBASHINI DEBI v SRIPATI CHARAN CHOWDHRY (1914) I L R 42 Calc 702

2 ——— *Unlawful obstruction to public way—Bona fide question of title—Duty of Magistrate to determine the question—Criminal Procedure Code (Act V of 1898) ss 133 137* Per SHARFUDDIN J —When a party against whom an order under s 133 of the Criminal Procedure Code is contemplated appears and raises the question that a pathway alleged to have been unlawfully obstructed is not a public but a private one the Magistrate should not only decide whether it is public or private but he should determine whether the claim is *bona fide* or a mere pretence set up only to oust the jurisdiction of the Court If he finds that the claim is a mere pretence he may proceed to pass a final order but if he finds that the claim though not substantiated has been raised *bona fide* he should stay his hand and refer the party to the Civil Court and if the party does not have recourse to such Court within a reasonable time the Magistrate may then proceed to make the order absolute *Bulat Hi v Abdur Rahim 8 C W N 143* *Matukdhari Tewari v Hari Madhab Das 9 C W N* ... *Luckhee Narain* ... *v Ram Kumar Mulli* ... *I L R 15 Calc 564* ... *Gladstone Malo I L R* ... *Calc* ... referred to The provisions of s 133 of the Code should be sparingly used TEUNON J in the circumstances of the case assented to the order proposed MANIHUR DEY v BIDHU BHUSHAN SARKAR (1914)

I L R 42 Calc 158

3 ——— *Liability of absent proprietors for such nuisance committed by their servants—Applicability of the English Common Law in the construction of the Penal Code—Penal Code (Act XLV of 1860) ss 268 290* Where the use of premises gives rise to a public nuisance it is generally the occupier for the time being who is liable for it and not the absent proprietor The English cases under the Common Law are no authority upon the construction of the Penal Code in this respect *Rex v Medley 6 C & P 292* and *Queen v Stephens L R 1 Q B 702* not followed BIBHUTI BHUSAN BISWAS v BHUBAN RAM (1918) I L R 46 Calc 515

PUBLIC AND PRIVATE NUISANCE

See NUISANCE I L R 38 Calc 296

PUBLIC OFFICER

See CANTONMENTS ACT (XVIII OF 1889) s 80 I L R 34 Bom 583

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 80 I L R 37 Bom 243

I L R 41 Mad 792

——— syndicate a—

See SPECIFIC RELIEF ACT (I OF 1877) s 45 I L R 40 Mad 125

PUBLIC PATHWAY

——— encroachment on—

See PUBLIC NUISANCE
I L R 42 Calc 702

——— obstruction to—

See PUBLIC NUISANCE
I L R 42 Calc 158

——— *Obstruction Proceedings against several without statement of particular acts of obstruction done by each—Initial and final orders vague—No reasonable opportunity given to show cause and adduce evidence—Legality of order based on local inquiry or information at time of conditional order—Criminal Procedure Code (Act V of 1898) ss 133 137* In a proceeding under s 133 of the Criminal Procedure Code against several

PUBLIC PATHWAY—*contd*

persons alleging various acts of unlawful obstruction to a public way the initial and final orders must state accurately the specific obstruction caused by each and which he is required to remove unless it is alleged that all of them are jointly responsible for all the obstructions complained of An order under the section should not be vague indefinite or ambiguous but such as to afford information by its terms to the person to whom it is directed what he is to do in order to comply with it *Kali Mohan Kar v Nakari Chandra Das 11 C L J 114* followed. It is desirable that responsible opportunity should be given the parties proceeded against under s 133 to show cause under s 135 (b) or adduce evidence under s 137 (1) The report or other information on which the Magistrate has passed the conditional order under s 133 is not evidence against the person to whom it is directed. *Srinath Roy v Ainaddi Halder I L R 24 Calc 395* approved. An order under s 133 cannot even by consent of parties be based on information gathered at a local inquiry *Upendra Nath Mandal v Rampal 10 C L J 48°* approved RAIMOHAN KARMAKAR v EMPEROR (1916) I L R 44 Calc 61

PUBLIC POLICY

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XXIII r 3
I L R 38 Mad 850

See CONTRACT 4 Pat L J 542

See CONTRACT ACT 1872—

S 23

S 24 I L R 42 Bom 339

S 25 I L R 37 Bom 280

See DEKHAN AGRICULTURISTS RELIEF ACT (XVII OF 1879) s 15B CL (2)
I L R 35 Bom 190

See PALAS OR TURNS OF WORSHIP
I L R 42 Calc 455

See SLAVERY BOND
I L R 42 Calc 742

See TRADE MARK I L R 40 Calc 814

See TRAFFICKING IN OFFICES
I L R 43 Calc 115

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 64 I L R 37 All 631

———— Inducing Public Officers for consideration to use influence—

See CONTRACT 25 C W N 297

PUBLIC PROSECUTOR

See CONTEMPT OF COURT
I L R 41 Calc 173

See SANCTION FOR PROSECUTION
I L R 41 Calc 448

———— *Remembrancer—Practice and Procedure—Criminal Procedure Code (Act V of 1898) ss 4 (t) 417 492—Acquittal appeal from—The Legal Remembrancer of Bengal as Public Prosecutor for Bengal incompetent to prefer an appeal from acquittal for the Government of Bihar and Orissa* By a notification published in the Calcutta Gazette on 24th June 1880 the Legal Remembrancer of Bengal was to be *ex officio* Public Prosecutor in all cases before the High Court on its Appellate Side except Calcutta cases On 1st April 1912 the Government of Bihar and Orissa appointed Mr Adami to be the Legal Remembrancer of that Province Under instructions from the Government of Bihar and Orissa contained in their letter dated 23rd April 1913 (which did not appoint him Public Prosecutor for this case) the Legal Remembrancer of Bengal (through his Deputy) presented this appeal to the High Court on 2nd May 1913 *Held* that from 1st April 1912 the Legal Remembrancer of Bihar and Orissa became *ex officio* Public Prosecutor for that Province and that the mere fact that a person had been directed to present an appeal to the High Court from an order of acquittal did not involve his appointment as Public Prosecutor for Bihar and Orissa for the purposes of the case and that accordingly the appeal presented by the Deputy Legal Remembrancer of Bengal was incompetent DEPUTY LEGAL REMEMBRANCER BENGAL v GAYA PROSAD (1913)
I L R 41 Calc 423

———— *Appeal against acquittal presented by Legal Remembrancer—Legal Remembrancer whether a Public Prosecutor—Criminal Procedure Code (Act V of 1898) s 417—Admissibility of evidence of a similar but unconnected transaction to prove the presence of the accused at a certain place and to rebut an alibi* The Legal Remembrancer is a Public Prosecutor within the meaning of s 417 of the Criminal Procedure Code Where the accused was charged with cheating a firm in Calcutta under s 420 of the Penal Code and it was alleged that he had, on a certain date sent a telegram to the firm from Cooch Behar purporting to come from their agents there evidence that he had sent a similar telegram on the same date to another firm in Calcutta purporting to come from their branch establishment in Cooch Behar is admissible to disprove the case of the accused that he was in Calcutta on such date and to corroborate the evidence of the witnesses connecting him with the despatch of the first mentioned telegram. LEGAL REMEMBRANCER BENGAL v TULARAM BARODIA (1918) I L R 46 Calc. 544

———— *Duty to produce all the evidence in his power bearing directly on the charge—Duty to call all the available eye witnesses in capital cases—Omission to examine material witnesses effect of—Inference adverse to the prosecution arising therefrom—Practice* The purpose of a criminal trial is not to support at all costs a theory but to investigate the offence and to determine the guilt or innocence of the accused and the duty of a Public Prosecutor is to represent not the police but the Crown and this duty should be discharged fairly and fearlessly and with a full sense of the responsibility attaching to his position. It is not his duty to call only witnesses who speak in his favour *Empress v Dhunno Kazi I L R 8 Calc 121* discussed and explained. He should in a capital case place before the Court the testimony of all the available eye witnesses though brought to the Court by the defence and though they give different accounts The rule is not a technical one but founded on commonsense and humanity *Reg v Holden 8 C & P 606* followed Where witnesses (who from their connection with the transactions in question must be able to give important information) are not called without sufficient reasons being shown the Court may properly draw an inference adverse to the

PUBLIC PROSECUTOR—*contd*

prosecution *Empress* v *Dhunno Kai* *I L R* *Calc 1 1* referred to A conviction under s 114 of the Penal Code cannot stand where the abetment charged necessarily requires the presence of the abettor To come within the section the abetment must be complete apart from the presence of the abettor RAM RANJAN ROY v EMPEROR (1914) **I L. R. 42 Calc. 422**
19 C W N 28

PUBLIC RELIGIOUS TRUST

See PARTIES **I. L. R 42 Calc 1135**

——— *Trespasser suit for removal of—Civil Procedure Code (Act V of 1908) s 92—Advocate General consent of* A suit for the removal of a trespasser in possession of trust property is not a suit of the kind contemplated by s 92 of the Code of Civil Procedure and therefore for the institution of such a suit no consent of the Advocate General is necessary *Budree Das Mukim* v *Chooni Lall Johurry I L R 33 Calc 789* followed *Neti Rama Jogiah* v *Venkatacharulu I L R 26 Mad 450 Sajdur Raja Chowdhuri* v *Gour Mohan Dass Baishnav I L R 24 Calc 418 Budh Singh Dudhuria* v *Niradbaran Roy 2 C L J 431* *Muhammad Abdul Majid Khan* v *Ahmad Said Khan I L R 35 All 459* referred to AYATUNNESSA BIBI v KULFU KHALIFA (1914)
I L. R 41 Calc 749

PUBLIC RIGHT OF WAY

——— **Obstruction**—*Special damage—Village pathway obstruction of—Special damage if need be proved* Where in a suit by the plaintiff for the declaration of a public right of way alleging special damage it appeared that a previous suit for a similar declaration had been dismissed on the ground that the plaint did not disclose any cause of action (there being no allegation that plaintiff had suffered special damage) but in dismissing the suit the Court had expressly stated that the plaintiff was not debarred from bringing a fresh suit properly framed *Held* that the second suit was not barred by *res judicata* Proof by the plaintiff that he and his servants had been compelled to go by a longer route and thereby incur additional expense was sufficient proof of special damage Infringement of a village pathway in which plaintiff had got a right with other villagers by reasons of a grant implied from long user does not require proof of special damage to give the plaintiff a cause of action HARIHAR DAS v CHANDRA KUMAR GUHA (1918)
23 C W N 91

——— **Right of marching in procession with a car**—*Suit for declaration of right—Injunction restraining interference with the right* Plaintiffs sued on behalf of themselves and of other members of a religious community to have a declaration of their right of marching in procession with a car along a particular public road to certain temples and for an injunction restraining the defendants from interfering with the plaintiffs The defendants contended that the plaintiffs had no right to march along the road The lower Courts dismissed the suit on the ground that the road being public the plaintiffs could not sue unless special damage were shown and proved On second appeal by the plaintiffs *Held* reversing the decree and allowing the claim that the suit was not for removal of a public nuisance but for a declaration of the right of an individual community to use the public road Every member of the public and every sect has a right to use the public streets in a lawful manner and it lies on those who would restrain him or it to show some law or custom having the force of law abrogating the privilege *Sadagopachariar* v *A Rama Rao I L R 26 Mad 376* followed BASLINGAPPA PARAPPA v DHARMAPPA BASAPPA (1910) **I L R 34 Bom 571**

——— **Metalled and unmetalled portions**—*Equally part of road—Right of public way* Where the question is as to the breadth of a public road it must be taken that all the ground over which the public have a right of way is part of the road the mere fact that part of the road may be metalled for the greater convenience of the traffic will not render the unmetalled portion on each side any the less a public road or street MUNICIPAL BOARD OF AGRA v SUDARSHAN DAS SHASTRI (1914) **I L. R 37 All. 9**

PUBLIC SERVANT

See PENAL CODE ss 21 161—190

ss 332 353 **I L R 37 All 353**
I L R 40 All. 28

——— **assaulting in execution of duty**—

See RIOTING **I L R 41 Calc 836**

——— **instigating a**—

See ABETMENT OF AN ABETMENT
I L R 46 Calc 607

——— **unpaid apprentice if**—

See PENAL CODE s 21
15 C W N 319

PUBLIC STREET

See BOMBAY DISTRICT MUNICIPALITIES ACT (BOM III OF 1901) ss 70 113 122 **I L R 42 Bom 454**

See HIGHWAY

See RAILWAY COMPANY
L R 43 I A 310

See RAILWAYS ACT (IX OF 1890) s 7
I L. R 38 Bom. 565

——— **definition of**—

See PUNJAB MUNICIPAL ACT 1911 s 3
I L R 1 Lah 117

PUBLIC TEMPLE

——— **manager no right to remove idol**—

See HINDU LAW **I L R 44 Bom 466**

PUBLIC TRUST

See CIVIL PROCEDURE CODE (1908) s 92

See HINDU LAW

See MAHOMEDAN LAW

——— *Co trustees—Act of one of two trustees without consent of the other—Grant of mortgage—Transaction whether valid—Rule of act of majority of trustee applicability of to cases of two trustees* One of two trustees of a public trust cannot grant a mortgage or effect any similar transaction in respect of the trust properties so as to bind the trust without the consent of the other trustee even though the latter on consultation wrongly refuses his consent The rule that the act of a majority of the trustees is valid,

PUBLIC TRUST—*contd*

provided they gave proper opportunity to the others to consider the advisability of the act in question *does not* apply to cases where there are only two trustees *as one* of them alone cannot constitute a majority *Savitri Antarjanam* v *Raman Nambudri* I L R 24 *Mad* 296 and *Wilkinson* v *Malin* 2 C & J 636 followed CHERU v NARAYANAN NAMBUDIRI (1918)
I L R 42 Mad 335

PUBLIC WAY

See CIVIL PROCEDURE ACT 1908, s 91

See HIGHWAY

See WAY

——— obstruction to by building a wall—

See PENAL CODE (ACT XLV OF 1860) ss 147 426 447
I L R 39 Mad 57

———An action for obstructing a public *road* is not maintainable unless the plaintiff proved some injury or damage peculiar to himself *and* different from the damage that *would* be suffered by other people who used the *road* Special damage *does* not mean serious damage but *means damage of* a special nature that is damage affecting *the* plaintiff individually or damage peculiar to himself his trade or calling BATIRAM KOTETA AND ORS v SIDRAM DAS AND ANR
25 C W N 95

PUBLIC WORKS DEPARTMENT

——— negligence of servants of—

See TORT I L R 39 Mad 351

PUBLICATION

See CONTEMPT OF COURT
I L R 45 Calc 169

See COPYRIGHT I L R 38 All 484

——— of picture copyright in England

See CONTRACT ACT 1872 s 23
I L R 44 Bom 720

——— of proceedings in pending cases not permissible till case comes on for hearing—

See CONTEMPT OF COURT
I L R 44 Bom 443

——— proof of—

See SEDITION
I L R 39 Calc 522 606

——— of notice of claims in Government Gazette sufficient for purposes of *s* 14 of Court of Wards Act—

See COURT OF WARDS ACT (BO ACT I OF 1905) *s* 11
I L R 44 Bom 493

PUBLICITY

See BURMESE BUDDHIST LAW—ADOPTION
I L R 45 Calc 1

PUISNE MORTGAGE

See MORTGAGE I L R 37 Calc 232
I L R 37 All 304

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 67 I L R 40 Mad 7?

——— rights of—

See CIVIL PROCEDURE CODE (1908) O XXXIV RR 4 AND 5
I L R 38 All 298

PUJARI

——— dispute concerning to act a —

See CRIMINAL PROCEDURE CODE (V OF 1898) s 147 I L R 37 Calc 558

See CIVIL PROCEDURE CODE (ACT V OF 1908) ss 9 AND 92
I L R 45 Bom 653

PUNISHMENT

See PENAL CODE ss 63 TO 75

——— Member of a Criminal Tribe—Second conviction—

See CRIMINAL TRIBES ACT (III OF 1911) s 23 I L R 45 Bom 1092

PUNITIVE POLICE

——— *Costs apportionment of—Police Act (V of 1861 as amended by Act VIII of 1895) ss 15 cl (4) 16—District Magistrate duty of—Amount realized on apportionment made by a Deputy Magistrate effect of—Secretary of State for India suit against if maintainable* An apportionment of costs made by a Deputy Magistrate under *s* 15 *cl* (4) of the Police Act for maintenance of a police force is illegal Where therefore an apportionment of costs having been made by a Deputy Magistrate and which on appeal having been affirmed by the District Magistrate the amount of costs assessed was recovered from a person under s 16 of the Act by distress warrant *Held* that the amount not being legally realized a suit for the recovery thereof would lie against the Secretary of State for India in Council *Sita bhayan* v *The Secretary of State for India*, I L R 28 *Bom* 314 referred to KAILASH CHANDRA NAG v SECRETARY OF STATE FOR INDIA (1912)
I L R 40 Calc 45?

PUNJAB

——— Permanent Tenancy in—

See LANDLORD AND TENANT
I L R 47 Cal 1

PUNJAB ACT II OF 1913

See REDEMPTION OF MORTGAGES
I L R 2 Lah 2 4

PUNJAB ALIENATION OF LAND ACT XIII OF 1900—

——— s 2 (3) (b)—whether right of a temporary lessee to take the produce of trees is agricultural land—

See PUNJAB PRE EMPTION ACT 1913 s 3
I L R 1 Lah 567

——— s 16—Prohibits only a sale and not a temporary alienation of agricultural land—

See EXECUTION OF DECREE
I L R 1 Lah 19?

——— s 16—whether Insolvency Court can attach land of an agriculturist insolvent—

See INSOLVENCY I L R 2 Lah ?8

——— s 17—

See REGISTRATION ACT 1908 s ?
I L R 2 Lah ?02

PUNJAB COLONIZATION OF GOVERNMENT LAND—

See COLONIZATION OF LAND

PUNJAB COURTS ACT 1914

See PUNJAB LAND REVENUE ACT 1887 s 117 I. L. R 1 Lah 387

——— s. 41 (3)—

——— Second appeal on point of custom—Limitation—Appeal filed beyond time on account of delay in obtaining a certificate—Custom—Khanakimadi—Langaryal Jats Tahsil Kharian—Appointment by a widow under instructions from her husband Appellant on 8th February 1919 filed a second appeal in the Chief Court against the decree of the District Judge dated 26th August 1918 She did not apply to the latter for a certificate till 21st November 1918 explaining that she was not aware of the necessity of a certificate till advised by a lawyer at Lahore The District Judge granted her certificate on 3rd February 1919 Held that under the circumstances and having regard to the provision of cl (3) of s 41 of the Punjab Courts Acts appeal should be held to be within time Held also that among Langaryal Jats of Tahsil Kharian who recognise the practice of making a Khanakimadi a widow who has received instructions in that behalf from her husband has full power to make a particular person a Khanakimadi Punjab Digest of Customary Law paragraphs 39 and 41 referred to MUSSAMMAT ALAM BI v LATTU I L. R 1 Lah. 245

——— Second Appeal on question of onus probandi in custom case—Necessity for certificate—Adoption of daughter's son among Brahmins of Amritsar Held following Mussammat Bhari v Khanu (7 P R 1918) that the question of onus probandi in a custom case is not a pure question of law unconnected with custom and that on the other hand it is not under all circumstances a question relating to the validity or the existence of a custom except in so far as in proving or disproving the validity or existence of a custom a party to a suit may be held to be entitled to an initial presumption in his favour on the strength of a generally accepted rule of custom Held also that in the present case having regard to the decision in Lachmi Dhar v Thakur Das (140 P R 1883) the onus probandi must be regarded as one relating to the existence of a custom governing the question of adoption and therefore a certificate under s 41 (3) of the Punjab Courts Act was necessary Allah Din v Salam Din (96 P R 1915) referred to MUSSAMMAT RAM RAKHI v MELA RAM I L. R 2 Lah 167

PUNJAB COURT OF WARDS (ACT II OF 1905)

——— ss 8 and 19—Court of Wards assuming superintendence of property in which the ward has no interest—Action ultra vires—Notice to Deputy Commissioner not necessary before filing a suit regarding such property Held that if the Court of Wards purporting to act under s 8 of Punjab Act II of 1905 wrongly assumes superintendence of the property of other persons in which the ward has no share its action is ultra vires and it cannot be said that it has assumed superintendence under the powers conferred upon it by the Act though it may have purported to act in accordance therewith If the Deputy Commissioner acts ultra vires any person affected thereby can object It is not necessary in such a case to give this officer notice under s 19 of the Act before filing a suit TARA SINGH v GANDA SINGH I L R 2 Lah 151

PUNJAB COURT OF WARDS (ACT II OF 1905)—*contd*

——— ss 11 and 12—

See WAQF NAMA I L R 42 All. 609

——— Injunction against person out of Jurisdiction—

See REGISTRATION ACT 1877 ss 17 87 25 C W N 123

PUNJAB LAND REVENUE ACT (XVII OF 1887)

——— s. 44—

See MAHOMEDAN LAW—ENDOWMENT I L R 40 Calc 297

——— s 117 (2) (b)—Decree by Revenue Officer trying cases as a Civil Court what it must contain—Appeal where there is no legal decree—Civil Procedure Code Act V of 1908 s 33 O XX rr 1—6 and O XLI r 1 Held that a Revenue Officer who tries a suit under the procedure laid down in s 117 ( ) (b) of the Land Revenue Act must record a judgment and a decree containing the particulars required by the Code of Civil Procedure to be specified therein and that a decree sheet signed by the Court in which only the amount of costs incurred by each party is specified but which otherwise has been left blank is no decree at all and that a paragraph in the judgment not drawn up in the form of a decree and not embodied in a separate form is not a decree and therefore no appeal is competent Dulhin Golab Koer v Radha Dulari Koer per PIGOT J (I L R 19 Calc 463 F B) approved GELA RAM v GANGA RAM I L R 1 Lah 223

——— s 117 (2) (c) (As amended by the Punjab Courts Act III of 1914)—Appeal from decree of Assistant Collector in determining a question of title lies to District Judge Held that since the substitution of the phrase Subordinate Judge for District Judge in s 117 (2) (c) of the Punjab Land Revenue Act by the Punjab Courts Act III of 1914 an appeal from the decree of an Assistant Collector in the matter of the determination of a question of title lies to the Court of the District Judge SADDA SINGH v KIRPALLA I L R 1 Lah 387

——— ss 141 158—Suit to recover price of barley sold by Revenue Officer

See JURISDICTION (CIVIL OR REVENUE) I L R 2 Lah 302

——— s 158 (1) and (2) XVII—Civil suit to rectify grievance arising out of a partition

See JURISDICTION (CIVIL OR REVENUE) I L. R 1 Lah. 298

PUNJAB LAWS ACT 1872—

——— No bar to suit to establish rights to property attached by Insolvency Courts as belonging to the insolvent—

See INSOLVENCY I L R 2 Lah. 147

——— s 5—

See CUSTOM I L R 45 Calc 450

——— Where custom not proved whether Court can apply personal law

See CUSTOM (SUCCESSION) I L. R 2 Lah. 98

——— s 27

See INSOLVENCY I L. R 37 Calc 418

PUNJAB MUNICIPAL ACT, 1911—

———— s 3 (10)—*Bye Laws of Delhi Municipality inconsistent with the provisions of the Act and unreasonable whether enforceable* By one of the bye laws of the Delhi Municipality framed under s 188 of the Punjab Municipal Act occupiers of stables used for more than six animals were required to obtain a licen e from the Committee and the word occupier was defined as meaning the person who is responsible for the letting or sub letting of the premises to the person in charge of animals and may include the owner The Municipal Act itself in paragraph (10) of s 3 however defined occupier as including an owner in actual occupation of his land or building etc The petitioner was owner of stables which he had leased to one R M and in which more than six animals were stabled without a license The petitioner was fined Rs 10 for a breach of the bye laws *Held* that the definition of occupier as given in the bye laws cannot be enforced in so far as it is inconsistent with that given in the Act itself *Narayan Chandra Chatterjee* v *Corporation of Calcutta* (*4 Indian Cases 259*) followed *Held* also that the bye law making the owner responsible in a case where he is not in actual occupation and has *no power to control the acts of his tenant* with regard to the use of the premises leased, is manifestly unjust to the owner and hence un reasonable and that the English law as to the necessity of bye laws being reasonable is applicable to bye laws framed in the exercise of their statutory powers by Municipal Boards in India *Emperor* v *Bal Kishan* (*I L R 24 All 439*) followed JOTI PERSHAD *v* THE CROWN I L R 2 Lah 239

———— s 3 (13) (b)—*Definition of public street —Presumed dedication of road in a private market (Ganj) to the public—Dedication for a limited purpose* The plaintiffs appellants were the abso lute owners of Nawab *Ganj* a market in the City of Karnal The *Ganj* was built in the form of a *Katra* or rectangular clo e to which entrance was obtained by four gates One of the gates was missing at the time of institution of the suit The others existed and were shut at night Round the close was a series of shops which were leased to grain merchants The enclosure thus formed was a narrow courtyard on the floor of which the tenants piled up their grain in separate heaps and under the courtyard were masonry bins for storage The courtyard was neither drained lighted nor cleaned by the Municipality and was by its nature acces ory to the shop property and let by the appellants as such to their shop tenants Recently the Municipal Committee constructed a metalled road through the *Ganj* on the plea that the area over which the road was laid was a public street under the Municipal Act The Chief Court held that there existed through this *Ganj* a public right of way and that this had been acquired by reason of dedication as such by the owner There was admittedly no dedication expressly or in writing but the Chief Court considered that as the space between the shops had been used by all members of the public who came in to buy and sell grain without any interruption there was a presumption that the owner intended the members of the public to make use of the space left vacant or a part of it as a highway *Held* that in such cases it is of crucial importance to distinguish between the grant to the public as such of a right of way and the per mission which naturally flows from the use of the ground a a passage for visitors to or traders with the tenants whose shops abut upon it That it was extremely doubtful in the present case whether the term dedication could with propriety be applied to what took place If the term be em ployed it could only be in this sense that the dedi cation of the *solum* of the courtyard was dedication, not to the public but to the uses of the shop keepers and their customers the principal u e being *the storing and display of grain* *Held* al o that the fact that members of the public get acce s to a place which is used by customers and might or might not pass through it did not justify an inter ference of dedication A person dedicating land to public use may place such limits as he wi hes upon the dedication if he makes those limits clear and definite although there can in law be no such thing as a public right of way constituted by dedi cation to only a section of the public *H Pool* v *Huskin on* (*M and W 827*) *per* BARON PARKE referred to NAWAB BAHADUR MUHAMMAD RUSTAM ALI KHAN *v* MUNICIPAL COMMITTEE OF KARNAL I L R 1 Lah 117

———— s 188—

See s 3 I L R 2 Lah 239

PUNJAB PRE EMPTION ACT I of 1913

———— s 3—*Whether the right of a temporary lessee to plant trees and take their produce (sardrakhti) is agricultural land or village immovable pro perty within the meaning of the Act—Punjab Alienation of Land Act XIII of 1900 s 2 (3) (b)—General Clauses Act X of 1897 s 3 (?)* The vendor in *this case* was the tenant of certain land under a lease made in 1888 in which it was stated that the land was leased *waste lagane sardrakhti* i e for the planting of a grove of trees or plant ation The lease was for seven years and after expiry of that period the lessor was to receive ⅓th of the produce of flowers fruits etc of the land Another condition was that if the lessor wanted to evict the lessee after the expiry of the seven years he would pay *the latter the* value of his *sardrakhti* By a deed of sale made in 1914 the vendor sold his *sardrakhti* in the land i e the rights owned by him in the *trees* The plaintiff sued for pre emption in respect of this sale and the questions for decision were whether the subject of the sale came within the definition of (1) agri cultural land in the Punjab *Pre emption Act*, s 3 read with the Punjab Alienation of Land Act 1900 s 2 *(3) (b)* as being a *share in the profits* of an estate or holding or (2) immovable pro perty under the Punjab Pre emption Act s 3 *Held* that the temporary rights which the vendor had in the produce of the trees under *the lease* did not constitute him owner of a share in the profits of the holding and that consequently the subject of the sale was not agricultural land within the meaning of s 3 of the Punjab Pre emption Act *Held* al o *that the temporary rights* sold were not immovable property under the Punjab Pre emption Act taking the definition as given in the General Clauses Act 1897 i e *that it includes* land benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth and the plaintiff had therefore no *locus standi* to *bring a suit for* pre emption *Shepherd* and *Brown s Indian Trans fer of Property Act 7th Edition page 14* referred to MUHAMMAD ISMAIL *v* SHAMS UD DIN I L R 1 Lah. 56

PUNJAB PRE-EMPTION ACT I OF 1913— *contd*

——— s. 15—

——— Whether a Christian can be heir to the son of a convert to Islam—

See ACT XXI OF 1850
I L R 1 Lah 376

——— *Owner of a small plot of land unassessed to revenue—Whether one of the owners of the estate* Plaintiff claimed pre-emption in respect of a sale of a house in the village *abadi* He based his claim on the plea of being one of the owners of the estate. Plaintiff was a *malik kab a* and owned only a small plot of land of 8 *marla* unassessed to revenue and uncultivated except to a trifling extent and clearly destined to be a building site *Held* that the plaintiff was not one of the owners of the estate within the meaning of s 15 (c) *thirdly* of the Punjab Pre emption Act and that his claim to pre emption was consequently inadmissible *Phallu* v *Mukarrab (153 P R 1885) Man Singh* v *Dip Singh (96 P R 1898) Sham Sunder* v *Sodhi Harbans Singh (109 P L R 1908)* and *Narain Singh* v *Gopal Singh (106 P R 1913)* followed *Lal Khan* v *Karib Ullah (14 P R 1889) Dasu* v *Jowala (13 P R 1885) Jasmir Singh* v *Rahmatullah (7 P R 1896)* distinguished. *Harjallu Mal* v *Nathu Ram (51 P R 1907)* disapproved. JAWALA SINGH *v* TARA SINGH
I L R 1 Lah. 503

PUNJAB RULING CHIEFS

See KUNJPURA STATE OF
I L R 39 Calc 711

PURCHASE

See BENAMI PURCHASE

See TITLE PROOF OF
I L R 45 Calc 909

——— by Husband—

See RESULTING TRUST
I L R 48 Calc 260

——— free of incumbrances—

See SALE FOR ARREARS OF REVENUE
I L R 39 Calc 353

PURCHASE MONEY

See LIMITATION ACT (IX OF 1908) SCH I ARTS 97 62
I L R 37 Bom 538

See MORTGAGE I L R 44 Calc 542

See RATEABLE DISTRIBUTION
I L R 44 Calc 789

——— payment of—

See PRE EMPTION I L R 35 All 582

——— refund of—

See SALE IN EXECUTION OF DECREE
I L R 37 Calc 67

——— suit to recover—

See CIVIL PROCEDURE CODE (1882) s 315
I L R 40 All. 411

PURCHASE OF ARMS

See FORGERY I L R 43 Calc 421

PURCHASER

See LIMITATION ACT (IX OF 1908) s 2?
I L R 38 Mad. 837

PURCHASER—*contd*

Sch I Art 12A I L R 45 Bom 45

See OCCUPANCY HOLDING
I L R 42 Calc 745

——— in Court auction—

See SUBSTITUTION OF PROPERTY AND SECURITY I L R 39 Mad 283

——— in puisne mortgagee s suit right of—

See TRANSFER OF PROPERTY ACT (IV OF 188) s 67 I L R 40 Mad 77

——— liability of—

See SALE FOR ARREARS OF REVENUE
I L R 40 Calc 89

——— of a share—

See SALE FOR ARREARS OF REVENUE
I L R 43 Calc 46

——— of equity of redemption—

See MORTGAGE 14 C W N 576

——— rights of—

See PRE EMPTION I L R 44 Calc 675

See SALE FOR ARREARS OF REVENUE
I L R 40 Calc 89

——— title of—

See CHAUKIDARI CHAKRAN LANDS
I L R 45 Calc 765

——— Widow claiming right of residence against purchaser for value from husband—

See HINDU LAW I L R 45 Bom 337

——— Sale by Revenue Courts for arrears of revenue—

See LIMITATION ACT (IX OF 1908) ART 12A I L R 45 Bom 45

PURCHASER FOR VALUE

See VENDOR AND PURCHASER
I L R 42 Calc 56

PURCHASER IN EXECUTION

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 67 I L R 40 Mad 77

PURCHASER PENDENTE LITE

See MESNE PROFITS
I L R 39 Calc 220

PURDANASHIN

See PARDANASHIN

PUTATIVE FATHER

——— right of to inherit his illegitimate son's property—

See HINDU LAW—INHERITANCE
I L R 41 Mad. 44

PUTNI

See PUTNI LEASE

See PUTNI REGULATION

See PUTNI TENURE

See SALE I L R 41 Calc 148

See TRANSFER OF PROPERTY ACT s 73
14 C W N 186

——— consideration for—

See ILLEGAL CESS I L R 45 Calc 259

PUTNI

———— purchase of—

See SALE FOR ARREARS OF RENT
I L R 44 Calc 715

———— *Putni Regulation (Reg VIII of 1819) s 9—Agreement of putnidar with stranger for purchase by latter and reconveyance to former—Legality—Contract Act (IX of 1872) s 23* A contract entered into by a *putnidar* with a stranger stipulating that the latter would purchase the *putni* which had been advertised for sale under Reg VIII of 1819 and reconvey it to the *putnidar* receiving the amount of the purchase money with interest and a further sum in addition from him is invalid under the provisions of s 23 of the Contract Act as being in contravention of the provisions of s 9 of the Putni Regulation MOHAN LAL BABU *v* UDAI NARAIN BHADURI (1910)
14 C W N 1031

———— *Chowkidari chakran land—Resumption and transfer to zemindar—Right of putnidar to settlement—Conditions of settlement—Suit by putnidar to recover—Limitation—Limitation Act (XV of 1877) Sch II Arts 142 144—Putnidar if must register himself in zemindar's sherista before suing—Purchase of putni in benami by defaulter if void—Reg VIII of 1819 s 9* The effect of the transfer by the Collector to the zemindar of resumed chowkidari chakran lands is not to separate them from the parent estate and grant a new title to them in favour of the proprietor of the estate A *putnidar* if these lands were included within his *putni* has the right to recover possession of the lands from the zemindar on condition of his agreeing to a fair and reasonable settlement with the landlord The terms of the settlement of the resumed chowkidari chakran land with the *putnidar* would depend upon the conditions under which the *putni* was originally created *Hari Narain Mozumdar v Mukund Lal Mundal 4 C W N 814* relied on A suit by the *putnidar* to recover possession of chowkidari chakran land resumed and transferred to the zemindar is governed by Art 142 or Art 144 of the Second Schedule of the Limitation Act *Bunwari Mukunda Deb v Bidhu Sundar Thakur I L R 35 Calc 346 s c 12 C W N 459* followed The absence of registration of the plaintiff's name in the zemindar's sherista is no bar to such a suit *Gossain Mungal Doss v Roy Dhunput Singh 25 W R 157* disapproved *Chunder Pershad Roy v Shuvadra Kumari Shaheba I L R 12 Calc 62? Joy Krishna Mookhopadhya v Sarfannessa I L R 15 Calc 345* relied on The purchase of the *putni* by the defaulting *putnidar* in the *benami* of another in contravention of s 9 of Reg VIII of 1819 is voidable only and not void *Matangini Debya v Prasanna Moyi Debya 3 C L J 93* followed HARAK CHAND BABU *v* CHAPU CHANDRA SINGHA (1910)
15 C W N 5

———— *Putni taluk sale of for arrears of rent—Suit by purchaser for recovery of possession of lands within taluk brought within 12 years from date of purchase—Limitation—Applicability of Art 121 Limitation Act—Adverse possession prior to creation of putni effect of—Cause of action—Adverse possession if arrested by creation of subordinate tenure when proprietor out of possession—Doctrine of possession following title application of where plaintiff has to prove possession at a particular point of time—Ancient documents showing exercise of right to property consideration of as presumptive evidence of possession—Sale under*

PUTNI—*contd*

159 Bengal Tenancy Act status of purchaser in—Encumbrance meaning and annulment of The plaintiff who was the purchaser of a *putni taluk* at a sale held in 1899 in execution of a rent decree under the Bengal Tenancy Act brought suit against the defendants within twelve years from date of his purchase for declaration of his title to the lands held by them within the *putni taluk* and for recovery of possession thereof There was ample evidence on the record that the adverse possession of the defendants and their predecessors commenced before the creation of the *putni* *Held* that the suits were barred by limitation and Art 121 of the 2nd Schedule of the Limitation Act did not apply to them That the plaintiff not having established that the possession of the defendants commenced after the creation of the *putni* or that the proprietor of the estate was in possession at the time when the *putni* was granted the interests acquired by the defendants could not be deemed to be an encumbrance within the meaning of *Art 121 nor was it an encumbrance* within the meaning of s 11 cl (1) of Reg VIII of 1819 That the cause of action did not arise on the date on which the plaintiff purchased *the taluk at the sale held* under the Bengal Tenancy Act That the adverse possession contemplated in the decisions *Nafar Chandra v Rajendra Lal, I L R 25 Calc 167 Woomesh Chandra Goopta v Raj Narain Roy 10 W R 15 Khanto Mони Dassi v Bijoy Chandra I L R 19 Calc 787* and *Karim Khan v Broja Nath Das I L R 22 Calc 244* is possession which commences after the creation of the *putni* tenure These cases are founded on the principle laid down in s 11 of Reg VIII of 1819 which is that the purchaser of a *putni taluk* at a sale held under Reg VIII of 1819 takes the *taluk* in the state in which it was initially created and the judicial decisions above *referred* to lay down the doctrine that the purchaser takes the property not free merely of all encumbrances that may have accrued upon the tenure by act of the defaulting proprietor his representatives or assignees but also free of the interest acquired by an adverse possessor who has been able to acquire such interest by the action of the defaulting proprietor This doctrine is plainly limited in its application to cases where the adverse possession commenced after the creation of the *putni* That in a case like the present in which the proprietor of the estate is out of possession he cannot merely by the device of the creation of a subordinate *taluk* arrest the effect of the adverse possession which has already commenced to run against him and such possession would be effective not only as against the subordinate tenure holder but also as against the superior proprietor *That the* plaintiff before he could succeed must prove that the proprietor was in possession when the *putni* was created That the doctrine that possession follows title has no application to a case like the present That as laid down by the Judicial Committee in *Runjeet Ram v Gobordhan Ram 20 W R 25 29* the Court may in the decision of the question of limitation if there is conflicting evidence on both sides presume that possession was with the party whose title has been established but it does not follow that when the plaintiff has to establish possession at a particular point of time he is entitled to call upon the Court to presume that because *his title* has been established possession must be presumed to have been with the holder of the title at the

PUTNI—contd

specified period of time This contention is clearly opposed to the decision of the Judicial Committee in *Mohima Chandra v Mohesh Chandra I L R 16 I A 23 s c I L R 16 Calc 473* That the plaintiff having made his purchase at a sale held in execution of a rent decree under the Bengal Tenancy Act under s 159 of the Act he made his purchase with power to annul the interests defined as encumbrance in s 161 encumbrance as used in that section includes a statutory title acquired by a trespasser by adverse possession of the land of the defaulting tenure provided such a title of possession commenced after the tenure had been created That even if he had succeeded in establishing that such adverse possession commenced after the creation of the *putni talук* before he could succeed he would have to prove that under sub s (1) of s 167 he had annulled the encumbrances by service of notice within one year from the date of the sale or the date on which he first had notice of the encumbrance and in the present case the plaintiff had failed herein *Held* (as to the contention that the grant of the *putni* tenure itself was evidence of possession) that the principle that ancient documents produced from proper custody and by which any right to property purports to have been exercised may rightly be treated as presumptive evidence of possession has no application to the circumstances of the present case KALIKANUND MUKERJEE *v* BIPRODAS PAL CHOUDRY (1914) 19 C W N 18

——— *Suit by purchaser to recover land from encumbrancer—Onus to prove that land was in zemindar's possession at date of putni* In the absence of anything to show that there was any change between the date of the quinquennial register for a period immediately preceding the permanent settlement and the permanent settlement the Court would be justified in holding that the area stated in the former was the area permanently settled with the zemindar Without considering the correctness of the principles laid down in *Kalikananda Mookerjee* v *Biprodas Pal Choudhury 19 C W N 18* *Held* that on the facts of the present case the onus was on the plaintiff (purchaser of a *putni* taluk at a rent sale) to prove that at the date of the creation of the *putni* the zemindar was in possession of the land sought to be recovered by annulment of defendant's alleged encumbrance KEDAR NATH RAI *v* BIPRA DAS PAL CHOWDHURY (1918) 23 C W N 182

——— *In a suit for khas possession of lands within the zemindary by purchaser of putni at sale for arrears of rent onus of proof is on plaintiff to prove zemindar's possession prior to creation of putni* Possession of as a tenant however long cannot be adverse to the landlord and cannot be held to be an encumbrance MONMOTHA NATH MITTER *v* ANATH BUNDHU PAL 25 C W N 107

PUTNIDAR

See CHAUKIDARI CHAKRAN LAND 14 C W N 995

——— right of—

See CHAUKIDARI CHAKRAN LANDS I L R 44 Calc 841

——— *Part of rent payable by putnidar assigned for payment of revenue—Separate account opened by a co sharer zemindar—*

PUTNIDAR—contd

Suit to apportion assigned rent and to order putnidar to pay plaintiff's share of same to plaintiff's account if maintainable—Transfer of Property Act (IV of 1882) s 37 Where a *putnidar* as part of the consideration for the use and occupation of the land undertook to pay the revenue payable by the zemindar direct in the Collectorate on account and to the credit of the landlord *Held* that the revenue so paid by the *putnidar* was part of the rent paid to the landlord The owners of a share in the zemindari having got a separate account opened in respect of their share under s 10 of Act XI of 1859 sued the *putnidar* and his co sharers for an apportionment as between the co-sharers of the revenue payable by the *putnidar* and for an order directing the *putnidar* to make separate payment in the Collectorate to the account and credit of the plaintiffs of the amount due in respect of their share *Held* that upon the principle underlying s 37 of the Transfer of Property Act and on the authority of *Sreenath Chunder v Mohesh Chunder 1 C L R 453* *Issur Chandra v Ramkrishna I L R 5 Calc 902* and *Raj Narain Mitter v Ekadasi Bag I L R 27 Calc 479 s c 4 C W N 494* the suit was maintainable and should be decreed the objection of the *putnidars* that the apportionment would impair the value or affect the character of their permanent lease being groundless and the objection that at each of the four kists they would have to write two challans instead of one being frivolous GOUR GOPAL SINHA *v* GOSTA BEHARY PRAMANIK (1916) 21 C W N 214

PUTNI LEASE

See CHAUKIDARI CHAKARAN LANDS I L R 41 Calc 685

See LANDLORD AND TENANT I L R 45 Calc 683

——— whether conveys underground right—

See MINERALS 5 Pat L J 563

——— *Construction of—Covenant in contravention of the rule against perpetuities—Contingent covenant in a lease when operative* Where a lessor by a *putni pattah* after leasing a mouzah exempted from its operation certain lands and covenanted that on certain contingencies happening the lessee should acquire a right there to as *putnidar* but no time was specified within which the contingency was to happen in order to vest the right in the *putnidar* *Held* that such covenant was void as offending against the rule against perpetuities even as between the parties to the covenant *Chandi Churn Barua* v *Sidheswari Debi I L R 16 Calc 71* *Ramasami Pattar* v *Chinan Asari I L R 24 Mad 449* and *Nabin Chandra Soot* v *Nabab Ali Sarkar 5 C W N 343* referred to ANATH NATH MAITRA *v* KUMAR KESHAB CHANDRA ROY (1910) 14 C W N 601

——— *Chota Nagpur Encumbered Estates Act (Bengal VI of 1876 as amended by Act V of 1884) s 17—Rules under s 19 of Act Rule 16—Putni lease executed by Deputy Commissioner as manager of Barabhum Estate under the Act—Sanction of Commissioner—Objection that putni lease had not been submitted to Commissioner after he had sanctioned all the details—Sanction granted for lease to a firm and lease given to a Limit*

PUTNI LEASE—*contd*

ed Company—Stipulation for payment of bonus—Payment after time fixed The grant of a *putni* lease under the Chota Nagpur Encumbered Estates Act (Bengal Act VI of 1876 as amended by Act V of 1884) s 17 and r 16 of the rules made under the Act necessitate the sanction of the Commissioner In a suit to have a *putni* lease executed by the Deputy Commissioner as the manager under the Act of the Barabhum Estate on behalf of the proprietor the father of the plaintiff (appellant) declared void and inoperative as not having received a valid sanction *Held* that where it has been affirmatively established that a transaction itself in all its essential particulars has obtained the sanction of the Commissioner and then it becomes requisite that the transaction be carried into effect by the preparation of an appropriate deed an objection merely on the ground that the document ultimately prepared has not been submitted for sanction cannot be sustained In administrative and departmental action it must necessarily be the case that formal details may have to be entered upon in order to carry into effect and put into legal shape the arrangement to which the sanction was given Where such a sanction was given for a *putni* lease to be granted to Robert Watson and Co a firm of individual men and the actual lease was executed in favour of Robert Watson and Co Limited the firm having been converted into a Limited Company *Held* on the facts of the case that when the negotiators in the course of the correspondence mentioned Robert Watson and Co they did in fact mean and were perfectly understood to mean Robert Watson and Co Limited the fact of the incorporation of the Limited concern being well known and that therefore the misdescription did not under the ordinary principle applicable to such matters affect the validity of the sanction or of the *putni* lease In this view it was unnecessary to decide as to the effect in law of the difference in the *persona* of the two descriptions *Held* also that the sanction of the Commissioner in this case was not merely a sanction of a proposal to grant a *putni* The proposal had been made it had been accepted a contract was accordingly completed on the subject and it was that contract so completed that was sanctioned The *putni* lease stipulated for the payment of a *salami* or bonus and the letter granting the sanction contained the clause provided the amount be paid before the end of March 1890 Some delay occurred owing to an exchange of views being necessary as to the actual wording of the draft *putni* but the lease was finally settled by both parties and the *salami* was paid on 25th June 1890 *Held* that the lease would not afterwards have been open to a challenge to be made by the Deputy Commissioner himself or for the Commissioner's sanction to be withdrawn and *a fortiori* there was no ground for sustaining such a challenge when put forward long afterwards on behalf of the debtor's successor by whom the suit was brought I AM KANAI SINGH DEO DARPASHAHA v MATHEWSON (1915)

I L R 40 Calc 1029

——— *Putni lease—Construction of—Saranjami if includes Government Revenue* In a *putni* lease it was stipulated that the *putnidar* would pay to the zemindar the rent besides Saranjami In a suit for arrears of rent on the basis of the *putni* lease the question was whether Government revenue was payable by the zemindar or the *putnidar* *Held* that evidence of conduct was not admissible for the construction of the *putni* contract and the Lower Courts were wrong in relying on the fact that for many years the Government revenue was paid by the *putnidar* BHAGABAN NATH ROY v PURNA CHANDRA SARKAR

25 C W N 308

PUTNI REGULATION (VIII OF 1819)

See DEPOSIT IN COURT

I L R 41 Calc 1000

——— *Position of a purchaser at sale under—Previous suit for rent by original talukdar dismissed on the ground that relation of landlord and tenant did not exist—Subsequent suit by purchaser if barred by* res judicata*—Purchaser if bound to annul encumbrance before suit—Incumbrance adverse possession when—Limitation* Although the position of a purchaser at a sale under Reg VIII of 1819 may not be precisely that of a purchaser at a sale for arrears of revenue yet he is not privy in estate to the defaulting proprietor and he does not derive his title from him as under s 11 of the Regulation he has acquired the property free of all encumbrances that might have been created upon it by the act of the defaulter his representatives or assignees and consequently a claim for rent by such a purchaser is not barred by *res judicata* by reason of the failure of a suit for rent by a previous *putnidar* on the ground that the relationship of landlord and tenant between the then plaintiff and the defendants was not established *Tara Prasad v Ram Nrisingha Singh 14 W R 283* and *Radha Gobind v Rakhal Das I L R 12 Calc 82 90* relied on A purchaser at a sale under Reg VIII of 1819 need not take any step before the suit is brought to annul an encumbrance The interest of an adverse possessor is an encumbrance only when the adverse possession has continued for the statutory period Adverse possession is arrested by the sale and limitation runs as against the purchaser from the date when the sale becomes final SATISH CHANDRA SINHA v MUNJAMATI DEBI (1912)

17 C W N 340

——— *Itmam and taluk tenures if permanent and heritable—Marfatdari receipts if raise presumption of non transferability* Two *putni* tenures were granted in Chittagong for an indefinite period described in the kabuliyats as an itmam and Taluk respectively and there were no words of limitation or inheritance The grantee transferred the tenures to a third person to whom rent receipts were granted marfatdari in the names of the original grantees *Held* that the term *itmam* as applied to a tenure in permanently settled parts of Chittagong primarily imports a permanent heritable and transferable tenure and it is well settled that the word taluk primarily imports permanency A grant for an indefinite term enures at least for the life time of the grantee JOGESH CHANDRA ROY v MOKBUL ALI CHOWDHURY

25 C W N 857

——— *s 3—Stipulation in a mourasi mokurrari kabuliyat for the delivery of ghee and goat annually if enforceable—Second clause of the section whether abrogates all previous restrictions on alienation as embodied in Regulation I of 1819 sec 3* In a mourasi mokurrari kabuliyat executed in 18—

PUTNI REGULATION (VIII OF 1819)—*contd*

——— s 3—*contd*

there was a stipulation at the end that the tenant should deliver annually one seer of ghee and one goat to the landlord *Held* that in view of the clause imposing the delivery of the goat and the ghee standing completely isolated from the terms relating to the rent proper and its mode of payment the goat and ghee were not part of the rent and as such were not recoverable being in the nature of an *abwab* and hence an illegal imposition Sec 3 of the Putni Regulation did not restrict the application of the general law against *abwab* as embodied in sec 3 of Reg V of 1812 RAM TARAN TEWARY v SM KUMEDA DASSEE 28 C W N 6-4

——— ss 3, 5 6—*Land Acquisition Act (I of 1894)—Non registration of putnidar s name in zemindar s books—Effect of on putnidar s title to share of compensation —Refusal of zemindar to allow proportionate abatement effect of on zemindar s title to compensation* When the whole of the compensation money for land acquired under the Land Acquisition Act was awarded to the *putnidars* on the ground that as the zemindars had not allowed an abatement of rent on account of the land acquired, they were not entitled to a share of the compensation money and the zemindars case was that as the *putnidars* did not get themselves registered in the books of the zemindars under the provisions of the Putni Regulation their title was not protected and they were not entitled to claim any portion of the compensation money *Held* that the *putnidars* were entitled to the compensation money and the zemindars to no portion of it Under s 6 of the Putni Regulation the landlord may demand a fee for the registration in his books of the name of the purchaser of a *putni* as also security from him but the omission to pay the fee and the security does not affect in any way the title of the purchaser whose rights are perfected upon the transfer by the *putnidar* and are not in any way contingent for their validity upon the payment of the fee and security If the zemindars allow an abatement of rent to the *putnidars* the rent abated primarily represents their annual loss and they may reasonably claim out of the compensation money the capitalised value of that rent but if they do not allow such abatement they do not suffer any immediate loss by reason of the acquisition GUNIAT SINGH v MOTI CHAND (1912) 18 C W N 103

——— ss 3 11 15—*Sale of putni—Dur putnidar s interest if ipso facto cancelled—Possession taken and proclamation obtained effect of* The purchaser at a *putni* sale under the provisions of Reg VIII of 1819 acquires the right to take possession immediately and one who has a tenure or a middle interest between the resident cultivator and the late *putnidar* cannot bar or in any way prejudice the purchaser s right *Mahini Chander Muzumder v Jotirmoy Ghose 4 C L J 4-* *Watson v Collector of Rajshahi 13 Moo I A 160 Brinda ban Chunder Sircar Chowdhury v Brindabun Chunder Day Chowdhury L R 1 I A 178* followed *Madhu Sudhan Kundu v Ramdhun Ganguly I- W R 383 3 B L P 431* distinguished When the purchaser asserted her full right as such at the earliest possible occasion took possession and obtained a proclamation as required by s 15 of the Regulation and then instituted a suit for rent against the cultivating tenant *Held* that she was entitled to a decree the interest of a *dur putnidar* who resisted the claim being considered as cancelled KRISHNA PROMODA DASSI v DWARKA NATH SEN (1913) 17 C W N 1092

——— ss 4 10 14—

See PUTNI SALE I L R 47 Calc 337

——— ss 5 6—*Transferee of portion of putni if may claim recognition by zemindar under Bengal Tenancy Act (VIII of 1885) ss 12 17—S 195 (e)* A partial transferee of a *putni* taluk is not entitled to be recognised by the zemindar It is a form of transfer which under the terms of ss 5 and 6 of Reg VIII of 1819 the zemindar is not bound to recognise and under s 195 (e) of the Bengal Tenancy Act the transferee cannot claim recognition by reason of ss 12 and 17 of the latter Act RAKHAL CHANDRA DAS v UMAPADO MISRI (1913) I L R 36 All 187 18 C W N 629

——— s 8—*Publication of notices at the Collector s kutchery—Notices taken down and kept on Nazir s table for inspection of Mukteers during office hours—Irregularity vitiating sale—Publication of list of putnis in arrears defaulters and arrears in zemindar s kutchery if sufficient—Publication in principal village—Sale in Collector s Court room if public sale when people prevented from coming in freely by chaprasis—Sale at an unusually early hour if bad* Where it appeared that applications for sales of *putnis* under Reg VIII of 1819 and notices thereof used to be taken down from the notice board on the verandah of the Collectorate by the Mukteers during office hours and placed on the Nazir s table and hung up again on the board at the close of the day *Held* that there was no proper publication of the notices which were meant for the public and not for Mukteers alone and it was an irregularity which vitiated the sale The law contemplates their unobstructed presentation to the notice of the public *Bejoy Chand Mahatap v Atulya Charan Bose I L R 3- Calc 353* and *Sachi Nandan Dutta v Bejoy Chand Mahatap 11 C W N 479* referred to Where instead of similar notices a list of the defaulting mahals with the names of the defaulters and the amounts due was stuck up in the zemindar s *sadar kutchery* there was a substantial compliance with the law Where the notice required to be served in the mofussil was served in the *kutchery* of the *dar putnidar* of three only out of six mauzas covered by the *putni* this was good service when the *dar putnidar s kutchery* was in the principal village of the defaulting tenure The complaint that the public had not unobstructed access to the place of sale was made out when it appeared that though the sale was held in the Court room of the Collector (and therefore in public *kutchery*) the Collector s chaprasis who were placed at the wicket gate to keep order did not allow many persons to enter to prevent overcrowding A defaulter cannot impeach a sale as illegal merely on the ground that it took place earlier than usual he may however be permitted to show that he was misled to his prejudice by the deviation from the usual practice Effect of irregularities in sales discussed *Maharaja of Burdwan v Tara Sundari Debi L R 10 I A 19 s c I L R 9 Calc 619 6-* and *Maharaja of Burdwan v Krishna Kamini Dasi L R 14 I A*

PUTNI REGULATION (VIII OF 1819)—*contd*

——— s 8—*contd*

30 s c I L R 14 Calc 365 referred to RANJIT SINGHA v JNANENDRA CH SEN GUPTA (1915)
19 C W N 963

——— s 11—

See INCUMBRANCE
I L R 37 Calc 322

——— ss 11 15 17 cl (3) para 2 and cl (5) para 3—*Sale under Putni Regulation after mortgagee s decree on mortgage of putni and zemindar s decree for antecedent arrears—Right to surplus sale proceeds—Priority—First charge—Limitation* There is nothing in the Putni Regulation contrary to the principle which underlies s 65 of the Bengal Tenancy Act the rent payable by the *putnidar* to the zemindar being under ss 11 and 15 of the Regulation as under s 65 a first charge on the tenure Where a *putni* tenure is sold under the Regulation for the realisation as the case may be of arrears due for the year immediately expired or for the current year the effect of such sale is not to reduce all former balances to personal debts of the *putnidar* The charge is not destroyed but is transferred to the surplus sale proceeds The sale in any case would not destroy the charge attaching to arrears in respect of which the zemindar has already obtained a decree prior to the sale for the second paragraph to the third clause of s 17 of the Regulation even if it be opposed to the provisions of s 65 of the Bengal Tenancy Act has no application to such a case for it cannot contemplate the institution of a fresh suit for recovery as a personal debt of antecedent balances in respect of which the zemindar had already obtained a decree *Peary Mohan Mukerjee* v *Sreeram Chandra Bose 6 C W N 794* approved *Jagannath* v *Mohiuddin Mirza I L R 37 Calc 747* not approved Where before the *putni* was sold under the Regulation both the zemindar and the mortgagee of the tenure had recovered decrees the former for antecedent arrears and the latter on his mortgage *Held* that though under s 73 of the Transfer of Property Act the latter had a charge in respect of the mortgage dues upon the surplus sale proceeds and this charge subsisted even after the decree the charge in favour of the zemindar in respect of arrears of rent would have preference before it as it was a first charge under s 65 of the Bengal Tenancy Act The zemindar was entitled to seek his remedy by way of suit in the Civil Court without repeated recourse to the summary procedure laid down in the Regulation *Brindaban Ch Sircar* v *Brindaban Ch Dey L R 1 I A 178 s c 13 B L R 409* referred to *Quære* Whether the limitation of two months provided by the fifth clause to s 17 of the Regulation applies to a suit by the mortgagee against the zemindar for a declaration of his right to appropriate in satisfaction of his own decree the surplus sale proceeds which the zemindar has taken out in execution of his decree for antecedent balances BASANTA KUMAR BOSE v KHULNA LOAN CO (1914) **19 C W N 1001**

——— s 13—*Sale of putni—Suit by vendor for back rents not assigned—Putni if may be sold free of dar putni in execution of decree made—Deposit of rent by dar putnidar—Dar putnidar's lien priority of* The special lien which a subordinate tenure holder acquired under 13 of Reg VIII of 1819 by depositing the *putni* rents in arrears for which the *putni* has been advertised for sale by the zemindar under that Regulation is not affected by proceedings taken in respect of the *putni* under the Bengal Tenancy Act the Putni Regulation being a self contained Act specially excluded from the operation of Bengal Tenancy Act by s 195 of that Act FORBES v MAHARAJ BAHADUR SINGH (1914)
I L R 41 Calc 926
18 C W N 747

——— *Deposit not voluntary to prevent putni sale—Suit to recover on the ground of intended sale being illegal if maintainable—Chota Nagpur Encumbered Estates Act (IV of 1876) preamble ss 2 4 5 8 9 1 16 17 18 19 and 23—The Act if applies to land outside Chota Nagpur—Intention of the Act* The rule which prevents a person from recovering back money which he has paid on a claim in legal proceedings to which he might have set up a defence but has failed to do so has no application where a deposit is made in order to stop a *putni sale* The proceedings before the Collector at a *putni* sale are of an administrative rather than a properly judicial character The zemindar who has the power of compelling a sale is to exercise this power through the instrumentality of the Collector himself who acts not magisterially but ministerially and who has in the true view of his functions no capacity to give effect to any enquiry he may make into title comparable to the capacity possessed by an ordinary judicial tribunal The Chota Nagpur Encumbered Estates Act is not a statute analogous to the Bankruptcy Act the controlling purpose of which is provision for creditors in a liquidation Its primary intention is that of providing by a measure of local application for the relief of the burdens affecting the land within Chota Nagpur owned by a class of landholders there The Act has therefore no application to immovable property outside Chota Nagpur Any provision which affects rights to enforce in jurisdictions outside it personal debts or liabilities are merely ancillary to the main purpose of the Act JYOTI PRASAD SINGH v KUMUD NATH CHATTERJI (1918)
22 C W N 1009

——— *Putni Regulation (VIII of 1819) s 13 (4)—Dar putnidar put in possession for paying putni rent—Payment of further arrears when in possession—Payments if first charge on the putni—Bengal Tenancy Act (VIII of 1885) s 171 (1) (b)—Mortgagee s prior right to surplus sale proceeds—Contract Act (IX of 1872) s 69* Where a *dar putnidar* having advanced certain arrears of rent due on a *putni* which was already subject to defendant s mortgage was placed in possession of the *putni* under paragraph 4 of cl 13 of Regulation VIII of 1819 and then the plaintiff an assignee of the *dar putni* paid the next three instalments of the *putni* rent but failing to pay the fourth instalment the *putni* was sold under the Regulation *Held* that the plaintiff was not entitled to recover out of the surplus sale proceeds the instalments of rent paid by him when he was in possession of the *putni* That as regards the arrears paid by the *dar putnidar* assuming that the amount was a charge on the *putni* defendant s mortgage of prior date had priority over it *Quære* Whether it was open to the *dar putnidar* to seek the relief provided by s 171 sub s (1) cl (b) of the Bengal Tenancy Act and if it was whether the remedy was avail

PUTNI REGULATION (VIII OF 1819)—contd

———— s 13—contd

able after election by him of the remedy under s 13 cl (4) of the Putni Regulation *Held* further that the plaintiff could not claim on the basis of s 69 of the Contract Act FAMJIBAN BHADRA v TAZ DIN KAZI (1911) 16 C W N 404

———— s 14—*Irregular sale under—if voidable or void—Sale if may be impugned collaterally—Limitation Act (IX of 15) Sch II Art 12* Where a putni has been sold under the Putni Regulation and no suit has been brought under s 14 of that Regulation to set aside that sale *Held* that the sale cannot be impugned as invalid collaterally by way of defence in a suit brought by a purchaser of the putni for ejectment Irregularity in the service of notices in such sale does not make the sale a nullity Irregular sales under the Regulation are voidable and not void and they can only be avoided by the procedure laid down in the Regulation and within the time allowed for such suit by Art 12 Sch II of the Limitation Act RAMSONA CHOWDHURI v NABA KUMAR SINGHA CHOWDHURI (1911) 16 C W N 805

———— When there is a second sale pending suit to set aside first sale the purchaser can acquire a good title if first sale is finally set aside as the validity of the second sale is not dependent on the continuance of the first sale BIJOY CHAND MAHATAB v ASHUTOSH CHUKERBUTTY 25 C W N 42

———— s 17 cl (c)

See PUTNI TENURE

I L R 37 Calc 747

———— *Antecedent balances if recoverable by resale of the tenure* Under the provisions of s 17 cl (c) of the Putni Regulation arrears of rent for a period antecedent to the period to recover the rent of which the tenure had been sold must be regarded as personal debts recoverable under the ordinary procedure for the recovery of debts and not by resale of the tenure *Jagannath v Moliuddin Mirza I L R 37 Calc 747* followed *Peary Mohun Mukhopadhya v Sreeram Chandra Bose 6 C W N 794* dissented from KHITISH CHANDRA ACHARYA CHOWDHURY v KHULNA LOAN COMPANY LTD (1912) 16 C W N 804

PUTNI RENT

See DEPOSIT IN COURT

I L R 41 Calc 1000

PUTNI SALE

———— suit to set aside—

See LIMITATION ACT 1877 s 8

14 C W N 128

———— *Regulation VIII of 1819—Suit to set aside putni sale—Second sale pending suit if it may stand in case first sale set aside* Where pending proceedings under the Regulation VIII of 1819 to set aside the sale of a Patni Taluk a second sale under the Regulation took place owing to default in payment of rent *Held* that if the first sale be set aside as invalid the second sale cannot stand BIJOY CHAND MAHTAB v MRITUNJOY GHOSE (1920) I L R 47 Calc 782

———— *Sale for arrears not due—Suit to set aside sale—Day how to be reckoned in a Statute mentioning months and dates in Bengali style—Payment to stop sale where and by whom to be made—Notice of sale in the Collector's katchery form and method of—Non publication of notice in manner prescribed effect of—Putni sale and Revenue sale difference of—Purchase by stranger at putni sale effect of—Necessary parties in a suit to set aside putni sale—Costs in a suit to set aside sale—Appellate Court discretion of in considering finding of fact of trial Judge who had witnesses before him—Conditional acceptance of arrears of putni rent of deposit—Putni Regulation (VIII of 1819) ss 8 10 14* The sale of a putni can be held only if the balance claimed by the zemindar on account of the rent of the putni remains unpaid up on the day fixed for the sale of the tenure and if a sale be held after a valid payment of the rent due it must be deemed to be a sale without jurisdiction *Shuroop Chunder Bhoomick v Perab Chunder Singh 7 W R 218* and *Ramsora Choudhury v Naba Kumar Singha 16 C W N 805* followed *Baijnath Sahu v Sital Prasad 2 B L R F B I 10 W R F B 66 Harkhoo Singh v Bunsidhur Singh I L R 25 Calc 876 Lalkishen Das v Simpson I L R 8 Calc 833 I R 9 I A 151 Mohomed Jan v Ganga Bishun Singh I L R 38 Calc 537 L R 38 I A 80 Haji Buksh Ilahi v Durlav Chandra Kar I L R 39 Calc 981 L R 39 I A 177* and *Jarakhari Lal v Gossain Lal Bhaya Gaywal I L R 37 Calc 107* referred to When a Regulation mentions Bengali months and dates throughout the Legislature must have intended that a day should be reckoned in the manner prevalent in Bengal that is from sunrise to sunrise The fact that there was no balance due may be urged as a ground in support of a suit for reversal of a putni sale A putnidar cannot stop the sale by a deposit in the Collectorate at the moment of sale Payment to stop a putni sale may however be made into Court either by a subordinate talukdar under s 13 of the Putni Regulation or by a putnidar who has applied for a summary investigation under s 14 cl ( ) of that Regulation *Kristo Mohun Shaha v Aftaboddeen Mahomed 15 W R 560* referred to The notice of sale required by the Putni Regulation to be stuck up at a conspicuous part of the Collector's katchari must be a self contained notice which comprises not only a specification of the arrears and a notification that the sale will be held on a particular date if the amount claimed be not paid before that date and also a statement of the lots proposed to be sold in the order in which the sale will be held. S 8 of the Putni Regulation must be read with s 10 *Rajnarain Mitra v Ananta Lal Mondul I L R 90 Calc 703 Bejoy Chand Mahatab v Atulya Charan Bose I L R 39 Calc 953* and *Harinarnath Das v Rajani Kanta Laik 15 Ind Cas 537* followed The requirements of the Putni Regulation in respect of the notice mentioned in ss 8 and 10 of that Regulation must be strictly complied with and a defective notice under s 8 is a fatal objection to the validity of the sale *Maharani of Burdwan v Krishna Kamini Dasi I L R 14 Calc 365 L R 14 I A 30 Abanulla Khan Bahadur v Harucharan Mozoomdar I L R 20 Calc 86 L R 19 I A 191 Ahsanulla Khan Bahadur v Hurri Charn Mozoomdar I L R 17 Calc 474 Rajnarain Mitra v Ananta Lal Mondul I L R 19 Calc 703 Hurro Doyal Roy Choudhry v Mahomed Gazi Choudry I L R

PUTNI SALE—*concld*

19 Calc 699 and *Maharaja of Burdwan* v *Tara sundari Debi I L R 9 Calc 619 L R 10 I A 19* referred to A sale under the Putni Regulation stands on an entirely different basis from a sale for arrears of revenue inasmuch as s 14 of the Regulation does not restrict the right of suit to narrow and specified grounds and the validity of the sale may be successfully challenged on proof that the conditions prescribed by the Regulation have not been fulfilled A purchase even by a stranger at a *putni* sale may be set aside on the ground that the provisions of the Regulation were not complied with. The purchaser is only entitled to be indemnified against all loss at the charge of the *zemindar* or other person at whose instance the sale may have been made such loss being ordinarily measured by costs of litigation and interest on purchase money *Mobaruck Ali* v *Ameer Ali 21 W R 252 Baikanta Nath Sing* v *Mahatab Chand Bahadur 9 B L R 87 17 W R 447* and *Bejoy Chand Mahatab* v *Amrita Lal Mukerjee I L R 27 Calc 508* referred to S 14 of the Putni Regulation contemplates that the purchaser is to be made a party If the purchaser has purchased on behalf of another or on behalf of himself and others he must be deemed to represent all such persons Where the issue involves a simple question of fact to be decided chiefly if not solely on oral evidence a Court of Appeal should be slow to set aside the finding of the trial Judge who had the witnesses before him *Bombay Cotton Manufacturing Co* v *Motilal Shivlal I L R 39 Bom 386 L R 42 I A 110* and *Dominion Trust Co* v *New York Life Insurance Co [1919] A C 254* followed The acceptance of arrears of a *putni* rent with a qualification that if the sale did take place the money would be returned does not indicate that the acceptance was postponed to await the event of sale or otherwise and such a sum paid and accepted cannot be regarded as a deposit BEJOY KRISHNA MOOKERJI *v* LAKSHMI NARAIN JIU (1919) **I L R 47 Calc 337**

PUTNI TALUK

See LANDLORD AND TENANT

I L R 41 Calc 683

———— sale of—

See CHOTA NAGPUR ENCUMBERED ESTATES ACT APPLICATION OF

I L R 46 Calc 1

See LIMITATION **I L R 46 Calc 670**

———— whether expression in a lease implies fixity of Rent—

See LANDLORD AND TENANT

24 C W N 874

———— *Sale for arrears of rent —Regulation VIII of 1819—Suit to set aside a prior putni sale—Appeal—Position of purchaser* An auction purchaser in a *putni* sale pending litigation to set aside a prior *putni* sale of the same property brought a suit on the prior sale being set aside against the *zemindar* for refund of the purchase money and rent paid: *Held* that he was the *putnidar* so far as the *zemindar* was concerned The cancellation of the prior sale did not affect the subsequent *putni* sale. *Ramsona Chowdhrani* v *Sonamula Chowdhurani 13 C L J 401* referred to. *Bejoy Chand Mahtab* v *Mohini Mohan Ghosh 21 C W N 785* dissented from

PUTNI TALUK—*contd*

BIJOY CHAND MAHTAB *v* ASHUTOSH CHUCKERBUTTY (1920) **I L R 48 Calc 454**

PUTNI TALUQ REGULATION (VIII OF 1819)

See PUTNI SALE.

See PUTNI TALUK.

———— s 14 sale under—

See LIMITATION **I L R 46 Calc 670**

PUTNI TENURE

———— purchaser of—

See INCUMBRANCE **I L R 43 Calc 558**

1 ———— *Incumbrance—Customary right to cut and appropriate trees whether an incumbrance—Putni Regulation (VIII of 1819) s 11—Right of an auction purchaser at a sale held under the Putni Regulation to avoid such incumbrance*—Bona fide *engagement made by the defaulting proprietor with resident and hereditary cultivators effect of* A customary right to cut and appropriate trees is an incumbrance within the meaning of s 11 of Regulation VIII of 1819 A purchaser of a *putni taluq* at a sale held under Regulation VIII of 1819 is not entitled to hold the property free from a customary right or a right recognised by usage which has grown up during the subsistence of the *putni* and under which occupancy raiyats are entitled to appropriate and convert to their own use such trees as they have the right to cut down inasmuch as he is not entitled to cancel a *bonâ fide* engagement made by the defaulting proprietor with the resident and hereditary cultivators PRADYOTE KUMAR TAGORE *v* GOPI KRISHNA MANDAL (1910) **I L R 37 Calc 322**

2 ———— *Putni Regulation (VIII of 1819) s 17, cl (c)—Arrears of rent—Arrears previous to the current year for which the sale took place—Personal Debt—Bengal Tenancy Act (VIII of 1885) s 65—First Charge* Under the Putni Regulation VIII of 1819 s 17 cl (c) where the arrears of rent claimed are for balance due for periods prior to the current year for which the arrears are due when the sale is held in the middle of the year or prior to the year preceding if the sale be held at the commencement of the following year these balances must be treated as personal debts recoverable under the ordinary procedure for recovery of debts and not as rents recoverable under the provisions of the Tenancy law and that in such a case the provisions of s 65 of the Bengal Tenancy Act would not have any application *Peary Mohan Mukhopadhya* v *Sreeram Chandra Bose 6 C W N 791* commented on and distinguished JAGANNATH *v* MOHIUDDIN MIRZA (1910) **I L R. 37 Calc 747**

3 ———— *Successive rent decrees—Sale in execution of last decree—Zemindar if has a charge on surplus sale proceeds for amount of previous decrees—Putni Regulation (VIII of 1819) ss 3 (3) 17 (3)—Bengal Tenancy Act (VIII of 1885) ss 65 165 195—(c)—Transfer of Property Act (IV of 1882) ss 73 100—Nature of charge for arrears of rent Per N R CHATTERJEE J (Smither J contra)*—Not only can a *putni* tenure be sold under the Bengal Tenancy Act but decrees for rent for earlier periods can be forced against the surplus sale proceeds of a *putni* tenure when sold in execution of a decree for rent under the provisions of the Bengal Tenancy Act. *Per*

PUTNI TENURE—*contd*

SMITHER, J.—Under s. 3, cl. (3) of the Putni Regulation the zemindar has the right to hold the *putni* answerable for any arrear of his rent, but only subject to the limitation specified in s. 17, cl. 3 of the Regulation under which if the zemindar should have failed to avail himself of the process which the Regulation provides arrears of a period before the current year or the year immediately expired become mere personal debts and his charge in respect of such arrears is time barred. The zemindar has therefore no charge for the amounts covered by two previous decrees for rent upon the surplus proceeds of a sale in execution of a later decree for rent. The words "public auction" in s. 3, cl. (3) of the Regulation should be taken to apply to any "public auction" and not limited to mean an auction under the Regulation if there can be any public auction of a *putni* other than a public auction under the Regulation. *Per* N. R. CHATTERJEE, J.—The provisions of s. 17, cl. (3) of the Regulation that the former balances beyond those of the current year (or of that immediately expired if the sale be at the commencement of the following year) will be mere personal debts of the *putnidar* applies only when the *putni* is sold under the Putni Regulation. The words "sale by public auction" in s. 3, cl. (3) of the Regulation refers to the summary sale under the Putni Regulation which alone is dealt with by it. The provisions of that section or of s. 17 have nothing to do with a sale held under the general law. Rent is a first charge under the Putni Regulation as well as under the Bengal Tenancy Act and there is no conflict between the two so far as the question whether rent constitutes a first charge is concerned. The Regulation provides for a summary sale only and in so far as such a sale is concerned the provisions of the Bengal Tenancy Act cannot affect such sales or the provisions relating to the distribution of the sale proceeds as laid down in the Regulation. With regard to sales under the general law there is no inconsistency between the provisions of the Bengal Tenancy Act and the Putni Regulation because the latter has nothing to do with such sales and the Bengal Tenancy Act supplements the provisions of the Regulation in matters not dealt with by it. If the zemindar has a first charge for rent under the Bengal Tenancy Act and the Regulation although such charge in respect of antecedent balances may not having regard to the provisions of s. 17 of the Regulation be enforced against the surplus sale proceeds when the *putni* is sold in a summary way under the Regulation there is no reason why the zemindar should lose such charge under a decree for rent when the *putni* is sold under the Bengal Tenancy Act. The tenure itself having been sold in execution of a rent decree the charge was transferred to the surplus sale proceeds on the principle embodied in s. 73 of the Transfer of Property which is a principle of justice, equity and good conscience. The charge which the landlord has in respect of his rent is not one created by law under s. 100 of the Transfer of Property Act. Such charge is not an encumbrance within the meaning of s. 161 of the Bengal Tenancy Act. SATYA SHANKAR GHOSAL *v.* MONOMOHAN GUHA (1917) 22 C. W. N. 131

PUTNIDAR

See POOLBUNDI CHARGES
I. L. R. 41 Calc. 130

PUTNIDAR—*contd*

———— relinquishment by—

See LANDLORD AND TENANT
I. L. R. 41 Calc. 693

———— suit by—

See CHAUKIDARI CHAKARAN LANDS
I. L. R. 46 Calc. 173

PATNIDARS AND DAR PATNIDARS

———— rights of—

See CHAUKIDARI CHAKARAN LANDS
I. L. R. 37 Calc. 57

PUTRA POUTRADIK—

———————— *Meaning of, in Chota Nagpur*—Literal putradik mai warsan kayem mokamiyan *meaning of*. The words *putra poutradik* in their ordinary acceptance must be taken to include female as well as male heirs where by law the estate would descend to such heirs. But by local custom can mean male heirs only. THAKUR BROJOKISHORE LAL *v.* MAHARAJA KUMAR JAGAT MOHUN NATH SAHI DEO
5 Pat. L. J. 265

Q

QABULIAT

See KABULIYAT

See LANDLORD AND TENANT
I. L. R. 35 All. 505

QADI

See WAKF I. L. R. 43 Calc. 467

QUALITY MARK

See TRADE NAME, INFRINGEMENT OF
I. L. R. 41 Bom. 49

QUARRIES

See LAND ACQUISITION ACT (I OF 1894)
I. L. R. 38 Bom. 37

———— right of grantee to—

See INAM I. L. R. 40 Mad. 268

QUESTION OF FACT

See CUSTOM OR USAGE
I. L. R. 45 Calc. 285

QUESTION OF LAW

See CUSTOM I. L. R. 45 Calc. 285

QUESTIONS OF LAW AND FACT

See CIVIL PROCEDURE CODE, ss. 100 AND 110

See SPECIAL OR SECOND APPEAL
I. L. R. 46 Calc. 189

QUINQUENNIAL REGISTER

See PUTNI 23 C. W. N. 182

R

RAFA TANKIDARS

——————— In the Khurdah Estate the Rapa Tankidars are occupancy raiyats and not tenure holders HARAYAN PATNAIK v RAGHUNATH PATNAIK 5 Pat L J 373

RAILWAY

See RAILWAY COMPANY

See RAILWAYS ACT

——————— Liability of Railway Administration—

See LOSS OF GOODS
I L R 44 Calc 16

See SHAWLS MEANING OF
I L R 39 Calc 1029

——————— Risk Note—

See RAILWAY COMPANY

See CONTRACT
I L R 39 All 418
I L R 43 Bom 769

RAILWAY COMPANY

See CARRIERS I L R 39 Calc 311

See CARRIER LIABILITY OF
I L R 33 Mad 120

See CONTRACT 15 C W N 981
I L P 39 All 418

See CONTRACT ACT 187_ ss _27 AND 237
I L R 43 All 621

ss 151 and 152
I L R 39 Bom 191

See CONTRIBUTORY NEGLIGENCE
I L R 34 Bom 427
I L R 41 Calc 308

See EVIDENCE ACT s 103
I L R 43 Bom 7o9

See NEGLIGENCE I L R 48 Calc 757

——————— liability of—

See RAILWAYS ACT (IX OF 1890) s 7_
I L R 34 All 656
I L R 37 All 463

See REMAND I L R 42 Calc. 888

——————— Loss or damage to goods—

1 ——————— Risk Note B—*Company absolv d from liability in all cases except negligence or dishonesty of its servants—Onus* Where goods were consigned to a Railway Company for car riage the contract being embodied in a risk note Form B under which in consideration of the Railway Company accepting a lower freight the consignor absolved the Railway Company from all liability for loss or damage to the goods subject however to the provi o that the Com pany would be liable for lo s due to wilful negligence on the part of their servants or due to thefts by its servants or agents *Held* that the onus lay on the person seeking to charge the Railway Company with damages for loss of goods to show that the case came within the proviso SHEOBARUT PAM v THE BENGAL NORTH WESTERN RAILWAY CO (1912) 16 C W N 766

2 ——————— Risk Note H—*Consignment under Risk note—Lo s of portion*

RAILWAY COMPANY—*contd*

of consignment—Onus of proving cau e of lo — Railways Act (IX of 1890) s 72 Where a number of tins containing oil was consigned to the defend ant railway company under ri k note Form H and the tins were delivered to the consignee but the contents of some of the tins were mi sing *Held* that the person who said that the ca e fell within the exceptions mentioned in the ri k note Form H had to prove his assertion *Sheobarut Pam v Bengal North Western Railway Company 16 C W N 766* referred to EAST INDIAN RAILWAY CO v NILKANTA ROY (1913)
I L R 41 Calc 5/6

3 ——————— *Contract Act (IX of 1872) ss 151 and 152—Liability of Railway Companies for loss damage or destruction of goods entrusted to them for carriage—Evidence neces ary to exonerate Railway Company when the true cause of the loss etc cannot be ascertained—Provision of appliances to put out fires* H sued the B B & C I Railway Company for the value of certain bales of cotton entrusted to the railway company for carriage and accidentally burnt while being so carried *Held* that the railway company merely by getting the Court to believe that the wagon on which the goods entrusted to it had been loaded had been so loaded with ordinary care had not done all that was needed to absolve itself but that in the absence of a definite known cause the railway company had to sati fy the Court that in the management of its engines and in the whole course of drawing the wagon to the place where it caught fire the railway company observed in all respects the same degree of care and prudence which an ordinary man con veying his own valuable goods might have been expected to take under the same circumstance When anyone has entrusted goods to a railway company for carriage and tho e goods are lost damaged or destroyed while in the posse sion and under the control of the railway company the fact of the loss damage or destruction is enough to cast upon the company the burden of proving that that loss was not due to any negli gence on its part The standard of negligence is given in ss 151 and 15_ of the Indian Contract Act but no general rule universally applicable can be laid down as a rule of law defin n the amount and quality of the proof in every ca e which will di charge the railway company s cri *Lalchand Ramchand v G I P Railway Com pany I L R 37 Bom 1* is an authority for the proposition that a decree ought not to be given against a railway company sued as bailee for los damage or destruction of goods bailed to it the moment it admits that it is unable to as ign the *vera causa* of the loss The company as bailee is primarily liable for the loss but it may exonerate itself in two ways It may while ignorant of the cause of the fire show if it can that that cause could not pos ibly be attributable to itself that in other words it was altogether external and beyond the railway company s control Second the bailee while ignorant of the *vera causa* might point to the fact that he had taken such precautions against risk had dealt with the goods entrusted to him with such care that whatever the cause might be and although attri butable to his own act yet it mu t be presumed to have been of such an uncommon or of such an unpreventable k nd that he ought not to be held

RAILWAY COMPANY—*contd*

responsible for it But such a defence could only be logically (if ever logically) established by the virtual exclusion of all causes of an ordinary kind attributable to the bailee or his servants or machinery HIRJI KHETSEY & COMPANY v B B & C I RAILWAY COMPANY (1914)

I L R 39 Bom 191

4 ———————Negligence—Common carrier—*Negligence—Railway Company if may free itself from liability by contract—Statutory limits imposed on such contract—Duty of care apart from contract and excluded by it if arises—Contract through agent or person held out as such—Agent not carrying to acquaint himself with terms printed on ticket—Principal if bound by terms—Jury—Fact finding of—Legal consequences flowing therefrom* Apart from statute a carrier is liable in Canada as in England for injury arising from negligence in execution of his contract to carry unless he has effectively stipulated that he shall be free from such liability Under s 284 of the Canada Railways Act railway companies are put under a general obligation to carry and deliver with the due care and diligence and any one aggrieved by a breach of this duty is to have a right of action from which the companies are not to be relieved by any notice condition or declaration if the damage arises from negligence or omission S 340 of the Act provides that no contract restricting liability for carriage is to be valid unless it is of a kind approved by the Railway Board which is empowered to determine the extent to which such liability may be impaired restricted or limited and generally to prescribe by regulation the terms and conditions under which any traffic may be carried *Held* that where under s 340 and other sections which deal with special tariffs forms of stipulation limiting liability have been approved by the Board and the conditions for making them binding have been duly complied with the companies are enabled in such cases to contract for complete freedom from liability for negligence If a passenger has entered a train on a mere invitation or permission from a railway company without more and he receives injury in an accident caused by the negligence of its servants the company is liable for damages for breach of a general duty to exercise care Such a breach can be regarded as one either of an implied contract or of a duty imposed by the general law and in the latter case is in form a tort But in either view this general duty may subject to statutory restrictions be superseded by a specific contract which may either enlarge diminish or exclude it If the law authorises it such a contract cannot be pronounced to be unreasonable by a Court of Justice The specific contract with its incidents either expressed or attached by law becomes in such a case the only measure of the duties between the parties If the contract is one which deprives the passenger of the benefit of a duty of care which he is *prima facie* entitled to expect that the company has accepted the latter must discharge the burden of proving that the passenger assented to the special terms imposed This he may be shown to have done either in person or through the agency of another Such agency will be held to have been established when he is shown to have authorised antecedently or by way of ratification the making of the contract under circumstances in which he must be taken to have left everything to his agent In such a case it is sufficient to prove that he has been content to accept the risk of allowing terms to be made without taking the trouble to learn what was being agreed to The company may infer his intention from his conduct If he stands by under such circumstances that it will naturally conclude that he has left the negotiation to the person who is acting for him and intends that the latter should arrange the terms on which he is to be conveyed he will be precluded by so doing from afterwards alleging want of authority to make any such terms as the law allows If the person acting on his behalf has himself not taken the trouble to read the terms of the contract proposed by the company in the ticket or pass offered and yet knew that there was something written or printed on it which might contain conditions it is not the company that will suffer by the agent's want of care The agent will in the absence of something misleading done by the company be bound and the principal will be bound through him The company owes the passenger no duty which the contract is expressed on the face of it to exclude and if he has approbated that contract by travelling under it he cannot afterwards reprobate it by claiming a right inconsistent with it GRAND TRUNK RAILWAY COMPANY OF CANADA v ALBERT NELSON ROBINSON (1915)

19 C W N 905

5 ——————————— *Liability of Railway Companies for damage to goods entrusted to them for carriage—Onus of proof of negligence—Railway Act (IX of 1890) ss 72 and 76—Contract Act (IX of 1872) ss 151 152 and 161—Carriers Act (III of 1865) s 9—Responsibility of Railway Company for negligence in preventing damage from fire after discovery of the fire* On the 3rd of March 1909 the 2nd plaintiffs consigned 90 bales of cotton to the defendants at Malkapur for delivery to the 1st plaintiffs at Bombay These 90 bales along with 19 others belonging to a different consignor were loaded upon a waggon at Malkapur Station by the defendants and the waggon was then closed and shunted on to a siding till the next day On the 4th of March 1909 at 1 50 P M the waggon was attached to a train being placed next to the engine On the arrival of the train at Varangaum Station at 3 40 P M the said bales of cotton were found to be on fire The waggon containing them was immediately detached and placed on a siding the doors were opened 37 bales were extracted and the engine driver having unsuccessfully tried to put out the fire with water from his boiler took the rest of the train on to Bhusaval a station 8 miles distant There not being appliances at Varangaum for extinguishing fires the remaining 72 bales continued to burn in the waggon till completely consumed While the bales were being burnt communications passed between the Varangaum and Bhusaval Station Masters as to the sending from Bhusaval of appliances to put out the fire At 4 10 the Station Master at Varangaum telegraphed to the Station Master at Bhusaval to send a fire pipe to put out the fire as it was burning very badly This message was received at Bhusaval at 4 30 P M During the day the Station Master at Varangaum sent several practice messages asking for assistance from Bhusaval and also sent a further telegram which

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was received at Bhusaval about 8 30 P M — Fire pump not sent yet half the bales burnt strong wind blowing fire in great force arrange sharp The Station Master at Bhusaval did not send any assistance whatever He made inquiries as to how far water was from the fire and on receiving the information that the nearest water was in a well some 200 yards from the fire and some 25 feet from the surface came to the conclusion that the appliances at Bhusaval Station would be ineffective In fact the nearest well was some 200 yards from the fire but only some 53 feet from the nearest point on a siding to which the waggon containing the bales could have been brought After the fire the defendants notified the plaintiffs that the 90 bales had been burnt but afterwards offered to give delivery to the plaintiffs of 37 bales slightly damaged but the plaintiffs refused to accept delivery of the bales and subsequently they were sold by the defendants for the sum of Rs 3 210 The plaintiffs sued the defendants to recover the value of the 90 bales No cause of the fire could be shown and no definite act of negligence on the part of the servants of the defendants or other default on their part prior to the discovery of the fire was proved *Held* that the responsibility of the defendants for the loss destruction or deterioration of goods delivered to them to be carried by them was as provided by s 72 of the Railways Act IX of 1890 that of a bailee under ss 151 152 and 162 of the Contract Act and that s 76 of the Railways Act did not extend the principles contained in s 9 of the Carriers Act 1865 to suits against Railway Companies and did not increase the onus of proof laid on the defendants under s 151 of the Contract Act namely to take as much care of the goods bailed to them as a man of ordinary prudence would under similar circumstances take of his own goods of the same bulk quality and value as the thing bailed but that in the absence of special contract the defendants were not responsible for the loss destruction and deterioration of the goods if they had taken that amount of care *Held* further that the defendants had exonerated themselves *quo ad* the outbreak of the fire *Held* however that the obligation on the defendants included not only the duty of taking all reasonable precautions to obviate risks but the duty of taking all proper measures for the protection of the goods when such risk had actually occurred and that the defendants servants had been guilty of default the Station Master at Bhusaval in not having sent appliances to extinguish the fire when requested by the Station Master at Varangaum and the Station Master at Varangaum in having misled the Station Master at Bhusaval as to the distance of water from the fire and that the defendants had not taken the care a reasonable man would take to save his goods *Held* accordingly that the defendants were liable to the plaintiffs to the extent of the damage which they might have prevented on the discovery of the fire LAKHICHAND RAMCHAND *v* G I P RAILWAY COMPANY (1911) I L R 37 Bom 1

6 ———— Carriage of goods—East Indian Railway—The senders risk note used by the East Indian Railway by which the Company take liability only for loss of a complete package due to the wilful negligence of their staff is not opposed to public policy KALI DAS MULLICK *v* EAST INDIAN RAILWAY COMPANY 21 C W N 315

7 ———————— Liability of in *respect of goods consigned for carriage and delivery—Obligation to grant shortage certificate* A Railway Company is under no liability to reweigh goods consigned to them for carriage and delivery and give a certificate of shortage if the consignee alleges loss in the transit JOGANATH MARWARI *v* EAST INDIAN RAILWAY CO (1918) 22 C W N 802

8 ———— Risk Note B—*Contract—Delivery of goods to Railway Company—Risk note Form B—Goods lost in transit—Admission of loss by Railway Company—Mere admission not sufficient to entitle Railway Company to protection of risk note—Definite proof of loss required* The plaintiff consigned certain bags of rice to Bombay from Dubraipore under Risk note Form B The consignment being short delivered the plaintiff sued the defendant Railway Companies for the value of the missing bags The second defendant Railway Company admitted the loss but sought to escape liability under the risk note The trial Judge on the admission of the defendant Company and without recording any evidence regarding the loss of goods dismissed the plaintiff's suit The plaintiff having applied to the High Court *Held* remanding the case for retrial that it was necessary for the defendant Company to prove that the goods were lost a mere admission in their own favour being insufficient GHELABHAI *v* THE E I RAILWAY COMPANY (1921) I L R 45 Bom 1201

9 ———————— Duties of as *carriers—Goods allowed by consignee to remain on railway premises for an unreasonable time—Company not liable for loss or damage—Demurrage* The consignee of goods sent by rail is bound to take delivery thereof within a reasonable time If by his own laches he omits to do so he cannot hold the railway company liable for any loss or damage which may accrue Different considerations would arise if there were any evidence to show an agreement on the part of the railway company to act as warehousemen but the mere fact of the company charging demurrage would not necessarily give rise to such an implication *Clapman v Great Western Railway Company* 5 Q B D 278 referred to BENGAL AND NORTH WESTERN RAILWAY *v* MUL CHAND I L R 42 All 655

10 ———— Death of passenger— *Alleged to have been caused by negligence—Suit for damages by representative of deceased—Nature of liability of Company—Fatal Accidents Act (XIII of 1855)* An action against a Railway Company for damages on account of the death of passenger alleged to have been caused by the negligence of the Company's servants is not an action ex contract but is an action based on tort and on the provisions of the Indian Fatal Accidents Act 1855 Such an action therefore cannot be brought at the place where the deceased person's ticket was taken There is no general obligation upon a Railway Company to carry passengers who have taken tickets safely *Austin v The Great Western Railway Company* L R 2 Q B 442 and the *East Indian Railway Company v Kalidas Mukerji* I L R 28 Calc 401 referred to SHIAM NARAIN TIKKOO *v* THE BOMBAY BARODA AND CENTRAL INDIA RAILWAY (1919) I L R 41 All 488

RAILWAY COMPANY—*contd*

11 ———— Public Street—Power to Cross *Land Acquisition Act (I of 1894)—Indian Railways Act (IX of 1890) s 7* The Indian Railways Act 1890 s 7 as amended by s 1 of Act IX of 1896 provides that subject in the case of immoveable property not belonging to the railway administration to the provisions of any enactment for the time being in force for the *acquisition of land for public purposes and for* companies a railway administration may for the purpose of constructing a railway (*inter alia*) construct across any streets such lines of railway as the railway administration think proper the powers conferred by the section are made *subject to the control of the Governor General* in Council The respondents constructed lines of railway across a street vested by statute in the appellant Municipal Corporation without obtaining their consent and without taking proceedings under the Land Acquisition Act 1894 *Held that the construction of the railway lines* across the street was not an acquisition of immoveable property within the meaning of s 7 of the Indian Railways Act 1890 and that the respondents had power under that section as amended to lay the lines without obtaining the consent of *the appellant corporation* BOMBAY CORPORATION v GREAT INDIAN PENINSULA RAILWAY

L R 43 I A 310

12 ———— Carriage of goods partly over railway line and partly by river— *Local booking form of railway receipt—Freight for the whole journey—Privity of contract—Loss of goods while in the custody of the Steamship Company—Negligence of the Steamship Company—Carriers Act (III of 1865) ss 8 and 9—Common carrier liability of to owner—Definition of common carrier in the Carriers Act (III of 1865)—Evidence Act (I of 1872) s 106* On or about the 11th November 1915 343 chests of tea belonging to the plaintiffs were delivered by the plaintiffs to the Railway Company (1st defendant) at the latter s station at Bordubi Road (Assam) for the purpose of transport to Chittagong in consideration of one single and entire reward paid by the plaintiffs to the Railway Company In the ordinary course of business such goods were carried by the Railway Company over its own line form Assam to Chittagong without recourse to any other Companies or system of transport Owing to a breakdown however of a section of the line known as the hill section in June 1915 arrangements were made between the Railway Company and the Steamship Company (2nd defendant) by which the Railway Company was to carry such goods over its own line to Gauhati and there hand over the goods to the Steamship Company to be carried by the latter (for a fixed reward to be paid by the Railway Company to the Steamship Company) by the river to Chandpur and there have the goods handed back to itself for the purpose of transport over its own line of railway to Chittagong The railway receipt given to the plaintiffs was in the form of the usual Local Booking receipt (which in normal times would be given for the all land transport from Bordubi Road to Chittagong) except that at the top thereof a note was made in writing Booked as per sender s request for shipment *via* Gauhati and Chandpur It also appeared that a notice was given by the Railway Company to its customers in the Railway Company s goods tariff stating the breakdown on the hill section and adding all goods traffic to and from stations in Upper Assam north of Mupa must be routed *via* Gauhati Under this arrangement the plaintiffs goods were carried by the Railway Company from Bordubi Road to Gauhati and put on board the Steamship Company s flat Cauvery at the latter place On the 21st December 1915 while the said goods were lying at Gauhati on the said flat a fire broke out on the said flat at 6 15 or 6 30 in the evening and 96 of the plaintiff s chests of tea were destroyed In a suit by the plaintiffs which proceeded against the Steamship Company (the suit against the Railway Company having been dismissed by consent) for damages for the loss of 96 chests of tea so destroyed — *Held* that there was no contract to carry safely from Gauhati to Chandpur between the plaintiffs (owners of the goods) and the Steamship Company as a common carrier *Muschamp* v *Lancaster and Preston Railway Co 8 M & W 421 Scothorn* v *South Staffs Railway Co 8 Ex 341 Bristol and Exeter Railway Co* v *Collins 7 H L C 194 Wilby* v *West Cornwall Railway Co 2 H & N 703* referred to *Semble* that in the absence of any privity of contract the plaintiffs as owners of the goods cannot [apart from the Carrier s Act (III of 1865) recover against the Steamship Company as an insurer of goods by reason only that it was a common carrier *Bretherton* v *Wood 3 Brod & P 54 Pozzi* v *Shipton 8 Ad & El 963 Marshall* v *York Newcastle Railway Co 11 C B 655 Austin* v *Great Western Railway Co L R 2 Q B 442* referred to *Held* also that under the arrangement above described the Steamship Company was engaged in the business of a common carrier within the definition of the term in the Carrier s Act (III of 1865) and that although there was no privity of contract between the plaintiffs and the Steamship Company the latter as a common carrier was liable to the plaintiffs as owner of the goods by virtue of ss 8 and 9 of the Carrier s Act (III of 1865) for loss arising from its negligence unless *it was able to exonerate itself from responsibility* for such loss *Chotimull* v *R S N Co I L R 24 Calc 786 R S N Co* v *Chotimull I L R 26 Calc 398 Hirji Khetsey & Co* v *B B & C I Railway Co I L R 9 Bom 191* referred to *Held* further in the circumstances of the case that (*apart from any rule of law as to common* carriers) the Steamship Company was liable to the plaintiffs in tort by reason of the fact that the plaintiffs had affirmatively established that the loss was caused by the negligence of the Steamship Company *Foulkes* v *Met Dist Railway Co L R 5 C P D 157 Hooper* v *L & N W Railway Co 50 L J Q B 103* followed *Kelly* v *Metropolitan Railway Co (1895) 1 Q B 915 Meux* v *Great Eastern Railway Co (1895) 2 Q B 387* referred to Where on a question of negligence the plaintiffs have adduced evidence sufficient to call upon the defendant to reply and the defendant thereupon being under the burden of laying the material facts before the Court has refrained from doing so the onus of proving negligence is discharged by the plaintiffs. *Lilley* v *Janson 14 L J Ex 201* followed *Dwarkanath* v *R S N Co 27 C L J 615* referred to DEKHARI TEA CO LD v ASSAM BENGAL RAILWAY CO LD (1919)

I L R 47 Calc. 6

RAILWAY PASSENGER

See Railway Company
I L R 41 All. 488

——— *Fraud—Travelling without a ticket but not with intent to defraud—Course open to Railway Administration in such case—Power to forcibly eject passenger—Assault—Railway—Rolling stock—Railways Act (IX of 1890) ss 3 (4) (10) 68 69 113 120 122—Railways Act (IV of 1879) ss 31 and 32—Enhancement of sentence on hearing of Reference* The main and primary purpose of ss 68 and 69 of the Railways Act (IX of 1890) is to prevent persons from travelling in fraud of the Company without payment of the fare and the obligation to show their tickets when required is subsidiary only to such purpose Travelling without a ticket in the absence of intent to defraud, is not an offence In such a case the only course open to the Railway Administration is that provided in s 113 There is no provision in the Act for ejecting passengers except in certain circumstances such as are specified in s 120 S 122 does not apply to passengers travelling in a railway carriage as the term railway in s 3 (4) excludes a carriage Where a person travelled without a ticket not with intent to defraud but because he arrived as the train was about to start and was therefore unable to purchase one and when asked for it by the travelling ticket checkers offered to pay the fare and excess charge on grant of a receipt but refused to leave the compartment at the next station and purchase a ticket as he was directed to do by the ticket checkers *Held* that the ticket checkers had no lawful authority to remove him thereupon forcibly from the carriage and to beat him with their fists and that they were guilty of an offence under s 323 of the Penal Code *Pratab Daji v B B & C I Railway Co I L R 1 Bom 52* distinguished *Butler v Manchester Sheffield and Lincolnshire Railway Company 21 Q B D 207* referred to The Court cannot entertain an application for enhancement on the hearing of a reference under s 438 of the Code Such applications ought to be made in the usual way and are not ordinarily entertained on behalf of private parties Mohammed Hosain v Farley (1916)
I L R 44 Calc 279

RAILWAY PREMISES

——— right to enter upon—
See Penal Code (Act XLV of 1860) s 188 I L R 35 All. 138

RAILWAY RECEIPT

See Contract Act (IX of 1872) ss 4 58 61 and 103
I L R 38 Bom 255

See Railways Act (IX of 1890) s 72
I L R 39 Bom 485

——— endorsement of—
See Contract Act 1872 s 103
I L R 40 Bom 630

——— not a delivery order—
See Contract Act (IX of 1872) s 47
I L R 40 Bom 517

——— possession of—
See Opium I L R 46 Calc 820

——— production of—
See Dishonestly receiving Stolen Property I L R. 40 Calc. 990

RAILWAY RECEIPT—*contd*

——— *Mercantile document—Title—Endorsee—Interest in the goods—Action for damages* A railway receipt is a mercantile document of title and the endorsee of the receipt has sufficient interest in the goods covered by it to maintain an action against the Railway Company for damages in respect of the goods covered by the receipt *Amerchand & Co v Ramdas Vithaldas I L R 38 Bom 255* followed Dolatram Dwarkadas v B, B & C I Railway Company (1914) I L R 38 Bom 659

——— *Mercantile document of title pledge of—Local custom—Charge—Holder thereof—Provincial Insolvency Act (III of 1907) s 16 cl (3)* A railway receipt is a mercantile document of title to goods and lawful possession as pledgee of such receipt enables the holder by virtue of local custom to get possession of the goods from the carrier and the insolvents right to get possession under s 16 cl (3) of the Provincial Insolvency Act (III of 1907) ceases with the pledge *Amarchand & Co v Ramdas 15 Bom L R 890* followed Fakeerappa v Thippanna (1913) I L R 38 Mad 664

RAILWAY RULE

See Railways Act (IX of 1890) s 72
I L R 39 Bom. 485

RAILWAY ACT (IX OF 1890)

——— ss 3 68 69 113 120 122—
See Railway Passenger
I L R 44 Calc 279

——— ss 3 and 121—*Indian Railway Board Act (IV of 1905) rr 244 229 and 231—Station master deputing signaller to collect tickets and excess fare—Assault on signaller by passenger* Under rr 244 229 and 231 framed under Railway Board Act (IV of 1905) a Stationmaster has power to depute a signaller subordinate to him to collect tickets and excess fares from passengers alighting at the station and a signaller so deputed is a Railway servant employed by a Railway administration within the meaning of s 3 cl (7) of the Indian Railways Act (IX of 1890) An assault by a passenger on such signaller rightly demanding excess fare is an offence under s 121 of the Indian Railways Act Bheemanna v Emperor (1920) I L R 34 Mad 348

——— ss 3 (6) 77 140—
See Loss of Goods
I L R 44 Calc. 16

——— ss 3 (6) 77 140—

——— *Railway administered by Government—Suit by consignee for price of goods consigned and misled by railway—Notice to Traffic Manager and to Collector for Secretary of State if sufficient—Limitation—Limitation Act (IX of 1908) Sch I Arts 30 31 115* In the case of a railway administered by Government notice under s 77 of the Railways Act is (in view of the definition of the words Railway Administration in s 3 (6) of the Act) effective if served on Government and s 140 does not mean that the Manager is the only person on whom notice can be served but that if notice is served on the Manager it must be served on him in the manner provided in s 140 *The Secretary of State v Dipchand Poddar I L R 24 Calc 306* Great

RAILWAY ACT (IX OF 1890)—*contd*

———— ss 3 (6) 77 140—*contd*

Indian Peninsula Railway v *Chandra Bai I L R 28 All 552 Janaki Dass* v *The Bengal Nagpur Railway Company 16 C W N 356 Periannan Chetti* v *South Indian Railway Company I L R 22 Mad 137* and *Nadiar Chand Saha* v *Wood I L R 35 Calc 194* considered *Per* D CHATTERJEE J *Semble* In the absence of evidence showing that the Agent of a railway administered by Government is the Manager or that the Traffic Manager is not the Manager and regard being had to the rule printed and published in the Fare and Time Table of the Railway that references regarding delay in transit to or loss of goods parcels luggage or other articles or claims for compensation and refunds should be addressed to the Traffic Manager notice to the Traffic Manager may be considered sufficient under s 140 of the Act In a suit by consignors of goods which were not alleged to have been lost but were found to have gone astray after they were delivered to the Railway for recovery of their price with compensation the defendant did not plead or prove any loss and on the other hand alleged that the goods had not been delivered at all nor was there evidence when the goods were to be delivered *Held per* CURIAM that neither Art 30 nor Art 31 applied and (*Per* D CHATTERJEE J) that the suit was governed by Art 115 of the 1st Schedule to the Limitation Act *Mohan Singh Chawan* v *Conder I L R 7 Bom 478* and *Danmull* v *British India Steam Navigation Company I L R 12 Calc 477* referred to RADHA SHAM BASAK v THE SECRETARY OF STATE FOR INDIA (1916)
20 C W N 790

———— s. 7—

RAILWAY COMPANY

———— *City of Bombay Municipal Act* (*Bom Act III of 1888*) *s 394—Use by Railway Company of its premises for storing timber—License from the Municipal Commissioner for the use not necessary* The Agent of the G I P Railway Company having been charged in the Presidency Magistrate s Court at the instance of the Bombay Municipality under s 394 (*1*) (*d*) of the City of Bombay Municipal Act (Bom Act III of 1888) with having used the Company s premises for storing timber without a license granted by the Municipal Commissioner the Presidency Magistrate recorded evidence and referred the following question under s 432 of the Criminal Procedure Code (Act V of 1898) — Do the statutory powers given to the Railway Company (s 7 of the Indian Railways Act IX of 1890) preclude the necessity of obtaining a license from the Municipal Commissioner to use premises in such a manner as is necessary for the convenient making altering repairing and using the Railway ? *Held* that no such license was necessary S 7 (*1*) of the Indian Railways Act (IX of 1890) authorizes the Railway Administration to do all acts necessary for the convenient making maintaining altering repairing and using the Railway notwithstanding anything in any other enactment for the time being in force The storing of timber was necessary for the convenient making etc of the Railway line Under s 7 sub s 2 of the Indian Railways Act (IX of 1890) the Governor General in Council and not the Municipal Commissioner has the control of the Railway Administration in the exercise of its powers under sub s 1 MUNICIPAL COMMISSIONER OF BOMBAY v G I P RAILWAY COMPANY (1909)
I L R 34 Bom 252

———— *City of Bombay Municipal Act 1888 s 289—Laying Railway lines by Railway Administration across public street vested in Municipality—Land Acquisition Act (I of 1894) provisions of inapplicable* S 7 of the Indian Railways Act 1890 (as amended by Act IX of 1896) enacts (i) Subject to the provisions of this Act and in the case of immovable property not belonging to the Railway administration to the provisions of any enactment for the time being in force for the acquisition of land for public purposes and for companies a Railway administration may for the purpose of constructing a railway notwithstanding anything in any other enactment for the time being in force make or construct in upon across under or over any lands or any streets lines of railway as the Railway administration thinks proper (ii) The exercise o the powers conferred on a Railway administration by sub s (*1*) shall be subject to the control of the Governor General in Council The respondents constructed Railway lines across a street vested in and under the control of the appellants by virtue of the provisions of the City of Bombay municipal Act 1888 In a suit by the appellants for a declaration that the respondents were not legally entitled to lay lines of railway across such street without either obtaining their permission or acquiring the street under the provisions of the Land Acquisition Act 1894 *Held* (affirming the decision of the High Court on appeal dismissing the suit) that the taking the railway on the level across the street was not acquisition of immovable property within the meaning of s 7 of the Indian Railways Act 1890 as amended. The provisions of the Land Acquisition Act were not so expressed as to cut down the power conferred by that section on the respondents to carry a line of railway across a street subject to the control of their powers by the Governor General and that Act was inapplicable to such a case MUNICIPAL CORPORATION OF CITY OF BOMBAY v G I P RAILWAY COMPANY (1916)
L. R 43 I A 300
I L R 41 Bom 291

AFFIRMING I L R 38 Bom 565

———— *Level-crossing—Closing an old level crossing and opening a new one—Diverting a road—Powers of a Railway Company* Plaintiff owned a bungalow on the west side of the defendant s Railway close to a station To go over to the east side there was a level-crossing near the plaintiff s bungalow The Railway Company owing to the necessity of increasing sidings near the station closed the level-crossing and opened a new one at a distance of few yards from the plaintiff s bungalow This diversion of the road caused much inconvenience to the plaintiff as he had to go a longer distance if he wished to cross the Railway and on the way there was a dip which made it impossible for the plaintiff to get at the new level-crossing during the monsoon The plaintiff therefore brought a suit against the Railway Company claiming a mandatory injunction directing the Company

RAILWAY ACT (IX OF 1890)—*contd*

——— s 7—*contd*

to have the old gateway at the level crossing re opened and he relied on s 7 of the Indian Railways Act 1890 *Held* dismissing the suit that the Railway Company were well within their powers in closing the old level crossing and they had fulfilled all the requirements which the law imposed on them to provide another level crossing A Railway Company has under Statute very wide powers in order to carry on its business for public purposes and it has got to consider not only the convenience of individual owners of properties bordering near the line but it has also got to consider the necessity for affording facilities to take the public who wish to travel on the Railway and send their goods by the Railway and it cannot possibly consider separately the interest of each individual who happens to live in the neighbourhood of the Railway line HARILAL LALLUBHAI v B B & C I RAILWAY COY (1919) I L R 44 Bom 705

——— ss 41 and 42—*Railway Administration—Powers—Compartment reserved for the use of Europeans and Anglo Indians only—Civil Court—Jurisdiction* Under s 41 of the Indian Railways Act 1890 a Civil Court has no jurisdiction to try the question whether a Railway administration can reserve accommodation for Europeans and Anglo Indians on a Railway train Section 42 of the Act deals not only with goods traffic but also with passenger traffic Opinions expressed in *Emperor* v *Brijbasi Lal* (1920) 42 All 327 dissented from VISHVANATH GANESH v G I P RAILWAY COMPANY (1921) I L R 45 Bom 1324

——— s 47—

See s 72 I L R 39 Bom 485

——— *General rules published in Gazette of India—Adoption by a Railway Company—Sanction—Publication* The general rules framed by the Governor General in Council and published in the *Gazette of India* by notification dated the 3rd July 1902 do not become operative as the rules of any individual Railway Company merely upon their adoption by the Company It must be shown that the particular Railway Company made rules and that those rules have received the sanction of the Governor General in Council and have been published in the manner prescribed by the Act HARI LAL SINHA v THE BENGAL NAGPUR RAILWAY CO (1910) 15 C W N 195

——— *Rules made by a Railway Company what are—Sanction of Government—Publication—General rules framed by Government* Rules adopted by a Railway Company though not originally prepared by it would satisfy the requirements of s 47 of the Railways Act if they were subsequently sanctioned by the Governor General in Council and published in the *Gazette of India* *Hari Lal Sinha* v *The Bengal Nagpur Railway Co* 13 C L J 15 15 C W N 195 referred to BENGAL NAGPUR RAILWAY Co v RAMPROTAP GONESHAM DAS (1912) 16 C W N 360

——— *Rules made by Railway Company validity of—Sanction of Government and publication* Upon the finding of the Small Cause Court that the rules of the East Indian Railway Company in question regarding the recovery of demurrage charges from consignees of goods despatched by the Railway were made sanctioned and published as prescribed by s 47 of the Railways Act *Held* that there was no case for the exercise of the Court's power of revision with reference to the Small Cause Court's decision dismissing the suit for refund of demurrage charges paid SURAJ MULL NAGAR MULL v THE EAST INDIAN RAILWAY CO (1912) I L R 38 Calc 903 16 C W N 359

——— ss 47, 54 and 72—*Act No IX of 1872 (Indian Contract Act) section 149—Liability of Railway Company for goods accepted by a servant of the Company for conveyance—Grant of receipt on behalf of the Company not essential to accrual of liability* Where goods are tendered to the appropriate official of a Railway Company for despatch to a particular destination and are accepted by him the liability of the Company in respect of such goods accrues from the time when the goods are so accepted and is not dependent upon the granting or withholding of a receipt for the same on behalf of the Company by the official who has accepted the goods *Janna Mal* v *The Secretary of State for India* I L R 23 All 367 distinguished and doubted SOHAN PAL MUNNA LAL v THE EAST INDIAN RAILWAY COMPANY I L R 44 All 218

——— s 56—

See LIMITATION ACT 1908 ART 31 AND 6? I L R 44 Mad 823

——— ss 68 69—

See RAILWAY PASSENGER I L R 44 Calc 279

——— s 72—

See CONTRACT I L R 9 All 418 I L R 43 Bom 769

See RAILWAY

See RAILWAY COMPANY I L R 41 Calc 576 I L R 37 Bom 1 16 C W N 766 I L R 45 Bom 1201

——— *Risk note Form B—Shortage in content of consignments suit for damages for of lies—Exception in regard to loss of whole consignment or package if applies* Where several tins of *ghee* consigned for carriage by the defendant Railway Company upon special terms as to rates and liability contained in a risk note Form B were found on arrival to have been cut open and there was a shortage in their contents *Held* that the loss was covered by the risk note and the Company was not liable—the exception with regard to loss of a whole consignment or one or more packages out of a consignment not being applicable to the present case where all the packages arrived but with a deficiency in the contents of some of them EAST INDIAN RY CO v SHIV PROSAD BHAKAT (1912) 17 C W N 59

——— *Risk note now to be signed in order to be d con ? or* The provision of s. 72 cl ( ) requiring risk notes to be signed

RAILWAY ACT (IX OF 1890)—*contd*

——— s 72—*contd*

by or on behalf of the person sending or delivering goods to a Railway Administration should be exactly carried out Where the person who delivered the goods signed not his own name but the name of the owner of the goods there was not a sufficient compliance with the requirements of s. 72 (1) (c) HOLMWOOD J —The person who signs the risk note must write his own name either by his own hand or by the hand of an agent who must be disclosed and have authority MAHABATSHA BANKAPORE v SECRETARY OF STATE FOR INDIA (1916) 20 C W N 685

——— *Liability of Railway Administration for loss of goods delivered for carriage the same as that of bailee—Indian Contract Act (Act IX of 1872) s 151—Loss of goods delivered for carriage by act of God—Onus on Railway Administration to prove circumstances exonerating liability—Negligence co operating with act of God* The plaintiff sued for the recovery of the value of goods made over to the Eastern Bengal Railway Administration but not delivered at the destination The defendant pleaded in substance that the goods were destroyed while in course of transmission by an act of God namely a severe cyclone *Held* that under sub s (1) of s 72 of the Indian Railways Act 1890 the responsibility of a Railway Administration for the loss or destruction of goods delivered to the Administration to be carried by Railway is subject to the other provisions of the Act that of a bailee under the Indian Contract Act That the liability of the defendant must be measured solely by the test formulated in ss 151 and 152 of the Indian Contract Act That when goods have not been delivered to the consignees at the place of destination the plaintiff need not prove how the loss occurred the burden lies upon the bailee to prove the existence of circumstances which exonerate him from liability for the loss That the defendant having discharged this burden the plaintiff s claim failed That there is no foundation for the contention that a Railway Administration when it accepts goods for transmission is in the position of insurers as common carriers That even if there was negligence on the part of the Railway Administration if the act of God was the proximate cause the defendant Railway would not be liable SURENDRO LAL CHOWDHURI v SECRETARY OF STATE (1916) 21 C W N 1125

——— *Risk Note Form B framed under—Whether a consignee of goods covered by this Risk Note can make the Railway Administration liable for the loss thereof—Whether ss 151 152 and 161 of the Indian Contract Act (IX of 1872) will apply in such a case—S 76 of the Indian Railways Act whether it governs s 72 and the contract in the Risk Note—Proof of negligence onus on whom lies* Where goods were consigned to a Railway Company for carriage at a reduced rate of freight and the senders executed a Risk Note in Form B and several bags forming part of the consignment were missing and could not be delivered to the consignee *Held* that in a suit for compensation for the missing bags the defendant Railway Company would not be liable if the plaintiff (consignee) failed to prove that the loss was due to the wilful neglect of the Railway Administration or to theft by or to the

RAILWAY ACT ((IX OF 1890)—*contd*

——— s 72—*contd*

wilful neglect of its servants *Held* also that such a case would be guided by the terms of the special contract embodied in the R N No 6 Form B and not by ss 151 152 and 161 of the Indian Contract Act or the other provisions of the Indian Railways Act EAST INDIAN RAILWAY CO v KANAK BEHARI HALDER (1918) 22 C W N 622

——— *Risk note—Consignment of goods—Loss deterioration or damage meaning of—Liability of Railway Company—Insurers—Bailees—Competency of Company to contract for less liability than as bailees* A consignor sent a bale of gunny bags through the defendant Railway Company The risk note provided that the company should not be responsible for any loss destruction or deterioration of or damage to the consignment from any cause whatever except for the loss of a complete consignment or of one or more complete packages forming part of a consignment due either to the wilful neglect of a Railway administration or to theft by or to the wilful neglect of its servants etc The bale was damaged by the dropping of a package of acid by the negligent act of the Company s servant On a claim against the Company for damages the latter pleaded that they were not liable on the ground *inter alia* that there was no loss of the article consigned within the meaning of the risk note *Held* that the plaintiff could recover only if the bale of gunnies was lost that is entirely deprived of value The distinction between loss and destruction deterioration and damage pointed out It cannot be said that there is no loss if the outer cover which encloses a parcel is delivered whatever may happen to the contents *East Indian Railway Company v Nilakanta Roy (1911) I L R 41 Calc 576 B B and C I Railway Company v Amlalal Setalal* Ind Ry Cas 48 and C S 30 of 1914 Madras High Court (unreported) dissented from *Per* SESHAGIRI AYYAR J — The term loss would include cases where the article consigned is lost to the consignor as such article or has lost its identity as such *Asfar & Co v Blundell (1896) 1 Q B 123* and *Hearn v The London and South Western Railway Company (1855) 10 Exch 793* referred to Under the Indian Law a Railway Company has not the liabilities of an insurer but only those of a bailee and under s 72 of the Indian Railways Act can enter into an agreement limiting its responsibility provided it is in a form approved by the Governor General in Council *Sheikh Mahamad Rauther v The British India Steam Navigation Co (1909) I L R 32 Mad 95 (F B)* commented on Persons who undertake to do certain things and who employ servants to do those things must be held responsible for the carelessness or negligence of those servants in the course of their employment *Joseph Rand v Craig (1919) 1 Ch 1* referred to MADRAS AND SOUTHERN MAHRATTA RAILWAY COMPANY v SUBBA RAO (1920)

I L R 43 Mad 617

——— *R 2 made under s 47 sub s (1) cl (f)—Rule not valid—Delivery of goods to be carried by Railway Administration—Grant of railway receipt not essential to complete delivery* The plaintiffs brought certain goods to the railway premises and handed a consignment

RAILWAY ACT (IX OF 1890)—*concld*

——— s 72—*concld*

note to the clerk of the railway company No receipt was given as the goods were not weighed and loaded In the meanwhile a fire broke out on the premises and destroyed the goods The plaintiffs having sued the railway company for the loss of goods the lower Court held that the company was not liable for the loss in absence of a railway receipt as provided for in r 2 framed under s 47 sub s (*1*) cl (*f*) of the Indian Railways Act (IX of 1890) On plaintiffs application under Extraordinary Jurisdiction *Held* that the commencement of the liability of the company for goods delivered to be carried under s 72 was in no way dependent upon the fact of a receipt having been granted but must be determined on evidence quite independently of r 2 under s 47 sub s (*1*) cl (*f*) of the Indian Railways Act (IX of 1890) *Held* also that inasmuch as r 2 sought to define and by defining changed what would otherwise be the meaning of s 72 of the Act the rule was bad *Per* HEATON J

A delivery to be carried by railway (within the meaning of s 72 of the Indian Railways Act 1890) means something more than a mere depositing of goods on the railway premises it means some sort of acceptance by the railway a taking as well as a giving When that taking occurs is a matter which depends on the course of business and the facts of each particular case but it certainly may be completed before a railway receipt is granted *Per* SHAH J The delivery contemplated by s 72 is an actual delivery and marks the beginning of the company's responsibility That delivery would no doubt involve not merely the bringing of the goods on the railway premises but acceptance thereof by the company for the purpose of carrying the same by railway Such acceptance may be expressed or implied in a variety of ways by the usual course of business and may be quite independent of any receipt being granted by the company Of course it will depend upon the circumstances of each case and the usual course of business of the Railway administration as to whether the goods can be said to be delivered to be carried by railway under s 72 of the Act RAMCHANDRA NATHA v G I P RAILWAY COMPANY (1915)

I L R 39 Bom 485

——— Risk Note H —Where a consignment of goods handed over to the Railway for carriage on risk note H were short delivered by 6 complete packages *Held* that though the effect of the evidence was not definitely to establish the suggested fact of robbery from a running train yet the theory of wilful neglect by the Railway servants had been sufficiently excluded B B & C I RAILWAYS v DAYARAM BECHARDAS (1921)

I L R 46 Bom 11

——— ss 72 77—*Duty of Railway Company as a bailee under the Indian Contract Act (IX of 1872)—Delivery of goods to person entitled but without production or delivery of railway receipt—Subsequent pledge of railway receipt—Suit by pledgee—Notice of claim whether necessary—Damage cause of* The liability of a Railway Company under the Indian Railways Act in respect of goods consigned for carriage is at an end when the goods are delivered to a person rightfully entitled to them even though he is not the consignee and even if the delivery is not made against the railway receipt After delivery of the goods to the rightful person the railway receipt ceases to be a symbol of goods and ceases to be negotiable Hence an innocent endorsee for value of the railway receipt after delivery to such a person has no cause of action for damages against the Railway Company A Railway Company is not under any duty to the public to insist upon the return of the railway receipt *Held* further that delivery of goods by the Railway Company without getting in the railway receipt was not the proximate cause of the loss to the endorsee *Barber v Meyerstein 4 E & Ir App 317* followed *Held* also that the suit was barred for want of notice under s 77 of Indian Railways Act which applies to claims for compensation arising not only from non delivery or accidental loss or destruction or deterioration of goods but also from wilful delivery to a person not entitled to them The Indian Common Carriers Act III of 1865 and the Indian Railways Act are not in *pari materia* with the English Carriers Act of 1830 as to when notice of loss is necessary Hence decisions under the English Act are not applicable to India M & S M RY CO LD v HARIDOSS BANMALIDOSS (1918)

I L R 41 Mad. 871

——— Risk Note B —A case of a wrong label being attached to goods *en route* and getting delivered at wrong destination after travelling on lines of various Railway administrations and getting damaged in so doing All Companies were sued but notice under s 77 only given to one The action failed on account of want of notice and one line being held not liable for damage due on another SHANKAR BALKRISHNA v S I RAILWAY (1921) I L R 46 Bom. 176

——— s. 75—

See REMAND I L R 42 Calc 833

See SHAWLS MEANING OF

I L R 39 Calc. 1079

——— *Goods referred to in s 75 consigned on a risk note —Railway Company not liable for loss* Where a person chooses to send goods referred to in s 75 of the Indian Railways Act on a risk note Form instead of declaring them and paying the extra percentage demandable under the terms of the section he cannot hold the Railway Company by which such goods are sent responsible for the loss thereof NARAIN DAS v THE EAST INDIAN RAILWAY COMPANY (1912) I L R 34 All. 656

——— *Articles of special value lost in transit—Liability of Railway Company for the loss thereof* The plaintiff who was a passenger on the defendant railway booked three packages from Howrah to Khurja One of them contained silver and silk articles of the description mentioned in the second schedule to the Indian Railways Act as articles which must be declared but the plaintiff did not do so The package was lost and the plaintiff brought this suit for damages *Held* that s 75 of Act IX of 1890 is one of general applicability to all classes of goods and inasmuch as the plaintiff did not declare the contents of his trunk that was lost in transit the Railway administration was freed from all liability for the loss thereof both as regards scheduled and non scheduled articles contained therein EAST INDIAN RAILWAY CO v N K ROY (1915)

I L R. 37 All. 463

RAILWAY ACT (IX OF 1890)—*contd*

——— s 75—*contd*

——— *Interpretation of schedule*— Lace *Held* on an interpretation of the second schedule to the Indian Railways Act, 1890 that the word lace as therein used includes both machine made and hand made lace and is not confined to the latter *Sarat Chandra Bose* v *Secretary of State for India* *I L R 39 Calc 1019* dissented from SUDARSHAN MAHARAJ NANDRAM v EAST INDIAN RAILWAY COMPANY **I L R 42 All. 76**

——— *Value and true value in s 75 of the Indian Railways Act meaning of— Value means intrinsic or market value— Value in some case may mean special value to the owner—Loss means the value of property lost and nothing more—Loss does not include remote and consequential damage—Loss must be estimated by the same measure of damages in cases under s 75 and in cases to which s 75 not applicable— Object of s 75 of the Indian Railways Act—S 75 bar to an action for amount exceeding one hundred rupees for loss and consequences unless a declaration is made.* On the 16th September 1916 the plaintiff delivered to the defendant Railway Company at the Victoria Terminus Station Bombay a parcel containing twenty four account books consigned to the plaintiff s firm at Nagpur After the arrival of the parcel at Nagpur it was mis-delivered, on the 19th September by a mistake of the defendants parcel clerk to the Superintendent of the Central Jail Nagpur The mistake was discovered when the plaintiff's agent came to ask for delivery on the 21st September Inquiries were made of the Jail Superintendent and it was ascertained that the books had been destroyed by him thinking that they were the papers consigned to him from Khandwa for destruction After some correspondence between the parties the plaintiff sued the defendants stating that the account books which contained the record of all the dealings and transactions of the plaintiff s firm were lost to him by reason of the negligence of the defendants The plaintiff estimated his loss at Rs 75 000 and claimed that sum of such other sum as might seem just to the Court as damages The defendants in their written statement repudiated the claim on the ground that the parcel containing the account books came under the head of writings an excepted article under s 75 of the Indian Railways Act 1890 and that the contents which exceeded in value one hundred rupees had not been declared and insured at the time of delivery of the parcel to the railway administration as required by the aforesaid section By consent the suit was placed on board for the trial of the preliminary issue whether the defendants are protected from liability to the plaintiff under s 75 of the Indian Railways Act 1890 The trial Judge decided that the defendants were not protected from liability under the section inasmuch as the value of the account books which must be taken to mean intrinsic value was admittedly less than Rs 100 and that the loss which occurred after delivery to the wrong person was not a loss within the meaning of the section *Held* reversing the decision of the trial Judge by SCOTT *C J*— (1) that s 75 of the Indian Railways Act 1890 was intended to apply to articles of special value declared by the Legislature in the Second Schedule or which may be added to the schedule by Notification of the Governor General in Council in the Gazette of India and that such articles must be free from any *pretium affectionis* on the part of the owner that is to say articles which could be valued by any sufficiently trained expert quite apart from the feelings of the owner (ii) that the damages recoverable against the Railway Company was the value of the property lost and nothing more (iii) that although s 75 did not directly protect the Railway Company since the goods were not of the value of a hundred rupees it would be entirely inconsistent with the Act to hold that if the goods had been of a value exceeding a hundred rupees the true value would be the limit of the defendants liability yet since the goods were of a value less than a hundred rupees the plaintiff might sue for any remote and consequential damage which he might allege to have suffered from the loss (iv) that the loss for which the Railway Company were liable must be estimated by the same measure of damages both in cases under s 75 and in cases to which s 75 was not applicable and that the most which the plaintiff could claim successfully having regard to the evidence was Rs 70 the value of the articles a sum for which he had not sued and could not sue in the High Court under cl 12 of the Letters Patent *Held* by MACLEOD J —(1) that the protection afforded by s 75 of the Indian Railways Act 1890 lasted as long as the Railway Company were liable as carriers and their liability would continue after the goods had arrived at their destination for such reasonable time as would be required for the consignee to come to take delivery (2) that the mere fact that the plaintiff was claiming more than Rs 100 for the loss of an undeclared excepted article barred him under s 75 of the Act from asserting that its value was under Rs 100 and the question what was the value of the goods did not arise (3) that the object of s 75 of the Indian Railways Act was to protect a Railway Company from liability for the loss destruction or deterioration of parcels entrusted to them for carriage containing articles of special value exceeding Rs 100 unless they have notice of the contents so that (a) they could demand a percentage on the value declared by way of compensation for increased risk and (b) they could take extra precautions for the safe carriage of such parcels the whole object of the section would be defeated if the consignor could claim consequential damages for the loss of an excepted articles without insuring it on the ground that its market value was under Rs 100 (4) that value in s 75 of the Act did not necessarily mean market value in some cases articles might have a special value to the owner beyond the market value and if the owner wished to recover this value he must declare and insure the goods the liability of the Company in the event of the loss being limited to the true values by s 75 (2) of the Act *Millen* v *Brasch 10 Q B D 142* *146* *Grouch* v *The London and North Western Railway Company 2 Car & K 789* *Riley* v *Horne 5 Bing 217* 222 referred to *Hearn* v *London and South Western Railway Company 10 Ex 793* distinguished. G I P RAILWAY CO v RAMCHANDRA JAGANNATH (1918) **I L R 43 Bom. 386**

——— **ss. 75 and 80**—*Suit for compensation for loss of through-booked goods—Short delivery—*

RAILWAY ACT (IX OF 1890)—*contd*

——— s 75—*concld*

Uninsured goods *Held* that where goods are booked for conveyance over more than one rail way system the owner can only claim compensa tion for loss against a railway company other than the company with which they were booked if it is shown that the loss occurred on the system of the company sued *Held* also that if goods the insurance of which is obligatory are packed uninsured with other goods the insurance of which is not obligatory, no compensation is obtainable for the loss of either class of goods *Pandlik Udaji Jadhaw v S M Railway Company I L P 11 Bom 827* followed GREAT INDIAN PENINSULA RAILWAY v SHAM MANOHAR (1911) **I L R 34 All 422**

——— s 77—

See s 72 **I L R 41 Mad 871**

See LOSS OF GOODS **I L R 44 Calc 16**

——— *Suit against Railway Company—Notice—Limitation—Limitation Act (IX of 1908) Sch I Art 31—Waiver of notice* Certain goods were despatched on the 26th of March 1908 from Bombay to Gazipur The goods were lost in transit while in possession of the Great Indian Peninsula Railway Company The con signee made a claim against the East Indian Rail way Company as the result of which he was offered a certain sum as compensation by the assistant traffic manager of that company who stated that he did so with the authority of the deputy traffic manager of the Great Indian Penin sula Railway Company There was however no proof that any such authority had been given and the offer was refused On the 9th August 1909 the consignee brought a suit against the Great Indian Peninsula Railway Company of damages for the loss of his goods but did not give the notice required by s 77 of the Indian Railways Act 1890 He claimed that certain conditions printed on the back of the railway receipt relieved him of the necessity of giving notice under s 77 *Held* that this was not so nor did the action of the assistant traffic manager of the East Indian Railway Company amount to a waiver of notice The suit was also barred by limitation under Art 31 of the first Schedule to the Indian Limitation Act 1908 GREAT INDIAN PENINSULA RAILWAY COMPANY v GANPAT RAI (1911) **I L R 33 All 544**

——— *Notice of claim to Goods Superintendent if sufficient—Irregular sale of left goods of consignor—Damage* *Held* that the notice of claim for loss of goods despatched by rail given in this case to the Goods Superin tendent did not comply with the requirements of ss 77 and 140 of the Railways Act *Quære* Whether a failure to observe the provisions pres cribed in the Railways Act with regard to sales of articles of which no delivery has been taken would make the sale an act of conversion by the Railway JANKI DAS v THE BENGAL NAGPUR RAILWAY CO (1912) **16 C W N 356**

——— *Notice of suit to Agent—Notice to Goods Superintendent if sufficient—Power of Goods Superintendent to make promises binding on Company* Where the plaintiff who were consignors of some bags of mustard seed denied that the bags offered by the defendant company were his and the trying Court found that the bags despatched by the plaintiff were lost or missing *Held* that in the circumstances the plaintiff was bound to serve notice under s 77 of the Indian Railways Act upon the Agent of the defendant company A notice given to the Goods Superintendent which there was no evi dence to show ever reached the Agent was not sufficient *Woods v Meher Ali Bepari 13 C W N 24* distinguished and doubted *Janki Das v The Bengal Nagpur Railway Company 16 C W N 356* *East Indian Railway Co v Bebu Madho Lal 17 C W N 1134* approved The company cannot be bound by any admission or statement by the Goods Superintendent such as is implied in a promise made before the suit to pay a liquidated sum to the plaintiff for the value of the missing bags PADHA KISHEN v THE EAST INDIAN RAILWAY CO (1913) **19 C W N 62**

——— *Notice to Manager—Agent Eastern Bengal Railway Manager thereof—Notice to Traffic Manager not sufficient* The Agent of the Eastern Bengal Railway is the Manager within the meaning of the Railways Act and the notice required by s 77 must be given to the Agent service of notice on the Traffic Manager is not sufficient KALA CHAND SHAHA v SECRETARY OF STATE (1917) **21 C W N 751**

——— ss 77 and 140—

See LOSS OF GOODS **I L R 44 Calc 16**
20 C W N 790

——— *Goods delivered in damaged condition—Notice of claim—Service on Traffic Manager if sufficient—Suit for damages—Maintainability* Serving a notice of claim in respect of goods delivered by a Railway Company in a damaged condition on the Divisional Traffic Manager of the Company is in the absence of authority given by the Agent of the Company to the Divisional Traffic Manager not a sufficient compliance with the provisions of s 140 of the Railways Act *Nadia Chand Saha v Wo d I L R 25 Calc 194* followed *Woods v Meher Ali Bepari 13 C W N 24* explained and dis tinguished EAST INDIAN RAILWAY COMPANY v MADHO LAL (1913) **17 C W N 1134**

——— *Notice on Claims Superintendent if notice on Agent—Suit for com pensation for loss of goods consigned—Limitation Sch I Art 30—Limitation Act (IX of 1908)* In the absence of evidence to prove that the Claims Superintendent was authorised by the Agent to receive notices on his behalf *Held* that a notice of claim served on the former was not served in compliance with the provisions of s 140 of the Railways Act The law requires that the notice should be on the Agent and whether a particular officer is authorised by the Agent to receive such notice on his behalf is a question of fact that must be decided on evi dence *Woods v Meher Ali 13 C W N 24* distinguished *Janki Das v The Bengal Nagpur Railway Co 16 C W N 356* *The East Indian Railway Co v Madho Lal 17 C W N 1134* and *Radha Kishen v The East Indian Railway Co 19 C W N 62* referred to Where the

RAILWAY ACT (IX OF 1890)—*contd*

——— ss 7 and 140—*contd*

Con ignor sued a Railway Company for compen a tion for loss of goods alleging the same to have been due to the wilful negligence of or theft by its servants *Held* (*semble*) that the suit was governed by Art 30 of the 1st Schedule to the Limitation Act EAST INDIAN RY Co *v* RAM AUTAR (1915) 20 C W N 696

——— s. 80—

See s 75 I L R 34 All. 422

——— s. 80 and Chapter VII—*Meaning of the word loss explained includes loss by mis delivery—Indian Contract Act IX of 1872 sections 151 152 and 161—Claim for compensation for loss of through-booked traffic—Which Railway responsible* *Held* by the Full Bench (Abdul Raoof J assenting) that the word loss in Chapter VII of the Indian Railways Act includes loss to the owner of goods made over to a railway administration which have been misdelivered and so have been lost to the person entitled thereto and section 80 makes the railway administration on whose line the loss occurred equally liable with the railway administration to which the goods were delivered by the consignors *The Madras and Southern Mahratta Railway Company v Haridass (I L R 41 Mad 871)* *The Madras and Southern Mahratta Railway Company v Mallai S bbi Rao (I L R 43 Mad 617)* and *The Great Indian Peninsula Railway Company v Ramchandra Jagannath (I L R 4 Bom 356 407)* followed *Chance Mal v Bengal N W Railway Company (6 P R 1897)* overruled *Miller v Brasch and Company (L R 10 Q B D 144)* distinguished HILL, SAWYERS AND COMPANY *v* SECRETARY OF STATE I L R 2 Lah 133

——— s 101—

See GENERAL CLAUSES ACT 189 No 2 *supra* 1 Pat L J 373

——— General Rules 99 (c) 100—*Breach of the rules—Endangering the safety of persons—Disregard of the rules by the station master—Fouling the line for which line clear is given—Driver of the approaching train disregarding danger signals and rushing into the derailed waggon on the line—Liability of the station master* The accused a station master received an up goods train on the third line in his station yard He then ordered the driver of the goods train to detach his engine and shunt 9 waggons which was standing on the loop line to a dead end siding in order to make room for the down mail At that time the next station on the other side asked the accused for line clear in order to pass an up passenger train which the accused gave at once The 9 waggons were shunted from the loop to the main line and while they were being taken from the main line to the dead end siding one of the waggons got derailed at the points where the siding joined the main line At this time the distant and home danger signals were up against the up passenger train. Still the driver of that train disregarded both signals and dashed into the derailed waggon causing some injury to two of the passengers and the guard The station master was tried under s 101 of the Indian Railways Act (IX of 1890) for breach of rr 99 (c) and 100 of the General Rules The trying Magistrate acquitted the accused on the ground that it was the act of the driver of the up passenger that was immediately responsible for the collision The Government having appealed *Held* setting aside the order of acquittal—that the disregard by the accused of r 100 enhanced the danger to passengers and it was the risk thus entailed which rendered the rule breaker liable to punishment *Held* also that as regards the punishment the gravity of the offence should be estimated not by the actual ultimate consequence but by the risk involved for the rule breaker might be punished even though no accident occurred EMPEROR *v* RAMCHANDRA HARI (1913) I L R 37 Bom 685

——— ss 108 121 128 131 132—

See TORT I L R 43 Bom 103

——— s 109—*Power of Railway administration to reserve accommodation—Legality of reservation in favour of a particular class of passengers* *Held* on a construction of s 109 of the Indian Railways Act 1890 that the section was wide enough to authorize a railway administration to reserve accommodation for any particular class of passenger by the name of the class A person entering a carriage so reserved might be required to leave it and if he refused might be prosecuted under the provisions of the section Ss 42 and 43 of the Act have no application to the case of the reservation of a particular passenger carriage for the use of any particular class of the travelling public EMPEROR *v* BRIJBASI LAL I L R 42 All 327

——— s 113—

See RAILWAY PASSENGER I L R 44 Calc 279

——— *Conviction without enquiry as to liability of accused to pay excess charge and fare in spite of accused pleading that he had not travelled by the train as alleged* The Petitioner was prosecuted for an offence under s 113 of the Railways Act and he pleaded in defence that he had not travelled by the train as alleged The Magistrate without any enquiry disposed of the case by issuing distress warrant for the amount of penalty imposed *Held* (*in setting aside the order*)—That the Magistrate should pass orders in accordance with law after taking evidence on the question whether the accused was liable to pay and how much was payable STATION MASTER RANAGHAT *v* HABUL SHEIKH 24 C W N 195

——— s 120—

See NUISANCE I L R 43 Calc 1042

See RAILWAY PASSENGER I L R 44 Calc 279

——— In a Railway shed reserved for the delivery of fish the Railway authorities prohibited the retail sale of fish The Petitioners were convicted under cl (*b*) of s 120 of the Act for having sold to qualities not allowed *Held* that in view of the fact that the retail sale of fish made the shed offensive in many ways the Act complained of was a nuisance within the section DEOKISHA *v* KING EMPEROR 25 C. W N 603

RAILWAY ACT (IX OF 1890)—*concld*

——— s 121—

See s 3 — I L R 43 Mad 348

See TORT — I L R 43 Bom. 103

——— s. 122—

See RAILWAY PASSENGER — I L R 44 Calc 279

——— *Unlawful entry upon Railway and refusal to leave—Essence of offence* Unlawful entry constitutes the basis of the offence under both clauses of s 122 of the Railways Act If the entry was lawful refusal to leave on being desired to do so would not make the original entry unlawful nor would it make a person guilty under cl (2) which is but an aggravated form of the offence under cl (1) KUMUD KANTA CHAKRABORTI v KING EMPEROR (1917) — 22 C W N 575

——— s 125—

——— *Cattle left in charge of keepers allowed to stray on a railway line—Liability of owner* The owner of cattle which have been allowed to stray upon a railway in consequence of the negligence of the person actually in charge of them on the owner s behalf is not liable to punishment under s 125 (1) of the Railways Act 1890 *Queen Empress* v *Andi I L R 18 Mad 228* followed. EMPEROR v GUR PRASAD GIR (1911) — I L R 34 All 91

——— ss 126 (*a*) 130—*Minor offender—Magistrate—Jurisdiction to try* A minor committing an offence punishable under s 130 read with s 126 (*a*) of the Indian Railways Act 1890 can be tried by a Magistrate he is not exclusively triable by a Court of Session EMPEROR *v* DHONDYA DUDHYA (1919) — I L R 43 Bom 888

——— s 128—

See TORT — I L R 43 Bom 103

——— s 131—

See TORT — I L R 43 Bom. 103

——— s 132—

See TORT — I L R 43 Bom 103

——— s 140—

——— *Notice of claim sent through post but not registered—Post Office Act (XIV of 1866) Part III* Notice of a claim of damages for short delivery sent through the post but not registered under Part III of the Indian Post Offices Act was not service in any of the modes provided by s 140 of the Railways Act *Nadiar Chand* v *Wood I L R 35 Calc 194 s c 12 C W N 450* relied on MARTIN & Co v FAKIR CHAND SAHU (1910) — 14 C W N 888

——— *Notice of suit upon whom to be served* Under s 140 Indian Railways Act (IX of 1890) notice of suit against a Railway Company can only be served upon the Agent unless it can be shown by evidence that some other officer of the Company had authority to receive the notice SESHACHELLAM CHETTY v TRAFFIC MANAGER NIZAM S GUARANTEED STATE RAILWAY (1913) — I. L. R 36 Mad 65

——— Sch III—

See SHAWLS — I. L R 39 Calc 1029

RAIYAT

See BENGAL TENANCY ACT

See CHOTA NAGPUR TENANCY ACT 1903 — 4 Pat L J 11

——— at fixed rent—If may grant permanent Lease—

See BENGAL TENANCY ACT 1885 s 11 — 25 C W N 9

——— at fixed rates—

See BENGAL TENANCY ACT 1885 — 1 Pat L J 67

——— purchase of interests of—

See LANDLORD AND TENANT — I L R 43 Calc 164

——— "Kayami ryot"—*Meaning of—Occupancy ryot grant of lease for over nine years by—Transferee from ryot if may question its validity—Bengal Tenancy Act (VIII of 1885) ss 49 85—Under ryot's right if heritable* A lessor describing himself as a *kayami* ryot does not necessarily imply that he was a ryot at a fixed rent Where it was found that the lessor did not thereby or otherwise represent himself as a ryot at a fixed rent and the lessee was not induced to take the lease by such representation and that in fact he was an occupancy ryot *Held* that the lease which was for a term of more than nine years was invalid and neither the lessor nor a purchaser from him was stopped from challenging its validity *Chandi Charan Nath* v *Samia Bibi* 22 *C W N 179 (1917)* followed The heir of an under ryot has no heritable right to continue as such *Arip Mondal* v *Ramratan Mondal* *I L R 31 Calc 757 s c. 8 C W N 479 (F B) (1904)* referred to NADIRAM CHANDRA SIL v SRINATH CHAKRAVARTI — 24 C W N 93

RAIYATI HOLDING—

——— *Registered lease—Oral surrender—Bengal Tenancy Act (VIII of 1885) s 9? proviso s 86 (i)—Evidence Act (I of 1872) s 92 proviso 4* Even where the original lease is a registered one a raiyat can orally surrender his holding under s 86 of the Bengal Tenancy Act if it was not for a fixed period and if possession is given up *Khankar Abdur Rahman* v *Ali Hafiz I L R 28 Calc. 256* and *Brajonath Sarma* v *Maheswar Gohain 13 C L J 220* referred to *Sarat Chandra Saha* v *Nritya Gopal Biswas 13 C L J 281* distinguished. PORAN MATIA v INDRA SENI (1919) — I L R 47 Calc. 109

RAJINAMA AND KABULIYAT

See BOMBAY LAND REVENUE CODE (BOM V OF 1879) — I L R 41 Bom. 170; I L R 45 Bom. 898

See REGISTRATION ACT (XVI OF 1908), s 17 — I L R. 41 Bom. 510

——— *Registration—Registration Act (XVI of 1908) s 90—Bombay Land Revenue Code (Bombay Act V of 1879) ss* ... Rajinamas and kabuliyats governed by the Bombay Land Revenue Code (Bombay Act V of 1879) are not compulsorily registrable They cannot in themselves be documents of transfer but they are fairly conclusive evidence that a transfer has in fact been made NARAYAN ... v NAGAVA (1918) — I. L. R 42 Bom 359

RAJPUT FAMILY

See HINDU LAW—SUCCESSION
I L R 48 Calc 997

RAPE.

See PENAL CODE ACT (XLV OF 1860), ss 82 AND 83 I L R 37 All. 187

RASH OR NEGLIGENT ACT

See PENAL CODE ACT (XLV OF 1860) s. 336 I L R 42 Bom 396

RATE CIRCULAR

——— **issued by shipowners—**

See CONTRACT I L R 41 Calc 670

RATEABLE DISTRIBUTION

See CIVIL PROCEDURE CODE 1882—
ss 270 295 I L R 37 Bom 138
ss 28 295 14 C W N 396

See CIVIL PROCEDURE CODE 1908—
ss 2 47 5 Pat L J 415
ss 47 73 O XXI R. 55
I L R 36 Bom 156
ss 47 73 104 I L R 39 Mad 570
s 64 I L R 43 All. 399

See EXECUTION OF DECREE.
I L R 47 Calc 515
I L R 44 Calc 1072

See LIMITATION ACT (IX OF 1908) SCH I ARTS 62 120 I L R 39 Mad 62

See RECEIVER 15 C W N 925

——— **order for—**

See CIVIL PROCEDURE CODE (ACT V OF 1908) ss 47 73 104
I L R 39 Mad 570

——— *Application for not considered to be application for execution—Attachment before judgment is not application for execution—Decree holder—No right to rateable distribution unless he has applied for execution* Only a decree holder who has applied for execution can claim a right to rateable distribution Such a right is not conferred upon a plaintiff who has merely obtained an attachment before judgment and has not applied for execution under s 230 Civil Procedure Code *Amara Veerayya v Annamala Chetty Pichayya I L R 31 Mad 502* overruled An attachment before judgement is in no sense an application for execution A mere application for rateable distribution which does not comply the requirements of s 235 in form or substance cannot be considered to be an application for execution within the scope of s 295 Civil Procedure Code *Sewdut Roy v Sree Canto Maity I L R 33 Calc 638* distinguished *Pallonji Shapurji Mistry v Edward Vaughan Jordan I L R 12 Bom 400* followed ARUNACHELLAM CHETTIAR v HAJI SHEEK MEERA ROWTHAR (1910) I. L. R 34 Mad 25

——— *Deposit by Judgment debtor—Civil Procedure Code (Act V of 1908) O XXI r 89 and s 73—Alteration in s 73 effect of* When money is paid into Court under O XXI r 89 of the Civil Procedure Code 1908 there can be no rateable distribution under s 73 of the Code The scope of s 73 of the new Code of Civil Procedure (Act V of 1908) is far wider than that of s 295 of the old Code (Act XIV of 1882) yet the effect of the enactment in s 310A of the old Code which is reproduced in O XXI r 89 of the new Code remains unaltered HARAI SAHA v FAIZLUR RAHMAN (1913)
I L R 40 Calc 619

——— *Practice and Procedure—Decree—Civil Procedure Code (Act V of 1908) ss 47 73—Civil Procedure Code (Act XI of 1882) s 295—Appeal* An order refusing rateable distribution made under s 73 of the Code of Civil Procedure (Act V of 1908) between two rival decree holders which does not affect or interest the judgment debtor is an *order* in execution proceedings but is not a *decree* as all the conditions enumerated in s 47 of that Code are not present and consequently is not appealable *Jagadish Chandra Shaha v Kripanath Shaha I L R 36 Calc 130* followed *Sorabji Coovarji v Kala Raghunath I L R 36 Bom 156* distinguished It is essential for the application of s 73 of the Code of Civil Procedure that the decree should have been passed against the same judgment debtor BALMER LAWRIE & Co v JUDUNATH BANERJEE (1914) I L R 42 Calc 1

——— *Rival decree holders—Right of one to impeach another's decree only in suit and not in execution—Civil Procedure Code (Act V of 1908) s 73 applicability of—O XXI r 52 enquiry under* Where several decree holders against the same judgment debtor apply for satisfaction of their decrees out of the same fund any one of them is entitled to show that his rival's decree is a fraudulent or sham one but it is not open for him to do so in execution proceedings *Sudindra v Budan I L R 9 Mad 80* followed S 73 Civil Procedure Code is applicable only if an application for *execution* of the decree in the prescribed form had already been made *before* the receipt of the assets and the fund out of which rateable distribution is asked for is one *realised* in execution Where holders of decree of several courts apply for satisfaction of their decrees out of a fund in the custody of a court the proper order governing their respective titles or priorities is O XXI r 52 Civil Procedure Code and they are entitled to share it rateably as in the case of administration of the estate of a deceased person or of an insolvent as attachment does not under the present law give any priority to the first attaching creditor but only prevent alienation. *Soobul Chunder Law v Russick Lal Mitter I L R 15 Calc 202 209* followed The shares due to holders of decrees of other courts than the one which has the custody of the fund are to be distributed only according to the orders of those courts KATUM SAHIBA v HAJEE MAHOMED BADSHA SAHIB (1913) I L R 38 Mad. 221

——— *Civil Procedure Code (Act V of 1908) s 73 O XXI r 65—Policy underlying the section—Receipt of purchase money by agent effect of* The policy which underlies s 73 of the Code of Civil Procedure obviously is to fix the point of time when the entire body of persons entitled to claim rateable distribution should be finally ascertained that point of time is the moment when the entire purchase money has been paid by the purchasers It is immaterial from this point of view whether the purchase money has been actually paid into the Treasury

RATEABLE DISTRIBUTION—*concld*

or into the hands of a person employed by the Court to hold the sale When a sale has been held by a Court in execution under O XXI r 65 receipt of purchase money by the agent is for the purposes of s 73 equivalent to receipt of assets by the Court *Golam Hossein v Fatima Begum 16 C W N 394 Maharaja of Burdwan v Apurba Krishna Roy 14 C L J 50* distinguished *Huddersfeld Banking Company Ltd v Henry Lister & Son Ltd (1895) 2 Ch 273 Wentworth v Bullen 9 B C 840 Crossley v Mills 1 C M & P 298 Gray v Haig 20 Beav 219* referred to GALSTAUN v WOOMES CHANDRA BONNERJEE (1916) **I L R 44 Calc 789**

——— *Civil Procedure Code (Act V of 1908) ss 63 73 application under—Sale by Munsif—Application to Subordinate Judge for attachment of sale proceeds and rateable distribution* Where in consequence of proceedings taken by a creditor the Munsif sold the judgment debtor s properties and where another creditor applied to the Subordinate Judge after the said sale to attach the sale proceeds deposited in the Munsif s Court and to distribute the same rateably and the latter refused the application *Held* that in the events which had happened neither s 63 nor s 73 of the Civil Procedure Code applied *Held* also that the Subordinate Judge could not direct the Munsif to transmit the proceeds to his Court but should move the District Judge to have the proceeds transferred If this procedure were adopted full effect would be given to the intention of the Legislature The Subordinate Judge would in essence adopt the sale held by the Munsif and the sale proceeds would then be rateably distributed in accordance with the provisions of the Code *Bykant Nath Saha v Rajendro Narain Rai I L R 12 Calc 333 Patel Naranji Morarji v Haridas Navalram I L R 18 Bom 458* referred to NILKANTA RAI v GOSTO BEHARI CHATTERJEE (1917) **I L R 46 Calc 64**

RATEABLE VALUE

See ASSESSMENT **I L R 42 Bom 692**

RATES AND TAXES

——— *Arrear of—Consolidated rate—Charge—Calcutta Municipal Act (Beng III of 1899) ss 223 2 S—Arrear of consolidated rates whether a first charge on the land and building in respect of which it has accrued due—Charge and mortgage distinction between—Transfer of Property Act (IV of 188) ss 55 58 100—Bengal Tenancy Act (VIII of 1885) s 171—Constructive notice—Bona fide purchaser for value without notice* S 2 8 of the Calcutta Municipal Act is not controlled by s 223 thereof and make the consolidated rate as it accrues due from time to time a first charge on the premises (subject only to arrears of land revenue) A mortgage does whereas a charge does not involve a transfer of an interest in specific immoveable property *Narayana v Venkataramana I L R 25 Mad 220 Tancred v Delagoa Bay Co 23 Q B D 239 Burlinson v Hall 12 Q B D 347* referred to Such a charge cannot be enforced against the property in the hands of a *bona fide* purchaser for value without notice *Kishen Lal v Ganga Ram I L R 13 All 28* referred to The plea of purchaser for value without notice is a single defence the onus of proving which is on the defendant *Attorney General v Biphosphated Guano Co 11 Ch D 327 Wilkes v Spooner (1911) 2 K B 473,* followed Where property with such a charge is foreclosed, by the mortgagee constructive notice cannot be imputed to him to the same extent as to a purchaser at a private sale, *Radha Madhab v Kalpataru 17 C L J 209 Brahma v Bholi Das 19 C L J 357* referred to Still he should ascertain the true state of affairs before he becomes full owner thereof Although a purchaser without notice from a person who had noticed is protected (*vide Harrison v Forth (1695) Finch s Prec Ch 51*) here purchasers from such a mortgagee cannot claim the protection as before they acquire title they might by enquiry from the municipal authorities ascertain the precise period for which the rates were in arrears AKHOY KUMAR BANERJEE v CORPORATION OF CALCUTTA (1914) *I L R 42 Calc 625*

RATIFICATION

See CONTRACT ACT 1872 ss 196 200

See MADRAS IRRIGATION CESS ACT (VII OF 1865) s 1 **I L R 38 Mad 997**

See TRADING WITH THE ENEMY **I L R 42 Calc 1094**

——— of order—

See HABEAS CORPUS **I L R 39 Calc 164**

RATING OF PROPERTY

See ADEN SETTLEMENT REGULATION (VII OF 1900) s 13 **I L R 40 Bom. 446**

RAYATI LEASE

See LANDLORD AND TENANT **I L R 38 Calc. 423**

REASONABLE NOTICE

See SCHOOL MASTER. **I L R 44 Calc. 917**

RE-ASSESSMENT OF PREMISES

See ACQUIESCENCE **I L R 37 Calc 833**

RECEIPT

See REGISTRATION ACT (XVI OF 1908)—s 17 (2) (xi) **I L R. 34 All. 593**

See STAMP ACT (II OF 1899)

ss 2 (23) 62 63 **I L R 35 All. 299**

s 65 **I L R 34 All. 199**

——— for goods shipped—

See CONTRACT **I L R 41 Calc. 870**

——— exceeding R 20—

See STAMP DUTY **I L R 37 Calc. 631**

——— by one servant from another—

See STAMP DUTY **I L R 37 Cal 631**

——— of purchase money—Registration—

See REGISTRATION ACT 1908 s. 17 **I L R. 1 Lah 25**

RECEIPT—*contd*

———— acknowledging acceptance of share —admissibility of to prove partition if un registered—

See REGISTRATION ACT 1908 ss 17 AND 49 I L R 44 Bom 881

———— Registration—Waiver —Evidence—Registration Act (III of 1877) s 17 (n)—Mortgage bond—Receipt showing simple interest charged—Evidence Act (I of 1872) s 9 A receipt which purports to show that simple and not compound interest was to be charged (though the mortgage bond contained provision for the payment of compound interest) is admissible in evidence Such a receipt operates as a full acquittance for the money paid and requires no registration *Jiwan Ali Beg* v *Basa Mal I L R 9 All 108* followed KAILASH CHANDRA NATH v SHEIKH CHHENU (1914) I. L. R 42 Calc 546

———— Stamp Duty—Money received by servant of a firm and handed over to fellow servant—Consideration—Acknowledgment of receipt by fellow-servant of a sum larger than R 20 if liable to stamp duty—Stamp Act (II of 1899) s 2 (23) Sch I Art 53 Where a sum exceeding R20 was received by an assistant in a mercantile firm from the cashier of the firm as advance made on the firm s behalf and to be expended on the firm s behalf and previous to disbursement of the sum in question a pay order was made out by the Accounts Department of the firm and was sent to the cashier who had paid the sum to the assistant and the assistant at the same time acknowledged receipt by signing his name or initials on the pay order *Held* that the acknowledgment did not require a receipt stamp by reason of the assistant s signature on the pay order *Attorney General* v *Carlton Bank (1899) 2 Q B 158* distinguished *In re* BURN & Co (1910) I L. R 37 Calc 634

RECEIVER

See BUSTEE LAND I L R 38 Calc 714

See CIVIL PROCEDURE CODE 1908—

s 47 3 Pat L J 513

s 60 (1) I L R 40 Mad 302

O XL

O XLIII R 1 I L R 45 Bom 99

See COMMON MANAGER I L R 43 Cal 936

See CRIMINAL PROCEDURE CODE—

s 145 3 Pat L J 147

See FRAUDULENT PREFERENCE I L. R 43 Calc 640

See GHATWALI TENURE I L R 39 Calc 1010

See INSOLVENCY I L. R 37 Calc 418
14 C W N 586
I L R 42 Calc 289
I L. R 41 All 200 274

See LEASE I L. R 45 Calc 940

See LIMITATION ACT (XV OF 1877) s 19 I L R 32 All 51

See OFFICIAL RECEIVER.

RECEIVER—*contd*

See PROVINCIAL INSOLVENCY ACT 1907—

s 59

s 16 2 Pat L J 235

ss 16 22 I L R 39 All 204

s 36 2 Pat L J 101

See SALE 16 C W N 394

———— application against the legal representatives of—

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XL R 4 I L R 39 Mad 584

———— appointment of—

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XL R 1 14 C W N 248 252

———— appeal against appointment of—

See CIVIL PROCEDURE CODE 1908 O XLIII R 1 I L R 42 All 227

———— attachment of moneys in hand of—

See EXECUTION OF DECREE 1 Pat L J 449

———— assets in the hands of—

See SOLICITOR S LIEN FOR COSTS I L R 34 Bom 484

———— death of—

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XL R 4 I L R 39 Mad 584

———— joint trial of—

See MISJOINDER I L R 46 Calc 741

———— in insolvency—

See MINOR I L R 42 Calc 225

———— misappropriation by—

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XL R 4 I L R 39 Mad 584

———— Order granting leave to sue Receiver for negligence—No appeal lies—

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XLIII R 1 I L R 45 Bom 99

———— pendente lite—

See RELIGIOUS TRUST I L R 40 Calc 251

———— powers of—

See PROVINCIAL INSOLVENCY ACT (III OF 1907) s 18 I L R 39 All. 633

———— report of—

See PROVINCIAL INSOLVENCY ACT (III OF 1907) s 43 I L R 37 All. 429

———— sufficiently grounds for appointment of—

See CIVIL PROCEDURE CODE 1908 O XL R 1 I L R 43 All. 311

———— vesting of property in on adjudication—

See PROVINCIAL INSOLVENCY ACT 1907 s. 16 I L. R 42 All. 433

RECEIVER—*contd*

———— Bhag property—Gift by Mahomedan widow for spiritual benefit of her husband—

See WASTE　　I L R 44 Bom 727

———— Suit against—Whether notice necessary—

See CIVIL PROCEDURE CODE 1908 ss 2 80　　I L R 44 Bom 895

———— Suit against without leave of Court—

See HIGH COURT JURISDICTION OF　　I L R 44 Bom 903

1 ———— Directions to receiver if appealable—*Civil Procedure Code (Act V of 1908) O XL r 1, cl (1) (d) and O XLIII r 1 (s)* Where both the parties have agreed to the appointment of a Receiver of the properties in dispute and the Court has in appointing the Receiver given him certain directions as to the disposal of the income *Held* that an appeal lies from those directions by virtue of O XLIII r 1 (s) of the Code of Civil Procedure MOHUNT ANAND DAS *v* RAM PERKASH DAS (1909)　　14 C W N 183

2 ———— Execution sale of property in hands of—*Illegality—Civil Procedure Code (Act XIV of 1882) ss 244 248—Non service of notice on judgment-debtor if ground for setting aside the sale—Confirmation of sale effect of* Where the Receiver appointed by the Court was directed to take possession of moveable properties and of the rents and profits of the immoveable properties and was further authorised to get in and collect all debts and claims due to the estate *Held* that he must be taken to have been appointed Receiver in respect of the whole estate and had authority to apply for an order absolute on a decree nisi for foreclosure A sale of the foreclosure decree while the estate was in the possession of the Receiver in execution of a decree for money without leave of the Court previously obtained was illegal and liable to be avoided, and punishment by the procedure for contempt was not the only remedy against such unauthorised sales The provisions of s 248 are not mandatory A sale held without issue of notice under s 248 Civil Procedure Code (Act XIV of 1882) is therefore not a nullity but such an omission is a serious irregularity sufficient to vacate the sale upon an application made by the judgment debtor under s 244 of the Code *Mallarjun* v *Narhari 5 C W N 10 s c I L R 25 Bom 337 L R 27 I A 216 ; Parashram* v *Balmukund I L R 32 Bom 572 Prava* v *Sidramappa I L R 21 Bom 4°4 432 Jogendra Chandra* v *Sham Das I L R 36 Calc 543 s c 9 C L J 271* Such an irregularity is a ground for setting aside the sale even after it has been confirmed *Ashutosh* v *Behari Lal 11 C W N 1011 s c I L R 35 Calc 61* referred to A purchaser of property at an execution sale is not protected when grounds for setting aside the sale under s 244 or 311 are established merely because he is a stranger *Janul Ihari Lal* v *Gossain Lal 13 C W N 716* referred to IRVINA ASHTON *v* MADHABMONI DASI (1910)　　14 C W N 560

3. ———— Possession of property by Receiver without succession certificate—*Succession Certificate Act (VII of 1889) ss 4 8 cl (c)—Succession (Property Protection) Act (XIX of 1841) —Succession Act (X of 1865) s 190—Hindu Wills Act (XXI of 1870)—Probate and Administration Act V of 1880)—Indian Securities Act (XIII of 1886) ss 3 sub s (2) 6 sub-s (1) cl (f)* The position of a Receiver appointed by a Court is analogous to that of a curator appointed under Act XIX of 1841 who is a person claiming to be entitled to the effects of the deceased person whose estate he is appointed to manage *Babasab* v *Narsappa I L R °0 Bom 437* referred to The Receiver ordinarily is not the representative or agent of either party to a suit in the administration of the trust but the appointment *is to* the benefit of all parties and he holds the property for the benefit of those ultimately found to be the rightful owners *Jagat Tarini Dasi* v *Nala Gopal Chaki I L R 34 Calc 305 Corporation of Bacup* v *Smith 44 Ch D 395 Portman* v *Mill 3 Jurist 356* referred to In the absence of any provision in the Hindu Wills Act (XXI of 1870) and in the Probate and Administration Act V of 1881) that no right to *the property* of an intestate can be established unless administration had been previously granted by a competent Court the Receiver appointed by the Court is competent to take possession *of the securities* and moneys without a certificate under s 4 of the Succession Certificate Act but regard being had to the provisions of the Indian Securities Act 1886 s 3 sub s *(2)* s *6* sub s *(1)* cl. *(f)* and s 8 cl *(c)* of the Succession Certificate Act (VII of 1889) a Succession Certificate would be needed if a suit was brought *to establish* a title to such funds by right of *inheritance* HARIHAR MUKERJI *v* HARENDRA NATH MUKERJI (1910)　　I L R 37 Calc 754

4 ———— Receiver if a necessary party to rent suit—*Appointment of Receiver if bars suit by creditor—Receiver how sued—Civil Procedure Code (Act XIV of 1882) s 3 —Receiver appointed by another Court if may be added as party by Court of its own motion* Where during the pendency of a suit for rent under the Bengal Tenancy Act a Receiver was appointed in respect of the entire property of the defendants by another Court and the property for which the rent was claimed vested in him *Held* that the Receiver was a necessary party to the suit and if he was not added with the permission of the Court which appointed him the suit was liable to be dismissed The appointment of a Receiver does not of itself debar a creditor of the person over whose estate the Receiver has been appointed from suing for his claim provided that such suit does not in any way interfere with the possession or jurisdiction of the Court appointing the Receiver But where property in the hand of the Receiver is intended to be affected by the result of the litigation the Receiver is a proper and necessary party to such suit by way of addition to and not in substitution for the parties primarily responsible *Miller* v *Ram J r on I I P 11 C L J 10 Calc 1014 Ashton* v *Madlab Moni 11 C L J 1 Calc 159 Hem Chunder* v *Frankiso J L R 10 Jogendra Nath* v *Delendra Nath I L R 90 Jarb Kor °6 Calc 1°7 s c 3 C W N 03 Jagat Tarini* v *Sham Shurendra 10 C L J s c 5 C L J* v *Nala Gopal I L R 34 Calc 305* °°0 referred to Where the plaintiffs refused to add the Receiver as a party with leave of the Court appointing him although they had notice of such appointment : *Held* that the Court was not bound nor was it competent to it to add the Receiver as a party of its own motion under s 3 Civil Procedure Code as the leave of the Court

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appointing the Receiver was essential But as the point raised was of some novelty and as a fresh suit by the plaintiffs might be barred by limitation the High Court allowed the plaintiffs an opportunity of continuing the suit by taking steps to make the Receiver a party upon their paying all costs JOTINDRA NATH CHOWDHURY v DARFA RAJ MIA (1910) 14 C W N 653

5 ———— Title—*Receiver accretions to property if vests in—Accretion title to prevails against all persons not claiming under prior title—Bona fide tenant under a de facto proprietor if acquires raiyati rights—Non-occupancy raiyat if entitled to possession of accretions—Criminal Procedure Code (Act V of 1898) ss 145 146—Receiver appointed under s 146 rights of* As a general rule a Receiver takes no title in property acquired by the person formerly in possession But a Receiver is entitled to any accretion to the property vested in him upon general principles and the policy of the law by which a proprietor acquire a title to accessions to his property Where a Receiver has been appointed under s 146 of the Criminal Procedure Code in respect of any property in dispute the Receiver is entitled unless some special circumstance is established not only to the subject matter of the proceedings under s 145 Criminal Procedure Code but also to the accreted land and gives good title to a tenant under him Such title will prevail against a trespasser but not against person who establishes a title to the accreted land acquired prior to the vesting of the lands in the Receiver *Atul Chandra v Lakhi Narain 10 C L J 65* referred to MADHU v SABAR ALI (1910)
14 C W N 681

6 ———— Mortgage suit—Sale appointment after—*Receiver if may be appointed of property in hand of common manager—Civil Procedure Code (Act V of 1908) O XL r 1 sub r ( )—Bengal Tenancy Act (VIII of 1885) s 95* A mortgage suit does not necessarily terminate with the sale and a Receiver may be appointed after the sale pending application to set it aside *Wills v Luff 38 Ch D 197* distinguished A Receiver may very well be appointed under O 40 r 1 sub r (2) Civil Procedure Code in respect of property in the hands of a common manager appointed under s 95 of the Bengal Tenancy Act MADANESWAR SINGH v MAHAMAYA PROSAD SINGH (1911) 15 C W N 672

7 ———— Suit against—*Leave of Court if condition precedent to suit—Stay of proceedings* Where a suit has been instituted against a Receiver without previously obtaining the leave of the Court which appointed him it is open to the Court to stay proceedings for a reasonable time so as to enable the plaintiff to apply for leave to proceed with the suit The consent of the Court which appointed the Receiver is not a condition precedent to the right to bring an action against the Receiver *Pramatha Nath Gangooly v Khetra Nath Banerjee I L R 32 Calc 270 s c 9 C W N 217* dissented from Where property in the hands of a receiver is intended to be affected by the result of the litigation the Receiver is a proper and necessary party to such a suit *Jotindra Nath Choudhry v Sarfaraj Mia 14 C W N 653* followed *Miller v Ram Ranjan Chuckerbutty I L R 10 Calc 1014 Chartered Bank v Hurish Chunder Neogy 5 C W N xx* and *Kumar Suttya Suttya Ghoshal v Rani Golap Moni Debi 5 C W N 27* distinguished BANKU BEHARI DEY v HARENDRA NATH MUKERJEE (1910) 15 C W N 54

8 ———— Application to execute decree against—*Application for rateable distribution—Property sold at the instance of another creditor with leave—Leave if still necessary—Leave if may be obtained after application preferred—Civil Procedure Code (Act XIV of 1882) s 272 order under if leave—Civil Procedure Code (Act V of 1908) s 73* The fact that leave had already been granted to the execution creditor at whose instance property in the hands of a Receiver was sold does not dispense with the necessity of other execution creditors obtaining such leave to prosecute their applications under s 73 of the Civil Procedure Code for rateable distribution of the assets for the funds are held by the Court for the benefit of the Receiver who would be entitled as a matter of right to take out any surplus left after satisfying the creditors who have obtained such leave and apply it for the purpose of the litigation in which he was appointed Courts have been generally reluctant to allow execution to proceed against properties in the hands of the Receiver until leave has expressly been granted for this purpose A prohibitory order under s 272 of Act XIV of 1882 on the Receiver cannot be construed as leave granted to the decree holder to proceed against properties in his hand In the circumstances of the case the High Court *held* that the application should not have been dismissed because no such leave had been obtained but that an opportunity should be given to the petitioner even at this late stage to obtain the requisite leave *Banku Behari Dey v Harendra Nath Mukerjee 15 C W N 54* followed *Pramatha Nath Gangooly v Khetra Nath Banerjee I L R 32 Calc 270 s c 9 C W N 217* dissented from SARAT CHANDRA BANERJEE v APURBA KRISHNA ROY (1911) 15 C W N 925

9 ———— *Interference with Receiver appointed by the Court* An agreement which would interfere with the work of a Receiver appointed by a Court should not be enforced as being opposed to public policy FUZLUR RAHAMAN v ANATH BANDHU PAL (1911)
16 C W N 114

10 ———— Mortgage suit—*Receiver if may be appointed in after appointment of Receiver in partition suit among t mortgagors—Foreclosure suit Receiver if and when may be appointed in* The appointment of a Receiver in a partition suit amongst the mortgagors is no bar to the appointment of a Receiver in a subsequent suit by the mortgagee on his mortgage as any possible conflict between the two Receivers where the same Receiver has not been appointed in both suits may easily be avoided A mortgagee who has obtained a preliminary decree for foreclosure cannot at that stage ask for a Receiver of the property under mortgage since he has no title to the profits until at least he obtains an order absolute for foreclosure and is then kept out of possession by the action of the judgment debtors KHUBSURAT KOER v SARODA CHARAN GUHA (1911) 16 C W N 126

11 ———— Ghatwali tenure—*Income from if may be attached—Receiver if may be appointed for Ghatwali lands—Rents and profits not due at*

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the date of appointment The rents and profits of a Ghatwali tenure may be attached in execution of a decree in the life time of the Ghatwal though the estate itself cannot be attached *Kustoora Koomaree* v *Benode Ram 4 W R Mis 5 Surajmal* v *Kristo Pershad 10 C W N* cclx *Udoy Kumari* v *Hari Ram I L R 28 Calc 48? Raj Keshore* v *Bunshidas, I L R 23 Calc 873* considered Where the lower Court in execution of a decree against the Ghatwal attached the Ghatwali estate, placed it under a Receiver and directed the tenants not to pay rents to any body other than the Receiver *Held* that although the order of attachment of the estate was erroneous the appointment of a Receiver was sanctioned by authority *Quære* Whether a Receiver may be appointed to collect rents and profits that have not accrued at the date of appointment KESOBATI KOERI *v* MOHAN CHANDRA MANDAL (1912)

I L R 39 Calc 1010
16 C W N 802

12 ———— **Insolvency**—*Jatri or Pilgrim business profits from—Priest office of—Provincial Insolvency Act (III of 1907) ss 2 (1) (g) 18 20 (c) 40 (1) 41 47—'Business — Trade* Where pending an appeal to the High Court by a creditor in insolvency against a conditional order of discharge in favour of the insolvent who was a *panda* or priest attached to the temple of Jagannath at Puri an application was made for the appointment of a receiver in respect of the business of the insolvent which consisted in receiving pilgrims housing them feeding them looking after their comfort and accompanying them to the temple of Jagannath in return for a fee from the said pilgrims in the nature of a voluntary payment the object of the creditor being not to stop the business but to carry it on so that the insolvent priest may be constantly attended by the receiver who may take possession of all his earnings *Held* that what the priest did for the pilgrims could not appropriately be described as business within the meaning of cl (c) of s 20 of the Provincial Insolvency Act and that the exercise of his calling by the insolvent under the circumstances stated could not be deemed a trade within the meaning of sub s (1) of s 40 of the Provincial Insolvency Act *Held* also that ordinarily the business of the insolvent might be carried on by the receiver not with a view to profit but only in so far as might be necessary for the beneficial winding up of the same *Ex parte Emmanuel 17 Ch D 35* followed The difference between a receiver and a manager explained *In re Manchester and Milford Railway Co 14 Ch D 64? Moss Steamship Co* v *Whinney (1912) A C 254 In re Newt Hotel (1902) 1 Ch 33? Boehm* v *Goodall (1911) 1 Ch 155* and *In re Newdigate Colliery Ld (1912) 1 Ch 468* referred to ANAND MAHANTI *v* GANESH MAHESWAR (1913)

I L R 40 Calc 678

13 ———— **Powers of Civil Court when Receiver in possession under s 146 (2) Criminal Procedure Code**—*(Act V of 1898)—Conditional appointment—Former Receiver reappointment of* The appointment of a receiver by a Civil Court under O XL r 1 of the Code of Civil Procedure does not operate as a discharge of the receiver of the same properties already appointed by a Magistrate under s 146 (2) of the Code of Criminal

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Procedure As a general rule when there is a receiver in possession appointed by the Magistrate and application is made to the Civil Court to exercise its powers under O XL r 1 of the Code of Civil Procedure the Civil Court should make a conditional order of appointment and inform the Magistrate so that the latter may have an opportunity of withdrawing his attachment Unless there is good reason to the contrary the Civil Court should as a matter of judicial discretion appoint as its receiver the person already appointed by the Magistrate *Farkat un nissa* v *Abdul A z I L R 22 All 211* distinguished BIDYAPRASAD NARAIN SINGH *v* ASHRAFI SINGH (1913) **I L R 40 Calc 862**

14 ———— **Discretion of Court—Interference by higher Court**—*Appointment of party to cause appointment of person residing outside jurisdiction and at a distance—Revision—Guardians and Wards Act (VIII of 1890) s 17 sub (1)* The selection and appointment of a particular person as a Receiver is a matter of judicial discretion to be determined by the Court according to the circumstances of the case and the exercise of this like other matters of judicial discretion will rarely be interfered with by an appellate tribunal To induce the Appellate Court to interfere it is necessary to show some overwhelming objection in point of propriety or some fatal objection in principle to the person named It is a settled rule that one of the parties to a cause shall not be appointed Receiver without the consent of the other party unless a very special case is made Residence beyond jurisdiction is not by itself a fatal objection but when a non resident is appointed Receiver there must be adequate guarantee that he will be subject to the effective control of the Court Residence at a great distance from the property which is to be subject to his management and control while not regarded as an absolute disqualification for the office is an important circumstance to be taken into consideration Where amongst two rival claimants for appointment as guardian of a minor s property the appointment of one by the District Judge was set aside on the ground of irregularities and the District Judge was asked to reconsider the matter and the District Judge pending trial appointed the same individual Receiver under sub-s (1) of s 12 of the Guardians and Wards Act although he was a resident outside the Judge s jurisdiction and no security was taken from him *Held* in revision that the appointment was bad and should be set aside KALI KUMARI *v* BIRBHAN SINGH (1913) **17 C. W N 974**

15 ———— ***Pending proceeding* for appointment of Common Manager**—*Land Tenancy Act (VIII of 1885) ss 93 100—Full case for appointment—Selection of Receiver High Court when will interfere with—Civil Procedure Code (Act V of 1908) O XL r 1* The fact that an application for the appointment of a Common Manager of the property in suit is pending before the District Judge does not preclude the Subordinate Judge before whom the suit is pending from appointing a Receiver in a proper case *Th Fatern Mortgage and Agency Co* v *Rileo Khatun 16 C W N 997* followed Where it was common ground that no one was in effective possession of the property and in a position to collect the rents and pay the Government revenue

RECEIVER—*contd*

the Court could hardly go wrong in appointing a Receiver The trying Court s selection of a Receiver will not be set aside in appeal except in an extreme case *i e* unle s there be ome overwhelming objection in point of propriety or choi e or some fatal objection in principle *Cooles* v *Cooles 2 DeG J & S 5 6* followed JIBANES A KHATUN *v* MAJIDUNNESSA KHATUN (1913) 17 C W N 581

16 ——— Suit by present against former Receivers—*Whether maintainable* A suit was instituted by the present receivers of an e tate against the former receivers (before the accounts of the latter have been passed by the Court) for the recovery of a certain sum which the plaint iffs alleged the defendants had failed to reali e on behalf of the estate *Held* that no such suit was maintainable K B DUTT *v* SHAMAL DHONE DUTT (1913) I L R 41 Calc 92

17 ——— Partition suit—*Defendant in sole occupation though plaintiff not altogether excluded—Court if may appoint a Receiver and when—Party to a suit when may be appointed* The Court has jurisdiction to appoint a Receiver until the hearing of a partition action or until further orders even though there is no exclusive occupation by any party and the Court will not hesitate to do so whenever it is just and convenient The case for the appointment of a Receiver is much stronger if a party to the partition action is in sole occupation In such a case any other party may obtain a Receiver either of his share of the rents and profits or of the whole estate The Court may also allow the party in exclusive occupation to elect to pay to the others an occu pation rent or the Court may require security from the co owner in exclusive occupation to account for their share of the rents to the other co owners *Held* that in the circumstances of the present case the second of the four alternative courses *viz* appointment of a Receiver of the whole e tate was the proper one to adopt One of the parties to a litigation should not ordinarily be appointed a Receiver except in very exceptional circumstances In the special circumstances of this case the defendant in possession was appointed Receiver of the whole estate subject to conditions SUPRASANNA ROY *v* UPENDRA NARAIN ROY (1913)] 18 C W N 533

18 ——— Property in possession of defendant—*if may be taken over—Object of appoint ment* Where the plaintiff sued to recover property in the possession of his adoptive mother and the suit was resisted *inter alia* on the ground that the defendant was entitled to retain possession of the estate for her life *Held* that O XL r 1 (2) which clearly refers to a case of removal of property from the possession or custody of a person other than the parti s to the suit was no bar to the appointment of a Receiver on the application of plaintiff when it was established that the estate was being grossly mismanaged by the defendant The effect of the appointment of a Receiver would not be to prejudge the case in any way as the only object and effect of so doing would be to maintain the estate in its present condition during the pendency of the suit SATYA NARAIN SINGH *v* KESHABATI KUMARI (1913) *18 C W N 537

19 ——— Suit by—*Suit by one against the other if maintainable—Objection to suit when to be taken—Contempt of Court* A Receiver is an officer of the Court and the possession by him is the pos ession of the Court and to bring a suit so as to interfere with the posse sion of the Court without the leave of the Court is a contempt of Court But if a party is guilty of contempt of Court the proper way for the Receiver to act is to bring it immediately to the notice of the Court so that proper steps may be taken against the party guilty of contempt and in a proper case the Court would grant a party leave to proceed with the suit But it is not proper for the Re ceiver to wait till the day of hearing and put this objection forward as a ground for dismi sing the suit Where by consent in a partition suit two of the parties were made Receivers of different portions of the property with full powers under s 503 of Act XIV of 1882 *Held* that each of the Receivers had power to bring and defend suits and a suit by one against the other without leave specially obtained from Court did not amount to such a grave and serious contempt of Court by the plaintiff as to merit dismissal *Pramatha nath* v *Khetranath I L R 32 Calc 270 s c 9 C W N 247* referred to SATYA KRIPAL BANERJEE *v* SATYA BHUPAL BANERJEE (1913) 18 C W N 546

20 ——— Partition—*Code of Civil Pro cedure (Act V of 1908) O XL r 1 cl (d)—Indian Trustees Act (XXV of 1866) ss 8 20 32* In a partition suit in which a receiver is authorised to sell properties including the share of an infant as declared in the decree the Court may direct the receiver to convey the properties Under O XL r 1 cl (*d*) of the Code of Civil Procedure (Act V of 1908) the Court may confer on a re ceiver all such powers for the realization of pro perties and the execution of documents as the owner has BA IR ALI *v* HAFIZ NAZIR ALI (1915) 19 C W N 817

21 ——— Suit by for possession of immovable property The plaintiffs were the receivers of the estate of one *G* who died leaving two widows A and N On the 8th August 1906 one of the co widows (N) brought a suit for a declaration that she was entitled to a half share in the estate of *G* and prayed that the properties might be partitioned and her share allotted to her In this suit the plaintiffs were appointed receivers with all the powers provided under O XL r 1 cl (*d*) of the Civil Procedure Code It was further ordered that the receivers should have power to bring and defend suits in their own name and al o should have power to use the names of the plaintiff and the defendant The plaintiffs instituted the present suit to recover possession of a certain immovable property and for a declaration that a lea e dated 16th September 1906 purporting to have been executed by A by virtue of which the defendant claimed to be a permanent tenant was void and inopera tive Subsequent to the institution of the present suit an order was made in the suit in which the plaintiffs were appointed receivers that the plaint iffs as receivers be at liberty to continue the present suit It appeared that proceedin s under the Lunacy Act were instituted in November 1906 and in these proceedings the Di tri t Judge on the 24th September 1907 held that N was of unsound mind and incapabl of managing her affairs *Held* that ordinarily a suit to recover possession of property can only be brought by

RECEIVER—*contd*

or if the writ has been issued to *direct the Re ceiver* through the Court which appointed him not to take any steps in compliance with *the writ* of appointment In the latter case O XLI, r 5 *(3) does* not apply and so security need be taken *under* sub cl (3) (c) MULCHAND SINGH *v* TARNI PRASAD **4 Pat L J 642**

32 ———— **Appointment of new Receiver after dismissal of suit**—*Validity of—Code of Civil Procedure* (*Act V of 1908*) *O XL r 1 (a)* A suit against several defendants in which a Receiver had been appointed was dismissed after a compromise with *defendant* No 1 had been effected Two of the other defendants objected to the discharge of the Receiver who had been appointed to the estate of defendant No 1 and an order was passed *continuing* the appointment In point of fact however a fresh Receiver was appointed *Held* that the order appointing a fresh Receiver *was without* jurisdiction The power conferred on the Court by O XL r 1 (*a*) to appoint a Receiver *of* any property whether before or after the decree refers only to the appointment of a Receiver *in* respect of the pro perty in regard to which litigation is pending *i e* as long as *the suit* remains *lis pendens* the function of the Receiver will continue until he is discharged *by the Court* Although the dis missal of a suit may in some cases mean the dis charge of the Receiver still the Court has juris diction over the Receiver who is an *officer of the* Court and the Court may require him to furnish accounts to *allow* parties to examine accounts and to deal with all matters connected with the management *of* the Receiver CHANDRESHWAR PRASAD NARAIN SINGH *v* BISHESWAR PRATAP NARAIN SAHI **5 Pat L J 513**

33 ———— **Liability to account** A Receiver *is not* liable to account for any period other than that for which he is appointed An appeal does *not lie from* an order directing sub mission of accounts SAMIAUTTA SINGH *v* BHAGWARI SINGH **5 Pat L J 97**

34. ———— **Whether appointment of, stays execution** An order appointing a Receiver does not stay execution of the decree against the debtor so as to disentitle the decree holder *for* executing the decree in any manner provided by the Civil Procedure Code even when appointed with consent of decree holder Where a party seeks a particular relief and the matter is settled *by a* consent decree not giving that relief it must be presumed that such relief was refused and claimant is stopped for subsequently claiming that relief MAHARAJADHIRAJ SIR RAMESHWAR SINGH BAHADUR *v* HITENDRA SINGH **6 Pat L J 203**

35 ———— **General principle summary appointment of** *The Code* of Civil Procedure does not confer an unlimited power on the Court to appoint a Receiver It is an Equitable Relief and should only be granted on equitable grounds the first essential condition precedent by that the applicant *need show* that he has an interest in the property effected and a simple contract creditor has *no such interest* unless he can show he has a right to be paid out of the particular property concerned RAI BAHADUR PRITHI CHAND LAL CHAUDHARI *v* KUMAR KALIKANAND SINGH **6 Pat L J 366**

RECEIVER—*contd*

36 ———— **Dismissal of objection to appointment of**—*Appeal—Code of Civil Procedure (Act V of 1908) s 115 and O XL r 1* An order dismissing an objection to the appointment of a Receiver of property of which the objector is in possession falls within O XL r 1 of the Code of *Civil Procedure* 1908 and is appealable AGABEG *v* MUSSAMAT SUNDARI **3 Pat L J 573**

36 (a) ———— **Court's discretion to appoint** Under O 40 r 1 of the Civil Procedure Code the Court has been given precisely the same dis cretion in questions of appointment of a receiver that the Courts in England have The condition in the old Code that to justify such appointment in any case it should be found necessary to preserve property from waste and alienation having been removed there has been a substantial widening of the Court's discretion Where therefore in a suit for partition of joint family property it was proved that a co owner admittedly entitled to a half share in a considerable portion of the properties in suit was being kept out of possession by the co owner with the result that all supplies were cut off from his branch of the family *Held* that although no case of waste might have been established against the co owner in posses sion the case was eminently a proper one for the appointment of a receiver PUNJI RAM AND OTHERS *v* SALIGRAM **14 C W N 248**

37 ———— **Appointment of by one Court whether can be restrained by another Court** *Held* that one Subordinate Court has no power to restrain the action of another subordinate Court with co-ordinate powers *Therefore when a* a Subordinate Judge had appointed a Receiver it was *held* that it was not competent for another Subordinate Judge to restrain the Receiver from taking possession of a part of the property in respect of which the Receiver had been appointed CHAWDHURY KEDARNATH THAKUR *v* MAHMOOD ALI KHAN **6 Pat L J 268**

38 ———— **Possession of receiver in mortgage suit for whose benefit**—*Receiver if can be appointed at the instance of mortgagee not entitled to possession* Possession of a receiver in a mortgage suit is *primâ facie* for the benefit of the party who has obtained the appointment *Pelny v Todd 26 W R (Eng) 507* followed A second mortgagee in whose presence the order for appointment of a receiver in a mortgage suit by the first mortgagee is made is not entitled to avoid the consequences of the order of appoint ment because he has obtained a decree on his mortgage and has purchased the equity of redemp tion in execution of that decree Whether a mortgagee is or is not entitled to possession he may invite the Court to appoint a receiver if the demands of justice require that the mort gagor should be deprived of possession *Jag gurti Venkata Rajagopala Suryarow Bahadur v A Basu Reddy (1914) Mad W N* [illegible] *Herbert v Greene 3 Ir Ch Rep 2 0 Heathcote v Eastern Mortgage Agency Co 13 C L J 495* and *Eastern Mortgage and Agency Co v Fakeruddi* [illegible] *W N 16* referred to RAMESWAR SINGH *v* CHUNI LAL SHAHA (1919) **I L R. 47 Calc. 415**

39 ———— **Suit against**—*Sanction of Court for institution of the suit—Want of previous sanc tion—Effect of—Jurisdiction whether affected—*

RECEIVER—*contd.*

Sanction subsequently obtained—Illegality whether cured Where a suit is instituted against a Receiver appointed by a Court without obtaining the previous sanction of that Court the omission to obtain such sanction does not affect the jurisdiction of the Court in which the suit is laid but is an illegality which can be effectively cured by the plaintiff obtaining the sanction during the course of the litigation *Banku Behari Dey v Harendra Nath Mukerjee (1910) 15 C W N 54* and *Jagat Tarini Dasi v Naba Gopal Chaki (1907) I L R 34 Calc 305* followed AMMUKUTTI v MANAVIKRAMAN (1920)

I L R 43 Mad. 793

40 ———— Rent decree obtained by *after conditional order of discharge made by Court but not carried out and before the decree embodying order of discharge was signed by the Judge—Receiver if bound to disclose to Court order of discharge in such circumstances—Devolution of interest pending suit—No application for substitution—Decree passed in favour of original party if bad* In a rent suit instituted by the receiver of an estate as such a decree was obtained after an order discharging the receiver on certain conditions had been made by the Court It appeared however that on the date the rent decree was made the order of discharge had not been in fact carried out nor was the decree embodying the said order signed by the Judge who passed it The receiver was in possession as before and he was subsequently continued as such by the order of the Appellate Court *Held* that it was not established that the receiver was in fact and law discharged on the date of the rent decree nor was it proved that there was fraud such as would entitle the plaintiff to maintain a suit to have the decree set aside That it was not shown that there was in fact and in law such a discharge as it was incumbent upon the receiver to disclose before the Court That assuming that the receiver was discharged before the decree was passed there was only a devolution pending the suit and the decree made in favour of the receiver would not on that account be a bad decree but would ensure for the benefit of the party on whom the interest devolved such party not having applied for the carriage of the proceedings BEPIN BEHARI BOSE v MR K S BANERJEE

26 C W N 361

41 ———— Teshildar appointed by The owners of an estate brought a suit for account against a Teshildar of their estate who had been appointed by a Receiver who had been in charge of the estate under an order of Court but had since been discharged *Held* that a suit was not maintainable Such a suit can be sustained only on proof of fiduciary relation between the parties But the Receiver is not a representative of the owner he is an officer of the Court Hence an officer appointed by the Receiver does not stand in the same position as an officer appointed by the owner Although a Receiver has been discharged it is still open to the party entitled to surcharge him in his accounts and obtain relief against him and a suit may be maintained against the Receiver if it is established that he has monies belonging to the estate still in his hands notwithstanding his discharge HARIHAR MOOKERJEE v JAHARUDDIN MANDAL

26 C W N 993

RECEIVING STOLEN PROPERTY

See AUTREFOIS ACQUIT
I L R 45 Calc 727

RECIPROCAL PROMISES

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XXIII R 3
I L R 38 Mad 959

RECISION OF CONTRACT

See LIMITATION ACT (IX OF 1908) SCH I ART 9
I L R 37 Bom 158

RECITAL

See EVIDENCE I L R 35 All 194
See DEED
See HINDU LAW—ALIENATION
I L R 44 Calc 186
See LEASE I L R 42 Bom 103

RECOGNITION

See HINDU LAW—MARRIAGE
I L R 38 Calc 700

RE CONSTRUCTION

See BUILDING I L R 39 Calc 84
See DISTRICT MUNICIPAL ACT (BOM III OF 1901) ss 3 (7) 96
I L R 35 Bom 412

RECONVERSION

See MAHOMEDAN LAW—BIGAMY
I L R 39 Calc 409

RE CONVEYANCE

See REGISTRATION ACT (1877) s 17
14 C W N 703
I L R 38 Bom 703

RECORD

———— alteration o —
See SANAD CONSTRUCTION OF
I L R 6 Bom 639

———— procedure when lost—
See JUDGMENT I L R 38 Mad 498

———— unnecessary printing of—
See COSTS L R 46 I A 299
I L R 47 Calc 415

———— *Special Tribunal—Calcutta Improvement Act (Beng V of 1911) s 71 cl (c)—Land Acquisition Act (I of 1894) s 53—Practice* The power to call for records is a power which is undoubtedly inherent in the Judge of a Land Acquisition Court and consequently in the Special Tribunal constituted under the Calcutta Improvement Act *Golap Coomary Dassee v Raja Sundar Narain Deo 4 C L R 36* followed. NARESH CHANDRA BOSE v HIRA LAL BOSE (1915)
I L R 43 Calc 239

RECORDED PROPRIETORS

See ARREARS OF REVENUE
I L R 47 Calc. 331

RECORDED TENANT

See LANDLORD AND TENANT
I L R [illegible] Calc 903

RECORD OF RIGHTS

See BENGAL TENANCY ACT (VIII OF 1885), ss. 103B AND 104H.
I L R [illegible]

RECORD OF RIGHTS—*contd*

See BENGAL TENANCY ACT s 102
14 C W N 812
s 105 1 Pat L J 479
s 111 1 Pat L J 73

See BOMBAY LAND REVENUE CODE 1879 s 135
I L R 45 Bom 1339

See COURT FEES ACT, 1870—
s 7 4 Pat L J 302
s 17 4 Pat L J 299

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 195 (1) (c)
I L R 39 Bom 310

See ENHANCEMENT OF RENTS
2 Pat L J 124

See LIMITATION 23 C W N 883

——— correctness of—

See BENGAL TENANCY ACT—
ss 5 103B I L R 45 Calc 805
s 105 14 C W N 897
s 106 14 C W N 884

See CENTRAL PROVINCES LAND REVENUE ACT—
s 78 14 C W N 686

——— erroneous entries—

See BENGAL TENANCY ACT s 106
14 C W N 897

See LANDLORD AND TENANT
I L R 37 Calc 30

——— effect of—

S ENHANCEMENT OF RENT
2 Pat L J 124

See ROAD CESS ACT 1880 s 20
1 Pat L J 521

——— entry in—

See COURT FEE I L R 44 Calc 352

——— presumption as to correctness of entries in—

See BOMBAY LAND REVENUE CODE 1879 s 135 I L R 44 Bom 214

——— suit for alteration of—

See BENGAL TENANCY ACT 1885 s 111A
1 Pat L J 73

See SANTAL PARGANAS SETTLEMENT REGULATION 1872 ss 11 24 25
6 Pat L J 373

——— *Presumption of correctness of—Finding of lower Appellate Court as to whether presumption rebutted not liable to be disturbed in second appeal* In the record of rights the defendants were stated to be settled raiyats with liability to have their rents a essed In a suit by the landlord for rent on declaration of title the first Court found that the suit was barred by limitation and adverse possession from an assertion of the defendant s right during the publication of the record of rights The lower Appellate Court reversed this finding and held that the presumption as to the correctness of the record was not rebutted *Held* that the lower Appellate Court was entitled on the question of fact to hold that the mere fact that this adverse claim had been made was not sufficient to show that the entry in the finally published record was wrong and this finding was not liable to be challenged in second appeal GOUR CHANDRA CHUCKERBUTY v BIRENDRO KISHORE MANIKYA (1917) 22 C W N 449

——— *Non agricultural lands—Bengal Tenancy Act (VIII of 1885) s 105* S 105 of the Bengal Tenancy Act has no application to non agricultural lands situated in a mofussil municipality BIPRADAS PAL CHOWDHRY v AZAM OSTAGAR (1918) I L R 46 Calc 441

——— *Entry in showing land khudkasht—Suit for declaration of right of possession claiming land as khudkasht—Onus on defence to show that land not such* The plaintiffs sued for declaration of their right to possession of lands which they claimed as *khudkasht* The record of rights showed that the lands were *khudkasht* *Held* that the onus was on the defendant to show that the entry was wrong GAJADHAR PROSAD SINGH v SHEO NANDAN PROSAD SINGH (1918) 23 C W N 304

——— *Suit for declaration that entry in is erroneous—Limitation* *A* was the sole owner of certain plots of land His brother in law *B* had the lands recorded as being held in joint tenancy by himself and *A* *A* took no step to have the erroneous entry corrected and *B* made no attempt to derive material benefit from it *B* instituted a suit in the Small Cause Court claiming to participate in the profits of the land *Held* that a suit by *A* within six years of the receipt of the summons in the Small Cause Court suit for a declaration that *A* was the sole owner of the land was within time MOULVI ALAUDIN v BIBI SABUNNISSA
2 Pat L J 557

——— *Suit for alteration in second of two records of rights—Limitation Act (IX of 1908) Sch I Art 120—Bengal Tenancy Act (VIII of 1885) ss 106 and 111 A* Where there are two consecutive finally published records of rights it is competent to a party aggrieved by the second record of rights to ask for a declaration in respect of that second record of rights without displacing any prejudicial entries in the first record of rights A person who has acquired a title by adverse possession is not bound to sue for a declaration that he has acquired such title In the record of rights finally published in 1889 the defendants were shown as being in possession of land some of which the plaintiff had purchased from the *lakhirajdar* and to some of which he had acquired prescriptive title which was perfected in 1897 The plaintiff however remained in possession but did not sue for a declaration of his title In the record of rights finally published in 1906 the defendants were again shown as being in possession of the land On the 11th January 1907 the plaintiff instituted the present suit for a declaration that the entry in the record-of rights of 1906 was incorrect It was pleaded that the suit so far as it concerned the land purchased from the *lakhirajdar* not having been brought within six years of the publication of the record of rights of 1889 and so far as it concerned the remainder of the land not having been brought within six years of 1897 was barred by limita

PECORD OF RIGHTS—contd

tion. *Held* that the suit was within time SHEIKH LATAFAT HOSAIN v KUMAR GANGANAND SINGH 3 Pat L. J 361

——— *Effect of entry in* An entry in a record of right has the same effect as between landlords of neighbouring estates as between landlord and tenant and must be presumed correct until the contrary is proved A survey is an indispensible necessity for a preparation of a record of right under s 101 of the Bengal Tenancy Act MUSSAMMAT BIBI WAKILAW v DEONANDAN PROSAD 5 Pat L J 681

——— *Settlement of rent —Bengal Tenancy Act (VIII of 1885) ss 105 106 113* A rectification of the record of rights under s 106 of the Bengal Tenancy Act as regards the existing rent cannot be said to be a settlement of rent so as to preclude a suit under s 113 of the Act S 105 and 105A of the Act contemplate settlement of rent and not s 106 MANINDRA CHANDRA NANDIA v UPENDRA CHANDRA HAZRA (19 0) I L. R. 47 Calc 1006

RECORDING OFFICER

See KHOTI SETTLEMENT ACT (BOM ACT I OF 1880) - 21
I L. R. 43 Bom 469

PECOUPMENT

See LAND ACQUISITION
I L R 47 Calc 500
I L. R 44 Calc 219

——— *Powers under Calcutta Improvement Act (Beng V of 1911) ss 2 36 37 39 41 42 (a) 49 (1) 69 71(b) 78 81 89 123 Sch cl 13— Betterment — Affect —Lands Clauses Consolidation Act 1845 (8 & 9 Vict c 18) ss 63 68—Land Acquisition Act (I of 1894) ss 6 9 23 (1) (4) 24 (6) 48—House and Town Planning Act 1909 (9 Edw VII c 44) s 58 (3)—Calcutta Municipal Act (Beng III of 1899) s 537 (?) —Bombay City Improvement Act (Bom IV of 1898) ss 25 29—Reference to Full bench when incompetent Per* CURIAM (CHATTERJEA J dissenting) —The Calcutta Improvement Act does authorise the Board of Trustees to acquire land compulsorily for purposes of recoupment i e by selling or otherwise dealing with the land under s 81 or by abandoning the land in consideration of the payment of sum under s 78 *Trustees for the Improvement of Calcutta* v *Chandra Kanta Ghosh I L R 44 Calc 219* overruled in so far as it decides to the contrary *Per* CHATTERJEA J —The Act does not authorise compulsory acquisition of land for the purpose of recoupment The lands are not to be included in the scheme originally for the purpose of thereafter making profits but if they are properly included in the scheme and subsequently found not to be required the Board have the power to dispose of such lands The question referred to the Full Bench did arise (CHATTERJEA J contra) *Prosonno Coomar Paul Chowdhry* v *Koylash Chandra Paul Chowdhry B L R (F B) 7?9* distinguished The preamble does not control the enacting provisions of the Act In s 4? (a) of Beng Act V of 1911 affected means affected in any way and not merely injuriously affected *The Metropolitan Board of Works* v *Owen McCarthy L R 7 H L 243* explained The words by the execution of the scheme used in s 42 (a) simply mean through or owing to the execution of the scheme *Hammersmith and City Railway Co* v *Brand I R 4 H L 171* distinguished S 78 does not apply only to land which was originally required for the execution of the scheme but was subsequently found to be unnecessary *Per* TEUNON J —The area fixed and sanctioned as the area comprised in the scheme corresponds with the lands delineated on the plans in England MANI LALL SINGH v TRUSTEES FOR THE IMPROVEMENT OF CALCUTTA (1917)
I L R 45 Calc 343

RECRUITMENT

See EMIGRATION I L R 37 Calc 27
See UNLAWFUL RECRUITMENT

RECTIFICATION

——— of decree—
See MISTAKE I L R 43 Calc 217

——— of mortgage deed—
See SPECIFIC RELIEF ACT s 31
26 C W N 36

——— of Instrument—
See SPECIFIC RELIEF ACT 1877 ss 31 34

——— of Register—
COMPANIES ACT 1882
ss 58 AND 147 I L R 40 Bom 134
See COMPANIES ACT (VII OF 1913)—
s 38 I L R 41 Bom 76
See REGISTER RECTIFICATION OF

——— *Entry in the revenue register—Misunderstanding of an order— Oversight —Natural Justice—Land Revenue Code (Bom Act V of 1879) ss 109 197* Where an entry in the revenue register was due to a misunderstanding of a certain order *Held* that the cause of the error being of the same nature as oversight falling within the description of errors in s 109 of the Land Revenue Code (Bom Act V of 1879) the rectification of the register so as to bring it in accord with the order after hearing both parties was not contrary to natural justice It was a case in which the revenue officer concerned was authorised under s 197 of the said Code to dispense with any judicial or quasi judicial inquiry WASUDEB MAKSHMAN v GOVIND MAHADEV (1911) I L R 36 Bom 315

RECURRING CHARGE

See MAINTENANCE ALLOWANCE
I L R 38 Calc 13

REDEMPTION

See BENGAL REGULATION NO XV OF 1793 I L. R. 34 All. 261
See CIVIL PROCEDURE CODE 1882—
s 13 AND 43
I L. R 33 All. 302
s 13 I L. R 32 All. 215
See CIVIL PROCEDURE CODE 1908—
ss 11 AND 47 I L. R 42 Bom. 246
s 47 O XXI R. 2
I L R 43 Bom. 240
s 148 O XXXIV R. 8.
I L. R. 34 All. 389

REDEMPTION—*contd*

O XXI R 63 4 Pat L J 336

O XXXIV

See EQUITY OF REDEMPTION

See LIMITATION ACT (XV OF 1877) SCH II, ART 148 I L R 36 All 195

ART 134 I L R 36 Bom 146

See LIMITATION ACT 1908—

ss 6 7 AND ART 144
I L R 43 Bom 487

SCH I ARTS 140 141
I L R 40 Bom 239

ARTS 181, 182 I L R 43 Bom 689

See MORTGAGE

See MORTGAGOR AND MORTGAGEE

See PRACTICE
I L R 35 Bom 507

See REDEMPTION SUIT

See REGISTRATION ACT (XVI OF 1908) s 17 I L R 41 Bom 510

See TRANSFER OF PROPERTY ACT 1882—

s 60 I L R 43 All 95 and 638
I L R 45 Bom 117

ss 83 84 I L R 39 All 719

ss 91 to 96

———— clog on—

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 60 I L R 45 Bom 117

———— decree for—

See CIVIL PROCEDURE CODE (1908) O XXXIV R 8 I L R 39 All 396

———— extension of time for—

See CIVIL PROCEDURE CODE 1908—

O I R 10 O XXXIV R 1
I L R 45 Bom 1009

O XXXIV R 8
I L R 35 All 116

———— in the Punjab—

See REDEMPTION OF MORTGAGES (PUNJAB) ACT 1913 I L R 2 Lah 234

———— mortgagee allowed interest and liable to account for mesne profits—

See DEKKHAN AGRICULTURISTS ACT 1879 s 15 I L R 44 Bom 372

———— mortgagor s right to redeem when property purchased by mortgagee at Court sale and later repurchased—

See LIMITATION ACT 1908 ART 134
I L R 44 Bom 848

———— parties in possession claiming independently—

See CIVIL PROCEDURE CODE 1908 O XXXIV R 1 I L R 44 Bom 698

———— transfer by mortgagee effect of—

See LIMITATION ACT 1908 ARTS 134 AND 148 I L R 43 Bom 614

———— right to—

See TRANSFER OF PROPERTY ACT (IV OF 1882) s. 91 I L. R. 39 All. 531

See MORTGAGE I L. R. 39 Calc 828

REDEMPTION—*contd*

———— suit for—

See CIVIL PROCEDURE CODE ACT 1908—

ss 2 97, O XXVI RR 11 12 (?)
I L R 38 Bom 392

s 11 EXPL I L R 35 Bom 504

ss 11 47 I L R 39 Bom. 41

s 47 O XXI RR 100 101
I L R 40 Mad. 964

See COMMISSIONER
I L R 41 Bom 719

See COMPROMISE I L R 42 Calc 801

See DECREE I L R 34 Bom 260

See DEKKHAN AGRICULTURISTS RELIEF ACT (XVII OF 1879)—
I L R 35 Bom 904
I L R 40 Bom 453

ss 2 (?) 10A I L R 38 Bom 18

ss 3 (w) 12 I L R 40 Bom 655

s 10(*a*) I L R 35 Bom 231

s 13 I L R 39 Bom. 587

ss 13 15D 16 I L R 39 Bom 78

See MADRAS CIVIL COURTS ACT (III OF 1873) ss 12 13
I L R 39 Mad. 447

See Mortgage
14 C W N 1001
I L R 47 Calc 377
I L R 48 Calc 22
I L R 39 All. 493
I L R. 43 Bom 334

See MORTGAGOR AND MORTGAGEE.
I L R 43 Bom 357

See REGULATION (XVII OF 1806) s 8
I L R 40 All 387

See TRANSFER OF PROPERTY ACT (I)—
I L R 39 Mad 310

ss 60 67 93 I L R 39 Mad. 896

ss 60 AND 91 I L R

———— *Civil Procedure Code (1877) s 583—Decree for redemption reversed on appeal—Restitution—Jurisdiction of Court to which application for restitution is made to award mesne profits which are not given by Appellate Court decree—Suit to redeem* A mortgagor sued for redemption of a usufructuary mortgage and obtained a decree from the Subordinate Judge under which on payment of the sum decreed to the mortgagee he was put in possession of the mortgaged property but the mortgagee appealed to the High Court which increased the amount payable on redemption by a sum which the mortgagor failed to pay and the mortgagee thereupon applied to the Subordinate Judge for possession and for mesne profits for the period during which he had been out of possession *Held* (upholding the decisions of the Courts in India) that the Subordinate Judge had power under s 583 of the Code of Civil Procedure 1877 to award mesne profits although they had not been expressly given by the decree of the High Court. If the decree was wrong the parties aggrieved had their remedy either by appeal to the High Court or by an application *for* revision The proceedings taken under the decree of the Subordinate Judge culminating in the sale at which the mortgagee purported to purchase the equity of redemption were valid and the appellant as

REDEMPTION—*contd*

assignee of the rights of the mortgagor was held not entitled to redeem. PARBHU DAYAL v MAKBUL AHMAD (1915) I L R 38 All. 163

———— *Suit for—Limitation* The plaintiffs were *Mitakshara* sons At a sale in execution of a decree upon four mortgages against their father the mortgagee defendants in the present suit bought the property now in suit. The plaintiffs were not parties to the suits upon the mortgages Several years after the auction sale they instituted the present suit for an account and to redeem *Held* that the first step necessary for redemption is a declaration that the sale should be set aside that the period of limitation to set aside a sale is one year and that therefore the suits were barred by Art 12 of the Limitation Act 1908 *Query* Whether a *Mitakshara* son can sue to redeem even though he has been deliberately and with notice omitted from a suit upon a mortgage made by his father BHOLA JHA v LALA KALI PRASAD 1 Pat L J 180

———— *Payment of balance whether amounts to—Transfer of Property Act (IV of 1882) ss 60 89 and 95—Code of Civil Procedure (Act V of 1908) O XXXIV r 5* Where there have been payments in part satisfaction of a mortgage the payment of the balance due is as much a redemption as the payment of the whole sum due in a case in which there has been no previous part payment Redemption is effected by the releasing of the security and where the security is extinguished the property is redeemed by the act which extinguishes it S 95 of the Transfer of Property Act 1882 is not limited in its scope to cases in which delivery of possession of the property itself is rendered possible by the fact that the mortgage was an usufructuary mortgage The section is also applicable to cases of simple mortgage where the property not being in the possession of the mortgagee cannot be transferred to the party releasing the security MUSAMMAT HIRA KUER v PALKU SINGH 3 Pat L J 490

REDEMPTION DECREE

See MORTGAGE I L R 43 Bom 703

REDEMPTION OF MORTGAGES (PUNJAB) ACT 1913

———— s 12—*Mortgage redeemed on payment of amount fixed by Collector and possession given to mortgagor—Suit by mortgagee for restoration* The defendant mortgagors applied under Punjab Act II of 1913 to the Collector for redemption of their land and an order was passed in their favour that possession should be given on payment of Rs 1 063 0 6 Possession passed accordingly The plaintiff mortgagee thereupon instituted the present suit for restoration of possession on the ground that a far larger sum was due under the mortgage The first Court found that Rs 1 987 6 0 was due to plaintiffs and that they were entitled to retain possession until they were given the full amount This decision was upheld by the lower Appellate Court The defendants appealed to the High Court *Held* that the provisions of s 12 of the Redemption of Mortgages (Punjab) Act are sufficiently wide to allow a Civil Court to right any wrong done by the Collector in the summary proceedings and if necessary to

REDEMPTION OF MORTGAGES (PUNJAB) ACT 1913—*contd*

S 12—*contd*

restore possession of the land and that the decision of the lower Courts was consequently correct *Balwant Rai v Gheru (85 P R 1917)* distinguished *Lok Chand v Hazar Khan (98 P R 1917)* not followed NIZAM DIN v DAULAT RAM I L R 2 Lah 234

REDUCTION OF RENT

See BENGAL TENANCY I L R 48 Calc 473

RE ENTRY

———— right of—

See LESSOR AND LESSEE I L R 38 Mad. 445

REFERENCE

See BOOKS OF REFERENCE

See COSTS I L R 45 Bom 1286

See JURISDICTION I L R 48 Calc 766

See PRACTICE I L R 42 Calc 819

See ARBITRATION

———— to determine tenure of land—

See BOMBAY REVENUE JURISDICTION ACT (X OF 1876) s 12 I. L R 45 Bom 463

———— *Jury trials—Power of Judge to refer the case of an accused as to whom he agrees with the verdict—Legality of procedure—Criminal Procedure Code (Act V of 1898) s 307 (2)—Confessions of co accused—Corroboration—Sufficiency of circumstances raising a mere suspicion* S 307 (2) of the Criminal Procedure Code contemplates a reference only in the case of those accused as to whom the Judge declines to accept the verdict of the jury When he agrees with them in respect of any particular accused he ought to acquit or convict and sentence the latter as the case may be Confessions of the co accused can be taken into consideration but the Court requires corroboration before acting on them EMPEROR v BABAR ALI GAZI (1914) I L R 42 Calc 789

REFERENCE BY COLLECTOR OF RANGOON

See APPEAL TO PRIVY COUNCIL I L R 40 Calc 21

REFERENCE TO ARBITRATION

See ARBITRATION

———— by some of the disputing parties—

See ARBITRATION I L R 37 Calc 63

———— Subsequent suit—No application to stay—

See ARBITRATION I L R 47 Calc 752

REFERENCE TO FULL BENCH

See RECOUPMENT I L R 45 Calc 343

REFERENCE TO HIGH COURT

See ACQUITTAL I L R 44 Calc 703

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 435 438 I. L R 41 Bom. 47

REFEPENCE TO HIGH COURT—*contd*

See CPIMINAL TRESPASS
I L R 41 Calc 662

See VERDICT OF JURY
I L R 41 Calc 621

REFORMATORY SCHOOLS ACT (VIII OF 1897)

———— s 31— *Youthful offender —Punishment—Powers of Courts dealing with youthful offenders* S 31 of Act VIII of 1897 read with the definition of 'youthful offender' enables practically any Court in the case of an offender under fifteen to deliver him to his parents with or without sureties for his future good behaviour EMPEROR v ABDUL AZIZ (1916) I L P 39 All 141

REFUND

See BOMBAY DISTRICT MUNICIPALITIES ACT (BOM ACT III OF 1901) *s 2* PRO (*b*) AND s 65 CL 4
I L R 45 Bom 64

See BOMBAY CITY IMPROVEMENT TRUST ACT (BOM IV OF 1898), s 48 (*11*) I L R 42 Bom 54

See UNDUE INFLUENCE
I L R 42 Calc 286

REFUND OF COURT FEE

———— *Appeal over valuation of—Partial decree—Memorandum of appeal over valuation of—Court fee paid in excess by inadvertence—Practice* The appellant s agent having by inadvertence over paid court fee on the memorandum of appeal the High Court directed the Taxing Officer to issue the necessary certificate to enable the appellant to obtain a refund of the excess court fee from the Revenue authorities *In the matter of Grant 14 W R 47* referred to HARIHAR GURU *v* ANANDA MAHANTY (1912)
I L R 40 Calc 365

REFUND OF PURCHASE-MONEY

———— suit for—

See EXECUTION OF DECREE
I L R 36 All 529

See SALE IN EXECUTION OF DECREE
I L R 37 Calc 67

REFUSAL BY JUDGE

———— effect of—

See CROSS EXAMINATION
I L R 41 Calc 299

REFUSAL TO GRANT TIME

See ATTACHMENT I L R 40 Calc 105

REGISTER OF BIRTHS

———— admissibility of as evidence—

See HINDU LAW—MINOR
I L R 38 Mad 166

REGISTEP OF DEATHS

———— *Public document—Evidence—Certified copy of entry in the Register admissibility of—Bengal Police Manual 1911 r 124—Evidence Act (I of 1872) ss 35 74 and 114* A register of deaths kept by police officers at *thanas* under the rules made by the Local Government, is a 'public document' within the meaning of s 74 of the Evidence Act Under the provisions of s 114 of that Act the Court is entitled to presume that an entry made in such register was properly made and a certified copy of such entry is admissible in evidence *Ramalinga Reddi v Kotayya I L R 41 Mad 26* referred to TAMIJUDDIN SARKAR *v* TAZU (1918)
I L R 46 Calc 15?

REGISTEP RECTIFICATION OF

See COMPANY I L R 47 Calc 901

COMPANIES ACT 1862 ss 58 AND 147
I L R 40 Bom 134

See COMPANIES ACT 1913—
s 38 I L R 41 Bom 76

See RECTIFICATION

REGISTERED AND UNREGISTERED DOCUMENTS

See REGISTRATION ACT (XVI OF 1908) s 50 I L R 35 All ?1

REGISTERED BOND

See LIMITATION ACT (IX OF 1908) SCH I ARTS 116 AND 66 s 19
I L R 38 Bom 177

REGISTERED COMPANY

See COMPANY

See LIQUIDATOR I L R 43 Calc 586

REGISTEPED LEASE

See LIMITATION ACT (IX OF 1908) SCH. I, ARTS 110 116
I L R 37 Bom 656

See RAIYATI HOLDING
I L R 47 Calc 129

REGISTRATION

See DESIGN I L R 45 Calc 606

See CIVIL PROCEDURE CODE 1908—
O XXIII R 3 I L R 38 All 75
3 Pat L J 43

See COMPROMISE

See COMPANIES ACT ss 28 45 61
I L R 38 Bom 557

See DESIGN I L R 45 Calc 606

See EVIDENCE ACT (I OF 1872) s. 10
I L R 38 All 1

See LAND REGISTRATION ACT (BENG ACT VII OF 1876)
I L R 37 Calc 583

See MORTGAGE I L R 43 Calc 1 & 509

See OUDH ESTATES ACT 1869
I L R 42 All 422
I L R 33 All 344

See PROVIDENT INSURANCE
I L R 42 Calc 300

See RECEIPT I L R 42 Calc 546

See REGISTRATION ACT (III OF 1877)

See REGISTRATION ACT XVI OF 1908

See SPECIFIC PERFORMANCE
14 C W N 65

REGISTRATION—*contd*

See TRANSFER OF PROPERTY ACT 1882—

s. 54 5 Pat L J 715
I L R 40 Bom 313

ss. 54 118 I L R 40 All 187

s. 59 I L R 28 Bom 372

s. 107 I L R 26 Bom 500

s. 123 I L R 45 Bom 164

See TRUSTS ACT s
I L R 26 Bom 396

See WAQFNAMA I L R 42 All 609

———— Fraud of mortgagor unknown to mortgagee —

See CIVIL PROCEDURE CODE 1908 s 109
I L R 42 All 176

———— Lessee on a monthly rent—

See REGISTRATION ACT 1908 s 17
I L R 2 Lah 300

———— Presentation by agent not duly authorised—

See REGISTRATION ACT 1908 s 32
I L R 2 Lah 5

———— Fraudulent by mortgagor—

See CIVIL PROCEDURE CODE 1908 s 109
I L R 42 All. 176

———— effect of—

See TRADE MARK I L R 37 Calc 204

———— if notice by itself—

See NOTICE 25 C W N 49

———— whether Court can go into the question of validity of the document—

See REGISTRATION ACT 1908 s 77
I L R 2 Lah 202

———— of receipt for purchase money—

See REGISTRATION ACT 1908 s 17
I L R 1 Lah 25

———— of transfer of shares—

See COMPANY I L R 36 All 365

————presentation by agent—

See REGISTRATION ACT 1877 ss 32 and 33 I L R 42 All 487

See REGISTRATION ACT 1908
I L R 2 Lah 5

———— Oral sale followed by Registered sale with notice—

See SALE I L R 44 Bom 586

———— of permanent lease granted by occupancy raiyat—

See BENGAL TENANCY ACT 1885 s 85
25 C W N 4

———— suit to compel—

See REGISTRATION ACT (XVI OF 1908)—

ss 36 73 77 I L R 34 All 315

ss. 73 74 77 I L R 34 All 165

———— validity of—

See REGISTRATION ACT 1877 s 28
14 C W N 532

REGISTRATION—*contd*

———— want of—

See CONSTRUCTION OF DOCUMENT
I L R 37 Mad 480

———— *Registration Act (III of 1877) s 17 cl (n)—Endorsement on a mortgage bond of payment made in satisfaction of a previous mortgage debt—Civil Procedure Code (Act XIV of 1882) s 43—Payment by a subsequent mortgagee under s 74 of the Transfer of Property Act (IV of 1882) effect of* The endorsements on a mortgage bond of payments made in satisfaction of a mortgage which payments did not purport to extinguish the mortgage are covered by cl (n) of s 17 of the Registration Act and as such do not require registration *Jiwan Ali Beg v Basa Mal I L R 9 All 108* and *Uppalalandi Kunhi Kutti Ali Haji v Kunnam Mithal Kottaprath Abdul Rahiman I L R 19 Mad 288 followed* HARI NARAIN BANERJEE *v* KUSUM KUMARI DASI (1910) I L R 37 Calc 589

———— *Document—Variation of Terms—Registration Act (XVI of 1908) s 17 (d)* A document which varies the amount to rent to be paid under an existing lease registered as required by s 17 *(d)* of the Indian Registration Act as also the incidents of such payments namely the date of payment and consequences of default of payment requires registration *Durga Prasad Singh v Rajendra Narain Bagchi I L R 37 Calc 293* approved so far as it determines that a document embodying an agreement for reduction of rent under a previously existing lease registered as required by s 17 *(d)* of the Registration Act requires registration LALIT MOHAN GHOSH *v* GOPALI CHUCK COAL COMPANY LD (1911)
I L R 39 Calc 284

———— *Gift—Consent of donor to registration of deed of gift of immovable property not essential to validity of gift* Held that it is not essential to the validity of a gift of immovable property that registration of the deed by which such gift is effected should be either at the instance of or with the consent of the donor *Ramamirtha Ayyan v Gopala Ayyan I L R 19 Mad 433* dissented from PARBATI *v* BAIJ NATH PATHAK (1912) I L R 35 All 3

———— *Instrument reserving a life estate to the maker not a will—Instrument creating interest in adoptive mother—Value of the interest in excess of Rs 100—Registration* Any instrument which confers or reserves a life estate to the maker is not a will A deed of adoption by which an interest is reserved to the wife of the adopter in immovable property which she otherwise would not have possessed and could not have possessed when such interest exceeds in value Rs 100 requires registration PIRSAB VALAD KASIMSAB *v* GURAPPA BASAPPA (1913)
I. L. R. 38 Bom 227

———— *Family settlement—Distribution of family property carried out by means of mutation proceedings—Hindu law—Joint Hindu family—Representative capacity of father* The members of a Hindu family one of whom was a minor entered into a compromise concerning the partition of certain property in the course of mutation proceedings and the partition agreed to was carried into effect by these proceedings *Held* that inasmuch as the minor was represented by his father and there was no evidence of fraud or

REGISTRATION—*contd*

collusion the compromise was binding on him *Held* also that the compromise did not require registration *Kokla* v *Piari Lal I L R 35 All 502* referred to DAYA SHANKAR v HUR LAL (1914) I L R 37 All 105

——— *Unregistered deed of relinquishment of real and personal estate for a joint consideration—Oral evidence of an agreement preceding the written document—Whether admissible in evidence—Indian Evidence Act I of 1872 s 91* The plaintiff appellant sued defendant respondent the widow of Basanta deceased as next heir for possession of the property left by the deceased on the grounds that she had forfeited her rights to a life estate owing to her unchastity The defendant contended *inter alia* that the plaintiff had waived his claim to succeed to the property left by Basanta and in support of this plea put forward a document by which the plaintiff gave up all his rights in Basanta s property real and personal on the condition that defendant paid a sum of Rs 1 000 to a *goushala* The execution of this document was admitted but not its contents *Held* that the document was inadmissible in evidence for want of registration notwithstanding that its execution had been admitted *Satyesh Chunder* v *Dhunput Singh I L R 24 Calc 20* and *Chedambaraam Chetty* v *Karunalyavalanga pulu Taver 3 Mad H C R 342* distinguished *Held* also that s 91 of the Evidence Act rendered inadmissible oral evidence to prove that there was an oral agreement of relinquishment preceding the written document *Held* further that as the consideration could not be apportioned between the real and personal estate relinquished by the deed the latter could not be admitted into evidence even in respect of the personal estate *Beran Petman* v *Ganesh Das 49 P 1916* followed. *Muhammad Bakhsh* v *Mussammat Amir Begum 93 P R 1918* and *Sri Pasupati* v *Sri Raja Vetsa raya 17 Indian Cases 563 573 574* distinguished BISHESHAR LAL v MUSSAMMAT BHURI I L R 1 Lah 436

——— *Constructive notice—Agreement between plaintiff and the defendant s vendor by which the latter restricted the ordinary user of his property—Agreement not a covenant running with land—Agreement if indexed in the register in relation to defendant s property would be notice—Injunction* The plaintiff had entered into an agreement with defendant s vendor by which the latter agreed to a restriction of ordinary user of his property This document was registered and on the strength of it the plaintiff sued to obtain certain reliefs by way of injunction against the defendant Both the lower Courts decreed the plaintiff s claim on the ground that the document was registered and therefore the defendant must be presumed to have had notice of it *Held* that the agreement not being a covenant running with the land but being merely a restrictive covenant by which the defendant s vendor restricted the ordinary user of his property it could not be said that defendant had constructive notice unless the document was indexed in the register in relation to defendant s property *Per* HEATON J—

Registration does not necessarily give notice to anybody of anything But if a registered document is so indexed that an inquirer anxious to ascertain whether there are documents relating to a property which he proposes to buy can find from the index documents relating to that property then it will be held that he has notice of those documents because if he made the enquiry which as a prudent man he ought to make then they would come to his notice" GORDHANDAS VITHALDAS v MOHANLAL MANEK LAL (1920) I L R 45 Bom 1.0

REGISTRATION—*contd*

REGISTRATION ACT (VIII OF 1871)

——— Lease executed before reserving a yearly rent if required registration

See TRANSFER OF PROPERTY ACT 23 C W N 641

REGISTRATION ACT (III OF 1877)

See REGISTRATION

See VENDOR AND PURCHASER I L R 41 Bom 300

——— effect of—

See GIFT I L R 40 Mad 204

——— s 3—

See KABULIYAT I L R 39 Calc 1018

——— ss 3 1 (d) 49—

See SPECIFIC PERFORMANCE 14 C W N 65

——— ss 3 17—

See CIVIL PROCEDURE CODE 1882 s 3.5 I L R 33 Mad. 102

——— ss 3 and 34—*Document creating right to benefits to arise out of land compulsorily registrable—Evidence such document not admissible in if unregistered—Possession under such document only* First defendant obtained possession of certain lands under an unregistered instrument which gave him the right to apportion future rents (over Rs 100 in value) towards an antecedent debt due to him *Held* that the instrument created a right to benefits to arise out of land and was compulsorily registrable under s 17 Indian Registration Act *Venkaje Babaji Naik* v *Shidramapa Balapa Desai I L R 19 Bom 663* followed *Misri Lal* v *Mozhar Husain I L R 13 Calc 262* distinguished *Banshidhar* v *Sant Lal I L R 10 All 133* distinguished Such a document if not registered cannot be admitted in evidence Where defendant s possession arose only out of such an unregistered document he cannot otherwise prove that he was no a trespasser MANGALASWAMI v SUBBIA PILLAI (1910) I L R 34 Mad. 64

——— ss 3 17 40—*Contract to sell—Agreement to lease—Evidence Act s 91* An agreement to execute a sub lease and to get it registered at a future date is a lease within s 3 of the Indian Registration Act III of 1877 and is compulsorily registrable under cl (d) of s 17 Such an agreement to grant a lease which requires registration affects movable property and cannot be received in evidence in a suit for specific performance of such agreement It is immaterial whether possession has passed or not in accordance with the agreement S 49 of the Registration Act indicates that a document should not be received in evidence even where the transaction sought to be proved does not amount to a transfer of interest in immovable property but has only created an obligation to transfer the property NARAYANAN CHETTY v MUTHIAH SERBAI (1910) I L R 35 Mad. 63

REGISTRATION ACT (III OF 1877)—*contd*

——— *Deed of gift in favour of a married minor girl presented for registration by latter's father without authority from executant —Registration if valid—Deed void* Two deeds of gift executed by *K* in favour of his niece *A* who was a minor and married to his adopted son were presented for registration by *A's* father and registered *Held* that upon *A's* marriage her father ceased to be her natural guardian and never having been appointed her legal guardian was not her assignee or representative within the meaning of sec 3 of the Registration Act 1877 Nor was he within the meaning of sec 34 of the Act the representative assignee or agent duly authorised on behalf of *K* The registration of the deeds was therefore illegal invalid and void with the consequence that the deeds themselves were void and unenforceable AMBA (*alias* PADMAVATHI) *v* SHRINIVASA KAMATHI
26 C W N (P C) 369

——— s 17—

See s 3 I L R 34 Mad 64
I L R 35 Mad. 63

See CIVIL PROCEDURE CODE 1882 s 375
I L R 33 Mad 102

See LIMITATION ACT 1877 SCH II ARTS 132 144 I L R 35 Bom 433

See TRANSFER OF PROPERTY ACT s 54 123 I L R 34 Bom 287

——— *Registration—Adoption—Authority to adopt—Whether document a will* A Hindu about three weeks before his death executed a document which was headed by a statement that it was a will in favour of the executant's wife by it the executant after stating that he had long been seriously ill and had no issue said I have consented to your adopting a son at your pleasure and conducting the management of the estate in the best manner None of my heirs shall have cause to raise disputes touching this matter This will has been executed by my consent The document was not registered After the executant's death his widow adopted a son to him *Held* that the document was merely an authority to adopt and not a will and was therefore required to be registered by the last provision in s 17 of the Indian Registration Act 1877 [*Judgment of the High Court affirmed*] BHEEMA DEO *v* BEHARI DEO (1921)
I L R 44 Mad (P C) 733

——— cls (a) (b) and (h)—*Registration Act (XVI of 1908) s 17 excep (v)—Registered conveyance—Simultaneous unregistered document to reconvey—An ordinary agreement to sell—Exemption from registration* The plaintiff and the defendant agreed that plaintiff should nominally sell the property in suit out and out to the defendant and thereafter attorn to him for an amount of rent which would represent reasonable interest A conveyance to this effect was executed and duly registered Contemporaneously the defendant executed an agreement to the plaintiff to re-convey the property for the same consideration namely Rs 1,400 when called upon to do so This agreement was not registered The plaintiff having brought a suit against the defendant for the specific performance of the unregistered agreement to re-convey the lower Courts dismissed the suit on the ground that the agreement was compulsorily registrable under s 17 cls (*a*) and (*b*) of the Registration Act (III of 1877) On second appeal by the plaintiff *Held* reversing the decree, that the agreement did not require registration Separated entirely from the defendant's registered conveyance plaintiff's unregistered document was nothing more than an ordinary agreement to sell and such agreements were expressly exempted from the operation of s 17 cls (*a*) and (*b*) of the Registration Act (III of 1877) by cl (*h*) and of s 17 of the Registration Act (XVI of 1908) by exception (v) Having regard to the form of the document as a whole it was no more than an ordinary agreement to re-convey SAYAD MIR GAZI *v* MIYA ALI (1914) I L R 38 Bom 703

REGISTRATION ACT (III OF 1877)—*contd*

——— cls (a) (b) and (h)—*contd*

——— cls (b) (c)—

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 54 I L R 37 Bom 53

——— cls (b) and (d)—*Lease of palmyra juice—Whether lease of immovable property* Where a document stated that the lessee had taken for lease for two years the palmyra trees in a certain garden and that he would not cut the leaves of any of the trees on which he climbed except those whose leaves had to be cut *Held* that it was not a lease of immovable property and that the interest conveyed by it was not for the purposes of the Registration Act an interest in immovable property *Sukry Kurdeppa v Goondakull Naguireddi* 6 *Mad H C* 71 and *Seeni Chettiar v Santhanathan Chettiar I L R 20 Mad 58* explained and distinguished NATESA *v* TANGAVELU (1914)
I L R 38 Mad 883

——— cl (d)—

——— proviso—*Lease not reserving a yearly rent not within the exemption* The proviso to s 17 (*d*) of the Registration Act will apply only in the case of leases which reserve an annual rent A lease for a term of 3 years which reserves no annual rent but only provides for the payment of a lump sum is compulsorily registrable even when such lump sum is less than the aggregate of three annual instalments of Rs 50 VENKATASAM CHETTY *v* SUPPA PILLAI (1909)
I L R 33 Mad 216

——— *Reservation of annual rent not necessary to bring the document within proviso to cl (d) of s 17* In order to exempt a lease from registration under the proviso to cl (*d*) of s 17 of the registration Act it is not necessary that an annual rent should be reserved. The proviso simply means that if an annual rent is reserved it should not exceed fifty rupees VENKATASAMI CHETTI *v* SUPPA PILLAI (1910)
I L R 34 Mad 90

——— cls (d) (h)—

See LEASE I L R 37 Calc 808

——— *Amalnamah if must be registered when lease intended to be granted a lease in perpetuity—Agreement to lease which contemplated execution of patta and kabulyat but nevertheless intended passing title upon delivery of possession if a document merely creating a right to obtain a subsequent document* Where a document described the land intended to be demised and set out the boundaries thereof and proceeded to say that according to your prayer I grant this *amalnamah* to you for erecting houses after reclaiming

REGISTRATION—*contd*

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——————— *Unregistered deed of relinquishment of real and personal estate for a joint consideration—Oral evidence of an agreement preceding the written document—Whether admissible in evidence—Indian Evidence Act, I of 1872 s 91* The plaintiff appellant sued defendant respondent the widow of Basanta deceased as next heir for possession of the property left by the deceased on the grounds that she had forfeited her rights to a life estate owing to her unchastity The defendant contended *inter alia* that the plaintiff had waived his claim to succeed to the property left by Basanta and in support of this plea put forward a document by which the plaintiff gave up all his rights in Basanta s property real and personal, on the condition that defendant paid a sum of Rs 1 000 to a *gowshala* The execution of this document was admitted but not its contents *Held* that the document was inadmissible in evidence for want of registration notwithstanding that its execution had been admitted *Satyesh Chunder* v *Dhunpul Singh I L R 24 Calc 20* and *Chedambaraam Chetty* v *Karunalyavalanga puly Tayer 3 Mad H C R 342* distinguished *Held* also that s 91 of the Evidence Act rendered inadmissible oral evidence to prove that there was an oral agreement of relinquishment preceding the written document *Held* further that as the consideration could not be apportioned between the real and personal estate relinquished by the deed the latter could not be admitted into evidence even in respect of the personal estate *Bevan Petman* v *Ganesh Das 49 P 1916* followed *Muhammad Bakhsh* v *Mussammat Amir Begum 23 P R 1918* and *Sri Pasupati* v *Sri Raja Vetsa vaya 17 Indian Cases 563 573 574* distinguished BISHESHAR LAL *v* MUSSAMMAT BHURI I L R 1 Lah 436

——————— *Constructive notice—Agreement between plaintiff and the defendant's vendor by which the latter restricted the ordinary user of his property—Agreement not a covenant running with land—Agreement if indexed in the register in relation to defendant s property would be notice—Injunction* The plaintiff had entered into an agreement with defendant s vendor by which the latter agreed to a restriction of ordinary user of his property This document was registered and on the strength of it the plaintiff sued to obtain certain reliefs by way of injunction against the defendant Both the lower Courts decreed the plaintiff s claim on the ground that the document was registered and therefore the defendant must be presumed to have had notice of it *Held* that the agreement not being a covenant running with the land but being merely a restrictive covenant by which the defendant s vendor restricted the ordinary user of his property it could not be said that defendant had constructive notice unless the document was indexed in the register in relation to defendant s property *Per* HEATON J —"Registration does not necessarily give notice to anybody of anything But if a registered document is so indexed that an inquirer anxious to ascertain whether there are documents relating to a property which he proposes to buy can find from the index documents relating to that

REGISTRATION—*contd*

property then it will be held that he has notice of those documents because if he made the enquiry which as a prudent man he ought to make then they would come to his notice" GORDHANDAS VITHALDAS *v* MOHANLAL MANEK LAL (1920) I L R 45 Bom 1,0

REGISTRATION ACT (VIII OF 1871)

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See TRANSFER OF PROPERTY ACT 23 C W N 641

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See REGISTRATION

See VENDOR AND PURCHASER I L R 41 Bom 300

——————— effect of—

See GIFT I L R 40 Mad 204

——————— s 3—

See KABULIYAT I L R 39 Calc 1016

——————— ss 3 1 (d) 49—

See SPECIFIC PERFORMANCE. 14 C W N 65

——————— ss 3 17—

See CIVIL PROCEDURE CODE 1882 s 375 I L R 33 Mad 102

——————— ss 3 and 34—*Document creating right to benefits to arise out of land compulsorily registrable—Evidence such document not admissible in if unregistered—Possession under such document only* First defendant obtained possession of certain lands under an unregistered instrument which gave him the right to apportion future rents (over Rs 100 in value) towards an antecedent debt due to him *Held* that the instrument created a right to benefits to arise out of land and was compulsorily registrable under s 17 Indian Registration Act *Venkaje Babaji Naik* v *Shidramapa Balapa Desai I L R 19 Bom 663* followed *Misri Lal* v *Mozhar Husain I L R 13 Cal 262* distinguished *Banshidhar* v *Sant Lal I L R 10 All 133* distinguished. Such a document if not registered cannot be admitted in evidence Where defendant s possession arose only out of such an unregistered document he cannot otherwise prove that he was not a trespasser MANGALASWAMI *v* SUBBIA PILLAI (1910) I L R 34 Mad 64

——————— ss 3 17 40—*Contract to sell—Agreement to lease—Evidence Act s 91* An agreement to execute a sub lease and to get it registered at a future date is a lease within s 3 of the Indian Registration Act III of 1877 and is compulsorily registrable under cl (d) of s 17 Such an agreement to grant a lease which requires registration affects movable property and cannot be received in evidence in a suit for specific performance of such agreement It is immaterial whether possession has passed or not in accordance with the agreement S 49 of the Registration Act indicates that a document should not be received in evidence even where the transaction sought to be proved does not amount to a transfer of interest in immovable property but has only created an obligation to transfer the property NARAYANAN CHETTY *v* MUTHIAR SERBAI (1910) I L R 35 Mad 63

REGISTRATION ACT (III OF 1877)—*contd*

———— *Deed of gift in favour of a married minor girl presented for registration by latter's father without authority from executant—Registration if valid—Deeds void* Two deeds of gift executed by K in favour of his niece A who was a minor and married to his adopted son were presented for registration by A's father and registered *Held* that upon A's marriage her father ceased to be her natural guardian and never having been appointed her legal guardian was not her assignee or representative within the meaning of sec 3 of the Registration Act 1877 Nor was he within the meaning of sec 34 of the Act the representative assign or agent duly authorized on behalf of A The registration of the deeds was therefore illegal invalid and void with the consequence that the deeds themselves were void and unenforceable AMBA (*alias* PADMAVATHI) *v* SHRINIVASA KAMATHI
26 C W N (P C) 369

———— s 17—

See s 3 I L R 34 Mad 64
I L R 35 Mad. 63

See CIVIL PROCEDURE CODE 1882 s 3 5
I L R 33 Mad 102

See LIMITATION ACT 1877 SCH II ARTS 132 144 I L R 35 Bom 433

See TRANSFER OF PROPERTY ACT s 5, 123 I L R 34 Bom 287

———— *Registration—Adoption—Authority to adopt—Whether document a will* A Hindu about three weeks before his death executed a document which was headed by a statement that it was a will in favour of the executant's wife by it the executant after stating that he had long been seriously ill and had no issue said I have consented to your adopting a son at your pleasure and conducting the management of the estate in the best manner None of my heirs shall have cause to raise disputes touching this matter This will has been executed by my consent The document was not registered After the executant's death his widow adopted a son to him *Held* that the document was merely an authority to adopt and not a will and was therefore required to be registered by the last provision in s 17 of the Indian Registration Act 1877 [*Judgment of the High Court affirmed*] BHEEMA DEO *v* BEHARI DEO (1921)
I L R 44 Mad (P C) 733

———— cls (a) (b) and (h)—*Registration Act (XVI of 1908) s 17 excep (v)—Registered conveyance—Simultaneous unregistered document to reconvey—An ordinary agreement to sell—Exemption from registration* The plaintiff and the defendant agreed that plaintiff should nominally sell the property in suit out and out to the defendant and thereafter attorn to him for an amount of rent which would represent reasonable interest A conveyance to this effect was executed and duly registered Contemporaneously the defendant executed an agreement to the plaintiff to re convey the property for the same consideration namely Rs 1 497 when called upon to do so This agreement was not registered The plaintiff having brought a suit against the defendant for the specific performance of the unregistered agreement to re-convey the lower Courts dismissed the suit on the ground that the agreement was compulsorily registrable under s 17 cls (*a*) and (*b*) of the

REGISTRATION ACT (III OF 1877)—*contd*

———— cls (a) (b) and (h)—*contd*

Registration Act (III of 1877) On second appeal by the plaintiff *Held* reversing the decree that the agreement did not require registration Separated entirely from the defendant's registered conveyance plaintiff's unregistered document was nothing more than an ordinary agreement to sell and such agreements were expressly exempted from the operation of s 17 cls (*a*) and (*b*) of the Registration Act (III of 1877) by cl (*h*) and of s 17 of the Registration Act (XVI of 1908) by exception (v) Having regard to the form of the document as a whole it was no more than an ordinary agreement to re convey SAYAD MIR GAZI *v* MIYA ALI (1914) I L R 38 Bom 703

———— cls (b) (c)—

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 54 I L R 37 Bom 53

———— cls (b) and (d)—*Lease of palmyra juice—Whether lease of immovable property* Where a document stated that the lessee had taken for lease for two years the palmyra trees in a certain garden and that he would not cut the leaves of any of the trees on which he climbed except those whose leaves had to be cut *Held* that it was not a lease of immovable property and that the interest conveyed by it was not for the purposes of the Registration Act an interest in immovable property *Sukry Kurdeppa* v *Goondakull Nagireddi* 6 *Mad H C* 71 and *Seeni Chettiar* v *Santhanathan Chettiar* *I L R 20 Mad 58* explained and distinguished NATESA *v* TANGAVELU (1914)
I L R 38 Mad 883

———— cl (d)—

———— proviso—*Lease not reserving a yearly rent not within the exemption* The proviso to s 17 (*d*) of the Registration Act will apply only in the case of leases which reserve an annual rent A lease for a term of 3 years which reserves no annual rent but only provides for the payment of a lump sum is compulsorily registrable even when such lump sum is less than the aggregate of three annual instalments of Rs 50 VENKATASAMI CHETTY *v* SUBPA PILLAI (1909)
I L R 33 Mad 216

———— *Reservation of annual rent not necessary to bring the document within proviso to cl (d) of s 17* In order to exempt a lease from registration under the proviso to cl (*d*) of s 17 of the registration Act it is not necessary that an annual rent should be reserved. The proviso simply means that if an annual rent is reserved it should not exceed fifty rupees VENKATASAMI CHETTI *v* SUPPA PILLAI (1910)
I L R 34 Mad 90

———— cls (d) (h)—

See LEASE I L R 37 Calc 808

———— *Amalnamah if must be registered when lease intended to be granted a lease in perpetuity—Agreement to lease which contemplated execution of patta and kabuliyat but nevertheless intended passing title upon delivery of possession if a document merely creating a right to obtain a subsequent document* Where a document described the land intended to be demised and set out the boundaries thereof and proceeded to say that according to your prayer I grant this *amalnamah* to you for erecting houses after reclaiming

REGISTRATION ACT (II OF 1877)—*contd*

——— cls (d) (h)—*contd*

the said homestead you will dwell thereon on payment of rent Rs 15 1 0 gds from year to year to our Sarkar you will abide the survey and settlement within a month on executing a *kabuliyat* you will take a *patta* which I shall grant *Held* that the document was plainly an agreement to lease and the lease being apparently a lease in perpetuity the document was compulsorily registrable *Syed Sufdar Reza* v *Amjad Ali I L R 7 Calc 703* followed *Dwarka Nath* v *Ledu Sirdar I L R 33 Calc 502* distinguished That it was not a document merely creating a right to obtain a subsequent document within cl (h) of s 17 of the Registration Act as the parties intended that as soon as possession was taken under the document the title of the grantee would commence and it was not contended that the title of the grantee did not yet commence by reason of his failure to tender a *kabuliyat* to the landlord and obtain from him a *patta* *Narayanan Chetty* v *Muthiah Servai I L R 35 Mad 63* *Champakalatika Mitra* v *Nafar Chandra Pal 15 C W N 536* referred to ELAHI v HUKUM (1913) 18 C W N 38

——— cls (d) (h) (i)—*Agreement to grant permanent lease of property not subject of suit embodied in petition of compromise—Agreement part of consideration of compromise—Decree passed on petition—Specific performance suit for—Admissibility of petition and decree to prove agreement—Petition if agreement for lease* Per MOOKERJEE J —Although an agreement in writing which does not operate as a present demise but is only an agreement for a lease is (having regard to the extended significance of the term lease as defined in s 3 of the Registration Act) required to be registered if the term exceeds one year and the exemptions provided in cls (h) and (i) to s 17 do not apply to leases or agreements for leases s 49 of the Act does not preclude its being received as evidence of any transaction not affecting such property Such a document can therefore be proved by the plaintiff in a suit for specific performance of the agreement to grant the lease *Kondura* v *Gottumukkala 17 Mad L J 218* *Satyendra Nath Bose* v *Anil Chandra Ghosh 14 C W N 66* *Sarat Chandra Ghose* v *Shyamchand Singh I L R 39 Calc 663* relied on *Hurjivan* v *Jamsetji I L R 9 Bom 63* and *Purnanand Das* v *Dharsey I L R 10 Bom 101* not followed Where in a suit for recovery of property *A* the parties entered into a compromise and in a petition to the Court recited the fact *inter alia* that plaintiff had agreed to grant a permanent lease of property *B* to the defendant on certain terms and the Court recorded the compromise in full and made a decree in these terms The suit be decreed in terms of the compromise filed by both parties in a suit for specific enforcement of the agreement embodied in the compromise petition *Held per* MOOKERJEE J —That the agreement for lease embodied in the petition was admissible in evidence to prove the contract to grant the lease *Per* BEACHCROFT J —That the petition simply amounted to a statement to Court that the parties had come to certain terms accompanied by a prayer for a decree on those terms It in itself was not an agreement to lease That the promise to grant a lease of property *B* was part of the consideration for the agreement arrived at concerning property *A* and the Court in its decree was bound to record the whole of the terms of the compromise and the decree though it was final only so far as it related to the subject matter of the suit was admissible in evidence to prove the promise to grant a lease of property *B* Documents referred to in cls (e) to (n) of s 17 of the Registration Act are excepted from the provisions of cls (b) and (c) and not from those of cls (a) and (d) because those documents come within the description of documents in cls (b) and (c) and not within the description of documents in cls (a) and (d) HEMANTA KUMARI DEBI v MIDNAPUR ZEMINDARI Co (1914)

19 C W N 547

——— cl (e)—*Stamp Act (II of 1899) Sch I Art 22—Trusts Act (II of 1882) s 5—Composition deed —Compounding of debts due—Transfer of immovable property—Registration not necessary* With the consent of creditors to the extent of Rs 1 22 000 out of the total number of creditors claiming Rs 1 61 800 of the family firm represented by one *B* the latter executed a deed making over all the specified assets of the family to certain nominated trustees The creditors coming in (by a particular day) under the deed agreed that after all the goods and the properties had been made over to the trustees no other claim whatever with regard to the amounts due to them should remain outstanding against *B* and the minor members of the family but the whole claim should be understood to be written off against them and *B* and the minors were to make use of the deed as a release passed on their behalf The deed also provided that the trustees were to manage the properties for the benefit of the creditors interested and the monies realized from time to time were to be distributed among such creditors in proportion to their claims The properties comprised in the deed movable as well as immovable were transferred to the trustees in due course The deed was unregistered Subsequently in a suit brought by the trustees to recover possession of a house comprised in the deed a question having arisen whether the deed was a composition deed *Held* that the definition of the term composition deed as given in Art 22 Sch I of the Stamp Act (II of 1899) meant the same thing as the term composition deed in s 17 of the Registration Act (III of 1877) that the term so defined covered three classes of instruments (i) an assignment for the benefit of creditors (ii) an agreement whereby payment of a composition or dividend was secured to the creditors and (iii) an inspectorship deed for the purpose of working the debtor's business for the benefit of his creditors that the inclusion of the term composition deed in s 17 of the Registration Act (III of 1877) showed that it was intended to apply to a transfer of immovable property and not to a mere agreement to take fractional payment of money in settlement of claims that the test of a composition deed was that there ought to be a compounding of debts due and that such a deed fell under cl (e) of s 17 of the Registration Act (III of 1877) and did not require registration under that Act nor under the provisions of s 5 of the Trusts Act (II of 1882) *Held* accordingly that the deed in question was a composition deed within the meaning of s 17 cl (e) of the Registration Act (III of 1877) and did not require registration CHANDRASHANKAR v BAI MAGAN (1914) I L R 38 Bom 576

REGISTRATION ACT (II OF 1877)—*contd*

——— Agreement to hand over land in consideration of supply of funds for litigation—

See CHAMPERTY I L R 1 Lah 124

——— cl. (1)—

See RES JUDICATA
I L R 36 Mad 46

——— Cl. (1)—*Document whether Will or an authority to adopt—Registration compulsory of latter* The operative part of a document which the writer called a Will stated that having owing to severe illness had serious misgivings and not having been blessed with an heir apparent the writer had consented to his wife adopting a son at her pleasure and conducting the management of the estate in the best manner *Held*—That the document was not a Will but only a power to adopt and as such ought to have been registered as being an authority to adopt a son not conferred by a Will within the meaning of sec. 17 (1) of the Registration Act of 1877 ANANGA BHANA DEO *v* KUNJA BEHARI
26 C W N 374

——— cl (n)—

See MORTGAGE I L R 37 Calc 589

See RECEIPT I L R 42 Calc 546

——— *Mortgage—Agreement to relinquish portion of principal and all interest—Acknowledgment—Registration Held* that an agreement executed by a mortgagee after the date of the mortgage whereby he relinquished a certain part of the principal and all interests past and future on the mortgage in lieu of certain services rendered by the mortgagor to the mortgagee was a document which required registration to make it admissible in evidence and it could not be said to be an acknowledgment of payment within the meaning of the exception contained in s. 17 cl. (*n*) of the Indian Registration Act 1877 GOBARDHAN SAHI *v* JADUNATH RAI (1913)
I L R 35 All 202

——— ss 17 28 49—

See MORTGAGE I L R 48 Calc 509

——— ss 17 and 49—

See MORTGAGE I L R 48 Calc 1

See OUDH ESTATES ACT (I OF 1869)
I L R 33 All 344

See TRANSFER OF PROPERTY ACT 1882 s 54 I L R 37 Bom 53

——— *Document compulsorily registerable—Registration by mistake in a wrong book—Mistake not to affect parties—Document duly registered—Endorsement releasing mortgaged property for consideration in cash—Registration* A release whereby a father transferred all his rights of ownership in his immovable and moveable property in favour of his son was registered not in Book No 1 but in Book No 4 that is to say not in the Book kept for the registration of documents compulsorily registrable under s 17 of the Registration Act (III of 1877) *Held* that the release must be considered as having been duly registered The father s property was capable of identification and the error of the registrar in registering the document in Book No 4 should not be allowed to affect the parties prejudicially *Sorabji Edalji* v *Ishwardas Jagjivandas* (1897) *I L R* 5 followed An endorsement made by a mortgagee (on the back of the mortgage deed) releasing the mortgaged property in consideration of a cash payment of Rs 700 is a document which requires registration, and not being registered was not admissible in evidence either of the redemption of the property or of the real nature of the original transaction between the parties PARASHRAMPANT *v* RAMA (1909)
I L R 34 Bom 202

REGISTRATION ACT (II OF 1877)—*contd*

——— ss 17 and 49—*contd*

——— *Registration—Compromise not embodied in the decree containing a contract for pre-empt on* The parties to a suit filed a compromise which in addition to setting forth the rights of the parties as to the property in suit went on to provide that if either party sold his share of the property the other party should have a right to pre empt The decree based on this compromise was silent as to the right of pre emption *Held* that the compromise required registration, and not being registered could not be used to support a suit for the pre emption. KASHI KUNBI *v* SUMER KUNBI (1910)
I L R. 32 All 206

——— *Evidence—Petition of compromise unregistered and not embodied in any decree of Court Held* that a petition containing the terms of a compromise between parties to a Revenue Court suit which had been filed in the Court but was unregistered and had not been acted upon or embodied in the Revenue Court s decree could not in a subsequent civil suit be used as evidence of the terms of such compromise the property purporting to be dealt with thereby being above the value of Rs 100 *Sadar ud-din Ahmad* v *Chajju I L R 31 All 13* and *Kashi Kunbi* v *Sumer Kunbi I L R 32 All 206* followed BHAGWAN SAHAI *v* HAR CHAIN (1911)
I L R 33 All 475

——— *Petition to Revenue Court in mutation proceedings—Compromise—Family settlement* A separated Hindu created two usufructuary mortgages on portions of his estate and then died leaving a widow and a daughter The widow held possession for her life time and created a third usufructuary mortgage She died Her daughter laid claim to the estate and applied for entry of her name in the revenue records *M* one of the reversioners contested her application urging that her father was joint with him and not separate The parties came to terms orally The daughter agreed to give up her claim *M* in return agreed to take the estate to pay off the mortgages and to pay a certain sum to the daughter They two then filed a joint petition in which it was stated that the parties had come to terms This statement in the petition was followed by another on behalf of the daughter that as she had given up her claim to the estate she had no objection to mutation of names being made in favour of *M* The Revenue Court s order was that mutation was to be made according to that compromise *M* [illegible] which he had promised to pay executed bonds in favour of her sister s [illegible] never paid the money due thereon [illegible] trary he managed to get the bonds back and kept them Some time afterwards the daughter sued to recover possession of the [illegible]

REGISTRATION ACT (II OF 1877)—*contd.*

——— ss 17 and 49—*contd*

Held that in the circumstances the plaintiff was entitled to a decree conditioned on her paying the amount due on the mortgages JAGRANI v BISHESHAR DUBE (1916)

I L R 38 All 366

——— *Agreement between first and second mortgagees of the same property to share equally money realised from their mortgages—Suit by one of them to recover money realised by the other—Agreement also affecting the mortgaged property* The appellants were the first mortgagees of certain immoveable property and the respondents held a second mortgage of the same property and they came to an agreement that both parties should as regards rights, stand in the same position without claiming prior or subsequent rights and divide and appropriate in equal halves as per terms mentioned herein whatever amounts may be realized on the date of realization. The agreement was found to be made for valuable consideration The appellants having realized part of the estate the respondents sued them in order to obtain their share of the proceeds to which they claimed to be entitled by virtue of the agreement An objection was raised by the appellants that the agreement required registration and not being registered could not be used as evidence *Held* on the construction of the agreement that if the whole effect of the agreement was to provide merely that the realized money was to be divided in equal shares there was nothing to require it to be registered and if on the other hand there were two distinct provisions the one relating to rights of property and the other with regard to the division of the money realized, then as the proceedings in the suit related merely to the question of the realized money the agreement need not be registered for the purpose of being given in evidence in this suit although it might require registration in a suit relating to the regulation of the rights against the estate itself VYRAVAN CHETTI v SUBRAMANIAN CHETTI (1920)

I L R 43 Mad (P C) 660

——— *Deed of authority to adopt executed in Nizam's Dominions by a domiciled subject of that State necessity for registration of—Adoption on such authority—Right of adopted son to succeed to his adoptive mother's father's properties situated in British India—Tenants in common—Adverse possession by the heir of one for more than twelve years—Art 144 of the Limitation Act (XV of 1877)* The Indian Registration Act (III of 1877) does not apply to authorities to adopt executed in Native States by domiciled subjects of those States such documents are valid and are admissible in evidence in British India without registration A person adopted in pursuance of such an authority acquires the status of an adopted son capable of inheriting the separate properties of his adoptive mother's father situated in British India If on the death of *A* a Hindu who held an estate on behalf of himself and other tenants in-common the estate is held exclusively by his widow or daughter as his heir claiming it as his separate property adversely to the other tenants in common for more than twelve years the rights of the latter to recover the estate as tenants in common are barred under Art 144 Limitation Act Art 127 does not apply On the death of the widow or daughter the estate will descend to the heirs of *A* as his separate property VENKATAPPAYYA v VENKATA RANGA ROW (1920)

I L R 43 Mad 288

——— ss 17 49 and 50—

See NOTICE 25 C W N 49

——— ss 17 and 87—

See WAQFNAMA I. L R 43 All. 609

——— *Deed appointing mutwalli of wakf need not be registered* Personal interest of registering officer disentitles him to register and if he in good faith does so overlooking his own interest it is adopted in procedure which is condoned by s 87 of the Registration Act MUHAMMAD RUSTAM ALI KHAN v MAULVI MUSHTAQ HUSAIN 25 C W N 173

——— s 21—*Registration—How far a misdescription of property comprised in a deed may invalidate registration* Where one of several villages comprised in a registered mortgage deed was described as being in a wrong *tappa* the description being notwithstanding this error sufficient for identification, it was *held* that the misdescription was not sufficient to invalidate the mortgage as regards the village in question *Beni Madho Singh* v *Jagat Singh 10 All L J 33* referred to PARSOTAM DAS v PATESRI PARTAB NARAIN SINGH (1913) I L R 35 All 250

——— s 28—

See MORTGAGE I L R 48 Calc 1

——— Jurisdiction of registering officer—*Registration—Validity—Property actually within jurisdiction included in conveyance—Vendor found not to have title in it—Fraud not found* Where the title to the only item of property sold by a *kobala* which would give the Sub Registrar jurisdiction to register it was disputed and ultimately found not to have been in the vendor *Held* that this alone in the absence of fraud on the part of the vendor or the vendee or collusion between them would not render the registration of the *kobala* by the Sub Registrar invalid when the property did in fact exist within his jurisdiction *Baij Nath Tewari* v *Sheo Sahoy Bhagut I L R 18 Calc 556* distinguished BROJO GOPAL MUKERJEE v ABHILASH CHUNDRA BISWAS (1910)

14 C W N 532

——— ss 28, 30 (b) 49—

——— *Property comprised in mortgage non existence of—Onus of proof—Effect of registration by officer not having jurisdiction—Mortgagee title of—Amendment of Schedule to mortgage deed—Property substituted not belonging to mortgagor—Fictitious entry in Schedule to get deed registered in Calcutta—Concurrent findings of fact as to mistake in entries in Schedule—No evidence showing mistake* The plaintiff's (appellants) claim was based on a mortgage decree passed in a suit brought in the High Court at Calcutta on its Original Side to enforce a mortgage executed in the plaintiff's favour The defendants (respondents) were the mortgagor (who did not appear) and two other persons who disputed the mortgagee's title These defendants (who had not been parties to the suit on the mortgage) alleged that the mortgage deed had not been legally registered because no portion of the property mortgaged was situated in Calcutta

REGISTRATION ACT (II OF 1877)—*contd*

——— ss 28, 30 (b) 49—*concld*

where the deed had been regi tered, and the decree had therefore been made by a Court which had no juri diction to entertain a suit on the mortgage and the plaintiff had no title to maintain the suit The only portion of the property in the mortgage deed alleged in the suit on the mortgage to be situate in Calcutta was parcel No 28 in the Schedule and was described as 25 Guru Das Street but the property so described was found to be non-existent, the wrong description being said to be due to a mistake though no evidence of it was given The Court directed an amendment and the description was altered to 25 Ashutosh Dey s Lane which was in Calcutta and was comprised within the same boundaries as tho e given in parcel 28 of the Schedule to the mortgage deed In the present suit no evidence was given either by the mortgagor or the mortgagee to show that there had been any mistake in the description of the property but it was proved by the defendants that the property contained within the boundaries given in parcel 28 was property which did not belong and never had belonged to the mortgagor Both the Courts below like the High Court in the suit on the mortgage found without any evidence that there had been a mistake in the entry of parcel 28 and held that part of the property being in Calcutta the deed had been properly registered there and that the decree in the mortgage suit had been rightly made and with jurisdiction *Held* (reversing those decisions) that it was open to the defendants (not having been parties to the mortgage suit) to contest the validity of the decree and for the same reason the direction of the High Court that the entry in the Schedule should be amended did not affect them and that under the circumstances of the case the onus was on the plaintiff to show that the entry in that parcel was not a fictitious entry which onus he had not discharged And their Lordships on the conduct of that parties and the evidence in the case held that the parcel was in fact a fictitious entry and represented no *property that the mortgagor possessed or intended* to mortgage or that the mortgagee intended to form part of his security Such an entry intentionally made use of by the parties for the purpose of obtaining registration in a district where no part of the property actually charged and intended to be charged in fact existed was a fraud on the Registration law and no registration obtained by means thereof was valid No such fictitious entry inserted to give a colourable appearance to the deed of relating to property in Calcutta when in reality such was not the case could bring the deed within the limited jurisdiction of the Court The High Court therefore had no jurisdiction to make the decree and the deed not having been registered in accordance with the *Registration Act (III of 1877)* the mortgagee had no title to maintain the suit The principle of concurrent findings of fact does not apply to a case of no evidence according to well known principles of law a deci ion that there is no evidence to support a finding being a question of law Where therefore the Subordinate Judge found that the erroneous entry in the S hedule had been made by mistake and the High Court accepted that finding but there was no evidence to show that there was in fact any mistake in the matter *Held* that the finding was one which could be set aside by the Judicial Committee on appeal without departing from their practice of not interfering with concurrent findings of fact HARENDRA LAL ROY CHOWDHURI *v* HARIDASI DEBI (1914)

I L R 41 Calc 972

——— s 32 —*Registration— Presentation* ' Where the executants of a document which it is desired to register are present acquiescing in the handing over of the document to the Registrar for registration, the fact that the physical act of handing the document to the Registrar is performed by a person who is not authorised to present the docummment for registration will not render the presentation invalid NATH MAL *v* ABDUL WAHID KHAN (1912) I L R 34 All. 355

——— ss 32 and 33—

——— *Registration—Presentation of power of attorney for registration—Executant ill and unable to go to registration office—Executant treated as presenter—Mortgage duly registered under power so presented and authenticated* In a suit on a mortgage executed on the 30th of August 1895 a question arose whether the mortgage had been duly registered It appeared from an endorsement by the Sub Registrar on the power of attorney under which it purported to be registered that it was brought to him on the 4th of November 1885 for registration and authentication by a servant of the executant of the power who said that the executant was ill and unable to come himself and asked that the power of attorney might be registered on the spot As that would have been illegal the Sub Registrar on the 6th of November went to the residence of the executant and was satisfied that he was ill and unable without risk and serious inconvenience to attend at the registration office and he read the contents of the power of attorney to the executant who thereupon admitted the execution and completion of the power and asked that after registration the document should be given to the person named as the attorney in it and thereupon the Sub Registrar registered it. *Held* that the presentation by the servant on the 4th of November was inoperative and that the executant himself was the real presenter and was so treated by the Sub Registrar on the 6th of November *Jambu Prasad* v *Muhammad Aftab Ali Khan I L R 37 All 49 L P 42 I A 22* distinguished The person named as attorney in the power presented on the 2nd of January 1896 now sued upon the mortgage of which he had obtained registration under the power of attorney *Held* that the power was duly registered and authenticated in accordance with ss 32 and 33 of the Registration Act (III of 1877) and the subsequent registration of the mortgage under it by the attorney named in it was a valid regi tration BHARAT INDU *v* HAMID ALI KHAN

I L R 42 All 487
25 C W N 73

——— *Registration—Evidence—Presumption of validity of registration—Presumption rebutted by evidence showing document to have been presented by an unauthorised person* Although when the validity of the registration of a document is in question after the lapse of a considerable period of time it is to be presumed that the registration was carried out according to

REGISTRATION ACT (II OF 1877)—*contd*

———— ss 32 and 33—*concld*

law yet when there exists evidence which discloses a fatal defect in procedure as for instance that the person who presented the document for registration was not legally authorized to do so the registration must be *held* to be invalid Such a defect as presentation by an unauthorized person cannot be cured by subsequent admission of execution on the part of the executants *Mohammad Ewaz* v *Brij Lall L R 4 I A 166* and *Majib un nissa* v *Abdur Rahim I L R 23 All 233* referred to *Wilaiti Begam* v *Fa al Husain Khan 9 All L J 148*, and *Ram Chandra Das* v *Farzand Ali Khan I L R 34 All 253* distinguished JAMBU PRASAD *v* MUHAMMAD AFTAB ALI KHAN (1912) I L R 34 All 331

———— *Registration of document by person holding power of attorney Necessity of strict compliance with the section of the statute established* JYANENDRA NATH PAL *v* THE SECRETARY OF STATE FOR INDIA 25 C W N 73

———— ss 32 to 35—*Presentation of documents for registration—Registration of document is presented by an unauthorised person not valid—Jurisdiction of Registering Officer to register document—Admission of execution by executant of deed effect of on registration—Prevention of fraud object of ss 32 to 35—Duty of Courts not to allow defect of provisions of Act* Ss 32 and 33 of the Registration Act (III of 1877) relating to the presentation of documents for registration are imperative and their provisions must be strictly followed and where it was proved that agents who presented deeds of mortgage for registration had not been duly authorized in the manner prescribed by the Act to present them the deeds were held not to be validly registered so as (under s 49) to affect immoveable property or to be received in evidence of any transactions affecting such property or under s 59 of the Transfer of Property Act (IV of 1882) to be effective as mortgages A Registrar or Sub Registrar has no jurisdiction to register a document unless he is moved to do so by a person who has executed or claims under it or by the representative or assign of such person or by an agent of such person representative or assign duly authorized by a power of attorney executed and authenticated in the manner prescribed by s 33 of the Act Executants of a deed who attend a Registering Officer to admit execution of it cannot be treated for the purposes of s 32 of the Act as presenting the deed for registration They would no doubt be assenting to the registration but that would not be sufficient to give the Registering Officer jurisdiction One object of ss 32 to 35 Registration Act III of 1877 was to make it difficult for persons to commit frauds by means of registration under the Act and it is the duty of the Courts in India not to allow the imperative provisions of the Act to be defeated *Ishri Prasad* v *Baijnath I L R 28 All 707* and the principle laid down in *Mujib un nissa* v *Abdur Rahim I L R 23 All 233 L R 28 I A 15* followed JAMBU PRASAD *v* MUHAMMAD AFTAB ALI KHAN (1914) I L R 37 All 49

———— ss 32 60 75—*Registration—Presentation—Endorsement of registering officer—Presumption—Evidence—Evidence Act (I of 1872) s 114*

REGISTRATION ACT (II OF 1877)—*contd*

———— ss 32, 60 75—*concld*

A *document* was presented to a Sub Registrar or registration by a *karinda* of the person in whose favour it was executed It was received for registration Simultaneously with the presentation an application was made to summon the executants They failed to appear and the Sub Registrar considering that execution was not admitted *refused to register* the document The matter came up before the District Registrar by means of an application under s 73 of the Registration Act and the presence of the executants having been secured the District Registrar ordered that the document should be registered The document was apparently then sent by the Registrar to the Sub Registrar by whom it was registered *Held* that in the absence of evidence to the contrary it must be presumed that the *karinda* who presented the document was duly authorized in that behalf and further that even if the Registrar had in fact sent the document direct to the Sub Registrar instead of returning it to the person who had presented it for registration this act alone was not sufficient to invalidate the registration *Mohammad Ewa* v *Brij Lall, L P 4 I A 167* referred to *Mujib un nissa* v *Abdur Rahim I L R 23 All 33* and *Ishri Prasad* v *Baij Nath I L R 28 All 707* distinguished RAM CHANDRA DAS *v* FARZAND ALI KHAN (1912) I L R 34 All. 253

———— s 33—*Registration—Presentation of document by agent holding a power-of attorney—Authentication of power* A document was presented for registration by the agent of a *parda nashin* lady acting under a power of attorney authorizing him generally to present documents for registration on behalf of his principal. The power of attorney was not executed in the presence of the Sub Registrar but the Sub Registrar had gone to the house of the executant questioned her and satisfied himself that the power of attorney have been voluntarily executed and had endorsed the power of attorney with a statement that he had so satisfied himself *Held* that the power of attorney was properly executed and authenticated within the meaning of s 33 of the Indian Registration Act 1877 and the document presented by the executant s agent was validly presented CHUTTAN LAL *v* SHIAM PRASAD (1919) I L R 32 All 1 9

———— s 34—
See s 3 26 C W N 369

———— s 40—
See s 3 I L R 35 Mad 63

———— s 49—
See s 17
See s 28 I. L R 41 Calc. 972
See MORTGAGE I L R 43 Calc 1
See SPECIFIC PERFORMANCE 14 C W N 65

———— s 50—
See NOTICE 25 C W N 49
See SPECIFIC RELIEF ACT (I OF 1877) s 27 I L R 38 All 184

———— *Registration—Mortgage—Priority between registered and unregistered deeds* Property which was the subject of two unregistered.

REGISTRATION ACT (II OF 1877)—*contd*

——— s 50—*concld*

mortgages of different dates was sold in execution of a decree on the latter of the two mortgages and purchased by the decree holder who afterwards sold it by an unregistered deed to Bal Kishan who in turn sold it by a registered deed without making any mention of the prior unregistered mortgage. *Held* that after such sale no suit would lie on the prior unregistered mortgage *Sobhag chand Gulabchand* v *Bhaichand I L R 6 Bom 193 Baldeo Prasad* v *Baldeo All Weekly Notes 1901 112* and *Ram Lal* v *Thakur Bachcha Singh 10 A L J 114* referred to ISHRI PRASAD v GOPI NATH (1912) I L R 34 All 631

——— *Registered document relating to land effect of as against unregistered document—Notice of title created by prior unregistered document effect of on holder of registered document—Burden of proof as to such notice—Possession of person other than vendor if sufficient notice to put purchaser on enquiry—Effect of purchase with such notice* S 50 of the Indian Registration Act has no application when the person who claims title under the subsequent registered document has notice of the title created by the prior unregistered document The burden lies upon the person who alleges such knowledge or notice to aver it in his pleadings and to establish it If a person purchases and takes a conveyance of an estate which he knows to be in the occupation of a person other than the vendor he is bound by all the equities which the person in such possession may have in the land MAGOO BRAHMA v BAKERISHNA DAS (1913) 18 C W N 657

——— s 60—

See s 32 I L R 34 All 253

See EVIDENCE ACT (I OF 1872) s 70 I L R 38 All 1

——— s 73—

See s 32 I L R 34 All 253

——— s 77—

——— *Suit for direction to register documents—Scope of enquiry—Issues—Execution—Compliance with requirements of law—Effect and binding nature of the documents* In a suit for a decree directing the registration of certain documents the enquiry in Court is to be directed to two points only namely (*a*) whether the documents had been executed and (*b*) whether certain requirements of the law as to presentation for registration in due time to the proper office and in the manner generally prescribed by the Registration Act had been complied with by the person presenting the documents for registration. *Raj Lackhi Ghosh* v *Debendra Chundra Mojumdar I L R 24 Calc 668 Balambal Ammal* v *Arunachala Chetti I L R 18 Mad 255 Kanhaya Lal* v *Sardar Singh I L R 29 All 284* The defendant in such a suit may possibly have good reasons why he should not be bound by the documents but the law does not allow him to advance such reasons in a suit under s 77 of the Indian Registration Act W W BROUCKE v RAJAH SHAHED MOHAN BIKRAM SHAH (1909) 14 C W N 12

——— *Suit for registration of a document—Limitation—Order striking off a case for compulsory registration of a document—Review—Final order refusing to register—Period of thirty days when to run from* Where the plaintiff applied

REGISTRATION ACT (II OF 1877)—*concld*

——— s 77—*concld*

to the Registrar for compulsory registration of a deed of sale and the case was struck off but on the plaintiff's application for review the case was restored and the Registrar after taking evidence on both sides made his final order refusing to register the deed and the plaintiff instituted a suit in the Civil Court under s 77 of the Registration Act within 30 days from the date of this order *Held* that the final order of the Registrar made after the restoration of the case was the order of refusal in respect of which the plaintiff was entitled to institute a suit in the Civil Court and the plaintiff's suit was not barred by limitation SHEIK SAJED v SARADA PORSAD CHAUDHURY (1913) 17 C W N 585

——— *Suit for registration of document—Limitation—Last day a holiday—Suit filed on re opening of Court—Stare decisis—General Clauses Act (X of 1887) s 77—General Clauses Act (I of 1897) s 10—Limitation Act (XV of 1877) s 5* Where a Registrar having refused to order the registration of a document on the 29th November the plaintiff instituted a suit for the registration of the document under s 77 Registration Act of 1877 on the 2nd January following the Court being closed on the 29th of December and the following days until it re opened on the 2nd January *Held* that in view of previous decisions of the Court and of the Legislative sanction impliedly accorded to the rule there laid down by the General Clauses Acts of 1887 and 1897 the suit should be held to have been properly instituted *Mayer* v *Harding L R 2 Q B 410* referred to *Hossein Ally* v *Donzelle, I L R 5 Calc 906 Shoshee Bhusan* v *Gobinda Chandra I L R 18 Calc 231 Peary Mohun* v *Ananda Charan I L R 18 Calc 631* commented on *Per* D CHATTERJEE *J*—S 5 of the Limitation Act has no application to suits under s 77 of the Registration Act AHAD BAKSH MOLLA v SHEIKH BAHAR ALI (1912) 16 C W N 721

——— s 87—

See s 17 25 C W N 123

See WAQFNAMA I L R 42 All 609

REGISTRATION ACT (XVI OF 1908)

See REGISTRATION

See CORRESPONDING SECTION OF REGISTRATION ACT 1877 WHICH IS PRACTICALLY IDENTICAL BUT NOTE FOLLOWING DIFFERENCES—

Act III of 1877	*Act XVI of 1908*
2	93
3	2 (Definition of Signature and Signed omitted)
4	3 and 4 (Proviso to s. 3 added)
9	9 (Slight difference in wording)
17(*b*)	17 (2) (ix) [(x) (xi) (xii) are new]
22	22 (2)
23	23 and 24
	22(1) and 23 A new
24	25
25	26
26	Omitted.

REGISTRATION ACT (XVI OF 1908)—*contd*

Act III of 1877	*Act XVI of 1908*
58 (or a cop of a certificate under the Land Improvement Act 1871 sent to the Registrar')	58 (' or a copy sent to the Pegistering Officer under s 89)
82(*d*) ' within the meaning of the Indian Penal Code	Omitted
83 Subordinate Magistrate of the first class	Magistrate of the second class
83 Paragraphs 3 and 4	Omitted
84 A Registrar shall but a sub registrar shall not be deemed a court within the meaning of ss. 435 and 436 of the Criminal Procedure Code s 89	Omitted
89	Amplified owing to enactments later than 1877
92 ' British Burma	Lower Burma

—————— *Mortgage bond—Interpolation by mortgagor—Adding another item belonging to mortgagor for convenience of registration—Registration Fraud on registration law—Document, whether properly executed attested and registered* A document mortgaging only one item of property was duly executed and attested and another item of his property was interpolated by the mortgagor with the knowledge and consent of the mortgagee in the presence of the same attesting witnesses The mortgagor registered the deed in the Sub Registrar s office within whose jurisdiction the latter item was situated It appeared that the object of adding the second item was not so much to give an additional security to the mortgagee as to enable the mortgagor to get the document registered near the place where he was living and thus prevent delay in registering the deed *Held* that there had been no fraud on the registration law and that the document was duly executed attested and registered with regard to both items of property *Harendra Lal Roy Chowdhuri* v *Haridasi Debi (1914) I L P 41 Calc 972 (P C)* distinguished KUNHI SANKARAN NAMBIAR v NARAYANAN TIRUMUNPU (1920) **I L R 43 Mad 405**

—————— s 2 (7)—

See KABULIYAT **I L R 39 Calc 1016**

—————— ss 2 3 17 49—*Admissibility of an unregistered lease—Lease and agreement to lease—Indian Registration Act (XVI of 1908) secs 2 3 17 49—Agreement followed by possession effect of—Doctrine of part performance if applicable—Statute of Frauds—Transfer of Property Act (IV of 1882) sec 107—Suit for specific performance—Estoppel against a statute if available* An agreement to lease intended to operate as a present demise is a lease within the meaning of cl (d) of sec 17 of the Registration Act 1908 and as such is inadmissible in evidence in a suit for specific performance of its terms under sec 49 of the Act if it is not registered even though the tenant is in possession under the said agreement Cases of part performance under sec 4 of the Statute of Frauds have no application to those arising under sec 49 of the Registration Act 1908 as the positions under the two Acts are

REGISTRATION ACT (XVI OF 1908)—*contd*

—————— ss 2 3 17, 49—*concld*

quite different SANJIB CHANDRA SANYAL v SANTOSH K LAHIRI **26 C W N 389**

—————— ss 2 and 17 —*Lease—Agreement to lease—Instrument not registered—Admissibility of instrument in evidence—Suit by lessor to eject lessee—Lessee setting up counter-claim for specific performance of agreement to lease or for damages for its breach by lessor* An agreement to lease which does not operate as an immediate demise of the property does not fall within the definition of lease contained in s 2 of the Registration Act (XVI of 1908) and is admissible in evidence without registration. The question whether an agreement to lease operates as an immediate demise should be determined on the facts of each case *Hemanta Kumari Debi* v *Midnapur Zamindari Company (1920) I L R 47 Calc 485 (P C) s c L R 46 I A 240* followed, *Narayanan Chetty* v *Muthiah Servai (1912) I L R 35 Mad 63 (F B)*, not followed. SWAMINATHA MUDALIAR v RAMASWAMI MUDALIAR (1921) **I L R 44 Mad 399**

—————— *Bainapatra if is an agreement to lease and whether requires registration when it does not effect a present demise* An unregistered *bainapatra* for grant of a putni lease acknowledged receipt of part of the consideration money and contained a promise to grant a putni lease again (with effect) from the date of the *bainapatra* and to exchange pattah and kabuliyat before the 30th Aghran *Held*—That the *bainapatra* did not effect a present demise and should be regarded as an agreement creating a right to obtain a putni lease on the performance of certain conditions on or before the 30th Aghran The document was not an agreement to lease and therefore did not require registration and so was admissible in evidence *Rani Hemanta Kumari Debi* v The *Midnapur Zamindari Co Ltd* 4 C W N 177 (P C) (1919) and *Panchanan Bose* v *Chandi Charan Misra* I L R 37 Cal 808 s c 14 C W N 874 (1910) referred to *Per* CURIAM On the whole we come to the conclusion that the document in question does not effect a present *demise* and *should* be regarded as an agreement creating in the Plaintiff a right to obtain in putni lease on performance of certain conditions on or before the 30th Aghan 1318 HARI NATH BANDOPADHYAYA v PROMOTHO NATH ROY CHAUDHURI **25 C W N 550**

—————— ss 2 17 49—

See AGREEMENT TO LEASE **I L R 47 Calc 485**

—————— s 17—

See s 2

See CIVIL PROCEDURE CODE (1908) O XXIII R 3 **I L R 38 All 75**

See COMPROMISE **3 Pat L J 43 & 255**
I L R 42 Calc 801

See HINDU LAW—PARTITION **I L R 48 Calc 1059**

See HINDU LAW—WIDOW **I L R 38 Bom 224**

See MORTGAGE **I L R 43 Mad 803**

See REGISTRATION

—————— Agreement to retransfer—*Agreement to re transfer property sold on repayment of price*

REGISTRATION ACT (XVI OF 1908)—*contd*

with interest it must be registered Where contemporaneously with a registered deed of sale a document was executed whereby the transferee agreed to retransfer the property to the transferor upon payment by the latter of the sale price with interest within a specified period *Held* that the document was not a reconveyance and did not require registration DWARKA NATH SEN v KESSORY LALL GOSWAMI (1910)
14 C W N 703

———— Memorandum of arrangement between lessor and lessee—*it must be stamped and registered* A document dated the 8th March 1885 which did not demise any property and was neither a lease nor an agreement to lease but was and purported to be a memorandum of an arrangement which had been made with the grantees by the agent of the lessors on their behalf and under which the grantees had taken possession with effect from 12th April 1884 was admissible in evidence although neither stamped nor registered KATAYANI DEBI v PORT CANNING AND LAND IMPROVEMENT Co (1914) 19 C W N 56

———— Rajinama and Kabuliyat—*Mortgage of lands in an Inam village—Mortgagor passing a Rajinama in favour of a third person—Kabuliyat by the person to the Inamdar—Transfer of Khata in Inamdar s books—Extinction of the equity of redemption* One *A* holder of lands in an Inam village mortgaged the lands with one *P* (father of defendants Nos 2 and 3) in 1871 In 1875 *A* passed a Rajinama in favour of one *J* and gave notice to the Inamdar to transfer his khata in the Inamdar s books to the name of *J* *J* on the same day passed a Kabuliyat to the Inamdar agreeing to pay assessment due to Government *J* in turn had the khata transferred to one *K* who in 1878 executed a Rajinama in favour of defendant No 2 In 1913 plaintiffs as the heirs of *A* sued to redeem the property The defendants Nos. 2 and 3 contended that they had become owners of the lands The Subordinate Judge dismissed the suit holding that *A* transferred his interest in the lands by the Rajinama in 1875 and therefore the plaintiffs had no interest in the lands as owners The Assistant Judge in appeal reversed the decree and allowed redemption on the ground that the Rajinama by *A* could not be proved in Court as it required registration On appeal to the High Court *Held* that the plaintiffs suit to redeem must fail as the Rajinamas and Kabuliyats although not registered were good evidence of the transfer having taken place since they were documents between the occupants and his superior holder and not documents between the transferor and the transferee they recited the transfer which had taken place presumably for consideration but they themselves did not purport to operate as transferring any interest to another *Held* further that even assuming that they fell within the terms of s 17 of the Indian Registration Act 1908 as operating to extinguish an interest in immovable property it was not shown that they required registration the interest extinguished by them being of a value less than Rs 100 *Held* also that at the time these transactions took place from 1875 to 1878 it was not necessary according to the law that there should be any document evidencing the transfer but payment of price and delivery of possession completed the transaction IMAM VALAD IBRAHIM v BHAU APPAJI (1917) I L R 41 Bom 510

REGISTRATION ACT (XVI OF 1908)—*contd*

———— Agreement by reversioners to forego right to sue for declaration respecting an alienation by the Hindu widow—*Held* that an agreement by which the reversioners to certain property in the possession of a Hindu widow agreed not to enforce their rights to sue for a declaration that a gift of such property made by the widow was not binding upon them was not a document which was compulsorily registrable under s 17 of the Indian Registration Act 1908 BHANA v GUMAN SINGH (1918)
I L R 40 All 384

————Sub s (1) (*b*)—
See COMPROMISE
3 Pat L J 43

———— sub s (1) (d)—Lease of land dar salne mate—*Lease exceeding one year—Registration compulsory* It was provided by a lease as follows We have taken these three fields for cultivation from you yearly (*dar salne mate*) on condition that we are to pay the assessment We shall go on paying the assessment to Government so long as you give us the fields for cultivation If we say anything false or unfair or if you come to hear of any fraud or deceit on our part or if we practise such fraud or deceit we will restore possession of the fields to you as soon as you ask us to do so *Held* on a construction of the lease that the words *dar salne mate* (year to year) taken in connection with the total absence of any date for the expiry of the tenancy suggested that the parties contemplated that the lease should operate for a period exceeding one year and that therefore it was compulsorily registrable under the provisions of s 17, sub s 1 (*d*) of the Indian Registration Act (XVI of 1908) DHURABHAI v BHULDAS v MOHANLAL MAGANLAL (1917) I L R 41 Bom 458

————————*Lease on a monthly rent—tenant liable to ejectment on a default in payment of rent—whether compulsorily registrable* The plaintiff sued for Rs 18 on account of the rent of a hut and for its possession under a lease entered in his book which was to the effect that plaintiff had let a hut to the defendant who was to pay 8 annas *per mensem* by way of rent and in the event of a default in payment of the rent the tenant was liable to be ejected The question before the High Court was whether the lease could be regarded as a lease for a term exceeding one year and therefore required registration *Held* that section 17 of the Registration Act being a disabling section must be strictly construed and that unless a document is clearly brought within the purview of that section its non registration is no bar to its being admitted in evidence *Held further* that the lease was not one for a period exceeding one year within the meaning of section 17 (1) (*d*) ATTRA v MANGAL SINGH I L R 2 Lah 300

See BENGAL TENANCY ACT 1885 ss 147A AND 29
4 Pat. L. J 667

See HINDU LAW—WIDOW
I L. R. 38 Bom. 225

———— sub-s 1 (b) and (c)—*Sale-deed—Receipt for consideration of sale—Proof of payment—Aliunde—Single Bench rulings as precedents* *Held* following *Ram Chand v Chatta Singh 73 P L R 1910* that a receipt for the

REGISTRATION ACT (XVI OF 1908)—contd.

subs s 1 (b) and (c)—concld

balance of purchase money on an oral sale of land said to have taken place previously is not a sale deed but is registrable under s 17 (c) of the Registration Act as a receipt *Held* also that although an unregistered receipt is not admissible in evidence the payment may be proved *aliunde* *Held* further that Single Bench rulings of this Court if not dissented from or overruled are as much binding upon the Subordinate Courts of the Province as the decisions of Division Benches SHER KHAN *v* MUZAFFAR KHAN

I L R 1 Lah 25

See COMPROMISE **3 Pat L J 255**

——— sub s (2) (v)—COMPROMISE—*Adjustment of decree—Civil Procedure Code (V of 1908) Order XXI r 2—Whether exempted from registration* A compromise made after decree affecting any immoveable property of the value of over Rs 100 and embodied in a petition presented under O XXI r 2 Civil Procedure Code which has been recorded by the Court is exempt from registration. *Hemanta Kumari Debi* v *Midnapur Zamindari Company (1919) 46 I A 240* followed *Chelamanna* v *Rama Rao (1913) I L R 36 Mad 46* and *Raja Venkatappa Nayanim Varu* v *Raja Thimma Nayanim Varu (1914) 27 M L J 656* overruled POORVANAYI AYISSA v KUNDRON CHOKEN (1920) **I L R 43 Mad (F B) 688**

See REGISTRATION ACT 1877 s 17 **I L R 38 Bom 703**

——— sub s 2 (xi)—*Mortgage—Receipt for mortgage money—Registration* A receipt for money due upon a mortgage was given in the following terms — The bond is returned No money remains due *Held* on suit for recovery of the mortgage debt that the receipt did not require to be registered and that the words no money remains due did not purport to extinguish the mortgage PIARI LAL *v* MAKHAN

I L R 34 All 528

——— ss 17 and 49—

See AGREEMENT TO LEASE **I L R 47 Calc 485**

See HINDU LAW—JOINT FAMILY PROPERTY **26 C W N 201**

See TRANSFER OF PROPERTY ACT 1882 s 4 **I L R 44 Mad 55**

———*Registration—Petition to Revenue Courts in Mutation Proceedings—Compromise—Family Settlement* A separate Hindu created two usufructuary mortgages on portions of his estate and then died leaving a widow and a daughter The widow held possession for her life time and created a third usufructuary mortgage She died Her daughter laid claim to the estate and applied for entry of her name in the revenue records *M* one of the reversioners contested her application urging that her father was joint with him and not separate The parties came to terms orally The daughter agreed to give up her claim *M* in return agreed to take the estate to pay off the mortgages and to pay a certain sum to the daughter They two then filed a joint petition in which it was stated that the parties had come to terms This statement in the petition was followed by another on behalf of the daughter that as she had given

REGISTRATION ACT (XVI OF 1908)—contd.

ss 17 and 49—contd

up her claim to the estate she had no objection to mutation of names being made in favour of *M* The Revenue Court s order was that mutation was to be made according to that compromise *M* to secure to the daughter of payment of the money which he had promised to pay executed two bonds in favour of her sister's husband but he never had the money due thereon on the contrary he managed to get the bonds back and kept them. Some time afterwards the daughter sued to recover possession of the property in dispute *Held* that in the circumstances the plaintiff was entitled to a decree conditioned on her paying the amount due on the mortgages JAGRANI *v* BISHESHAR DUBE **I L R 38 All 366**

——— *Act No IV of 1882 (Transfer of Property Act) s 9—Registration—Petition to Court in mutation proceedings—Compromise—Family settlement* The parties to certain mutation proceedings were six nephews of the deceased owner three being sons of one brother two of another and one of a third In the course of the mutation proceedings the parties came to an agreement amongst themselves as to the partition not only of the zamindari property but of certain house property owned by the propositus and also as to the payment of his debts As to the house property the agreement was put into writing and registered and the parties took possession of the house property in accordance therewith Some of them also paid certain of the debts due from the deceased in accordance with the agreement As regards the zamindari property the parties filed in court a petition in which they recited that they had arrived at a settlement of the matters in dispute between them and what that settlement was and they prayed that mutation might be ordered in accordance therewith The settlement was based on the supposition that according to the custom of the tribe to which the parties belonged the nephews were entitled to the property *per stirpes* Subsequently however the three sons of one brother of the propositus brought a suit claiming one half of the property as against the other three The suit was dismissed by the trial court but on appeal the lower appellate court remanded the case for trial on the merits holding that the compromise filed in the mutation proceedings was invalid for want of registration *Held* by KANHAIYA LAL, J (PIGGOTT J *dubitante*) that in the circumstances of the case the petition filed in the mutation proceedings was not a document which required registration But in any case the petition might be treated together with the registered agreement as to the house property and with the fact that some of the debts of the deceased had been paid apparently in pursuance of an agreement between the parties as evidence of an antecedent family settlement of disputed claims which if fairly arrived at without fraud or concealment would be binding on the parties and could not be re opened especially if it had been acted upon BALDEO SINGH *v* UDAL SINGH **I L R 43 All 1**

———The parties to a suit filed a compromise which in addition to setting forth the rights of the parties to the property in suit went on to provide that if either party sold his share the other would have the right to preempt The decree based on the compromise

REGISTRATION ACT (XVI OF 1908)—*contd*

ss. 17 and 49—*contd*

was silent on the point *Held* that the compromise required registration and therefore could not be used. KASHI KUMBI v SUMER KUMBI

I L R 32 All 206

——— *Partition—Unregistered receipt acknowledging acceptance of shares* Plaintiff claimed to be entitled to certain property alleging that the same was allotted to his share on a partition between himself and his brothers. For the purpose of proving the alleged partition plaintiff relied on unregistered receipts signed by his brothers in which they acknowledged having accepted certain portions of the family property *Held* that the receipts required registration and were therefore inadmissible as evidence NILKANTH BHIMJI v HANMANT EKNATH (1920)

I L R 44 Bom 881

——— *Document compulsorily registrable—Assignment of decree for sale of immoveable property* *Held* that a deed of assignment of a final decree for the sale of mortgaged property under O XXXIV r 5 of the Code of Civil Procedure 1908 is not a document which is compulsorily registrable under the provisions of s 17 (*b*) of the Indian Registration Act 1908 *Gopal Narayan v Trimbak Sadashiv I L R 1 Bom 267* and *Mutasaddi Lal v Muhammad Hanif 10 All L J 167* distinguished *Abdul Majid v Muhammad Faizullah I L R 13 All 89* and *Baij Nath Lohea v Binoyendra Nath Palit 6 C W N 5* followed MUMTAZ AHMAD v SRI RAM (1913)

I L R 35 All 524

——— *Lease—Agreement to lease—Property demised in process of construction—Demise from a future date—Document evidencing demise from a future date need not be registered—Offer and acceptance—Specific performance—Optional clause for renewal inserted in a letter of acceptance—Optional clause not binding on the lessor unless accepted by him—Power of an estate manager to bind the owner* In December 1914 the Presidency Post Master was looking for premises for a new Post Office for the Masjid branch and gave the defendant who was then erecting a building particulars as to the nature and extent of the accommodation required On 1st February 1915 the defendant wrote a letter to the Presidency Post Master saying that he shall let on a lease for ten years a portion of the building at Rs 175 a month the defendant making necessary arrangements for the Post Office and keeping the premises ready for occupation by the 1st of April 1916 On the 13th February 1915 the Presidency Post Master replied that he accepted the proposal adding that the Post Master General had desired him to insert an optional clause *i e* giving the Post Office the option to renew the lease for another five years Nothing was said by the defendant with regard to this optional clause but on the 16th February 1915 the defendant's estate manager merely wrote to the Presidency Post Master that he was making the necessary arrangements On 1st April 1916 the Presidency Post Master went into occupation of the defendant's premises though the necessary arrangements were not completed till the following month The Presidency Post Master paid rent at the rate of Rs 175 a month but no steps were taken towards getting a proper lease executed until September 1917 when the Presidency Post Master was given notice to quit Thereupon the Secretary of State for India sued the defendant for specific performance of the agreement of February 1915 by calling upon the defendant to execute a proper lease such lease to contain the optional clause for renewal of the lease The defendant contended *inter alia* that there was no concluded agreement between the parties that he had not accorded his assent to the optional clause to renew the lease and that if his letter of 1st February 1915 and the reply thereto be held to constitute an offer and acceptance of the proposal the same were inadmissible in evidence for want of registration The trial Court decreed the plaintiff's suit The defendant appealed —*Held* (1) that the defendant's letter of the 1st February 1915 and the reply of the Presidency Post Master constituted an offer and acceptance of the proposal and specific performance of that agreement should be decreed (2) that the said letter and reply were admissible in evidence though unregistered as they did not constitute a present demise (3) that the optional clause in the reply of the Presidency Post Master was a counter offer to the defendant and as the same was not accepted by that defendant the plaintiff was not entitled to have the clause inserted in the lease (4) that the estate manager of the defendant had no power to accept the counter offer nor was his letter of the 16th February 1916 an acceptance of such counter offer *Hemanta Kumari Debi v Midnapur Zamindari Company (1919) L R 46 I A 240,* referred to SIR MAHOMED YUSUF v THE SECRETARY OF STATE FOR INDIA (1920)

I L R 45 Bom 8

——— ss 17 50—

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 54 I L R 41 Bom 550

——— ss 17 90—

See LAND REVENUE CODE (BOM ACT V OF 1879) s 74 I L R 41 Bom 170

——— *Registration—Transfer of Property Act (IV of 1882) s 107—Crown Grants Act (XV of 1895) ss 2 and 3—Lease—Lease of Government land by commissioners of a notified area* The commissioners of a notified area let certain plots of land which were the property of the Government and had been handed over to them for administrative purposes The leases ran in the name of the Secretary of State for India and provided that the lessees were to remain in possession for 30 years so long as they fulfilled certain conditions and the lessor had a right of re entry only on breach of certain conditions *Held* that such leases were compulsorily registrable and could not be considered as falling within the purview of s 90 (*d*) of the Indian Registration Act 1908 nor were they excluded from s 107 of the Transfer of Property Act by the operation of the Crown Grants Act 1895 *Dost Muhammad Khan v The Bank of Upper India 3 All L J 122 628* referred to MUNSHI LAL v THE NOTIFIED AREA OF BAROUT (1914) I L R 36 All 176

——— s 23—

See MORTGAGE 16 C W N 55

——— s 23—

See REGISTRATION LAW—FRAUD

I L R 43 [illegible]

REGISTRATION ACT (XVI OF 1908)—*contd*

s 28—*contd*

——— *Registration in district where small portion of property situated—Transfer or not entitled to such property—Whether registration is valid* Where there is any fraud or collusion between the parties for the purpose of giving jurisdiction to a particular Sub Registrar to register a document by including property which does not exist this is sufficient to invalidate the registration but registration is not invalid if the property described exists merely because it transpires that the transferor though acting in a perfectly *bond fide* manner has ceased to have an interest in that property Where property which formed the subject matter of a document registered in Benares were situted party in Benares and partly el e where and it transpired that the transferor had no title to the property situate in Benares *Held* that the registration was valid MUSSAMMAT RAM DAI *v* RAM CHANDARBALI DEBI

4 Pat L J 433

——— *Place of registration—Sale deed—Deed fraudulently registered in a district where none of th property in respect of which it might have been op rative was situated* In order to prevent certain persons interested in the bulk of the property which purported to be sold and which was in the district of Pilibhit becoming aware of the existence of a sale deed the vendor included in the deed a small piece of property situated in the city of Bareilly which in fact did not belong to him and had the sale deed registered in Bareilly *Held* that this transaction was merely a fraudulent evasion of the Registration law and that the sale deed conveyed no title to the purchasers in respect of any of the property comprised in it *Harendra Lal Roy Choudhuri* v *Harida i Debi I L R 41 Calc 972 Jagan Nath* v *Ram Nath 12 All L J 913 Bansraj Singh* v *Rajbans Bharthi 12 All L J 918* and *Purna Chandra Bakshi* v *Nabin Chandra Gangapadhya 8 C W N 362* referred to MANGALI LAL *v* ABID YAR KHAN (1917)

I L R 39 All 523

——— *Place of registration—Security bond—Bond fraudulently registered in a district where none of the property in respect of which it might have been operative was situated* In a bond hypothecating as security for the due fulfil ment of the terms of a mortgage certain immove able property a small piece of land was inserted which did not belong to the obligor and was men tioned only for the purpose of getting the security bond registered in a particular registration sub division *Held* that registration so effected was a fraud on the Registration law and the bond must be treated as unregistered *Mangali Lal* v *Abid Yar Khan I L R 39 All 523* followed *Harendra Lal Roy Choudhuri* v *Haridasi Debi I L R 41 Calc 972* referred to RAM LAL *v* TAMKIN BANO (1919) I L R 41 All 385

——— *Registration—Mortgage regis ered in a particular place by virtue of inclusion therein of property to which the mortgagor had no title—Fraud or collusion not proved* Where property is admitted to be in existence and has been included in a mortgage deed but is shown not to have been the property of the mortgagor the mere fact that the document has been registered in the district to which that property belongs is not sufficient in the absence of evidence of fraud or collusion between the mortgagor and the mortgagee to invalidate the registration when that property is the only property hypothecated within the registration district *Brojogopal Mukerjee* v *Abhilash Chandra Biswas 14 C W N 55*° followed *Harendra Lal Roy Chowdhuri* v *Haridasi Debi I L R 41 Calc 792* distinguished PAHLADI LAL *v* MUSAMMAT LABAITI (1918)

I L R 41 All. 22

REGISTRATION ACT (XVI OF 1908)—*contd*

s 28—*concld*

——— ss 31 32 52 87—*Registration— Presentation' —Presentation by a person not an authorized agent of the executant—Procedure—Invalid presentation not a mere question of procedure* Where a document is presented for registration by a person not duly authorized to present it according to the law applicable to registration of documents such presentation is altogether invalid and its subsequent registration made upon the admission of the executant before an officer who had no jurisdiction to accept the document for regi tra tion is likewise invalid *Majib un nissa* v *Abdur Rahim I L R 23 All °33* followed KHALIL UD DIN AHMAD *v* BANNI BIBI (1912)

I L R 35 All. 34

——— s 32—

——— *Presentation —Presentation by a servant of the mortgagor in the presence of the mortgagor* Where a mortgage deed was handed over to the sub registrar for the purpose of registration by a person other than the mortgagor but the mortgagor was present assenting to the registration of the document with full knowledge of what was being done in the office of the sub registrar *Held* that the presentation was a valid presentation within the meaning of s 32 of the Registration Act *Nath Mal* v *Abdul Wahid Khan I L R 34 All 355* followed *Mujib un nissa* v *Abdur Rahim I L R 23 All 233* distinguished *Jambu Prasad* v *Aftab Ali Khan I L R 34 All 331* not followed KARTA KISAN *v* HARNAM CHAND (1912)

I L R 35 All. 12

——— *Registration— Presentation —Physical delivery of document by person not authori ed to present it but executant present and assenting whilst registration was going on* Where it is shown that prior to the registration of the document by the duly authorized official a person competent to present the document for registration was present before that official assenting to the registration the requirements of the Registration Act are sufficiently complied with. *Mujib un nissa* v *Abdur Rahim I L R 23 All 233* and *Karta Kishan* v *Har Narain I L R 35 All 72* referred to ATMA RAM *v* UGRA SEN (1912) I L R 35 All. 134

——— ss 32 33 71 73 75 87 88—*Mortgage deed—Registration—Presentation—Authority to present document for registration on behalf of executant—Distinction between presentation under part VI and under part XII of the Act* A mortgage deed was executed on the 20th of November 1911 Before however the deed could be registered the mortgagee fell ill On the 3rd of February 1912 the mortgagee executed in favour of a pleader a power of attorney of the kind referred to in s 32 of the Indian Registration Act 1908 This was duly authenticated by the sub registrar and the document was presented for registration by the appointee on the 5th of February 191°

REGISTRATION ACT (XVI OF 1908)—*contd*

ss 32, 33 71, 73 75, 87 88—*concld*

On the 8th of February the mortgagee died The mortgagor failed to appear before the sub registrar and admit execution and the sub registrar refused to register the deed An application was next presented to the Registrar under s. 73 of the Act by the widow of the mortgagee in the capacity of the guardian of the mortgagee s two minor sons and on the 28th of June, 1912 the Registrar made an order under s 75 (1) of the Act directing that the mortgage deed should be registered Mean while the estate of the minors had been taken under the superintendence of the Court of Wards and the Collector as Manager on behalf the Court of Wards on the 23rd of July 1912 sent the mortgage deed by a messenger to the sub registrar with a copy of the Registrar s order mentioned above and an official letter requesting that the document might be registered which was accordingly done On suit having been brought on the the mortgage some of the defendants raised an objection that the mortgage deed in suit was not validly registered *Held* that the document was properly registered No valid objection could be sustained as to its presentation, either on the 5th of February 1912 when it was presented by the pleader acting under his power of attorney given by the mortgagee or on the 23rd of July 1912 when it was sent by the Collector to the sub registrar The Collector was not bound to present the document in person and that being so it was immaterial what means he took to bring it before the sub registrar That officer was perfectly justified in presuming the authenticity of the Collector s official letter and in taking action accordingly COLLECTOR OF MORADABAD v. MAQBUL-UL RAHMAN (1918) I L R 40 All 434

——— ss 32, 35 49 and 60—*Presentment of document for registration by a person not properly authoris I—Limitation—Declaratory suit in respect of a gift of land and houses—Indian Limitation Act IX of 1908 articles 120 and 125* On 14th June 1904 the widow of *A K* executed a gift by which she gave 2 498 *bighas* and 10 *biswas* of land and a house belonging to her deceased husband to *H N* one of her 2 daughters On the 30th January 1905 *A B* plaintiff the other daughter executed a deed of release in which she consented to the gift and gave up her rights to the property gifted Notwithstanding this she brought the present suit for a declaration that the gift should not affect her reversionary rights The first Court gave her a decree as regards both the land and the house The Lower Appellate Court upheld the decree in regard to the land but held that the suit was barred by time as regards the house Both parties appealed to the High Court It was contended by the plaintiff that though the deed of release was a registered one it was inadmissible in evidence owing to defects in registration as the person presenting it on behalf of the plaintiff had no power of attorney *Held* following *Jambu Prasad* v *Muhammad Aftab Ali* [*I L R 37 All 49 (P C)*] that sections 32 and 33 of the Registration Act relating to the presentation of documents for registration are imperative and their provisions must be strictly followed and therefore if the Agent who presented deed for registration had not been duly authorised in the manner prescribed by the Act the deed would not be validly registered so as (under section 49) to affect immovable property or to be received in evidence of any transactions affecting such property One object of sections 32 to 35 of the Registration Act is to make it difficult for persons to commit fraud by means of registration under the Act, and it is the duty of the Courts not to allow the imperative provisions of the Act to be defeated *Held further* that the presumption is that the owner of a house is owner of the site also and therefore article 125 of the Limitation Act applies to this suit in regard to the house (included in the gift) as well as to the land *Dev Raj* v *Shiv Ram* (*70 P R 1914*) *distinguished* *Soman Singh* v *Uttam Chand* (*I L R 1 Lahore 69*) referred to *Pulla Ram* v *Sher Singh* (*5 Indian Cases 849*) followed MUSSAMMAT AMIR BEGUM v. MUST HUSSAIN BIBI I L R 2 Lah 5

REGISTRATION ACT (XVI OF 1908)—*contd*

ss 32, 35 49 and 60—*concld*

——— s 35—*Registration of deed of gift—Death of donor—Execution admitted by donee—Registration if proper* The donee under a deed of gift is an assign of the executant within the meaning of s 35 of the Registration Act and may when the donor is dead admit the execution of the deed before the Registering Officer AKHOY CHANDRA MAJHI v. MANMATHA NATH CHATTERJEE (1916) 20 C W N 1345

——— ss 36 73 77—*Registration—Refusal of Sub Registrar to register—Appeal to Registrar—Refusal to register based on inability to procure attendance of executants—Suit to compel registration* A sale deed was presented for registration but the executants did not appear before the Sub-Registrar who after four months from the date of execution reported the fact to the Registrar and was directed by the latter not to register it Registration was accordingly refused An appeal against that order to the Registrar was dismissed. It appeared that the summonses by the Sub Registrar to the executants had been returned unserved The vendees brought a suit for registration of the document *Held* that the suit was maintainable the refusal by the Sub Registrar to register not being based upon denial of execution *Luckhi Narain Khettry* v *Sat Courie Pyne I L R 16 Calc 189* distinguished. KHADIM HUSAIN v. BHARAT SINGH (1912) I L R 34 All. 315

——— s 41 (2)—*Enquiry before a Sub Registrar regarding a disputed will—Deposition of witnesses admissibility of under s 33 of the Evidence Act* The depositions of witnesses (since deceased) examined at an enquiry held by a Sub-Registrar under s 41 (2) of the Indian Registration Act regarding the genuineness of a will at which the opposing parties had opportunity of cross examination are admissible in evidence under s 33 of the Evidence Act in a subsequent suit raising the same question between the same parties. It is not necessary that the first proceeding referred in s 33 of the Evidence Act should be a judicial proceeding LAKSHMANNA v. VARDHANAMMA (1918) I L R 42 Mad. 103

——— s 47—

See AGRA TENANCY ACT (II OF 1901) s 97 I L R 37 All 59

——— *Time from which registered document operates—Date of execution and not*

REGISTRATION ACT (XVI OF 1908)—*contd*

———— s 47—*concld*

date of registration The plaintiff purchased a certain property The vendor on receipt of con sideration executed a deed of sale in his favour but thereafter he executed a second conveyance in respect of the same property in favour of a third person who had no notice of the plaintiff's pur chase and had the latter document registered first and put the second purchaser in possession RAJANI NATH DAS v OPAJUDDI MOLLA (1916)
22 C W N 318

———— s 49—

See s 2 28 C W N 399
See s 17

———————— *Registration—Evidence of title—Petition of compromise in a mutation case and order thereon* *Held* that a petition of com promi e filed in a mutation case before a Court of Revenue and the order of the Court thereon can neither effect nor prove a conveyance of the immoveable property to which the mutation proceedings may relate *Pranal Anni* v *Lakshmi Anni I L R 22 Mad 508 Raghubans Mani Singh* v *Mahabir Singh I L R 28 All 78 Kashi Kunbi* v *Sumer Kunbi I L R 32 All 206 Biraj Mohini Dasee* v *Kedar Nath Karmakar I L R 35 Calc 1010 Muthayya* v *Venkataratnam I L R 25 Mad 553* and *Sadar ud din Ahmad* v *Chajju I L R 31 All 13* referred to RUSTOM ALI KHAN v GAURA (1911) I L R 33 All 728

———————— *Mortgage by deposit of title deeds—Agreement to mortgage—Document containing agreement to mortgage registration of if necessary—Admissibility of document for any purpose* Where the plaintiff who had executed a mortgage by deposit of title deeds executed a promissory note to the defendant and agreed that the latter should pay off the mortgage and recover the title deeds from the mortgagee and retain them himself as additional security and the terms of the agreement were embodied in two documents which were not registered *Held* that the documents required to be registered and were inadmissible in evidence in respect of any of the terms contained therein under s 49 of the Registration Act (XVI of 1908) *Moore* v *Culverhouse 27 Beav 639 54 E R 254* and *Neve* v *Pennel 2 H & M 170* followed *Kedarnath* v *Shamlall Khettry 11 B L R 405* distin guished. SWAMI CHETTY v ETHIRAJULU NAIDU (1916) I L R 40 Mad 547

———— s 50—

See SPECIFIC RELIEF ACT 1877 s 27
I L R 38 All 184
See TRANSFER OF PROPERTY ACT 1882 s 54
I L R 41 Bom 550

———————— *Registered and unregistered documents—Priority—Effect on rights of prior unregistered mortgagee of sale in execution of a decree on a subsequent registered mortgage* When property is sold in execution of a decree on a sub sequent registered mortgage taking priority over a prior unregistered mortgage such sale does not have the effect of invalidating the prior mortgage or of extinguishing altogether the rights of the mortgagee thereunder but his debt would still be recoverable from the surplus if any left after the satisfaction of the registered mortgage DHAN PAL SINGH v BUDH SINGH (1913)
I L R 35 All 271

REGISTRATION ACT (XVI OF 1908)—*contd*

———— s 52—

See s 31 I L R 35 All. 34

———— ss 71—75—

See s 32 I L R 40 All. 434

———— ss 72 76 and 77—

See s 77 24 C W N 504

———————— *Refusal of Registrar to direct Sub Registrar to register a document whether a refusal to register it—Limitation—Thirty days in s 77—Time from which to be computed* A document was presented for registration to the Sub Registrar on the last day of the four months allowed for presentation but the Sub Registrar declined to receive it owing to pressure of other work At the suggestion of the Sub Registrar it was presented the next day with an application to the Registrar to execute the delay in presen s tion On the refusal of the Registrar to excuse the delay the Sub Registrar refu ed to reg ter the document From this order an appeal was filed before the Registrar and it was dismi ed. The present suit was filed within thirty days of the dismissal of the appeal under s 77 of the Indian Registration Act but more than thirty days after the order refusing to extend time *Held* (i) that the order of the Registrar on appeal refusing to direct the Sub-Registrar to register the document was a refusal to register' within ss 77 76 and 72 (i) of the Act and (ii) that the suit was filed in time as the thirty days allowed for filing by s 77 must be counted from the date of the order on appeal and not from the date of the order refusing to extend time There is no distinction between a refusal to accept a docu ment for registration and a refusal to register it *Narasimha Nayanavaru* v *Ramalingam Rao 10 Mad L J 104* and *Sivarama Pattar Karnakar* v *Krishnaiyar 26 Mad L J 307* followed *Kunhimmu* v *Viyyathamma I L R 7 Mad. 535* distinguished *Gangava* v *Sayava I L R 21 Bom 699 Balambal Ammal* v *Arunachala Chetti I L R 18 Mad 255* and *Veeramma* v *Abbiah I L R 18 Mad 99* not followed. GANGADARA v SAMBASIVA (1916) I L R 40 Mad 759

———— ss 73 74 77—*Registration—Refusal to register—Inquiry ordered but application dismissed on account of parties failing to attend—Suit to compel registration* A Sub Registrar refu ed to register a document presented to him and on the application of one of the parties, the Registrar directed an inquiry under s 74 of the Indian Registration Act 1908 On the date fixed for the inquiry however the parties failed to appear and the Registrar accordingly dismissed the application *Held* that this amounted to a refu al to register within the meaning of s 77 of the Act and a suit to compel registration would lie *Sajib ullah Sirkar* v *Haji Khosh Mohamed Sirkar I L R 13 Calc 264* followed *Udit Upadhia* v *Imam Bandi Bibi I L R 24 All 407* distinguished. ABDUL HAKIM KHAN v CHANDAN (1911)
I L R 34 All 165

———— s 77—

See s 72 I L R 40 Mad. 759
See EVIDENCE ACT (I OF 18–) s 165 I L R 41 Mad. –31

REGISTRATION ACT (XVI OF 1908)—*contd*

——— s 77—*concld*

See LIMITATION I L R 47 Calc 300
I L R 38 Mad 291

——— *Period of 30 days provided by s 77 Registration Act (XVI of 1908) if can be extended on ground of prosecution of proceedings in good faith in Court not having jurisdiction* A suit for the registration of a mortgage bond for Rs 1 000 was filed in the Court of the Munsif being valued at Rs 500 and on the Court holding it to be undervalued the plaint was amended and the suit was valued at Rs 1 000 whereupon the plaint was returned as being beyond the pecuniary limit of the jurisdiction of the Court It was then filed in the Court of the Subordinate Judge and was dismissed as barred by limitation *Held* that under s 29 (1) (*b*) of the Limitation Act nothing in that enactment affects or alters any period of limitation specially prescribed for any suit, appeal or application by any special or local law and inasmuch as ss 71 to 77 of the Registration Act lay down a complete procedure where registration is refused and as s 77 limits the period within which a suit is to be brought to 30 days, the said period cannot be extended under s 14 of the Limitation Act on the ground of prosecution of proceedings in good faith in a Court not having jurisdiction in the matter KHAGENDRA NARAYAN ROY BARMAN *v* BAMANI BARMANI
24 C W N 29

———*Held* that s 14 of the Limitation Act cannot be applied to compute the period of limitation prescribed by s 77 of the Registration Act for a suit to enforce the registration of a document KALIMUDDIN MOLLAH *v* SAHIBUDDIN MOLLAH 24 C W N 4

——— *Whether Court can enter into the question of the validity of the document—Punjab Alienation of Land Act XIII of 1900 s 17—New charge on old security—whether a new mortgage* *Held* that in a suit for the registration of a document under s 77 of the Registration Act the District Judge is not entitled to enquire into anything more than whether the ostensible executant signed and delivered to the other party the document which he produced for registration and he cannot enter into any question regarding its validity *Nawab* v *Arjan Das (13 P R 1904)* followed *Held* further that where a mortgage has been effected before the 8th June 1901 and a further advance is made after that date on the old security the further advance is not a new mortgage provided that no changes are made in the terms of the original transaction *Shadi Lal's Punjab Alienation of Land Act p 41* and *Financial Commissioner s Standing Order No 1 dated 2nd September 1914* referred to REMAL DAS *v* MUSSAMMAT JANNAT
I L R 2 Lah 202

——— ss 77 72 76—*Suit for registration of document registration whereof refused on the ground of non payment of penalty in due time* Refusal by a Sub Registrar to register a document on the ground of failure to pay penalty in due time is an order refusing registration under s 72 of the Registration Act and is appealable to the Registrar and on the dismissal of such appeal a suit lies under s 77 for the registration of the document UMESH CHANDRA GHOSH *v* NISTARINI BASU
24 C W N 304

REGISTRATION ACT (XVI OF 1908)—*concld*

——— ss 82 83—

——— *Permission of registration officer a necessary preliminary to a prosecution* *Held* that the permission referred to in s 83 of the Indian Registration Act 1908 is a necessary condition precedent to the prosecution of any person for an offence mentioned in s 82 of the Act *King Emperor* v *Jiwan 27 Indian Cases 208* referred to EMPEROR *v* HUSAIN KHAN (1916) I L R 38 All 354

——— *Offence under s 82—Prosecution by a private person—Permission under s 83 whether necessary* Permission under s 83 of the Registration Act (XVI of 1908) is not a preliminary requisite for the institution by a private person of proceedings for an offence under s 82 of the Act *Gopinath* v *Kuldip Singh I L R 11 Calc 566* and *Queen Empress* v *Vithilinga I L R 11 Mad 500* referred to RE NADATHI (1917) I L R 40 Mad 880

——— s 83—

See CRIMINAL PROCEDURE CODE
s 213 I L R 38 Bom 114
s 413 I L R 39 All 293

——— ss 87 and 88—

See s 31 I L R 35 All 34
See s 32 I L R 40 All 434

——— s 90—

See s 17 I L R 36 All 176

See BOMBAY LAND REVENUE CODE
I L R 41 Bom 170
I L R 45 Bom 898

See RAJINAMA AND KABULIYAT
I L R 42 Bom 359

——— cl (1) (d)—*Consultation—Rule of ejusdem generis—Lease of lands by Government—Document executed by lessee but not registered whether admissible in evidence—Prohibition in lease against erection of buildings—Power of Government to impose conditions—Crown Grants Act (XV of 1895) ss 2 and 3—Power whether affected by Malabar Compensation for Tenants Improvements Act (I of 1900) s 19* A lease of lands made by Government was evidenced by an unregistered document executed by the lessee it contained an undertaking by the lessee not to erect buildings on the land the latter however built on the lands contrary to the agreement In a suit by the Secretary of State to eject the lessee *Held* that the document did not require registration as it fell under s 90 cl. (1) (*d*) of the Registration Act and was admissible in evidence The expression other document etc in s 90 Registration Act should not be construed *ejusdem generis* with sanads and inam title deeds in the previous part of the section but even if so construed a lease is of the same character as a sanad and the words grants or assignments of interest in the same section are comprehensive enough to include a lease Under ss 2 and 3 of the Crown Grants Act the Government has power to impose restrictions in a lease made by it—a power which is not effected by the provisions of the Malabar Compensation for Tenants Improvements Act *Munshilal* v *The Notified Area of Barant (1914) I L R 36 All 176* dissented from MOOSA KUTTI *v* THE SECRETARY OF STATE (1920)
I L R 43 Mad

REGISTRATION LAW FRAUD ON

See REGISTRATION ACT 1908 s 28

——— *Sale deed—Including a cent of land to enable a Sub Registrar to register—Item of land real and owned by vendor—No intention to pass title to vendee—Registration whether valid* The inclusion of an item of property belonging to the vendor in a sale deed without any intention of passing title in it and purely for the purpose of making the deed available for registration in a particular place is a fraud upon the registration law, and such sale deed must be deemed not to have been properly registered NARASIMHA RAO *v* PAPUNNA (1920)

I L R 43 Mad 436

REGISTRATION OF DOCUMENTS

——— *Agreement to lease—Creation of future rights—Absence of actual Demise—Compromise Decree—Matters outside suit—Civil Procedure Code (XIV of 1882) s 375—Registration Act (XVI of 1908), s 2 (7) s 17, sub s 1 (b) (d) sub s 2 (ii) s 49* A petition setting out the terms of an agreement in compromise of a suit stated as one of the terms that the plaintiff agreed that if she succeeded in another suit which she had brought to recover certain land other than that to which the compromised suit related she would grant to the defendants a lease of that land upon specified terms The petition was recited in full in the decree made in the compromised suit under s 375 of the Code of Civil Procedure 1882 The present suit was brought for specific performance of the agreement *Held* (1) that as the agreement did not affect an actual demise of the land or operate as a lease it was not an agreement to lease within s 2 (7) of the Indian Registration Act 1908 so as to be required by s 17 sub s 1 (d) to be registered (2) that s 17 sub s 2 (ii) which provides that s 17 sub s 1 (b) and (c) are not to apply to a decree of a Court extends to the whole of a decree not merely that part which is operative as a decree (3) that consequently s 49 of the Act did not preclude the decree from being given as evidence of the agreement *Panchanan Bose v Chandra Charan Misra I L R 37 Calc 808 Pranal Annee v Lakshmi Annee L R 26 I A 101* applied HEMANTA KUMARI DEBI *v* MIDNAPUR ZAMINDARI COMPANY (1919) L R 46 I A 240

REGISTRATION OFFICER

See REGISTRATION ACT (XVI OF 1908) ss 82 83 I L R 38 All 354

REGISTRATION OF NAME

See IJARADAR

I L R 48 Calc 1078

REGISTRY OF VESSELS

See COASTING VESSELS ACT ss 4 7 13

I L R 38 Bom 111

RE GRANT OF LAND

See BOMBAY LAND REVENUE CODE (BOM ACT V OF 1879 AS AMENDED BY BOM ACT VI OF 1901) s 56

I L R 37 Bom 692

REGULATIONS

See BENGAL REGULATIONS

See BOMBAY REGULATIONS

See MADRAS REGULATIONS

REGULATIONS—*contd*

——— 1778—I—

See CONSTRUCTION OF DOCUMENT I L R 38 All 570

——— 1793—I—

ss 2 and 8—

See MINERAL RIGHTS 5 Pat L J 273

s 8 cl (4)—

See CHAUKIDARI CHAKRAN LANDS I L R 42 Calc 710

——— 1793—II—

See ESTATE PARTITION ACT 189 s. 11 1 Pat L J 491

——— 1793—VIII—

s 41—

See CHOWKIDARI ACT 1870 15 C W N 300

ss 52 54—

See ILLEGAL CESS I L R 45 Calc 259

ss 54, 55—

See ABWAB I L R 40 Calc 808

——— 1793—XIX—

s 2—

See MINERAL RIGHT 5 Pat L J 273

ss 22 to 25—

See LAKHERAJ LANDS I L R 45 Calc 574

——— 1793—XXXVI—

See HINDU LAW—WILL. 1 Pat L J 16

——— 1793—XXXVII—

s 15—

See JAIGIR I L R 42 Calc 305

——— 1799—V—

——— s 5—*Order if can be made when no regular suit has been brought by the claimants* When no regular suit has been brought by the persons who claim the property dealt with by the Court an order under s 5 of Reg V of 1799 is *ultra vires* BALIA KOER *v* BANDHAM SAHU (1914) 20 C W N 523

——— 1800—VIII—

See PARTITION I L R 47 Calc 354

——— *Regulation VIII of 1800* Mulki papers or returns filed by clakadars under the provisions of Reg VIII of 1800 para. 3 although not of the same evidentiary value as the Registers themselves inasmuch as they require proof of origin and authentication are nevertheless good evidence of title if they contain statements made at a time when there was no dispute and against the proprietary interest of the maker KALI SANKAR SAHAI *v* MAHARAJA PRATAP UDAI NATH SAHI DEO (1911) 16 C W N 683

——— 1801—I—

——— *Independent talook what is—ss 8 and 11—Time within which separation was to be applied for— Actual produce in s 3 refers to the produce of what date Held* that the proprietors of Talook Balasuti which was

REGULATIONS—*contd.*

——— 1801—I—*concld*

established by a decree of the Sudder Dewany Adaulat of 180 to be an independent talook having duly applied for the separation of the talook in accordance with the provi ions of Reg I of 1801 within a year from the passing of the Act had not been wanting in diligence in seeking the relief to which they were clearly entitled and that the delay of over 100 years that had occurred was due either to the opposition of the zemindar or the action of the Revenue authorities and that the objections of the zemindar in their present suit to the separation being effected by the Revenue authorities were purely vexatious and de igned to prolong litigation The actual produce on which the as essment of revenue under s 8 of Reg I of 1801 was to be based was the actual produce at the time when proceedings were instituted for the separation of the talook. HEMANTA KUMARI DEBI *v* JAGADINDRA NATH ROY (1918) 23 C W N 149

——— 1802—XXV—

See IMPARTIBLE ESTATE. I L R 36 Mad 325

See UNSETTLED PALAYAM I L R 41 Mad 749

See MADRAS REGULATION

——— *Impartible estate proof of—Sanad granted under Madras Reg XXV of 1802 in common form if alters succession—Impartibility proof of—Raj estate whether—Question of fact—Concurrent findings—Appeal to Privy Council—Practice* The zamindari of Nidadavole was the subject of a *sanad* in common form under Reg (Mad) XXV of 1802 *Held* that it must be held to be partible and descendible according to the ordinary rules of inheritance of the Hindu Law unless the *sanad* could operate as a confirmation of a previously existing estate which from its nature or by virtue of some special family custom was impartible and descendible to a single heir Whether or not at or prior to the date of the *sanad* the grantee of the *sanad* had an estate in the nature of a Raj and so descendible to a single heir was a question of fact to be determined on the evidence Where on such a question there were concurrent findings of the Courts in India the practice of the Privy Council was not to disturb the finding unless they were satisfied that it was not justified by the evidence The principles applicable in determining the questions of impartibility in cases of this description re affirmed VENKATARAMAYYA APPA ROW *v* PARTHASARATHY APPA ROW (1913) 17 C W N 1221

——— 1803—XXXI—

s 6—

See CONSTRUCTION OF DOCUMENT I L R 38 All 230

——— 1805—XII—

s 33—

See CHAUKIDARI CHAKRAN LANDS I L R 42 Calc 710

——— 1805—XIII—

s 41—

See CHAUKIDARI CHAKRAN LANDS I L R 42 Calc 710

REGULATIONS—*contd*

——— 1806—XVII—

See CONSTRUCTION OF DOCUMENT I L R 38 All 57[illegible]

See MORTGAGE I L R 38 All 9[illegible]

——— s 8—*Mortgage by way of conditional sale—Suit for redemption—Plea of foreclosure under the Regulation—Procedure—Evidence* In the case of mortgage to which Reg XVII of 1806 applies before it can be held that the right of redemption is barred it must be proved that the requirements of the Regulation have been strictly complied with that is to say that the mortgagee had served upon the mortgagor a notice under the seal and official signature of the District Judge warning him that the mortgage would be finally foreclosed in the event of his failure to redeem within the period of one year *Badal Ram v Taj Ali* [illegible] *A L J* 717 followed RAM BARAN RAI *v* HAR SEWAK DUBE (1918) I L R 40 All 38[illegible]

——— 1810—XIX—

See MAHOMEDAN LAW—WAKF I L R 46 Calc 1[illegible]

——— 1812—V—

——— s 3—

See ILLEGAL CESS I L R 45 Calc 25[illegible]

——— 1814—XXIX—

See GHATWALI TENURES 1 Pat L J 19[illegible]

See PARTITION I L R 47 Calc 35[illegible]

——— 1818—III—

See LIBEL I L R 37 Calc 76[illegible]

——— 1819—II—

——— *Resumption of land within permanently settled mahal—Nature of onus of proof on person with whom such land settled in dispute as to whether land settled was within ambit of the zemindari* Where certain lands within a permanently settled mahal were resumed under Reg II of 1819 and settled along with other Government khas Mahal lands with a person other than the zemindar the onus of proving that lands within the ambit of the zemindari were part of such resumed land as against the zemindar did not lie on the person who claimed it as such in the sense that on his failure to discharge it the lands must be taken to remain and be vested in the zemindar SURJA KANTA ACHARJYA *v* SARAT CHANDRA ROY CHOWDHURY (1914) 18 C W N 1281

——— 1819—VIII—

See PATNI SALE I L R 47 Calc 782

ss 8 9 15 (2)—

See SALE FOR ARREARS OF RENT I L R 44 Calc 715

s 14—

See LIMITATION ACT 1877 s 8 14 C W N 128[illegible]

——— 1822—VII—

See PRE EMPTION I L R 33 All 196

——— *S*[illegible] *t proceedings under Reg VII 1822 read* [illegible] *IX of 1875*

REGULATIONS—*contd*

——— **1822—VII**—*concld*

——— *Settlement proceedings under Reg VII of 1882 read with Reg IX of 1885—Raiyati land held by Settlement Officer to belong to defendant s and not to plaintiff's holding—Decision if award—Plaintiff's suit to recover—Limitation—Limitation Act (XV of 1877) Sch II, Arts 14 46—Tenant if may sue to recover from person with whom land settled by landlord and by whom he has been dispossessed* Where a Collector in settling land under Reg VII of 1822 decided that a certain area of land did not form part of the plaintiff s holding as alleged by them but was part of the defendant s holding *Held* that the decision of the Collector was not an award within the meaning of Art 46 of Sch II of the Limitation Act of 1877 *Held* further that an order by which land belonging to the plaintiffs was given by the Collector to others without any warrant of law need not be set aside by the plaintiffs and Art 14 of Sch II of the Limitation Act does not apply to a suit by the plaintiffs to recover the land It was not intended by the provisions of Reg VII of 1822 that the Collector should decide disputes as to title between raiyats in which the zemindars or *sadar malguzars* had no assessment which could in no way affect the interest and S 14 of the Regulation does not apply to a case in which rival tenants claim not only a tenancy of the same nature but the same land under the same nature of tenancy The decision in *Binad Lal Pakrashi* v *Kalu Pramanik I L R 20 Calc 709* was never intended to be applied to a tenant seeking to recover his own holding RAJANI KANT MUKERJI *v* RAM DULAL DAS (1911) 17 C W N 55

——— s 3—

——— *Chur land—Present holder s right to re settlement—Revenue authorities when may settle with stranger—Strict compliance with the law necessary* Where there was no report by the Revenue authorities that the settlement of *chur* land with the proprietor of a permanently settled estate contiguous to it who was the last holder of the *chur* would endanger the public tranquility or otherwise be seriously detrimental *Held* that the settlement of the *chur* with a third party was not in compliance with s 3 Reg VII of 1822 and must be set aside Strict compliance with the provisions of the Regulation was necessary to justify the deprival of the present holder s right to settlement of the *chur* with him RAGHUNATH BANGA *v* KARUNANIDHAN SINGHA (1918) 23 C W N 261

——— *Chur mehal accreted to a permanently settled estate temporary settlement of under Regulation if valid—Reg II of 1819—Reg XI of 1825—Act IX of 1847—Act XXXI of 1858—Reg VIII of 1798—Resumption of chur on ground of Sudder Malguzar's misconduct attacked as ultra vires—Decision of Revenue authorities if reviewable by Civil Courts—Civil Courts jurisdiction* The provisions of s 3 of Reg VII of 1822 are applicable to *chur* lands which have accreted to an estate in which the owner has a permanent proprietary interest The applicability of the provisions of the Regulation is not restricted to the matters referred to in the second paragraph of s 2 of Act XXXI of 1858 Where upon a report of the Revenue authorities bearing on the conduct of the Sudder Malguzar with whom on behalf of the proprietors of a permanently settled estate a *chur* mahal had been settled, the Local Government in exercise of powers conferred by s 3 of Reg VII of 1822 directed that the mahal be held *khas* for a term of 12 years and the order of the Local Government was questioned as *ultra vires* on the ground that the charges made against the Sudder Malguzar were without justification *Held* that if there were materials for the Revenue authorities to go upon it was not open to the Civil Court to see whether they were sufficient to justify them in reporting to the Government under the proviso to the section the proviso having conferred exclusive jurisdiction in the matter on the Revenue authorities What the Civil Court has to be satisfied with is that the requirements of the law had been complied with and that the Revenue authorities had materials upon which it made the recommendation to the Government There is nothing to show that steps cannot be taken under s 3 of the Regulation unless the report of the Revenue authorities is made in the course of proceeding under Reg VII of 1822 and the present order was not bad because it was made in the course of settlement proceedings under Chap X of the Bengal Tenancy Act RADHA KANTA AICH *v* SECRETARY OF STATE FOR INDIA (1918) 23 C W N 265

——— ss 7 9— *Rent enhancement of—Settlement officer powers of—Jamabandi* Where a settlement was carried out under Reg VII of settlement Regulation 1882 *Held* that the Settlement Regulation did not authorise the settlement of fair rents All that the Settlement Officer was entitled to do was to record the existing rent ISHUR CHANDRA SARKAR *v* TROYLUKHYA NATH SINGHA (1913) 17 C W N 865

——— s 10—

See BENGAL LAND REVENUE SALES ACT 1859 s 37 5 Pat L J 79

——— **1825—XI**—

See BENGAL ALLUVION AND DILUVION REGULATION 5 Pat. L J 1 & 630

See FISHERY I L R 42 Calc 489

——— *Whether the section applies to the bed of a private river* S 4 of Reg XI of 1825 is not limited in its application to a river the bed of which is the property of the Crown PURI DASS *v* KANHU BEHERA. 1 Pat L J 536

——— *Damodar if a navigable river—Non navigable river flowing through or by the side of permanently-settled estate churs forming in if resumable and assessable with revenue—Riparian owner s right to the middle of the stream—Exclusive right of fishery as evidence of title in the soil of the river bed* The test in this country as to whether a river is navigable is whether it allows of the passage of boats at all times of the year The river Damodar was not a navigable river at the date of the Permanent Settlement At the date of the Permanent Settlement the bed of the river Damodar in so far as it flowed through the chakla or zemindary of Burdwan formed a portion of the estate permanently settled with the predecessor of the zemindar of Burdwan Although an exclusive right of fishery does not of itself pass the right to the soil in the bed of the river the terms of the grant in this case being unknown or uncertain the fact that the grantee had a several right of

REGULATIONS—*contd*

—— 1875—XI—*contd*

fish rs in the river was held to support his claim to the soil in its bed Churs forming in non navigable rivers flowing through permanently settled estates and forming parts thereof are not resumable under Reg XI of 18 P fo e there an be a further as men o Government rev nue there mu t be a gain from the public domain The right to the soil of a river flowing within the estates of different proprietors belongs to the riparian owners *ad medium filum aquae* Where property is bounded by a road or a river the boundary even if given as the road or the river is the middle of the road or river as the case may be Therefore a permanently settled estate on the bank of a non navigable river included half the bed of the river and chars forming on this portion are not assessable with revenue under Reg XI of 18 the assessment of the Government revenue on the riparian mouzas having been imposed not only on the mouzas but on the adjoining half of the river bed also SECRETARY OF STATE FOR INDIA v BEJOY CHAND MAHATAP (1918)

22 C W N 872

—— 1827—II—

—— s 21—Caste question—*Civil Court Jurisdiction—Suit to be declared Ayya of Hire math and to restrain defendant from so styling himself* The plaintiff sued to obtain a declaration that he was entitled to the fees and privileges appertaining to the Hiremath and Kamalapur by reason of his title to be called the Ayya of that Hiremath and to obtain a perpetual injunction to restrain the defendant from using the name of Ayya of Hiremath The plaintiff's complaint was that the defendant had assumed a name to which the plaintiff had the exclusive right and that that assumption would enable as it had enabled the defendant to attract to himself a large number of the plaintiff s followers and thereby appropriate to himself fees which would otherwise have been paid to the plaintiff *Held* that it was a claim to a caste office and to be entitled to perform the honorary duties of that office or to enjoy certain privileges and honors at the hands of the members of the caste in virtue of that office It was a caste question not cognizable by a Civil Court *Held* also that the fact that there had been no allegation of any specific damage by reason of the assumption by the defendant of the name of Ayya of Hiremath and also the admission that after all the result of the assumption of that name would be merely to enable some of the followers of the plaintiff to go over to the defendant showed that what the parties had been fighting for was merely a question of dignity under the cover of a religious office If the Court were to interfere in such cases it would be merely assisting one party at the expense of the other and compelling the caste or the sect to follow one spiritual leader in preference to another GADIGEYA v BASAYA (1910)

I L R 34 Bom 455

—— 1832—VII—

—— s 9—

See HINDU LAW—CONVERSION

I L R 33 All 356

—— 1833—IX—

—— ss 20 21—

See COLLECTOR　I L R 40 Calc 465

REGULATIONS—*contd*

—— 1872—III—

See SANTHAL PARGANAS SETTLEMENT REGULATION 18 　6 Pat L J 373

4 Pat L J 49

—— 1882—III—

See ESTATES PARTITION ACT 1897 s 11

1 Pat L J 491

—— 1882 VII—

—— s 9—*Duty of Settlement Officer under the Regulation—Entry as to fair rent payable by tenant if has the effect of enhancing rent* A Settlement Officer under Reg VII of 1882 does not settle rent but records rates of rent existing in the village and the effect of an entry by the Settlement Officer as to the fair rent payable by the cultivator has not the effect of enhancement of his rent so as to entitle the landlord to claim rent at that rate JAGADINDRA NATH RAY v MOHENDRA NATH MOZUMDAR (1914)

23 C W N 587

—— 1886—V—

—— ss 85 141—*Municipal Board—Powers of Board in respect of erection of buildings—Suit against Municipal Board—Jurisdiction* One Kifayat ullah served the Municipal Board of Ajmere with notice of his intention to rebuild a certain wall He received no reply to his notice within a month and thereafter commenced to build The Municipal Board then required him to stop the building and submit a fresh application The applicant stopped the building but did not present a fresh application and some months later sued the Board for damages on account of the stoppage of the building The Board failed to prove that the notice first given by Kifayat ullah was not in accordance with law *Held* that in the circumstances the original notice must be considered as a good notice under s 85 of the Ajmere Regulation I of 1877 and that s 140 of the Regulation if it applied at all did not oust the jurisdiction of the Civil Court to try the suit for damages MUNICIPAL BOARD OF AJMERE v KIFAYAT ULLAH (1915)　I L R 37 All 220

—— 1910—XIV—

See GHATWALI TENURES

1 Pat L J 197

RE HEARING

See AFFIDAVIT　I L R 3 Calc 259

See CIVIL PROCEDURE CODE 1908

ss 115 151　Pat L J 250

O XLI r 21

See LIMITATION ACT 1908

SCH I ART 182　3 Pat L J 119

—— appellant not entitled to—

See APPEAL PARTIES TO AN

I L R 39 Mad 386

REIMBURSEMENT

See COMPROMISE　I L R 47 Calc 932

RE INSTATEMENT

See MUKTEAR　I L R 38 Calc 309

RELATIONSHIP

—— evidence of—

See HINDU WIDOW

I L R 40 Calc 555

RELEASE.

See Civil Procedure Code (Act V of 1908) O XXIII r 3
I L R 38 Mad 959

See Liquidator I L R 43 Calc 586

See Mortgage I L R 34 All 606

See Registration Act 1877 ss 17 49
I L R 34 Bom 202

See Stamp Act (II of 1899) Sch I Art 55 I L R 38 All 56

——— **conditional—**

See Contract Act (IX of 1872) s 28
I L R 38 Bom 344

——— **of some of joint judgment debtors—**

See Joint Judgment debtors
I L R 39 Mad 548

——— **recitals in—**

See Vendor and Purchaser
I L R 41 Bom 300

——— **Partition**—*Undivided brothers—Instruments whereby co owners divide property in severalty—Release—Stamp* Instruments whereby co owners of any property divide or agree to divide it in severalty are instruments of partition. One of three undivided brothers agreed to take from the eldest brother the manager of the family as his share in the family property moveable and immoveable a certain cash and bonds for debts due to the family and passed to the eldest brother a document in the form of a release Subsequently one of the two brothers passed to the eldest brother a document in the form of a release whereby he and the eldest brother divided the remaining family property by the latter handing over to the former securities for money A question having arisen as to whether for the purpose of stamp duty the said two documents were to be treated as releases or instruments of partition *Held* that the documents were instruments of partition *In re* Govind Pandurang Kamat (1910) I L R 35 Bom 75

RELEVANCY

——— **of previous decision—**

See Custom (Religious Institution)
I L R 1 Lah 540

RELIEF

See Divorce I L R 37 Calc 613

——— **Power for Court to grant when order would be nugatory—**

See Bengal Tenancy Act 1885 s 60
6 Pat L J 658

——— **whether limited by pleadings—**

See Civil Procedure Code 1908 O XXXII r 7 6 Pat L J 190

——— *Claim for two reliefs—Right to one proved and to the other not proved—Right of plaintiff to a decree for the relief proved* Where the plaintiffs claimed a decree for possession of a tank from which they had been dispossessed and a declaration that they had a permanent and heritable right in the tank and it was found that they were entitled to possession but were not entitled to a permanent and heritable right therein *Held* that they were entitled to a decree for possession as it was not a case of a plaintiff claiming one relief and being given relief of a wholly different kind It was a case of a plaintiff claiming two reliefs—one of which he was entitled to and the other he had failed to prove himself entitled to Dehu Ghunna v Srimati Barabhira Debi
2 Pat L J 15

RELIGIOUS BEQUEST

See Will I L R 46 Calc 485

RELIGIOUS CEREMONY

——— *Right to perform religious ceremonies if may be enforced—Agreement to share profits of religious services suit if lies to enforce* Parties who require religious ceremonies to be performed for their benefit are at liberty to choose the priest by whom they shall be performed and no declaration can be given that any person is exclusively entitled to officiate at ceremonies at a particular place Where the plaintiffs claimed under an agreement executed by the ancestors of the plaintiffs and defendants that whoever amongst them might perform ceremonies on a particular occasion on the banks of the river Punpun at Gaya he should bring whatever he might earn thereby into a common fund to be enjoyed by all the members of the family *Held* that such agreement cannot be obligatory on the successors of the parties for all time in spite of the wishes of the members who might desire to terminate it and a suit does not lie to enforce the claim *Dino Nath v Protap Chandra I L R 27 Calc 30 4 C W N 79* and *Bheema v Kotha Kota 17 Mad L J 493* distinguished Dwarka Missra v Rampratap Missra (1911)
16 C W N 347

RELIGIOUS ENDOWMENT

See Civil Procedure Code (Act V of 1908) s 92 I L R 40 Mad 212

See Hindu Law (religious endowment)

See Limitation Act (IX of 1908) s 10
Sch I Arts 124 144 I L R 39 All 636

See Parties I L R 40 Calc 323

See Religious Endowments Act

See Res judicata
I L R 37 Bom 224

——— **requirements for completion of a valid gift—**

See Hindu Law (Religious endowment) I L R 43 All 503

——— *Religious Endowments Act (XX of 1863) ss 7 8 and 10—Suit brought by surviving member of a Committee whether maintainable* A suit brought by a surviving member or members of a Committee appointed under s 7 of the Religious Endowments Act (XX of 1863) is maintainable *Santhalea v Manjanna Shetty I L R 31 Mad 1* dissented from Prabhu Ramanandan Ramanuja Das v Bibhuti Bhushan Mukerjee (1911) I L R 39 Calc 304

——— *Failure of the line of trustees—Right of heirs of founders of the institution to create a new line of trustees* *Held* by the Full Bench (Srinivasa Ayyangar J contra) that it is competent to an heir of the founder of

RELIGIOUS ENDOWMENT—*contd*

a shrine in whom the trusteeship has vested owing to the failure of the line of the original trustee to create a new line of trustees *Per* SRINIVASA AYYANGAR J In the absence of any such power in the deed of trust the Court alone has the power to appoint a trustee such a power of nomination is equivalent to an alienation of the office of trustee which is illegal CAUPANGA SAHU *v* SUDEVI MATA (1917) I L R 40 Mad 612

——— *Mutt—Head of Mutt—Trustee of temples—Appointment of successor—Compromise to avoid prosecution—Invalidity—Code of Civil Procedure (XIV of 1882) 539* By the usage of a mutt the pandara sannidhi or head had power to appoint his successor and was trustee of the endowments of certain dependent temples In 1894 the pandara sannidhi appointed the appellant as chinna pattam or junior head with a right to succeed as head This appointment was not made *bona fide* in the interests of the mutt but under a compromise whereby he had avoided a threatened prosecution for forgery of a will purporting to be that of a his predecessor and appointing him as successor The appellant having succeeded as pandara sannidhi suits were instituted in 1905 to remove him from being trustee of the mutt properties and of the temple properties *Held* that the appellant s appointment as head of the mutt was invalid and that consequently he never became trustee of the temples but that on the finding which was not challenged on appeal that there was no evidence that the head of the mutt was a trustee of the mutt properties, the suit to remove him from being trustee of the mutt could not be maintained under s 539 of the Code of Civil Procedure 1882 *Ramalingam Pillai* v *Vythilingam Pillai (1893) L R 20 I A 150 I L R 16 Mad 490 (P C)* followed and applied NATARAJA THAMBIRAN *v* KAILASAM PILLAI (1921) I L R 44 Mad 283

——— *Removal of Mahant by unauthorized persons—Suit for restoration—Whether irregularities in removal entitle plaintiff to succeed* When the *Mahant* of an endowment had been removed from office on account of unfitness *Held* he was not entitled to succeed in a suit for a declaration that the defendant had no right to remove him from office and for possession merely on the ground that the persons who removed him from office were incompetent to do so unless he could show that he was not unfit to continue in the office NIAMAT ALI *v* YAD ALI SHAH 6 Pat L J 408

——— *Mutt—Relation of heads and managers of religious institutions to their property—Alienation by head of mutt— Trustee Indian Limitation Act (IX of 1908) Sch I Arts 134 and 144* The endowments of a Hindu mutt are not conveyed in trust nor is the head of the mutt a trustee with regard to them save as to any specific property proved to be vested in the head for specific and definite object Consequently Art 134 of Sch I of the Indian Limitation Act 1908 which contains the expressions above quoted does not apply where the head of a mutt has granted a permanent lease over a part of the mutt property not proved to be subject to a specific trust The same rule applies to the endowments of Mahommedan religious institutions and to alienations made by the Sajjadanashin or Mutawali *Ram Parkash Das* v *Anand Das (1916) I L R 43 Calc 707 (P C) L R 43 I A 73* explained *Behari Lal* v *Muhammad Muttaki (1898) I L R 20 All 482 (F B) Dattagiri* v *Dattatraya (1903) I L R 27 Bom 363 Nilmony Singh* v *Jagabandhu Roy (1896) I L R 23 Calc 536* disapproved Except for unavoidable necessity the head of a mutt cannot create any interest in the mutt property to ensure beyond his life A lessee however has not adverse possession under Art 144 of the schedule above named during the life of the head who granted the lease If the lessee s possession is consented to by the succeeding head that consent can be referable only to a new tenancy created by him and there is no adverse possession until his death [Judgment of the High Court reversed] VIDYA VARUTHI *v* BALUSAMI AYYAR (1921) I L R 44 Mad 831

——— *Shebaiti rights whether trustees have power to convey life estate in—Adverse possession acquisition of Shebaiti rights by—Limitation Act (IX of 1908) s 10 Sch 1 Arts 134 and 144* The right to administer the trust property of a public religious endowment within the limits imposed by the trust and for that purpose the right to possession of the property as against those previously administering the trust or others claiming through them can be acquired by adverse possession and in a trust of this nature it is only where a claim is set up adverse to the rights of the deity to whose worship the property is dedicated that s 10 of the Limitation Act 1908 could have any application so as to deprive the defendant of the rights conferred by the remaining portions of the Act The trustees of such an endowment have no power to convey even a life estate in the *shebaiti* rights attending the worship of an idol Where the trustees purport to make such a conveyance the grantee is in adverse possession of the estate from the time when he assumes the duties of the office and takes over possession of the property NATHE PUJARI *v* RADHA BINDE NAIK 3 Pat L J 327

——— *Waqf—Constitution of* The dedication of property in trust to secure the permanent performance of certain religious *ceremonies is not void for vagueness nor does the* fact that the settlor retains the residue of the income for herself vitiate the trust SAYID ISMAIL ALI KHAN *v* MUSSAMMAT HAMIDI BEGUM 6 Pat L J 218

——— *Code of Civil Procedure 1882 s 539—Sanction to sue under section—Death of original defendant—Jurisdiction to order scheme* A suit was instituted to remove a Raja from the management of a Hindu shrine on the ground of mismanagement Permission to institute a suit under s 539 of the Code of Civil Procedure 1882 had been granted Pending the hearing the Raja died his widow was substituted for him and later a posthumous son was added as a defendant The trial Judge found that the shrine was a public religious and charitable trust and held that the defendant family should be removed from being trustees and a scheme settled Upon appeal the son s hereditary right to manage the shrine on attaining majority was conditionally declared and the case was remitted for the settlement of a scheme *Held* that there was jurisdiction to order the settlement of a scheme although the application for permission

RELEASE

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XXIII R 3 I L R 38 Mad 959

See LIQUIDATOR I L R 43 Calc 586

See MORTGAGE I L R 34 All 606

See REGISTRATION ACT 1877 ss 17 49 I L R 34 Bom 202

See STAMP ACT (II OF 1899) SCH I ART 55 I L R 38 All 56

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RELIGIOUS ENDOWMENT

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 92 I L R 40 Mad 212

See HINDU LAW (RELIGIOUS ENDOWMENT) s 18

See LIMITATION ACT (IX OF 1908) s 18 SCH I ARTS 134 144 I L R 39 All 686 I L R 40 Calc 323

See PARTIES

See RELIGIOUS ENDOWMENTS ACT

See RES JUDICATA I L R 37 Bom 003

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RELIGIOUS ENDOWMENT—*concld*

contemplated only the appointment of new trustees and although the original defendant had died after the suit was instituted Judgment of the Court of Judicial Commissioner affirmed RAJA ANAND RAO *v* RAMDAS DADURAM (1920)
I L R 48 Calc 493

——————— *Shebait—Benami purchase of Debottar property—Invalidity—Removal of shebait* A purchase of debottar property by its shebait benami and without disclosing that he is the real purchaser is invalid even when the sale is in execution proceedings and the shebait has paid the full market value It is sufficient ground for removing a shebait from his office that in the exercise of his duties he has placed himself in a position in which the Court thinks that he can no longer faithfully discharge the obligations of the office Judgment of the High Court affirmed PEARY MOHAN MUKERJI *v* MANOHAR MUKERJI (1921)
I L R 48 Calc 1019

RELIGIOUS ENDOWMENTS ACT (XX OF 1863)

See CIVIL PROCEDURE CODE (ACT V OF 1908) SS 92 AND 14
I L R 42 Mad 668

——————— *Change of village from one district to another for revenue purposes—Religious institution in the village—Power of original committee of the original district to control the institution—No power for the committee of the new district to appoint trustees* The Religious Endowments Act (XX of 1863) contemplates the creation of division or district committees once for all soon after the passing of the Act to take the place of the Board of Revenue and the local agents referred to in Reg VII of 1817 It is only the committee that is originally appointed in that behalf or its successor that can exercise jurisdiction over a particular religious institution and any order of Government transferring a certain village in which a particular religious institution is situated from one district to another for purposes of revenue administration does not deprive the original temple committee of its powers over the institution (such as appointing trustees for the same) or enable the committee of the new district to which the village is transferred to exercise any power over the institution PANGAPPA *v* BHIMAPPA (1915)
I L R 39 Mad 949

——————— s 3—*Temple falling under—Power of Temple Committee to appoint additional trustees in good faith and in the interest of the temple—Onus of proving bad faith on person challenging the appointment* For the better management of a certain Hindu temple which had no settled scheme of management and which was governed by s 3 of the Religious Endowments Act (XX of 1863) a Temple Committee appointed two trustees in addition to the three then existing *Held* (*a*) that the committee had power to appoint the additional trustees in virtue of their general power of superintendence over temples committed to their care as successors to the Board of Revenue who has such power under s 2 of Reg VII of 1817 (*b*) that this power must be exercised reasonably and in good faith in the interests of the temple (*c*) that the *onus* of proving that it did not exercise this power Reasonably and in good faith

RELIGIOUS ENDOWMENTS ACT (XX OF 1863)—*contd*

lay not on the committee but on the person challenging the appointment of additional trustees *e g*, on the already existing trustee as in this case who sued to set aside the additional appointment and (*d*) that the power of appointing new trustees was not confined to filling up vacancies alone but extended to creating additional trustees *Sheik Davud Saiba v Hussein Saiba I L R 17 Mad 212* referred to *Venkatachalla Pillai v The Taluk Board Saidapet I L R 34 Mad 375 Nilayatakshi Ammal v The Taluk Board of Mayavaram I L R 34 Mad 533 s c 20 Mad L J 885* and *Ganapati Ayyar v Sri Vedarya a Alasinga Bhattar I L R 29 Mad 534* distinguished THIRUVENGADATHAIYANGAR *v* PONNAPPIENGAR (1914)
I L R 38 Mad 1176

——————— *Suit for scheme for a temple falling under s 3—Civil Procedure Code (Act V of 1908) s 92 jurisdiction of Courts to frame a scheme under—Temple Committee powers of* Ever since 1842 when the Board of Revenue handed over the management of the temple of Srirangam to certain trustees one trustee was chosen hereditarily every year from a certain family in the locality called the Sthalathars and two other trustees were appointed till 1863 by the Board and later on by the Temple Committee formed under the Religious Endowments Act (XX of 1863) In several litigations connected with the temple the temple was treated as one falling under s 3 of Act XX of 1863 *Held* that the temple was one falling under s 3 and not under s 4 and was thus subject to the control of the Temple Committee Though the Courts cannot interfere with the statutory powers conferred upon the members of the Temple Committee so as to deprive them of their statutory functions yet the Court has jurisdiction to frame a scheme under s 92 Civil Procedure Code (Act V of 1908) in respect even of a temple subject to the control of the Temple Committee and introduce changes in its administration which the committee is not legally competent to introduce and which are desirable and necessary to meet the altered circumstances of the time Considering that the actual management of the temple must vest in the trustees subject to the statutory control of the committee their Lordships held it undesirable in framing a scheme to introduce as the lower Court did a new body of people called a Board of Control over the trustees and hence abolished the same In the result their Lordships framed a scheme for the temple providing among other things for (*a*) the appointment of two additional trustees for the better management of the temple (*b*) the tenure of office of the trustees appointed being only for five years (*c*) the preparation of annual budget and audit of temple accounts and (*d*) the appointment of a cashier under the trustees *Per* CURIAM —The powers of the committee or any other statutory body do not become suspended by the occurrence of a vacancy among its members Powers of a Temple Committee considered *Sankaralinga v Manjanna Shetty I L R 34 Mad 1* ... English and Indian cases reviewed dissented from SITHARAMA CHETTY *v* SIR S SUBRAHMANIA IYER (1916)
I L R 39 Mad 700

——————— ss 3 and 4—

See HINDU LAW (ENDOWMENT)
I L R 43 Mad. 665

RELIGIOUS ENDOWMENTS ACT (XX OF 1863)—*contd*

——— s 5—*District Court if may appoint a trustee pending decision of Civil Court in all cases* District Courts have no power upon a vacancy occurring in the office of the trustee of a religious endowment to appoint a trustee under s 5 of the Religious Endowments Act unless the endowed property has been actually transferred to the former trustee under s 4 of the Act by the Board of Revenue or Government *Ittuni Panikkar v Irani Nambudripad I L R 3 Mad 401 Jan Ali v Ram Nath Mundal I L R 8 Calc 32* relied on *Dhurrum Singh v Kissen Singh I L R 7 Calc 61 Sheoratan Kunwari v Ram Pargash I L R 18 All* Muhammad *Siyyid Haji v Imamuddin I L R 19 All 101* distinguished. S 5 of the Act contemplates the temporary appointment of a manager by the Court pending the decision by a Civil Court of the title of any other applicant to the office MOHUNT SHEONANDAN GIR *v* DHUPAN UPADHYA (1910)

14 C W N 1104

——— *Order appointing the Collector to take charge of a Math—Revision—Jurisdiction* The District Judge has jurisdiction to appoint a temporary manager of trust property under s 5 of Act No XX of 1863 only in the case where a vacancy has occurred in the office of the trustee to whom such property shall have been transferred under s 4 of the Act An order purporting to be passed under s 5 of the Act without any inquiry as to whether foundation for the District Judge's jurisdiction exists is open to the revisional if not the appellate jurisdiction of the High Court *Ittuni Panikkar v Irani Nambudripad I L R 3 Mad 401 Gopala Ayyar v Arunachallam Chetty I L R 26 Mad 85* and *Mohun Sheonandan Gir v Dhupan Upadhya 14 C W N 1104* referred to BASDEO GIR *v* PITAM GIR

I L R 43 All 50

——— *Order appointing the Collector to take charge of a* Math—*Appeal* No appeal lies against an order made under s 5 of the Religious Endowments Act 1863 *Minakshi Naidu v Subramanya Sastri I L R 11 Mad 26* referred to PRITAM GIR *v* MAHANT BASDEO GIR

I L R 43 All 55

——— s 7—

See MAHOMEDAN LAW—WAKF

I L R 46 Calc 13

——— *Suit for removal of trustees—Parties* Two out of three of the members constituting a committee appointed under s 7 of the Religious Endowments Act 1863 are not competent to maintain a suit for the removal of the person or persons acting as the trustees of the endowment The Committee under this section is a Corporation having a legal entity SYED MUHAMMAD HASAN *v* KAZI NAZAR MUHAMMAD

1 Pat L J 437

——— ss 7 8 10—

See RELIGIOUS ENDOWMENT

I L R 39 Calc 304

——— ss 7 and 10—*Constitution of Committee under—Validity of Acts done by incomplete committee* One of a committee of three members appointed under s 7 of Act XX of 1863 (Religious Endowments Act) died and the vacancy thus caused was not filled up in accordance with s 10 of the Act The remaining two members purported to perform the functions of the committee *Held* that the remaining two members cannot be said to be a committee at all and cannot perform any of the functions of the original committee *Per* ARNOLD WHITE *C J*—Ss 7 and 10 of the Act are imperative or obligatory and not merely directory The law governing corporate bodies with regard to the capacity of the members of the corporate bodies to act is not applicable to the case of the statutory body appointed under s 7 of the Religious Endowments Act *The King v Bellringer 4 T R 810* and *100 Eng Rep 1315* distinguished *Per* ABDUR RAHIM *J*—The intention of the Legislature is that a committee appointed under the Act shall not consist of less than the number originally appointed *Anantanarayana Ayyar v Kuttalam Pillai I L R 22 Mad 481* distinguished SANTHALYA *v* MANJANNA SHETTY (1910)　　I L R 34 Mad 1

BUT *see* s 3　　I L R 39 Mad 700

——— s 10—*Temple Committee Vacancy—District Judge—Court—Persona designata—Civil Procedure Code (Act V of 1908) s 115* An order made by a District Court under s 10 of the Religious Endowments Act is an order revisable by the High Court under s 115 Civil Procedure Code (Act V of 1908) *Meenakshi v Subramanya I L R 11 Mad 26* distinguished *Gopala Ayyar v Arunachallam Chetty I L R 26 Mad 85* referred to When a Temple Committee does not do its duty and arrange for an election the Court can make the appointment without reference to the committee or direct the remaining members of the committee to fill up a vacancy The power of the committee in such a case being derived from the Court an appointment by election thereafter is bad *Ramanuja Iyengar v Anantaraman Iyer 6 Mad L J 1* dissented from VASUDEVA AIYAR *v* THE NEGAPATAM DEVASTHANAM COMMITTEE (1913)　　I L R 38 Mad 594

——— *Vacancy in Temple Committee—Jurisdiction of District Judge—Civil Procedure Code (Act V of 1908) s 115—Power of revision by the High Court—Duty of remaining members of the Committee—Failure to perform duty—Election held after expiration of the statutory time* The High Court has jurisdiction under s 115 of the Civil Procedure Code 1908 to revise an order of the District Judge made under s 10 of the Religious Endowments Act XX of 1863 on the occurrence of a vacancy in a Temple Committee declaring that an election by the remaining members of the Committee to fill up the vacancy was regularly held and that the appointment of the person was valid No appeal lay under the Civil Procedure Code from such an order In making the order the District Court was acting in a judicial capacity as a Court of law and not merely in an administrative capacity The matter in which the order of the District Court was made was a case within the meaning of s 115 of the Civil Procedure Code 1908 A case includes an *ex parte* application such as that made in this matter *Minakshi Nayudu v Subramanya Sastri I L R 11 Mad 26 L R 14 I A 160* distinguished On the true construction of s 10 of Act XX of 1863 the power of the remaining mem

RELIGIOUS ENDOWMENTS ACT (XX OF 1863)—contd

——— s 10—contd

bers of the Committee to fill up the vacancy must be exercised within three months from the date of the occurrence of the vacancy The District Court had no jurisdiction after the expiration of the three months to direct the remaining members of the Committee to fill up the vacancy by election or to make an order purporting to validate the appointment of the person elected If the Committee do not perform their duty by holding an election within three months to fill up the vacancy a subsequent election by the remaining members after the expiration of three months is invalid and this is so notwithstanding that such a construction would enable the remaining members of the Committee by their own default to practically disfranchise the electors and at the discretion of the Court possibly to procure the patronage for themselves The only remedy for that is to alter the law if wrong by legislation The Board can only declare the law BALAKRISHNA UDAYAR v VASUDEVA AYYAR (1917)

I L R 40 Mad 793

——— s 14—

See CIVIL PROCEDURE CODE 1908—
s 92 I L R 42 Bom 742
ss 92 AND 14 I L R 42 Mad 668
See PARTIES I L R 40 Calc 323

——— *Procedure to be followed by committee in the transaction of its business—Suspension of a temple trustee by a Temple Committee—Legality of procedure—Suit by the trustee for damages for illegal suspension—Liability of individual members of the committee in damages* Notice of suspension was given to a temple trustee in accordance with the opinion of the majority of the members of the local Temple Committee to each of whom one of the members sent a copy of his report recommending suspension and in spite of the objection taken by one member that the matter should be disposed of at a meeting *Held* that a Temple Committee under the Religious Endowments Act resembles a corporation and that the ordinary way to transact its business is at a meeting Assuming that it can do some of its business in circulation it cannot remove or suspend a trustee in this manner *Rex* v *Taylor* Salk 231 [illegible] *Rex* v *Sutton* 10 Mad [illegible] *Thandavaraya Pillai* v *Subbayyar* I L R [illegible] Mad 453 [illegible] and *Ponnambala* [illegible] *Muthu Chetty* 30 Mad L J 619 referred to The procedure being ultra vires it is no answer to the trustee's suit for damages for illegal suspension that there were sufficient grounds for suspension In India the individual members of a Temple Committee who are parties to an illegal suspension of this kind are liable in damages *Vyasa Raghava* v *Secretary of State for India* [illegible] Mad 468 and *Ferguson* v *Kinnoull* [illegible] followed Indian and English decisions considered VENKATA NARAYANA [illegible] v PONNUSWAMI NADAR (1917)

I L R 41 [illegible]

——— ss 14 and 18 *Sanction to [illegible] jointly—Whether suit by one competent*—[illegible] sanction to sue is given to two persons [illegible] of the Religious Endowments Act one of [illegible] not sue alone [illegible] *I L R* 34 *Ca*[illegible] under s 18 [illegible] and sanction [illegible] a condition [illegible]

RELIGIOUS ENDOWMENTS ACT (XX OF 1863)—contd

——— ss 14 and 18—contd

to the exercise of the right of suit *Venkatesa, In re* I L R 10 Mad 98 referred to It has to be construed strictly without enlarging its scope *Sayad Hussain Miyan* v *Collector of Kaira* I L R 21 Bom 257 referred to S 14 of the Act commented on VENKATESHA MALLIA v RAMAYA HEDAGE (1914)

I L R 38 Mad 1192

——— *Leave given to four persons under s 18 of the Act—Suit by them under s 14—Death of one of the plaintiffs after suit whether it effects abatement* A suit instituted under s 14 of the Religious Endowments Act by four persons with the leave of the Court under s 18 of the Act does not abate on the death of one of the plaintiffs *Venkatesha Malia* v *Ramayya Hedage* I L R 38 *Mad* 1192 *Maddala Bagavannarayana* v *Vadapalli Perumalla Charyulu* 29 *Mad L J* 231 distinguished *Chabil Ram* v *Durga Prasad* I L R 3[illegible] All 2[illegible] not approved. *Parameswaran Munpee* v *Narayanan Nambodri* I L R 40 *Mad* 110 referred to ALAGAPPA v MUTHIAH (1917)

I L R 41 Mad 237

——— s 18—

See CIVIL PROCEDURE CODE 188[illegible] s 62[illegible]
I L R 33 Mad 412

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 92 I L R 37 Mad 181
I L R 40 Mad 212

RELIGIOUS FOUNDATION

——— *Endowed Property—Limitation Act XV of 1877 s 28 Sch II Arts 1[illegible] 144—Temple trusteeship and properties bar of suit for former involves bar of suits for latter* The dismissal of a suit to recover the office of trustee for a temple whereby the right to the trusteeship is lost involves the loss of the right to recover a portion of the endowment GOVINDASAMI PILLAI v DAKSHINAMURTI POOSARI (1910)

I L R 35 Mad 9[illegible]

RELIGIOUS INSTITUTIONS—

See CUSTOM (RELIGIOUS INSTITUTIONS)
I L R 1 Lah 511 [illegible]

See MAHOMEDAN LAW—ENDOWMENT
I L R 36 Bom 308

——— transfer of—

See RELIGIOUS ENDOWMENTS ACT (XX OF 1863) I L R 3[illegible] Mad 949

RELIGIOUS OFFICE

See HINDU LAW SUCCESSION
I L R 40 Mad 105

——— competency of women to hold—

See HINDU LAW—[illegible] OFFICE
I L R 41 Mad 6[illegible]

See MAHOMEDAN LAW—RELIGIOUS OFFICE
[illegible] Mad 1023

[illegible]GIOUS POE[illegible]

See OBSCENE [illegible]

[illegible] Calc [illegible]

[illegible] PROCE[illegible]

See HIGH [illegible]

RELIGIOUS TRUST

See PUBLIC RELIGIOUS TRUST

See TRUST I L R 40 Calc 232

——— *Deed of endowment—Sole shebait—Appointment of the new shebait in case of death—Appointment how to be made—Receiver pendente lite* Trusts will not be allowed to fail for want of a trustee and consequently if the nominee dies before qualifying or afterwards the Court will appoint a trustee *In re Orde* 4 *Ch D* 2 1 *Re Amller s Trust* 59 *L T N S* 10 *Gunson v Simpson L R* 5 *I* * 33 *In re Smartl waite s Trusts L R* 11 *L* 51 referred to Where a *shebait* is dead and there is no provision in the deed of endowment about the mode in which the office is to be filled up the Court will not read into the deed of endowment a provision for appointment to the office of *shebait* which is not to be found therein It becomes incumbent upon the representatives of the founders to make an appointment to the office of *shebait* and upon failure to do so the Court has power to appoint a new trustee and will exercise this power whenever there is a failure of a suitable person to perform the trust either from original or supervenient disability to act *Sital Dass Babaji v Pratap Chandra Sarma* 11 *C L J* . referred to The appointment of a fit and proper person to be a new trustee is not a matter of arbitrary discretion of the Court The appointment must be made subject to well known and defined rules *In re Tempest L R* 1 *Ch App* 485 referred to Where a receiver appointed *pendente lite* was directed by the subordinate Judge to continue to manage the properties on the scheme laid down in the deed of endowment pending an agreement between the parties to appoint a *shebait* *Held* that the proper course to follow was either to dismiss the suit or if the parties so desired to appoint a *shebait* and place the properties in his hands This latter order could be properly made only after amendment of the prayer in the plaint RAJ KRISHNA DEY *v* BIPIN BEHARY DEY (191.)

I L R 40 Calc 251

RELINQUISHMENT

See FAMILY SETTLEMENT I L R 38 All 335

See HINDU LAW—WIDOW I L R 47 Calc 466

See HINDU LAW—WIDOW L R 46 I A 259

See LANDLORD AND TENANT 15 C W N 680

See MAHOMEDAN LAW—DOWER I L R 47 Calc 537

See NORTH WESTERN PROVINCES RENT ACT (XII OF 1881) I L R 37 All 444

See UNDER RAIYATI HOLDING I L R 42 Calc 751

——— by patnidar—

See LANDLORD AND TENANT I L R 41 Calc 683

——— in favour of sentient person—

See HINDU LAW—WILL I L R 37 Calc 128

——— of claim—

See CIVIL PROCEDURE CODE 1882 s 43 I L R 32 All 625

RELINQUISHMENT—*contd*

——— of portion of claim—

See CAUSE OF ACTION I L R 46 Calc 640

——— to save Litigation whether binding on Reversioners—

See FAMILY SETTLEMENT

——— of service I L R 38 All 335

See MASTER AND SERVANT I L R 35 All 132

RELEVANCY OF EVIDENCE

See EVIDENCE ACT 18.. s 32 I L R 44 Bom 192

REMAINDERMAN

See ESTOPPEL I L R 44 Calc 145

REMAND

See AGRA TENANCY ACT (II OF 1901)
ss 182 183 I L R 38 All 181
s. 193 I L R 40 All 652
s 202 I L R 38 All 533

See APPEAL I L R 37 Calc 426
15 C W N 830

See (BENGAL) CESS ACT 2 Pat L J 653

See CIVIL PROCEDURE CODE 1908
ss 10. 108 109 O XLI r 23 I L R 33 All 391
s 10. O XLI r 23 I L R 43 All 377
s 109 I L R 42 All 174 176
I L R 38 All 150
O XLI r 1 2 Pat L J 398
O XXI r 23 I L R 34 All 612
O XLI r 23
r 23 O XLIII r 1 (4) I L R 35 All 427
r 25 15 C W N 575
r 33 I L R 37 Bom 289
O XLIII r 1 I L R 42 All 200

See CRIMINAL PROCEDURE CODE ss 112 167 I L R 36 All 262

See LETTERS PATENT 2 Pat L J 663

See PENSIONS ACT (XXIII OF 1871) s 6 I L R 39 Bom 352

See SANCTION FOR PROSECUTION I L R 44 Calc 816

See SECOND APPEAL 2 Pat L J 564

——— appeal from order of on finding of fact—

See CIVIL PROCEDURE CODE 1908 O XLIII r 1 I L R 2 Lah 25

——— by Appellate Court—

See COSTS I L R 39 Mad 476

——— Order of whether appealable to Privy Court—

See PRIVY COUNCIL APPEAL TO I L R 38 Mad 509

REMAND—*concld*

after remand the lower Appellate Court went into the whole case on the merits as directed —*Held* that the High Court had ample jurisdiction to make the order remanding the whole case for determination on the merits *Attorney General* v *Simpson* [*1901*] *2 Ch 671* referred to SARADA SUNDARI DASSAYA v GANGAHARI SAHA (1918)
I L R 46 Calc 738

11 ———— Appeal from—*Remand order* passed otherwise than under O XLI r 23 is not appealable MOHENDRO NATH CHAKRAVARTI v RAMTARAN BANDOPADHAYA (1919)
23 C W N 1049

12 ———— Appellate Court Inherent powers of—*Code of Civil Procedure* (*Act V of 1908*) *s 151 and O XLI, rr 23 and 25* Under its inherent powers an Appellate Court has jurisdiction to remand a case for re trial apart from the provisions of O XLI rr 23 and 25 of the Code of Civil Procedure 1908 but should exercise that power with the greatest caution RAGHUNANDAN SINGH v JADUNANDAN SINGH
3 Pat L J 253

13 ———— *Inherent powers of court* Under its inherent powers an appellate court may remand a case if it thinks that it is necessary for the ends of justice to do so even where the case does not come within the terms of O XLI rr 23 and 25 of the Code of Civil Procedure 1908 BRIJMOHAN PATHAK v DEOBHANJAN PATHAK
5 Pat L J 146

RE MARRIAGE

See DIVORCE I L R 48 Calc 636

See GUARDIAN—HINDU WIDOW
I L R 38 Calc 862

See HINDU LAW—WIDOW

See HINDU WIDOWS RE MARRIAGE ACT (XV OF 1856) s 2

———— custom of—

See HINDU LAW—SUCCESSION
I L R 48 Calc 300

REMEMBRANCER OF LEGAL AFFAIRS

———— Position of—

See CONTEMPT OF COURT
I L R 41 Calc 173

REMOTENESS

———— rule of—

See WILL I L R 46 Calc 485

REMOVAL NOTICE OF

See FIXTURE I L R 48 Calc 602

REMOVAL OF CASTE DISABILITIES ACT (XXI OF 1850)

See HINDU LAW—JOINT FAMILY
I L R 40 Calc 407

See MALABAR LAW
I L R 44 Mad 891

———— s 1—

See HINDU LAW—WIDOW
I L R 35 All. 466

REMUNERATION

See ADMINISTRATOR PENDENTE LITE
I L R 41 Calc 41

RENEWAL

———— option of—

See LANDLORD AND TENANT—LEASE
I L R 46 Calc 1079

RENNELL S MAP OF INLAND NAVIGATION

See NAVIGABLE RIVER
I L R 46 Calc 390

RENT

See AGRA TENANCY ACT (II OF 1901) ss 4 167 I L R 39 All 605

See BENGAL RENT RECOVERY ACT

See BOMBAY CITY MUNICIPAL ACT (BOM ACT III OF 1888) ss 140 (*c*) 143 (*1*) (*g*) AND 2 (*d*) I L R 43 Bom 281

See ESTATES LAND ACT (I OF 1908) s 76
I L R 41 Mad 121

See LANDLORD AND TENANT

See LIMITATION ACT (IX OF 1908)—

SCH I ART 110 I L R 36 Mad 438

ARTS 110 116 I L R 37 Bom 656

See RENT DECREE

See RENT SUIT FOR

See RENT IN KIND

See RENT RESERVED

See STAMP ACT (II OF 1899) s 59 SCH I ART 35 CL (*a*) SUB CL (iii)
I L R 39 Bom 434

See SUIT FOR RENT

See U P LAND REVENUE ACT (III OF 1901) ss 56 86 I L R 33 All 256

———— abatement of—

See PATNI LEASE I L R 41 Calc 683

———— arrears of—

See MORTGAGE I L R 39 Calc 810

———— distraint for—

See MADRAS ESTATES LAND ACT (I OF 1908) s 52 (*2*) I L R 38 Mad 1140

———— enhancement of—

See BOMBAY LAND REVENUE CODE 1879 ss 83 216 I L R 44 Bom 566

See OUDH RENT ACT (XXII OF 1886) s. 3 (*10*) AND CH VIIA
I L R 40 All 541

———— fixation of—

See AGRA TENANCY ACT (II OF 1901) s 95 I L R 37 All 1°

———— forfeiture for non payment of—

See LESSOR AND LESSEE
I L R 38 Mad. 445

———— Kadim Inamdar right of after introduction of settlement—

See BOMBAY LAND REVENUE CODE, 1879 s 217 I L R 45 Bom 61

———— in kind—

See LANDLORD AND TENANT—ENHANCEMENT OF RENT I L R 37 Calc 610

RENT—*contd*

——— legal right to remission—

See ESTATES LAND ACT (MAD ACT I OF 1908), s 4 27 73 143
I L R 40 Mad 640

——— liability for—

See LANDLORD AND TENANT
I L R 34 All 601

See SALE I L R 41 Calc 148

——— Mortgagor retaining property under a Rent Note—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s 47 O XXXIV r 14
I L R 45 Bom 174

——— no estoppel by receipt of—

See MADRAS ESTATES LAND ACT (MAD I OF 1908) s 3 I L R 37 Mad 1

——— non payment of—

See MADRAS ESTATES LAND ACT (I OF 1908) s. 153 I L R 39 Mad 60

——— partly in money partly in kind—

See KABULIYAT CONSTRUCTION OF
I L R 37 Calc 626

——— payment of, for sixty years—

See MADRAS ESTATES LAND ACT (I OF 1908) s 13 CL. (3)
I L R 39 Mad 84

——— permanent occupant—

See BOMBAY LAND REVENUE CODE 1879 s 216 I L R 45 Bom 996

——— permanency of—

See LANDLORD AND TENANT
I L R 37 Calc 30

——— payable in kind recovery of—

See BENGAL TENANCY ACT 1885 s 40
25 C W N 714

——— receipt stating tenancy is at will—value of—

See LANDLORD AND TENANT
24 C W N 1

——— relief against forfeiture for non-payment of—

See LEASE I L R 45 Bom 300

——— remission of—

See CUSTOM I L R 45 Calc 475

——— suit for—

See AGRA TENANCY ACT (II OF 1901) s 34 I L R 35 All 512

See HOMESTEAD LAND
I L R 42 Calc 638

See JURISDICTION OF CIVIL COURT
I L R 40 Calc 402

See LESSOR AND LESSEE.
I L R 39 Mad 939

See LIMITATION I L R 38 Mad 101
I L R 48 Calc 65

——— suit for by a third party—

See CONTRACT I L R 41 Mad 488

RENT—*contd*

——— suit for in Revenue Court—

See MADRAS ESTATES LAND ACT (I OF 1908) I L R 38 Mad 33

——— suspension of—

See LANDLORD AND TENANT
I L R 46 Calc 956

——— War restrictions on—

See BOMBAY RENT (WAR RESTRICTION) ACT

See CALCUTTA RENT ACT

1 ——— Rent for Ferry—*Provincial Small Cause Courts Act (IX of 1887) Sch II Art 8—Rent of a ferry suit for if cognisable by a Small Cause Court* To determine whether an amount payable under a contract is rent or not each case must be judged by its own circumstances. In a suit to recover sums due under a contract for the defendant plying boats in a private ferry *Held* that in the circumstances of the case the sum payable was in no sense a rent PROHLAD PATNI *v* SASHADHAR RAI (1910) 14 C W N 994

2 ——— Maintenance Grant—*Baradaran Jagir Orissa—Landlord and Tenant—Grantor and Grantee—Killajat estates in Orissa—Light tribute as rent—Assessment of rent by Settlement Officer—Finality of decision—Bengal Tenancy Act (VIII of 1885) ss 3 (5) 104 107—Bengal Tenancy Amendment Act (Ben III of 1898) s 9—Second Appeal—Findings of Fact—Inference of Law* In Orissa a proprietor of an estate governed by the law of primogeniture made a grant of certain villages at *baradaran jagir khorposak niskar* etc for the support of the younger brothers and other nearer relatives of the family it was not transferable but was subject to resumption on failure of direct heirs and the grantee had to pay to the grantor a proportionate share of the Government revenue *Held* that the amount payable by the grantee to the grantor under such conditions constituted rent within the meaning of s 3 (5) of the Bengal Tenancy Act 1885 and the grantees were tenants and not co proprietors *Chunder Kant Chukerbutty* v *Mahomed Hossein 6 W P Act X 1* referred to Where a Settlement Officer made an assessment of rent under s 104 of the Bengal Tenancy Act (VIII of 1885) which was not appealed against under s 108 of the Act *Held* that the decision of the Settlement Officer was in view of s 107 of the Bengal Tenancy Act 1885 read with s 9 of Bengal Tenancy Amendment Act 1898 final Though the High Court in second appeal cannot interfere with findings of fact it can interfere with an inference of law drawn from the facts found DWARKA NATH BIDYADHAR *v* DAMBARU DHAR MAHAPATRA (1910) I L R 38 Calc 278

3 ——— Madras Estates Land Act—*(I of 1908) ss 3 (10) 19 and 189* A Revenue Court has no jurisdiction to try a suit for rent of private lands as defined in s 3 (10) of the Madras Estates Land Act (I of 1908) such a suit must be brought in a Civil Court RAJA APPA RAO BAHADUR *v* NAGANNA (1913)
I L R 36 Mad 7

4 ——— Evidence admissibility of—Previous decree for rent—*Obtained by a co sharer if relevant on the question of rent—Res inter alias acta* Where a tenant holds lands under several landlords under one contract of tenancy and each co sharer claims to collect rent pro

RENT—*contd*

tionately to his share a decree for rent obtained in a previous suit by one co sharer is relevant for the determination of the question of the rate of rent in a subsequent suit for rent by another co sharer who was joined as a *pro formâ* defendant in the former suit *Ram Ranjan* v *Ram Narain* *I L R 22 Calc 533* *Tepu Khan* v *Rajani Mohun Das I L R 25 Calc 522* and *Abdul Ali* v *Raj Chandra Das 10 C W N 1084* referred to RAMADIN RAI *v* DHUNWANTI KOER (1912)
17 C W N 1016

5 ———— **Oral evidence admissibility of**—*Evidence Act* (*I of 1872*) *s 92—Tenancy Leas* Where a *kabuliyat* was executed but was not registered and never came into operation oral evidence is admissible to prove the rent agreed upon by the parties A tenancy can be proved without proving the lease if there be any *Banka Behary Christian* v *Raj Chandra Pal 14 C W N 141* and *De Medina* v *Polson Holt N P 47* referred to AMEER ALI *v* YAKUB ALI KHAN (1913) **I L R 41 Calc 347**

6 ———— **Commutation of under Bengal Tenancy Act**—(*VIII of 1885*) *s 40 sub ss* (*1*) (*2*) (*3*) *s 109 Order for commutation of rent—Jurisdiction* Where under s 40 of the Bengal Tenancy Act an application by a tenant for commutation of rent was made to a Sub divisional Officer who transferred the same to a Settlement Officer who in his turn transferred it to an Assistant Settlement Officer who heard and decided the application on its merits *Held* that it was not competent for the Sub divisional Officer to transfer the application to the Settlement Officer *Held* further that it was incumbent on the Court to satisfy itself that an order made on an application under s 40 of the Bengal Tenancy Act was made with jurisdiction though it was not competent to examine the propriety of an order so made *Lalla Saligram Singh* v *Mohunt Ramgir 3 C W N 311* *Kali Krishna Biswas* v *Ram Chandra Baidya 21 C L J 487* *19 C W N 893* followed. JADU NATH MANNA *v* PRANKRISHNA DAS (1917)
I L R 45 Calc 769

7 ———— **Maurasi mokurari kabuliyat**—*Stipulation in for payment of rent partly in cash and partly in kind with statement of the money value of the portion payable in kind and declaring the total rent as the amount made up by the two—Rent if to be taken to be fixed in perpetuity at such amount* In a *maurasi mokurari kabuliyat* it was stipulated that the rent was payable partly in cash and partly in kind that the market value of the paddy was the amount stated in the *kabuliyat* and the total rent was the amount obtained by the addition of the rent in cash and the money value of the rent in kind *Held* per SANDERSON *C J* and MOOKERJEE *J* (NEWBOULD *J* contra) that on a proper construction of the contract it must be held that the parties intended to fix the total rent which should be paid in the event of non delivery of paddy ASHUTOSH MOKHOPADHYA *v* HARAN CHANDRA MUKHERJEE (1919)
23 C W N 1021

8 ———— **Suit for by purchaser landlord**—*Plea of payment to landlord's vendor—Notice of transfer before payment* In a suit for rent by the landlord the defence was that payment had been made to his vendor *Held* that if the defendant had in fact notice of the transfer before payment the plaintiff's suit must succeed but in the absence of a distinct finding on the point by the Lower Appellate Court the case should be remanded MIDNAPURE ZEMINDARY CO LD *v* SYAMA CHARAN CHOWDHURY (1918) **23 C W N 355**

9 ———— **Kabuliyat**—*Construction of—Rent payable partly in cash partly in kind—Value of paddy stated—Mourashi mokarari kabuliyat—Jama abadharita and dharjya meaning of—Bengal Tenancy Act* (*VIII of 1885*) *s 68* Where a *mourashi mokarari kabuliyat* in respect of 4 bighas recited *inter alia* the following — At the rent of Re 1 6 0 each and 7 aries of paddy taking the cash and the price of paddy together assessing the total rent of Rs 16 6 8 gds and on payment of Rs 30 as salami and covenant that I will maintain the boundaries and shall pay the cash rent fixed every year in Bhadra and Pous and the paddy in the month of Magh every year in one kist there shall be no increase or abatement in the *jama* *Held per* CURIAM (NEWBOULD *J* dissenting) that looking at the evidence as a whole the parties did intend to fix the total rent which should be paid in the event of non delivery of paddy namely Rs 16-6 8 gds. *Dwarka Nath Mukerjee* v *Dwijendra Nath Ghosal I L R 47 Calc 139* note followed. *Baneswar Mukerji* v *Umesh Chandra Chakrabarti I L R 37 Calc 626* distinguished. *Per* SANDERSON *C J* When a *mourashi mokarari* lease mentions a certain sum of money as the *jama abadharita* which words may well be rendered as the fixed rent the meaning of the document seems to be very clear that the parties wanted to fix the value of the paddy that is the part of the rent which was payable in kind. *Per* MOOKERJEE *J* The two words *abadharita* and *dharjya* (which latter is used in the present case) are derived from the same root and they have clearly the same significance *Per* NEWBOULD *J* The facts of this case seems to me to be indistinguishable from the facts of the case of *Baneswar Mukerji* v *Umesh Chandra Chakrabarti I L R 37 Calc 626* When the value of the paddy varies the value of the cash may also be said to vary in comparison with the paddy The effect of variation is diminished by fixing as in this case the rent partly in cash and party in kind The statement fixing the total rent at Rs 16 6 8 gds cannot be given any other meaning than a statement added to the document for the purpose of fixing the stamp duty and the registration fee ASHUTOSH MUKERJEE *v* HARAN CHANDRA MUKERJEE (1919)
I L R 47 Calc. 133

10 ———— **Diluvion**—*Abatement of rent on ground of diluvion—Onus of proof on landlord to prove amount recoverable on proof of diluvion by tenant* When there is no express agreement to the contrary as soon as the fact of diluvion is established by the tenant in a suit for rent he is entitled to abatement and the burden is shifted to the landlord to prove the reduced amount of rent justly recoverable by him which can be done only by proof of the extent of the diluvion The finding of the Lower Court on evidence as to length of the unit of measurement cannot be assailed in second appeal KRISTA DAS LAW *v* ABDUL KARIM **25 C W N 308**

RENT DECREE

See EXECUTION OF DECREE.
I L R 28 Calc 288
I L R 40 Calc 623

——— amendment of—

See BENGAL TENANCY ACT 1885 s 10.
5 Pat L J 472

——— Execution of—

See SALE I L R 43 Calc 263

See CHOTA NAGPUR TENANCY ACT 1908 s 211 5 Pat L J 468

——— Whether acts as Res Judicata—

See CIVIL PROCEDURE CODE O XLVII r 2 3 Pat L J 372

1 ——— Contribution suit—*Contract Act (IX of 1872) ss 69 70—Suit for contribution of loss for payment by one judgment-debtor of joint decree— Lawfully paid money paid by one judgment-debtor to satisfy joint-decree—Res judicata—Plea of non-liability in contribution suit if barred in equity where Defendant acquiesced in original claim* A decree was passed against several persons jointly in a rent suit and one of them paid the whole amount of the decree This judgment debtor subsequently brought a suit for contribution against some of his co judgment debtors The defendants pleaded that they were *benamdars* and not really liable for payment under the decree *Held* that although the decree in the rent suit was not *res judicata* as between co-defendants the co judgment-debtors should not be allowed to plead non liability in the contribution suit If they had such a plea they ought to have raised it in the rent suit *Sera Parda* v *Jugueti Parda I L R 25 Mad 599* referred to It is a recognised principle of equity that where of two innocent persons one must suffer by the act of a third he by whose negligence it happened must be the sufferer So even if the defendants were *benamdars* as they allowed their names to be used in the kobala and the zemindar's sherista and did not object when the zemindar brought a suit against them they cannot be heard to complain if they are compelled to reimburse the plaintiff for what he had done for them *Umesh Chandra* v *Khulna Loan Co I L R 34 Calc 92* referred to No hard and fast rule can be laid down barring the application of s 69 of the Indian Contract Act to the payment of a joint decree by one of the joint judgment debtors *Futtehali* v *Ganga Nath I L R 8 Calc 113 Mathura Nath* v *Kristo Kumar I L R 4 Calc 369 Manindra Chunder* v *Jamaher Kumari 9 C W N 670* discussed But where the decree was for a share of the rent by a fractional proprietor and was executed against the plaintiff alone any interest other than that of the plaintiff was not imperilled and the plaintiff could not be said to have been interested in the payment of that part of the decree which was leviable from the defendants and could not recover the amount so paid by a suit for contribution under s 69 of the Indian Contract Act But the payment by the plaintiff was lawful within the meaning of s 70 of the Indian Contract Act and he could recover on it under that section from the defendants who had been benefited by it An interest in making the payment should be a criterion for deciding whether the payment was lawful within the meaning of s 70 of the Contract Act *Chedi Lal* v *Bhagwan Dass I L R 11 All 234 Damodara Mudaliar* v *Secretary of State I L R 18 Mad 88 Gordhan* v *Durbar Sree Suraj Malu I L R 26 Bom 504 Smith* v *Dina Nath I L R 12 Calc 213 Bailurto Nath* v *Udoy Chand 2 C L J 311 313* discussed AJODHYA SINGH v JALTOO LAL (1910) 14 C W N 609

2 ——— Previous ex parte rent decree—*Admissibility of as evidence of relationship between parties—Presumption of continuance thereof—Evidence Act (I of 1872) s 114 illus (d)* A previous ex parte rent decree (between the same parties) is not merely an item of evidence but is conclusive as to the relationship between the parties at that time Its value becomes more apparent since the terms of s 114 illus (d) of the Evidence Act permit the Court to make a presumption as to the continuance of the state of things HIRANMOY KUMAR SAHA v PAMJAN ALI DEWAN (1916) I L R 43 Calc 170

3 ——— Decree for ejectment for non-payment—*Act VIII (B C) of 1869 s 52—Decree for ejectment for non payment of arrears of rent—Period of 15 days if can be extended by executing Court after appeal dismissed* Under s 52 of Act VIII (B C) of 1869 the period of 15 days can only be extended by the Court of first instance at the time of drawing the decree or by the Appellate Court when disposing of the appeal from the decree but cannot be subsequently extended by the Court executing the decree HURAI SHEIKH v SARAT CHANDRA DUTTA (1917) 21 C W N 749

4 ——— Rent decree obtained by putnidar—*Sale of putni under Reg VIII of 1819 after application for execution but before sale—Decree if to be executed as rent decree—Bengal Tenancy Act (VIII of 1885) s 65* Where after his putni taluk had been sold under Reg VIII of 1819 the putnidar sued a tenant for previously accrued arrears of rent and recovered a decree and subsequently the putni sale was set aside and the putnidar thereafter applied for execution of the decree by sale of the holding under the Bengal Tenancy Act but before the sale the putni was again sold under Reg VIII of 1819 *Held* that the decree could be executed as a rent decree the case being covered by the Full Bench decision in *Mehtapal Singh* v *Kritartha Moyee Dasi I L R 35 Calc 666 s c 10 C W N 547* which has not been overruled by the Privy Council in *Forbes* v *Maharaj Bahadur Singh I L R 41 Calc 926 s c 18 C W N 747* MANINDRA NATH GHOSH v ASHUTOSH GHOSH (1917) 21 C W N 1132

5 ——— Produce Rent—*Whether can fall into arrears—Bengal Tenancy Act (VIII of 1885) ss 45 (3) 65 and 158 (b)* A holding which is held on produce rent or partly on produce rent and partly on money rent is liable to be sold in execution of a decree for arrears MAKHAPAN RAUT v NOWBAT SINGH 5 Pat L J 641

6 ——— *Two compromise rent decrees both providing for satisfaction by sale of the tenure—Second decree if may be executed against tenant personally when the tenure was sold in execution of the first decree—Sale subject to directions in the second decree* Two compromise rent decrees provided that the landlord should satisfy his claim for rent by sale of the tenure Under the first decree the property was sold and purchased by the decree holder and the decree-

RENT DECREE—*concld*

holder next applied for personal execution of the second decree *Held*—That the executing Court cannot go behind the decree and must give effect if possible to both the decrees The second decree having been passed before the sale of the property the sale was subject to the directions contained in the second decree PATAN LAL BISWAS *v* NAFAR CHANDRA PAL CHOWDHURY
26 C W N 708

7 ———— Not a mortgage decree—A rent decree is in no sense a mortgage decree *Fortick Chunder Dey Sircar* v *Foley* *I L R 15 Calc 492* approved If the landlord obtains two rent decrees against a tenant and first executes one decree by sale of the holding without notifying that the sale is subject to the other decree and purchases the holding himself he is not debarred from executing the other decree against the remaining properties of the tenant MAHARAJA KESHO PRASAD SINGH *v* MUSAMMAT PARANJOTA KOER
6 Pat L J 354

8 ———— Where five persons are entered in the Record of Rights as the tenants of certain land a rent decree cannot be obtained in a suit against only one of them BERADAR SINGH *v* BACHA MAHTO
5 Pat L J 32

RENT FREE GRANT

See AGRA TENANCY ACT (II OF 1901) s 158 I L R 33 All 553

See ESTOPPEL I L R 39 Calc 439

See JURISDICTION OF CIVIL COURT I L R 43 All 325

RENT FREE HOLDING

———— *Lakhiraj Land accretions to—Lakhirajdar if entitled to hold same rent free—Suit to recover possession from superior tenure holder and raiyat who took settlement from latter—Mesne profits—Regulation XI of 1825 s 4 sub ss (1) and (5)* The holder of a rent free holding is entitled to possession of all lands forming accretion thereto but he is not entitled to hold the same rent free *Mea Jan* v *Akram* *8 C L J 541* *Gourhari* v *Bholanath* *I L R 21 Calc 233* *Golam Ali* v *Kali Krishna Thakur* *I L R 7 Calc 479* *Chooramonee Dey* v *Howrah Mill Company* *I L R 11 Calc 696* *Pammonee* v *Oomesh Chunder* *[1858] Beng S D A 1836* and *Ramgulty Nag* v *Buroda Churn* *1 W R 124* referred to Where such a person sued to recover the accreted land from the holder of the superior interest and from a raiyat who in good faith had taken settlement of the land from the latter *Held* that the plaintiff was not entitled to eject the raiyat The principle of *Benode Lal Pakrashi* v *Kalu Pramanik* *I L R 20 Calc 708* applies equally to firm and alluvial lands As against the superior holder the plaintiff who it was found had never paid him any rent or offered to do so was not given a decree for mesne profits the former's claim for rent being set off against the latter's claim of mesne profits RADHIKA NATH ROY *v* NANDA LAL GUHA SARKAR (1914)
18 C W N 1206

RENT FREE TANK

See ESTOPPEL I L R 39 Calc 439

See LIMITATION I L R 39 Calc 453

RENT IN KIND

———— conversion of, into money rent—

See HINDU LAW (REVERSIONERS) I L R 40 Mad 871

RENT RESERVED

See LANDLORD AND TENANT I L R 44 Calc 403

See SUIT FOR RENT I L R 46 Calc 347

RENT ROLL

———— certified extracts of—

See BOMBAY CITY LAND REVENUE ACT (BOM II OF 1876) ss 30 35 39 40 I L R 39 Bom 664

RENT SETTLEMENT ACT (BENG VIII OF 1879)

See BENGAL TENANCY ACT (VIII OF 1885,) ss 103B 104H I L R 46 Calc 90

RENT SUIT

See IJARADAR I L R 48 Calc 1078

See LIMITATION I L R 48 Calc 65

See LIMITATION ACT (XV OF 1877) SCH II, ARTS 110 116 I L R 34 All 464

See NON JOINDER I L R 48 Calc 518

———— premature—

See LIMITATION I L R 46 Calc 870

———— *Title Paramount dispossession by—Onus of proof—Apportionment of rent—Evidence Act (I of 1872) s 109* Where a tenant is sued for rent he can set up eviction by title paramount to that of his lessor as an answer and if evicted from part of the land an apportionment of the rent may take place but the onus is on the lessor to show what is the fair rent of the lands out of which the tenant was not evicted *Gopanund Jha* v *Lalla Govinda Prosad* *12 W R 109* referred to SURENDRA NARAIN ROY CHOWDHURY *v* DINA NATH BOSE (1915)
I L R 43 Calc 554

———— *Suit against one of several recorded tenants—whether rent decree or money decree may be passed* When 5 persons are entered in the Record of Rights as the tenants of a certain piece of land a rent decree cannot be obtained in a suit against one only BERADAR SINGH *v* BACHA MAHTO
5 Pat L J 33

———— *Against co-tenants—Non substitution of heirs of deceased co tenant—Decree whether good money decree against survivors—Liability if joint or joint and several—Right of co-tenant to insist on all co tenants being impleaded—Contract Act (IX of 1872) s 43* Where in a suit for rent the landlord purported to make all the persons who had entered into the contract of tenancy parties defendants and obtained an *ex parte* decree but some of the tenants having died before the suit the surviving opposed execution on the ground that the decree was not validly obtained: *Held* that the decree passed in such circumstances

RENT SUIT—*contd.*

was a good and valid money decree enforcible against the tenants who were alive at the date of the decree or their representative. If the landlord desires to obtain a decree good against the land under the Bengal Tenancy Act he must ordinarily (apart from any question of representation) implead all the co-tenants including the heirs or legal representatives of a deceased co-tenant. But for the purposes of a money decree (in the absence of express agreement to the contrary) he is free under s. 43 of the Contract Act to sue any or all of the tenants. *Per* N. R. CHATTERJEA J. (RICHARDSON J. *reserving his opinion*) when the contract is with a single person as tenant and he dies the liability of his heirs is a joint liability. *Per* RICHARDSON J. Liability is joint. On the death of one of the joint promisors the liability becomes the liability of the surviving promisors and no liability devolves upon the heirs or legal representatives of the deceased promisor. There being no survivorship amongst co-tenants in India and co-tenants not having under s. 43 the right to be sued together *primâ facie* the liability is joint and several. Authorities reviewed. KRISHNA DAS ROY *v.* KALI TARA CHOWDHURANI (1917)

22 C W N 289

———— *All tenants not made party nor all property represented effect of.* In a rent suit one of the tenants had not been joined as a party but he had received a copy of the summons and been represented by a pleader after filing a written statement. In the appeal too the defendant was not made a party but the district judge after he had delivered judgment issued a notice to him informing him that his name had been added as a party defendant. In the said rent suit another infant tenant's mother on being proposed as guardian appeared through a pleader and stated she could not act unless the name was corrected which not having been done she did not defend the suit on behalf of the infant. *Held* that no useful purpose could be served by adding in the appellate stage a party defendant if he had not been made a party to the appeal and that after judgment in the appeal had been delivered he could not be bound by the insertion of his name on the record by the defendant. BURENDRA NATH BOSE *v.* AGHORE NATH BOSE

25 C W N 525

———— *Pendency of suit for ejectment, if and when prevents limitation running.* It is established as a general principle that the right to demand the rent which falls due during the pendency of a suit for ejectment is not in suspense during the pendency of the litigation. NAGENDRA NATH SEN *v.* SADHU RAM MANDAL

25 C W N 954

RENUNCIATION

See PROBATE I L R 40 Bom 666

REPEAL.

See BOMBAY DISTRICT POLICE ACT 1890 s 62 I L R 45 Bom 203

See CIVIL PROCEDURE CODE 1908 O XLI r 33 I L R 37 Bom 289

See LIMITATION I L R 37 Bom 231

See STATUTE CONSTRUCTION OF I L R 35 Bom 307

REPEALING AND AMENDING ACT (X OF 1914)

See ATTACHMENT I L R 43 Bom 716

REPRESENTATION

See CONTRACT I L R 39 Mad 509

See HEREDITARY OFFICES ACT (BOM III OF 1874) ss. 2 36

I L R 34 Bom 101

See HINDU LAW—ALIENATION

I L R 44 Calc 186

———— principle of—

See LANDLORD AND TENANT

I L R 37 Calc 75

———— Deceased defendant—*Executor not substituted—Decree passed against heirs, if binding on the estate—Will.* B one of the defendants in a money suit brought by P died during the pendency of the suit leaving a will in favour of the plaintiff in the present suit. On P's application the heirs of B were substituted as defendants in her place and the plaintiff's application for substitution of his own name was rejected as he had not obtained probate of B's will. A decree was passed *ex parte* and the property sold in execution thereof. *Held* that the estate of B was not properly represented in the suit and that so far as the estate covered by the will was concerned it was not affected by the decree or the sale. *Baswantappa v. Ranu I L R 9 Bom 86, Khairaj mal v. Daim 9 C W N 201 s c I L R 32 Calc 296 L R 32 I A 23, Malangini Dasi v. Chooney Mont Dasi I L R 22 Calc 903* followed. *Prosunno Chunder Bhattacharjee v. Kristo Chaitanya Pal I L R 4 Calc 342, Chuni Lal Bose v. Osmond Beeby I L R 30 Calc 1014* distinguished. HARISH CHANDRA BISWAS *v.* PURIDAS DAS (1910)

14 C W N 1041

REPRESENTATIVE

See CIVIL PROCEDURE CODE 1908 ss 47 52 I L R 39 All 47

REPRESENTATIVE IN INTEREST

See EVIDENCE I L R 40 Calc 891

REPRESENTATIVE SUIT

See CONTRACT ACT (IX OF 1872) s 70

I L R 42 Bom 556

RE PUBLICATION

See WILL I L R 40 Calc 192

REPUDIATION OF TITLE

See LEASE I L R 42 Bom 734

REPUDIATION OF WILL

See JURISDICTION OF HIGH COURT

I L R 34 Mad. 257

RE PURCHASE

See SALE WITH AN OPTION OF RE PURCHASE I L R 35 Bom 258

REPUTATION

See LIBEL I L R 37 Calc 78

REPUTE

See BURMESE LAW—MARRIAGE.

I L R 39 Calc 49

REQUIREMENTS

See MORTGAGE I L R 45 Calc 748

RE-SALE

See CONTRACT I L R 39 Calc 568

——— of tenure—

See BENGAL TENANCY ACT s 65
14 C W N 1096

RESCUE FROM LAWFUL CUSTODY

See WARRANT I L R 38 Calc 789

See WARRANT VALIDITY OF
I L R 42 Calc 708

——— *Lawful apprehension resistance to—Opium—Person selling article as opium which turns out not to be the same—Arrest and detention of such person—Legality of arrest—Escape from such arrest—Opium Act (I of 1878) s 15—Penal Code (Act XLV of 1860) ss 224 and 225* Where a person purports to sell an article as opium which afterwards turns out not to be the same and he is arrested but escapes with the aid of others *Held* that his arrest and detention are lawful under s 15 of the Opium Act (*I of 1878*) and that his conviction under s 224 and that of the others under s 225 of the Penal Code are legal It is an offence for a person to escape from custody after he has been lawfully arrested on a charge of having committed an offence although he may not be convicted of such latter offence *Deo Sahay Lal* v *Queen Empress I L R 28 Calc 253* approved MOHAMMED KAZI *v* EMPEROR (1916)
I L R 43 Calc 1161

RESERVED FOREST

——— *Assam Forest Regulation (VII of 1891) ss 4 5 6 8 11 15 16 17 and 25—Claim by proprietor of permanently settled estates—Disposal of claim—Disallowance of claim without enquiry—Order of rejection not appealed against—Validity of final notification—Objection to validity raised at trial for breach of Regulation* Where on the issue of a notification under s 5 of the Assam Forest Regulation (VII of 1891) proposing to constitute a certain area a reserved forest a proprietor filed an objection or claim before the Forest Settlement Officer that part of the notified area was his permanently settled estate and not at the disposal of Government under s 4 but his pleader acceded at the hearing to the view of such officer that he was not empowered to adjudicate on the claim and stated that he merely put in his objection and offered to produce evidence as a safeguard in any future proceedings before the Civil Court whereupon the officer without holding an enquiry or taking evidence held that he was not empowered to decide an objection denying the title of Government and therefore disallowed the objection and the claimant did not appeal against the order and the final notification under s 17 was published *Held* that the claimant could not on his trial for offences under s 25 of the Regulation raise the question of the validity of the final notification either because he had not really submitted his claim for adjudication and had not therefore adopted the course specified by the Regulation or if he had so submitted his claim because it had been "disposed of" within s 17 and he had not appealed against the decision of the Forest Settlement Officer KHONDKAR HEDAYETULLA *v* EMPEROR (1920)
I L R 47 Calc [illegible]

RESERVED RENT

See TENANCY AT WILL.
I L R 44 Calc. 2[illegible]

RESIDENCE

See DIVORCE ACT (IV OF 1869) ss 4 7 45 I L R 38 Bom 1[illegible]

See SECURITY FOR GOOD BEHAVIOUR
I L R 43 Calc 15[illegible]

See SUCCESSION ACT (X OF 1865) s 7 9 10 I L R Bom 68[illegible]

——— Hindu widow's right of—

See HINDU LAW
I L R 45 Bom 337

——— meaning of—

See LUNACY ACT s 37
25 C W N 1[illegible]8

——— notification of—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 565
I L R 35 Bom 137

RESIDENT AT ADEN

See ADEN SETTLEMENT REGULATION (VII OF 1900) s 13 I L R 40 Bom 448

RESIDUARY CLAUSE

See WILL I L R 38 Mad. 1096

RESIDUARY LEGATEE

See PROBATE AND ADMINISTRATION ACT
I L R 45 Calc. 862

See PARTIES

——— A residuary legatee is entitled to such an account as is necessary for the purpose of ascertaining what his share is KHETRA MONI DASEE *v* DHIRENDRA NATH ROY
I L R 41 Calc. 271

RESISTANCE BY STRANGER

See EXECUTION OF DECREE.
14 C W N 838

See SEARCH I L R 41 Calc. 261

RES JUDICATA

See AGRA TENANCY ACT (II OF 1901)—

ss 4 19	I L R 37 All 280
ss 10 202	I L R 33 All. 507
s 63	I L R 33 All. 453
s 95	I L R 37 All. 223
ss 95 AND 167	I L R. 37 All. 41
ss 142 199	I L R 41 All. 359
s 167	I L R 43 All. 191
s 199	I L R 32 All. 6

See AWARD I L R 33 All. 430

See BENGAL TENANCY
I L R. 48 Calc. 450

See BENGAL TENANCY ACT—

s 103B	14 C. W N 364
ss. 105 and 105A	8 Pat L J 659
ss. 105A 107 AND 109	3 Pat. L J 379

RES JUDICATA—*contd*

———— rule of—

See DECLARATORY DECREE SUIT FOR
I L R 43 Calc 694

———— order for directions not—

See THIRD PARTY NOTICE
I L R 45 Bom 24

———— suit in Revenue Court for rent followed by suit in Civil Court claiming to be occupancy tenants—

See AGRA TENANCY ACT 1901 s 167
I L R 43 All 191

———— refusal of Court to file arbitration award—

See CIVIL PROCEDURE CODE 1908 s 11 SCH II, R 20 I L R 45 Bom 329

1 ———— Adjudications—*Res judicata between co defendants—Burden of proof* Where an adjudication between co defendants is necessary to give the appropriate relief to the plaintiff such adjudication will be *res judicata* between the defendants as well as between the plaintiff and defendants There must be a conflict of interest between the defendants a necessity for a decision between them and a judgment defining the rights and obligations of the defendants *inter se* *Ram Chander Narayan* v *Narayan Mahadev I L R 11 Bom 216 220* referred to and followed The general rule is that a person who claims property through some other person must prove that such property vested in that other person A person who alleges that property in the hands of a female was inherited from some person whose heir he claims to be must prove that it belonged to that person *Diwan Ran Bijai Bahadur Singh* v *Indar pal Singh, L R 26 I A 226 228* referred to NARASIMMA AMMAL *v* SRINIVASARAGAVA AIYANGAR (1909)
I L R 33 Mad 112

2 ———— Matter substantially in issue —*Capacity of parties—Civil Procedure Code (Act XIV of 1882) s 13* The plaintiff in conjunction with another had in 1902 filed a suit against the defendant for possession of certain property basing his claim on the allegation that he was owner He succeeded in the first Court but the Court of Appeal held that the property had been dedicated to charity and refused to uphold his claim as owner The plaintiff declined to adopt the Court s suggestion to modify his claim and be content to ask for a decree for possession as manager and his suit was therefore dismissed Five years later he filed the present suit claiming possession as manager *Held* that his title as manager was one which might and ought to have been put forward in the previous suit and that his present claim was therefore *res judicata* If a plaintiff is suing in a capacity in which he is a stranger to the capacity in which he sued in a former suit his claim has no proper connection with that former suit and the Civil Procedure Code (Act XIV of 1882) s 13 does not apply HARGOVAN PAMJI *v* MULJI HARJIVAN (1909)
I L R 34 Bom 416

3 ———— Practice—*Suit against defendant on ground which failed not to be decreed on another ground—Application for leave to amend plaint after arguments heard in appeal disallowed* A suit brought against the defendants on one ground which fails should not be decreed against them on another ground which they had no opportunity of meeting After arguments in appeal have been heard the Court will not allow an amendment of the plaint so as to convert a suit of one character into a suit of a substantially different character *H* filed a suit in 1904 against *A and J* the drawer and indorser respectively of two hundies At the time of filing the suit *J* was dead *H* obtained a decree against both defendants which decree remained unsatisfied In 1905 *H* filed a suit against the heirs of *J* on the same two hundies *Held* that the earlier suit having been filed against the firm of *J* and not against *J* personally was a bar to the later suit BAYABAI *v* HAJI NOOR MAHOMED (1905)
I L R 34 Bom 244

4 ———— Cause of action, how to be determined—*Civil Procedure Code Act XIV of 1882 s 103—Bar of suit under s 158—Scope of* The plaintiff in the present suit sued one Srinivasa Aiyar in Original Suit No 7 of 1?9? ca the ground that he was prevented from entering on his property and prayed for an injunction restraining the said Srinivasa Aiyar from obstructing plaintiff In the present suit plaintiff sued the successors in title of Srinivasa Aiyar alleging that Srinivasa Aiyar wrongfully got into possession prior to his filing Original Suit No 7 of 189 and prayed for a declaration of title and possession *Held* that the present suit was barred as *res judicata* Where the causes of action are substantially the same the form in which they are stated or the difference in the frame of the relief will not affect the question. *Haji Hasam Ibrahim* v *Mancharam Kalidas I L R 3 Bom 137* followed *Jibanti Nath Khan* v *Shib Nath Chakerbatty I L R 8 Calc 819* distinguished A Court is not precluded from comparing the issues in the two cases and from considering what the plaintiff had to prove or undertook to prove in either case in considering whether the causes of action are identical *Chand Kour* v *Partab Singh I L R 16 Calc 98* explained Where in a suit at an adjourned hearing neither the plaintiff nor his pleader appears the case may be dealt with under s 158 of the Civil Procedure Code 1882 There is nothing in the language of that section which precludes its application to such a case *Srimant Sagajirao* v *Smith I L R 20 Bom 736* dissented from NAGAVADA AIYAR *v* KRISHNAMURTI AIYAR (1910)
I L R 34 Mad 97

5 ———— Decision on merits—dismissal for under valuation—*Civil Procedure Code (Act V of 1908) s 11—Second suit for trial on same merits* A previous suit between the parties failed on the ground that the claim was undervalued and the plaintiff when called upon to pay the deficient Court fees omitted to do so There were issues on merits also decided In a subsequent suit for trial on the same merits the decision in the first suit was pleaded as *res judicata* *Held* that the rejection of the suit on the ground of undervaluation at any stage of it did not make it *res judicata* for the purposes of a subsequent suit on the same cause of action or litigating the same title *Held* further that the dismissal of the suit on the ground of undervaluation having been sufficient by itself the findings on the issues on the merits were not necessary for the decision of the suit and could not have the force of *res judicata*

RES JUDICATA—*contd*

IRAWA KOM LAXMANA MUGALI v SATYAPPA BIN SHIDAPPA MUGALI (1910) I. L. R. 35 Bom 38

6 ——— Execution proceedings—*Decision in such proceeding not appealed against—Finality of such decision—Erroneous decision on a question of law whether res judicata* A decision in a previous execution proceeding which merely lays down what the law is and is found to be erroneous, cannot have the force of res judicata in a subsequent proceeding for a different relief BAIJ NATH GOENKA v LADMANAND SINGH (1911) I. L. R. 39 Calc. 848

7 ——— Partition suit—*Suit by a widow to recover possession of her husband's share in divided family lands after partition by mete and bounds—Alleged partition of a house—Dismissal of suit family lands being found not divided—Subsequent suit by a reversioner to recover possession of the house no res judicata* There were two brothers Kishorbhai and Desaibhai Kishorbhai died leaving him surviving his widow Bai Kanku a daughter Bai Divali and brother Desaibhai Subsequently Desaibhai died leaving behind him his daughter's son Muljibhai In 1884 Bai Kanku brought a suit against Muljibhai to recover possession of her husband's share in divided family lands after partition by metes and bounds She alleged that the house in which she lived had fallen to her husband's share at partition It was found that the family lands were not divided and the suit was dismissed Bai Kanku died in 1907 In the year 1908 the plaintiff who was the nearest heir of Kishorbhai brought the present suit against Muljibhai to recover possession of the house A question having arisen as to whether the finding in the suit of 1884 with respect to family lands operated as *res judicata* with respect to the house *Held* that the decision in the suit of 1884 did not bar the present suit MULJIBHAI NARBHERAM v PATEL LAKHMIDAS (1911) I. L. R 36 Bom 127

8 ——— Suit against pledger—*Ornaments—Unauthorised Pledge—Subsequent pledge—Recovery of Judgment against pledger—Non satisfaction—Suit against pledgee for detention after demand—Tort feasors—Judgment not res judicata—Omission to raise an issue suggested by defendant—Defendant not claiming under a person against whom the issue was decided after defendant's transaction—Moveable property—Doctrine of lis pendens not applicable—Party and privy* Plaintiff brought a suit No 159 of 1897 against *M* to obtain a declaration that *M* was not adopted by plaintiff's step mother and that she (the plaintiff) was the owner of the property in suit as the heir of her father and to obtain possession The cause of action was laid in March 1897 The property in suit included ornaments of considerable value which *M* had pledged with his creditor After the filing of the suit *M* redeemed the ornaments and again pledged them with *G* with the exception of two which had already been pledged with *G* The plaintiff recovered judgment against *M* but it was not satisfied The plaintiff then brought the present suit No 56 of 1908 against *G* as pledgee of the ornaments from an unauthorized pledger for detention of the ornaments after demand on or about the 11th August 1907 The defendant *G* answered that the judgment in the suit of 1897 was a bar to the present suit on the ground that the pledger and the pledgee were joint tort feasors and the matter had passed into *res judicata* At the hearing of the suit the defendant wanted the Court to raise an issue as to whether *M* was not the validly adopted son but the Court refused to frame the issue and admitted the judgment in the suit of 1897 (which had decided the issue in the negative) in evidence on the ground *inter alia* that the defendant who was *M's* pleader in that suit was a privy to it The Court overruled the defendant's plea of *res judicata* and allowed the plaintiff's claim for the recovery of the ornaments or their value *Held* on appeal by the defendant that the defendant's plea of *res judicata* could not stand The cause of action in the second suit must be precisely the same as the cause of action in the first suit in order to make the judgment in the first suit a bar to proceedings in the second suit *Held* further that it was an error not to raise an issue as to whether *M* was not the validly adopted son and to admit the judgment in the former suit in evidence on the ground that the defendant was a privy to it The judgment in the former suit was subsequent to the pledge and the defendant did not claim under a person against whom the issue of adoption had been at the time of the pledge finally heard and determined The fact that the former suit was pending at the time of the pledge of the ornaments could not prejudice the defendant on the issue of *res judicata* for the doctrine of *lis pendens* did not apply to moveable property The defendant was therefore not a privy of *M* and was not bound by that judgment *Held* also that the judgment in the previous case was irrelevant to prove that *M* had got possession of the ornaments by means of fraud GOVIND BABA GURJAR v JIJIBAI SAHEB (1911)

I. L. R 36 Bom 189

9 ——— Co plaintiffs—*Civil Procedure Code (Act V of 1908) s 11—Civil Procedure Code (Act XIV of 1882) s 26—Joinder of parties* The plaintiff *D* and his step mother *R* (defendant) brought a suit against *C* to recover possession of certain ornaments which formed part of the estate of *M* the father of *D* and husband of *R* It was held by the Court of first instance that *R* was entitled to the ornaments because they were her *stridhan* but the appellate Court held that she was entitled to them not because they were her *stridhan* but because she was the absolute owner of the property *D* then sued *R* for a declaration that he as son and heir to *M* was entitled to hold the decree The defendant in reply contended *inter alia* that the suit was barred by *res judicata* *Held* that the bar of *res judicata* did not apply inasmuch as there was no final adjudication as between *P* and D and in the first suit it was a matter of no consequence to the defendant therein for the purposes of the relief to be given against him whether *P* succeeded or whether *D* succeeded A finding to become *res judicata* as between co plaintiffs must have been essential for the purpose of giving relief against the defendants *Ramchandra Narayan* v *Narayan Mahadev I L R 11 Bom 216* followed The Court ought not to hold a point to be *res judicata* unless it is clear from the pleadings and the findings in the previous suit No Court ought to infer *res judicata* by mere arguments from a judgment in a previous suit *Attorney General for Trinidad and Tobago* v *Erichè* [1893] *A C 518* followed RUKHMINI v DHONDO MAHADU (1911) I L R 36 Bom 207

RES JUDICATA—*contd*

10 ———— **Settlement**—*Suit by after born son to set aside settlement—Difference between estoppel and res judicata* Estoppel and *res judicata* are entirely different *Res judicata* precludes a man averring the same thing twice over in successive litigations while estoppel prevents him saying one thing at one time and the opposite at another CASSAMALLY JAIRAJBHAI *v* SIR CURRIMBHOY EBRAHIM (1911) **I L R 36 Bom 214**

11 ———— **Consent decree**—*Civil Procedure Code (Act V of 1908) s 11—Consent decree between predecessors in title of parties in suit—Injunction granted in former suit—Res judicata and estoppel distinguished* A consent decree has to all intents and purposes the same effect as *res judicata* as a decree passed *per invitum* and this notwithstanding the words in s 11 of the Civil Procedure Code has been heard and finally decided *In re South American and Mexican Company* [1895] *1 Ch 37* followed A consent decree come to between the predecessors in interest of the present parties touching matters now substantially and directly in issue between them is *res judicata* *Res judicata* ousts the jurisdiction of the Court while estoppel does no more than shut the mouth of a party Estoppel never means anything more than that a person shall not be allowed to say one thing at one time and the opposite of it at another time while *res judicata* meant nothing more than that a person shall not be heard to say the same thing twice over BHAISHANKER NANABHAI *v* MORARJI KESHAVJI & Co (1911) **I L R 36 Bom 283**

12 ———— **Compromise decree recision of**—*Civil Procedure Code s 257 A—Agreement contravening rule in—Not opposed to public policy—Judgment debtor may waive rule* The test for determining whether there is an estoppel in any particular case in consequence of a decree passed on a compromise is whether the parties decided for themselves the particular matter in dispute by the compromise and the matter was expressly embodied in the decree of the Court passed on the compromise or was it necessarily involved in or was it the basis of what was embodied in the decree The basis of a compromise decree is a contract between the parties to the litigation and the principles applicable to contracts would often have to be considered in determining the rules of estoppel applicable to such decrees at the same time such a decree cannot be regarded as a mere contract and has got a sanction for higher than an agreement between parties The parties to the decree cannot therefore put an end to it at their pleasure in the manner that they could rescind a mere contract Nor can it be impeached on some grounds on which a mere contract could be impeached such as absence of consideration or mistake *Jenkins v Robertson 1 H L Sc* and *Dii 117* distinguished The reason is that the Court having found to adopt the agreement between the parties as its own adjudication the interpretation to be placed upon such adjudication, ought to be the same as that to be placed on the agreement itself A compromise decree may in some respects have a greater validity than one passed after contest between the parties as such a decree has all the force of a compromise or a species of contract which is highly favoured by the Courts. Judgments passed on mutual agreements of parties are distinguishable from judgments by default and decrees passed upon a confession of judgment or an admission by the defendant that the plaintiff is entitled to a particular relief *An agreement in contravention of s 257 A of the Civil Procedure Code is not opposed to public policy* The prohibition in section is not based on any rule of public policy rendering such agreement illegal It is merely unenforceable in execution proceedings or by a fresh suit as the case may be A judgment debtor is entitled to waive the benefit of the rule VENKATA PERUMAL RAJA BAHADUR *v* THATA RAMASAMY CHETTY (1911) **I L R 35 Mad 5**

13 ———— **Rent decree**—*How far decree for rent in previous suit res judicata on the question of title in subsequent suit* A a landlord tendered patta to *B* his tenant who objected to the patta on the ground that the extent of his holding was overstated some of the lands included in the patta not belonging to *A* but to *B* himself The issue was raised whether the patta tendered was proper the Court found that it did not contain any objectionable matter and was therefore a proper patta Decree was accordingly given for rent in favour of *A* *A* tendered a similar patta to *B* for a subsequent year and *B* again raised a similar objection to the extent of the holding In a suit brought by *A* for the rent *B* objected to the extent of the holding and it was contended first that the matter was *res judicata* by reason of the decision in the previous suit —*Per* MUNRO *J*—The finding in the previous suit that the patta was proper was a finding that the relationship of landlord and tenant subsisted between the plaintiff and the defendants in respect of the land entered in the patta and the defendants cannot be allowed to plaintiff again to proof of his title *Per* SANKARAN NAIR *J*—A decree for rent does not necessarily require a decision as to the terms of the patta or the extent of the land for which rent has to be paid There being no express finding in the previous suit on the question of the ownership of the land it cannot be implied from the mere passing of the decree for rent that the question was decided for the purpose of the subsequent suit Where a question need not be deemed to have been decided on the ground that the decree in the previous suit requires such assumption to make it a decree rightly passed a party is not in the absence of a clear and express finding precluded from raising the question in a subsequent suit The question whether *A* or *B* was owner of the land included in the patta was not *res judicata* by reason of the previous decision BAMMIDI BAYYA NAIDU *v* PAMMIDI PARADESI NAIDU (1911) **I L R 35 Mad. 216**

14 ———— **Compromised decree**—*Compromise also affecting land not in suit—Compulsory registration Act (III of 1877) s 17 cl (i)—Compromise affected land not in suit—Registration* Where a compromise affected land not in suit and a decree was passed in terms of the compromise in so far as it related to the property sued for to render the compromise available as a defence to a future suit as regards property not formerly sued for it must have been registered in accordance with the provisions of the Registration Act (III of 1877) s 17 If any portion of a compromise has not passed into a decree or order of Court it is *prima facie* difficult to see how a recital of it in the proceedings of the Court or its inclusion in pleadings put before the Court will bring it within the operation of cl (i) of

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s 17 of Registration Act *Pindernath Naik v Ganga Saran Sahu I L R 20 All 1 1* and *Leranal Annee v Lakshmi Anni I L R 20 Mad 515* explained *Naganathan Chetty v Venna Nachiar I L R 33 Mad 10* dissented from *Janmejoy Biswas v Phulan Jeon I L R 31 Calc 4 6* distinguished. CHELLAMANNA v LAKSHMI AMMAL (1913)

I L. R. 36 Mad. 46

15 ———— Decision based on oath, etc. *effect of as—Oaths Act (X of 1873) effect of* An adjudication by a Court on an oath made by one of the parties to the suit would make the matter of issue covered by the adjudication *res judicata* in a subsequent litigation between the same parties where the subject matter of the suit is different *Per Curiam* The decision of any matter directly and substantially in issue in a former suit between the same parties would none the less be *res judicata* because the decision was based on the oath of one of the parties or a witness in the former suit The effect is similar to that of a decision of a Court based on a finding of an arbitrator or on a compromise between the parties In all these cases the decision is the decision of the Court and not of the arbitrator or the parties SANYASI BARIKIYA v ARTA NAYO (1913)

I L. R. 36 Mad. 287

16 ———— Land assigned to support religious service—Lease—Adverse possession—*Limitation—Suit to recover possession of vatan land on the ground that the mortgage by the previous holder ceased to be effective on his death—Defence of tenancy for a term—Dismissal of suit—Subsequent suit to recover possession on the ground that the deceased holder had no right to alienate the land in any manner* In the case of a lease for a term of years by the holder for the time being of lands assigned to support services rendered to a Makan and religious community by successive holders time begins to run not from the commencement of the tenancy of the person claiming to hold as a tenant but from the date when the claims of the parties became openly and undoubtedly adverse *Thakur Ram Chunder Singh v Srimati Madho Kumari L R 12 I A 197* and *Trimbak Ramchandra v Sheikh Gulam Zilani I L R 24 Bom 529* referred to The plaintiff brought a suit on the ground that the alienation by way of mortgage of certain service vatan lands ceased to be effective on the death of the alienor the previous holder The defendant contended that the document of alienation was a lease and not mortgage The suit was dismissed on the ground that the plaintiff failed to establish his contention as to the character of the document upon which he had elected to go to trial. In a subsequent suit the plaintiff asserted that the lands in suit being Sarv Inam continuable in the plaintiff s family in the succession of disciples the plaintiff's deceased predecessor had no right and power whatever to pass in writing those lands by way of mortgage or lease or in any other manner so as to let the writing continue in force after his death. *Held* that the subsequent suit was not maintainable owing to the bar of *res judicata* The complaint in both the suits was the unlawful retention by the defendant of the lands after demand for delivery free of incumbrances The matter of the retention of possession of the lands by defendants upon the terms asserted by him had been heard and finally decided in the first suit and could not be raised again *Hoomatara Debea v Krishnokamini Dossee 18 W R 163* referred to *Naro Balvand v Ramchandra Tulder I L R 13 Bom 3 6* distinguished MAHAMAD OAYS v RAJABAKSHA (1912)

I L. R 37 Bom 224

17 ———— Estoppel—Mortgage by Hindu widow claiming an absolute estate—*Lever sioner previous independent title of* On 28th August 1879 one Musammat Bhamo was declared to have preferential title to one Satyabadi in certain lands On the 30th September 1904 Bhamo executed a conditional mortgage In a suit for foreclosure brought by the mortgagee against Bhamo and Satyabadi s brother Baleshwar who was made a party on the allegation that he was in possession as a donee of the equity of redemption a decree *nisi* was granted to the mortgagee and Baleshwar (who repudiated the title of Bhamo and set up a title in himself alleging that the property belonged to him and Bhamo was in possession as his guardian) was dismissed from the suit Subsequently the mortgage decree having been made absolute and the mortgagee having been unable to obtain possession of the lands in question a suit for recovery of possession was filed on the 19th June 1906 by the mortgagee against Baleshwar This latter suit was decreed on the 17th September 1906 and both Courts of Appeal subsequently confirmed this decree Shortly after the decision of the High Court in the above appeal Bhamo died and on the 2nd April 1909 Baleshwar brought a suit against the mortgagee for declaration of title and recovery of possession *Held* that the decision in the litigation of 1879 could not operate as *res judicata* *Baleshwar Bagarti v Bhagirathi Das I L R 35 Calc 701* followed *Held* also that the decision in the mortgage suit could not operate as *res judicata* *Juggeshwar Dutt v Bhuban Mohan Mitra I L 33 Calc 425 2 C L J 205* referred to *Held* further that the plaintiff was bound by his allegations in the suit for recovery of possession and could not now be permitted to say that Bhamo was in possession as a Hindu mother and that he himself was entitled to succeed on her death *Bhaja Chowdhury v Chuni Lal Marwari 5 C L J 95* referred to BHAGIRATHI DAS v BALESHWAR BAGARTI (1913) I L R 41 Calc 69

17 C W N 877

18 ———— Suit for rent decreed—Tenant if can institute title suit *to declare he was the tenant of another person and for recovery of amount realised under the decree—Alleged landlord joined as party* Where B having sued C for rent on the basis of a registered *kabuliyat* C denied his tenancy under B and asserted that he was holding as tenant directly under B s superior landlord A but C's defence was overruled and a decree made in B s favour *Held* that a subsequent suit brought by C in which he made both A and B parties defendants for a declaration that he was not C s tenant and for refund of the money realised by B under his decree was barred by *res judicata* *Dwarka Nath v Ram Chand I L R 26 Calc 498 s c 3 C W N 266* distinguished SREENATH DUTT v KASER SHEIKH (1913) 18 C W N 116

19 ———— Execution proceedings—*Order returning execution application for correction of the amount claimed without notice to judgment debtor whether binding on the decree holder* Where the Court without issuing notice to the judgment debtor returned an execution applica

RES JUDICATA—*contd*

tion directing the decree holder to amend the same by reducing the amount claimed and the decree holder failed to appeal against the order *Held* that the order was a judicial adjudication in a proceeding between the parties that the decree holder was not entitled to the larger amount and that the decree holder was consequently debarred from claiming the larger amount in a fresh execution application The fact that the judgment debtor had no notice is immaterial except when the order is passed against him in which case it is an *ex parte* order and cannot bind a party who had no opportunity to make his defence *Hiralal Bose v Dwija Charan Bose 3 C L J 240 Bhola Nath Das v Prafulla Nath Kundu Chowdhry I L R 28 Calc 122* and *Delhi and London Bank Limited v Orchard I L R 3 Calc 47*, distinguished VYAPURI GOUNDAN v CHIDAMBARA MUDALIAR (1912) **I L R 37 Mad. 314**

20 ———— **Findings on two issues**—*Civil Procedure Code (Act V of 1908) s 11—Judgment or findings on two issues one of which alone was sufficient—Both findings res judicata* Where a judgment is based on the findings on two issues the findings on both the issues will operate as *res judicata* though the finding on only one would be sufficient to sustain the judgment *Krishna Behari Roy v Brojeswari Choudranee L R 2 I A 283* and *Venkayya v Narasamma I L R 11 Mad 204* followed VENCATARAJU v RAMANAMMA (1913) **I L R 38 Mad 158**

21 ———— **Execution of decree**—*Failure of judgment debtor to raise objection to an amount erroneously set forth in an application for the execution of a decree—Civil Procedure Code (1908) s 11 expln IV* *Held* that if a judgment debtor does not take exception to the amount erroneously set forth in an application for the execution of a decree as being the sum due he is not prevented by the principle of *res judicata* from doing so on subsequent application for the execution of the same decree KALYAN SINGH v JAGAN PRASAD (1915) **I L R 37 All. 589**

22 ———— **Suit on mortgage**—*Ex parte decree against morgagors members of joint Hindu family—Decree set aside against one member for insufficient service while remaining against other members—Decree on retrial made against all the members—Decision that decree was valid decree in suit on mortgage—Fresh suit to set aside decree on same grounds as in suit on mortgage and between same parties—Civil Procedure Code (1882) ss 13 and 244—Suit to set aside decree made with jurisdiction and allowed to become final—Valid decision unless fraudulent* A mortgage was executed in 1894 by the manager of a Hindu joint family of which he and his two sons were the adult members in favour of the predecessor in title of the respondents and in a suit on a mortgage an *ex parte* decree was on the 30th of April 1897 made against the mortgagor and his two sons one of whom was the appellant and an order absolute *for sale was made in September 1900 In 1901 the ex parte* decree was set aside against the other son on the ground of insufficient service on him and on the retrial of the suit the Subordinate Judge on the 22nd of September 1902 made a decree against all three members of the family notwithstanding that the decree of the 30th of April 1897 was still in existence against the appellant In 1906 an order was applied for to make the decree of 1902 absolute against all the judgment debtors The appellant made objections which were over ruled and an order absolute for sale was made by the Subordinate Judge on the 3rd of November 1906 which was affirmed by the High Court on the 26th of February 1908 *Held* that a fresh suit brought by the appellant against the respondents to have the decree of the 22nd of September 190[illegible] set aside on the ground that he was not a party to it and that the Court had therefore no jurisdiction to make it was on the principle of *res judicata* not maintainable as being between the same parties and raising precisely the same grounds and objections as had been raised and disallowed in the former suit and proceedings on the mortgage It is not open to suitors in India who have exhausted the remedies competent to them to institute a fresh suit the object of which is to declare that a decree competently and with adequate jurisdiction obtained therein is not applicable to them although they are named in the decree Even if the objections were wrongly decided and the decree was erroneous it must when it has been allowed to become final be taken as being valid if the Court had jurisdiction to make it and provided as was the case here there was no fraud proved *Malkarjun v Narhari I L R 25 Bom 337 L R 27 I A 216* followed RAJWANT PRASAD PANDE v RAM RATAN GIR (1915) **I L R 37 All. 485**

23 ———— **Sale of Khoti Lands**—*Civil Procedure Code (Act V of 1908) s 11—Sale of Khoti lands on the basis that they are alienable—Subsequent suit between the parties on the allegation that the lands were inalienable—Khoti Settlement Act (Bombay Act I of 1880) s 9* Certain Khoti lands were sold in execution proceedings between the parties on the footing that they were alienable and purchased by the defendant The plaintiff then filed a suit to recover possession of the lands on the allegation that the lands being occupancy lands their sale was invalid under s 9 of the Khoti Settlement Act 1880 *Held* that the plaintiff s allegation was barred by *res judicata* inasmuch as the sale in execution decided inferentially as between the plaintiff and the defendant that the lands sold were not occupancy lands KASHINATH KRISHNA v DHONDSHET (1916) **I L R 40 Bom 675**

24 ———— **Effect of rule**—*Rule of res judicata not a mere technical rule* The application of the rule of *res judicata* by the Courts in India should be influenced by no technical considerations of form but by matter of substance within the limits allowed by law SHEOPARSAN SINGH v RAMNANDAN PRASHAD NARAYAN SINGH (1916) **I L R 43 Calc 694** | **20 C W N 738**

25 ———— **Finding in claim case if "res judicata" re other properties**—*Civil Procedure Code (Act V of 1908) O XXI r 63 effect of—Wakf validity of* Properties A and B are included in an alleged wakf The finding in a claim case regarding A that the wakf is a fraudulent transaction is not conclusive in a suit for declaration and possession regarding a share in B An order in a claim case is conclusive only as regards the particular property in dispute *Held* further that a wakf having been given effect to during the life time of the wakifs is valid and irrevocable *Surnamoyi Dasi v Ashutosh Goswami I L R 27*

RES JUDICATA—contd

Calc 714 Ponnappa Chettiar v Deory Garavamma I L R 29 Mad 95 Ramu Aiyar v A L Palaniappa Chetty I L R 25 Mad 35 distinguished *Radha Prasad Singh v Lal Sahab Rai I L R 13 All 53 Dinkar Ballal Chakradev v Hari Shridhar Apte I L R 14 Bom 206* referred to AMNA BIBI v AWALJADI BIBI (1916)

I L R 44 Calc 698

26. ———— **Execution of decree**—*Effect of the decision of an issue in the suit upon a cognate but not precisely similar issue raised in execution proceedings* In a suit for sale on a mortgage the main defence raised was that the mortgagor had no right to mortgage the property in suit inasmuch as it formed part of a grant originally made by Government, which was in the nature of political pension and inalienable This defence was accepted and the Court refusing to make a decree on the mortgage gave the plaintiffs a money decree only In execution of this money decree the plaintiffs decree holders sought to attach certain property of the judgment debtors not being part of the property included in their mortgage Whereupon it was objected by the judgment debtors that this property also formed part of the original grant and could not be taken in execution *Held* that the question so raised was not concluded by the finding arrived at in the suit in respect of the property which purported to have been mortgaged to the plaintiffs *Mongalathammal v Narayanaswami Aiyar I L R 20 Mad 461* and *Aghore Nath Mukerjee v Srimati Kamini Debi 11 C L J 461* referred to *Held* that having regard to the substance rather than to the form of the proceedings before the court below there was in this matter a reference to arbitration by the Court under the earlier paragraphs of the second schedule to the Code of Civil Procedure and in the circumstances the appeal which was against the decree based on the award was not maintainable *Aidamarthi Krishnamoorthi v Garigiparti Ganapatilingam 34 Indian Cases 741* and *Shama Sundram Iyer v Abdul Latif I L R 27 Calc 61* referred to RAM NANDAN DHAR DUBE v KANIZ FATIMA BIBI (1917)

I L R 39 All 379

27 ———— **Finding when "res judicata" between co-defendants**—In order that a finding in a case should be *res judicata* between co defendants three things are necessary (i) that there should be a conflict of interest between co-defendants (ii) that it should be necessary to decide on that conflict in order to give to the plaintiff the relief appropriate to his suit (iii) that the judgment should contain a decision of the question raised as between co-defendants JADAV CHANDRA SIRKAR v KAILASH CHANDRA SING (1916)

21 C W N 693

28 ———— **"Issue not finally decided" in former suit**—*Civil Procedure Code 1882 s 13—Defence of fraudulent representation in suit on a bond* S 10 of the British Baluchistan Regulation IX of 1896 creates an estoppel by judgment only when the matter in issue has been finally decided *Sheosagar Singh v Sitaram Singh I L R 24 Calc 616 L R 24 I A 50* followed That was a case under s 13 of the Civil Procedure Code 1882 which so far as the question under discussion is concerned is similar to s 10 of the Baluchistan Regulation. The appellant (defendant) had brought a suit for cancellation of a bond on the ground that he was induced to execute it by the fraudulent representations of the respondent (the present plaintiff) The first Court held that he had failed to establish the fraud and that decision was affirmed on appeal by the District Judge He then brought a second appeal to the Judicial Commissioner who declined to go into the merits of the case and upholding an objection by the respondent to the frame of the suit dismissed the appeal In a suit brought by the respondent to enforce the bond the appellant raised the same issue as before and the two lower Courts held that the issue was *res judicata* and the Judicial Commissioner dismissed an appeal to him from that decision *Held* by the Judicial Committee that the defence in the present suit was not *res judicata* the allegation regarding the execution of the bond on the fraudulent representations of the respondent never having been finally decided in the Judicial Commissioner's Court ABDULLAH ASHGAR ALI KHAN v GANESH DASS (1917)

I L R 45 Calc 442

29 ———— **Suit for profits**—*Civil Procedure Code (Act V of 1908) s 11 expl V s 47* and *O XX r 12—Previous suit for land and past and future profits—Decree for land and past profits and no decision as to future profit—Second suit for future profits maintainability of* *Held* by the Full Bench (AYLING J contra) When in a suit for possession and past and future mesne profits the Court gives a decree for mesne profits down to the date of suit and says nothing about subsequent mesne profits a fresh suit to recover them is not barred under s 11 Civil Procedure Code *Ponnusawmi Iyer v Sri Rangaraja Iyengar 2 L W 8* over ruled *Kuppusuamy Aiyar v Venkataramier 15 Mad L J 402* applied DORAISAMI v SUBBRAMANIA (1917) **I L R 41 Mad. 188**

30 ———— **Erroneous decree**—*Property belonging to estate B erroneously decreed to be in estate A—Tenants under B under permanent leases if bound by decree—Tenants entitled to hold under their own leases under A—Co sharer zemindar purchasing tenure—Possession disputed by tenant of neighbouring zemindar—Suit as both purchaser and zemindar to establish title in property purchased—Zemindar's title if property in issue—Litigating under the same title* A and B are neighbouring zemindaries The 4 5ths proprietor of A purchased in execution of a decree for his share of the rent a defaulting tenure G in A A tenant of B having set up title as such to a portion of the land thus purchased the purchaser sued the claimant and the zemindars of B to establish his title both as landlord and as purchaser to the tenure G In the course of that suit a Commissioner fixed a boundary between A and B which in a subsequent investigation was found to have erroneously included in estate A lands which really formed part of estate B as part of the defaulting tenure G and this was confirmed by the Court *Held* that the plaintiff in that suit was interested in establishing his title both as zemindar and purchaser and the zemindari title having upon the pleadings been directly put in issue the decision, so far as plaintiff's 4 5ths zemindari title was concerned was as between the rival zemindars *res judicata* The defaulting tenure holder having prior to the sale of the tenure mortgaged his properties the tenure (amongst other properties) was

RES JUDICATA—*contd*

sold in execution of a decree obtained on the mortgage and a part of it was purchased by the mortgagee and the rest by a stranger who later on sold it to the mortgagee The mortgagee purchaser was no party to the suit of the 4 5ths zemindar of A who had purchased only the equity of redemption at the sale in execution of his rent decree *Held* that the decision in that suit was not *res judicata* against the mortgagee purchaser who was entitled to show that he held certain portions of the land purchased by him under permanent leases granted to the mortgagor by the proprietors of B on certain terms That as regards such lands the 4 5ths zemindari title being found to be in the proprietors A *res judicata* in the present suit in which both the proprietors of B and the mortgagee purchaser are parties the mortgagee purchaser is entitled to hold them under the 4 5ths proprietor of A as to that share on the terms of the permanent leases granted by the proprietors of B SHIB CHANDRA RAY *v* HARENDRA LAL RAY (1918)

22 C W N 721

31 ———— **Finding on unnecessary issue** —*Civil Procedure Code (Act V of 1908) s 11—Finding recorded on an issue which is not necessary in the first suit—Finding does not become res judicata — Finally decided meaning of* In 1903 the plaintiff sued the defendant to recover possession of land and arrears of assessment at an enhanced rate alleging that the defendant was a tenant at will and not a permanent tenant The Court held in that suit that the defendant was a yearly tenant and though it decreed the claim to recover arrears of assessment at the enhanced rate it dismissed the claim to recover possession on the ground that notice to quit had not been given by the plaintiff Ten years later the plaintiff gave to the defendant a legal notice to quit and brought a second suit to recover possession of the land alleging that the defendant was a tenant at will and that he was prevented from contending otherwise by *res judicata* *Held* by HEATON J that though the issue as to the nature of the tenancy was undoubtedly directly and substantially in issue it could not be said that it was finally decided in the earlier case *Held* by PRATT J that the dismissal of the claim for possession prevented the finding that the defendant was not a permanent tenant from operating as *res judicata* and that the issue as to the character of the tenure was a matter collateral to the liability to pay enhanced assessment DAUDBHAI ALLIBHAI *v* DAYA RAMA (1918)

I L R 43 Bom 563

32 ———— **Adoption suit**—*Civil Procedure Code (Act V of 1908) s 11—Suit by Hindu widow to set aside adoption made by her as invalid—Suit dismissed on the ground of estoppel and also on the merits—Fresh suit by reversionary heir to declare adoption invalid if maintainable—Hindu widow how far represents estate* A suit by a Hindu widow to set aside an alleged adoption by her of the defendant as the son of her deceased husband was dismissed by the Courts in India on the ground that the plaintiff was by her conduct estopped from denying that the defendant was validly adopted but on appeal to the Privy Council the Judicial Committee did not confine its decision to the question of estoppel only but held as a fact that the plaintiff had authority to adopt the defendant and he was validly adopted. On the death of the widow an alleged reversionary heir sued the defendant in the previous suit for recovery of the estate on the allegation that the widow had no authority to adopt *Held* that the decision in the previous suit was a bar to the maintainability of this suit That in that suit, the widow notwithstanding the personal estoppel under which she laboured represented the estate on the question of fact as to whether the defendant had or had not been adopted Where the estate of a deceased Hindu has vested in a female heir a decree fairly and properly obtained against her in regard to the estate is in the absence of fraud or collusion binding on the reversionary heir and a Hindu widow otherwise qualified to represent an estate in litigation does not cease to be so qualified merely owing to personal disability or disadvantage as a litigant although the merits are tried and the trial is fair and honest RISAL SINGH *v* BALWANT SINGH (1918)

23 C W N 398

33 ———— **Administration suit**—*Validity of gift—Decision in same suit—Civil Procedure Code (Act V of 1908) s 11* S 11 of the Code of Civil Procedure 1908 is not exhaustive of the circumstances in which an issue is *res judicata* A testator by his will and codicils provided that certain annuities should be paid out of a trust fund thereby created and that the residue of the income of the fund should be paid to the deacons of a Baptist church subject to certain conditions with a gift over to another Baptist church if the conditions were not fulfilled. In an administration suit in the High Court during the life of the last surviving annuitant it was held that the conditions had not been fulfilled and that there was not an *intestacy* as to the surplus income rejecting a contention on behalf of the next of kin that the gift over was invalid as creating a perpetuity the decree provided that the determination of the destination of the income or corpus of the fund upon the death of the annuitant should be deferred until after that event In further proceedings in the suit after the annuitant's death the next of kin contended that under the reservation in the decree they were entitled again to raise the contention that the gift over was invalid. *Held* that the validity of the gift over was *res judicata* Ram Kirpal Shukul v Rup Kuari I L R 6 All 633 L R 11 I A 37 and Pearce v Marriot 22 Ch D 189 followed Judgment of the High Court reversed. HOOK v ADMINISTRATOR GENERAL OF BENGAL (1921)

I L R 48 Calc 499

25 C W N 915

34. ———— **Rent suit**—*Question of title incidentally raised if res judicata* In a suit by the Plaintiff to recover lands appertaining to a *jote* belonging to his predecessor the defence was that the latter had abandoned the *jote* In a previous suit by the Plaintiff against Defendant for rent on the basis of a *kabuliyat* the Defendant had averred that the *kabuliyat* had been obtained by misrepresentation and set up a tenancy under a third party It had been found in that suit by the first Court that the *kabuliyat* was not genuine but in the Appellate Court the dismissal of the suit by the first Court was upheld on the finding that the Plaintiff had abandoned the *jote* *Held* — That the decision was not *res judicata* in the present suit GOHER SHEIKH *v* ALIMUDDIN SHEIKH

24 C W N 717

RES JUDICATA—*contd.*

35. ———— **Family Custom, Effect of decision as to**—*Position of descendants of non-contesting branches of the family* Where it is necessary to establish o d nr a custom in a family and where pains have been taken to bring upon the record every branch of the family and where that custom has been the subject of contest and thoroughly thrashed out in the presence of all branches of the family the matter cannot be again raised by the descendants of those branches even though certain branches did not take an active part in the contest but contented themselves with admitting that the custom existed MOWAR SHEWBAK SINGH v MOWAR THAKUR DAYAL SINGH 1 Pat. L. J 221

36 ———— **Decision incidental to main issue**—*Whether operates as res judicata*—*Examination of pleadings and judgment to ascertain what was directly and substantially in issue* In a previous suit by the plaintiff for delivery of a kabuliyat it was alleged that the rent was Rs 49 *per annum* The court, finding that the rent was less than Rs 49 *per annum* dismissed the suit and in order to decide what costs the defendants were entitled to recorded a finding that the real rent was Rs 30 *per annum*. In the present suit the plaintiff sued for rent at the rate of Rs. 30 per *annum*. *Held* that the question of the rent payable by the defendants was not *res judicata* The decision that the rent was Rs 30 *per annum* being recorded merely for the purpose of arriving at a correct conclusion regarding the cost was only incidental and recorded for a purpose collateral to the main issue In order to ascertain what matter directly and substantially in issue in the previous suit was heard and finally decided, the pleadings and judgment in that suit may be examined MITTLE PODDAR v JADAB CHANDRA CHATTOPADHYAY 2 Pat L. J 156

37 ———— **Mortgage suit property wrongly described**—*Decree set aside*—*Subsequent suit for sale of property actually covered by bond* Where the execution of a decree on a mortgage bond failed on the ground that in the plaint in the suit the property was described as being situated in Mouzah L whereas in fact it was situated in Mouzah M *held* that a subsequent suit on the mortgage bond was not barred by the rule of *res judicata* Non suit does not operate as *res judicata* JANARDHAN SARAN MISSER v AMBICA PRASAD SINGH 2 Pat L J 313

38 ———— **Failure to produce evidence in first suit**—*Withdrawal with leave to bring fresh suit effect of* If a suit is dismissed on the ground that as constituted it could not succeed the dismissal is not *res judicata* however erroneous may be the idea that the frame of the suit barred a decision If however it is dismissed for want of evidence the decision is final Where the plaintiff's suit was dismissed by the first Court and the plaintiff appealed and applied to the appellate Court for leave to withdraw the appeal on the ground that he had not been able to adduce evidence necessary for the substantiation of his case *Held* that the order of the appellate Court granting leave to withdraw amounted to a decision that the evidence on the record was not sufficient to support the plaintiff s case and therefore a subsequent suit between the same parties in which the same matters were substantially in issue was barred by the rule of *res judicata* SATYABAD GOUNIA v BEDIADHAR BARLANDA 3 Pat L J 404

39 ———— **First suit decreed in the Second Class Subordinate Judge s Court—Subsequent suit in Court of the First Class Subordinate Judge**—*Identical issue involved in both suits*—*No bar of res judicata*—*Jurisdiction*—*Civil Procedure Code (Act V of 1908) O II r 2*—*Minor plaintiff not to be prejudiced by a mistake of his guardian* The plaintiff s guardian filed a suit in the Second Class Subordinate Judge s Court to recover possession of property alleging that the plaintiff was the adopted son of one Nathu *The plaintiff s* adoption was upheld and suit decreed The plaintiff subsequently filed a second suit in the First Class Subordinate Judge s Court for the recovery of another portion of family property The defendant pleaded that the plaintiff was not the adopted son and that the suit was barred by O II r 2 Civil Procedure Code On plaintiff s behalf it was contended that the defendants were barred by *res judicata* from disputing plaintiff s adoption *Held* that the decree in plaintiff s favour in the previous suit could not be pleaded as *res judicata* in the subsequent suit as the judge by whom it was made had no jurisdiction to try and decide the subsequent suit in which the issue as to adoption was subsequently raised *Held also* that the suit was not barred under O II r 2 of the Civil Procedure Code 1908 as the plaintiff who was a minor when the first suit was brought could not be prejudiced by a mistake made by his guardian as his right to sue in his own person came into effect on his attaining majority *Gokul Mandar v Pudmanund Singh (1902) I L 29 I A 202* referred to VYANKAT v ONKAR NATHU (19 0) I L R 45 Bom 805

40 ———— **Where both parties appealed from decree of first Court and Appellate Court disposed of both appeals by one judgment** *accepting plaintiff s appeal and rejecting that of defendant separate decrees being given*—*and defendant in his second appeal did not file a copy of the decree passed on his appeal*—*Civil Procedure Code Act V of 1908 O 42 r 1*—*entries in bhasis silent as to interest*—*whether oral evidence of agreement to pay interest is admissible*—*Indian Evidence Act I of 1872 s 92 proviso (2)* Plaintiff respondent sued for recovery of Rs 825 principal and Rs 412 8 0 interest on a *bahi* entry which made no mention of interest First Court decreed Rs 325 and interest at Rs 2 *per cent per mensem* making a total of Rs 448 8 0 Both parties appealed and the Lower Appellate Court wrote a judgment in defendant s appeal covering both appeals and accepted plaintiff s appeal allowing Rs 825 the amount given in the entry and Rs 264 as interest total 1 089 and dismissed defendant s appeal A short judgment was also written in the plaintiff s appeal referring to the other and separate decrees were given in the two appeals Defendant then preferred a second appeal to this Court attaching thereto copies of the two judgments and of the decree in plaintiff s appeal but not of the decree passed in his own appeal *Held* that as there was no valid appeal before this Court *in respect of the decree of the Lower Appellate* Court on defendant s appeal the decision relating to the sum of Rs 448 8 0 was final and the present appeal in respect of this item was barred as *res*

RES JUDICATA—*contd*

judicata C v C and B (22 P R 1903) referred to, *Jugal Kishore* v *Chammo* (85 P R 1905 F B) distinguished *Held also* that, having regard to the concluding words of *proviso* (2) *of* s 92 of the Evidence Act oral evidence of an agreement to pay interest on the amount shown due in the entry was admissible such entires in *bahis* not being of a formal character *Kishore Chand* v *Guran Ditta Mal* (52 P R 1911) distinguished *Bura* v *Maila Shah* (104 P R 1901) and *Paghu Mal* v *Bandu* (110 P R 1908) referred to BHAN SINGH *v* GOKAL CHAND

I L R 1 Lah 83

41 ———— **Decision in previous suit whether "res judicata" as between the defendants—necessary essentials**—*Estoppel—Admission by defendant in a previous suit which did nothing to influence plaintiff's beliefs or actions* *Held* following *Ram Chandra Narain* v *Narain Mahadev* (I L R 11 Bom 216) that where an adjudication between the defendants is necessary to give the appropriate relief to the plaintiff the adjudication will be *res judicata* between the defendants as well as between the plaintiffs and defendants But for this effect to arise there must be a conflict of interests between the defendants and a judgment defining the real rights and obligations of the defendants *inter se* Without necessity a judgment will not be *res judicata* amongst defendants nor will it be *res judicata* amongst them by mere inference from the fact that they have been collectively defeated in resisting a claim to a share made against them as a group *Broja Behari* v *Kedar Nath* (I L R 12 Calc 580 F B) and *Balambhat* v *Narayanbhat* (I L R 25 Bom 74) approved *Held further* that as the plaintiff was fully cognizant of his own rights and position the admission of the defendant made in a previous suit between the parties who did nothing to influence either plaintiff s beliefs or actions could not operate as an estoppel in the present suit MEHRA *v* DEVI DITTA MAL

I L R 2 Lah 88

42 ———— **Ex parte decree**—*Application for re hearing on ground of non service of summons —Application dismissed—Suit to contest decree on the same ground whether maintainable—Code of Civil Procedure (Act V of 1908) O IX r 13* Although a decree can be set aside on ground of fraud yet if question has already been agitated between the same parties and decided by a Court of competent jurisdiction the matter is *res judicata* JANGAL CHAWDHRY *v* LALOIT PASTAN

6 Pat L J 1

43 ———— **Withdrawal from Suit**—Where a defendant has entered appearance and filed a written statement and then withdrawn from the suit he is not entitled to institute a suit to set aside the *ex parte* decree obtained against him in these circumstances merely on the ground that the plaintiff in a joint suit procured his decree by means of perjured evidence RAM NARAIN LAL SHAW *v* TOOKI SAO **5 Pat L J 259**

44 ———— **Suit by public**—*if barred by the decision in a previous suit betw en a Manager appointed under the Religious Endowments Act and some claimants as Mohunts* A Manager was appointed under s 5 of the Religious Endowments Act of 1863 in respect of a temple and thereupon a person claiming to be a Mohunt or Dundee of the temple instituted a suit for establishment of his title There were three Defendants in the suit viz the said Manager his successor in office and another rival claimant to the office of Dundee The suit was decreed During the pendency of the suit the public brought the present suit under s 92 of the Civil Procedure Code but the District Judge dismissed the suit on the ground that the trial of the question raised in the present suit was barred by the result of the decision in the previous suit which was pending at the date of the institution of the present suit *Held*—That the decree in the earlier suit though operative against the Manager appointed under s 5 of the Religious Endowments Act as also against the rival claimants could not possibly operate to defeat a suit by members of the public instituted under s 9 C P C S 92 contemplates the administration of a trust created for public purposes Such administration may include the removal of an existing trustee the appointment of a new trustee or both In such a suit it may be held that the endowment was not of such a nature as to attract the operation of the provisions of the Religious Endowments Act 1863 and that the appointment of the Manager under s 5 of the Act was without jurisdiction and so forth SAHAYAM CHAKRABARTY *v* KHAGENDRANANDA **26 C W N 504**

45 ———— **Land Acquisition Act**—*(I of 1894)—Decision under if may be reopened in regular suit*—Res judicata *general principle of not limited by Civil Procedure Code* (Act V of 1908) *s 11—Land Acquisition Act (I of 1894) s 54— Award if includes decision on disputed question as to disposition of compensation money—Gift by Hindu to wife whether limited or absolute—Principle of construction* Under a deed of settlement executed by one P one half of certain properties was given to his adopted son and the remaining half was given to his two wives who were to take the same half and half One of these properties having been acquired by Government a question arose in a proceeding under s 32 of Act 1 of 1894 between the adopted son and one of the wives as to whether the latter was absolutely entitled to her share of the compensation money or whether the same was to be invested she having no right to alienate her interest in the property under the deed of settlement The High Court when the matter came up before it held that by the deed of settlement the wife was intended to have a widow s estate only in the property devised Subsequently the wife having bequeathed her properties to Respondent by Will, the representatives of the adopted son instituted a suit against the claimants under the Will alleging that she had a limited estate under the deed of settlement and had no power to dispose of the properties by Will *Held*—That it was not open to the Courts in this suit to review the decision of the High Court in the proceeding under sec 32 of Act I of 1894 that the lady had only a limited estate in the property without power of alienation It is not competent for the Court in the case of the same question arising between the parties to review a previous decision no longer open to appeal This principle is of general application and is not limited by the specific words of s 11 of the Civil Procedure Code so that the fact that the decision in question was not

RES JUDICATA—*contd*

claimed in a former suit did not make any difference The importance of a judicial decision is not to be measured by the pecuniary value of the particular item in dispute and the Defendants in the suit could not be heard to say that in view of the comparatively small value of the property involved in the proceeding under s. 32 of Act 1 of 1894 it was not thought worth the while to appeal from the decision of the High Court in that proceeding The award as constituted by the Land Acquisition Act is nothing but an award which states the area of the land the compensation to be allowed and the apportionment amongst persons whose interests are not in dispute A dispute between interested people as to the extent of their interest forms no part of the award The determination of such a dispute in the High Court was a decree and appealable as such to the Privy Council It is not accurate to say that under the Hindu law in the case of a gift of immoveable property to a Hindu widow she has no power to alienate unless such power has been given T B RAMACHANDRA RAO v B N S RAMCHANDRA RAO 26 C W N 715

RESPONDENT

——— death of—

See APPEAL, PARTIES TO AN
I L R 39 Mad. 386

RESTITUTION

See ASSIGNEE OF A MONEY DECREE.
I L R 38 Mad. 36

See CIVIL PROCEDURE CODE 1882 s 583
I L R 38 All 163
I L R 32 All 79

See CIVIL PROCEDURE CODE 1908

s 47 AND 144 I L R 44 Bom 702
s 144

——— claim for—

See CIVIL PROCEDURE CODE (ACT V OF 1908) *s 144* I L R 43 Bom 492

——— *Application for restitution of property—subsequent application for mesne profits res judicata—Code of Civil Procedure (Act V of 1908) ss 141 and 144 and O II r 2—(Act XIX of 1881) s 583—Limitation Act (IX of 1908) Sch I Art 181* Where a decree obtained against the defendants was reversed on appeal and they applied for and obtained restitution of the property from the plaintiff *Held* that a subsequent application for mesne profits in respect of the property for the period during which the plaintiffs were in possession was maintainable and that the period of three years provided by Art 181 of Sch I to the Limitation Act 1908 began to run from the date of the appellate Court s judgment A proceeding in which relief by way of restitution is claimed is neither a suit nor an execution proceeding but a miscellaneous proceeding to which the rules applicable to execution proceedings in substance apply The provisions of O II r 2 of the Civil Procedure Code do not apply to such a proceeding Article 181 of Schedule I to the Limitation Act 1908 does not control the period during which mesne profits shall be allowed to accumulate and whatever the number of years during which the decree holders have been in possession the defendant is entitled to be compensated in respect of the whole of that period provided he applies within three years from the date on which the right to the relief accrued KRUPASINDHU RAY v MAHANTA BALBHADRA DAS
3 Pat L J 367

RESTITUTION OF CONJUGAL RIGHTS

See CIVIL PROCEDURE CODE 1908—

s 11 I L R 37 Bom 563
O XXXIX r 1 I L R 42 All. 134

See COURT FEES ACT (VII OF 1870) SCH II ART 17 (vi) I L R 33 All 787

See DIVORCE ACT (IV OF 1869) ss 2 4 7 45 I L R 38 Bom 125

See HUSBAND AND WIFE
I L R 37 Bom 393

See LIMITATION ACT (IX OF 1908) s 29
I L R 34 All. 412

See MAHOMEDAN LAW—DOWER
I L R 35 Bom 386

See MAHOMEDAN LAW—RESTITUTION OF CONJUGAL RIGHTS

See MARRIAGE I L R 33 All. 90

——— decree for should not be executed by detention of wife in prison—

See CIVIL PROCEDURE CODE 1908 O XXI r 33 I L R 44 Bom 972

——— suit for effect of—

See MAHOMEDAN LAW—DIVORCE
I L R 46 Calc 141

——— Jurisdiction—*Valuation of claim—Jurisdiction of Second Class Subordinate Judge to entertain the suit—Bombay Civil Courts Act (XIV of 1869) s 24—Suits Valuation Act (VII of 1887) s 11* A suit for restitution of conjugal rights wherein the claim was valued by the plaintiff at Rs 65 was instituted in the Court of the Second Class Subordinate Judge The First Court decreed the claim and on appeal the decree was confirmed On second appeal it was contended that the First Court had no jurisdiction to try the suit *Held* that the valuation of the claim by the plaintiff must be accepted for the purpose of jurisdiction unless it was shown to have been made either from any improper motive or deliberately for the purpose of giving the Court a jurisdiction which in fact it had not *Jan Mahomed Mandal* v *Mashar Bibi I L R 34 Calc 352* followed JASODA v CHHOTU (1909) I L R 34 Bom 236

——— Decree against wife—*Injunction against wife s parents—Costs* Plaintiff filed a suit against his wife and her parents to obtain a decree for restitution of conjugal rights against his wife and a personal injunction restraining the parents from obstructing his wife from living with him and from allowing her to live in their house The lower appellate Court gave the Plaintiff a decree for restitution of conjugal rights and granted an injunction against the parents On appeal —*Held* that the order granting the injunction was wrong *Jamunabai* v *Narayan*

RESTITUTION—*contd*

Moreshwar Pendse 1876 I Bom 164 distinguished BAI JAMANA *v* DAYALJI MAKANJI (1919)
I L R 44 Bom 454

RESTORATION OF APPEAL

See APPEAL **6 Pat L J 625**

RESTORATION OF SUIT

See CIVIL PROCEDURE CODE 1908 O IX RR 8 AND 9 S 151
I L R 34 All 426

See SMALL CAUSE COURT SUIT
I L R 44 Calc 950

——— *Decree set aside for fraud—Order of Court of concurrent jurisdiction of effective to restore suit* Where a decree obtained in a Court of equal jurisdiction was set aside by another Court which went on to add that the result of the decree being declared fraudulent would be that the original suit would be restored *Held* that this order of a Court of equal jurisdiction could not operate as a direction to the first Court to restore the suit and that in refusing to restore the suit the Court had committed no error KHETRA MOHAN BARIK *v* MANGOBINDA PAL (1910)
14 C W N 558

——— *Order dismissing application for restoration—appeal* No appeal lies from an order dismissing an application for restoration of a suit JAGDISH NARAIN PRASAD SINGH *v* HARBANS NARAIN SINGH **2 Pat L J 720**

RESTRAINT ON PROCEEDINGS

See INJUNCTION **I L R 38 Calc 405**

RESTRAINT OF TRADE

See CONTRACT
I L R 48 Calc 1030

See CONTRACT ACT S 27

RESTRAINT ON ALIENATION

See TRANSFER OF PROPERTY ACT 1882 S 10

RESTRAINT UPON DRUNKEN AND DISORDERLY PERSON—

See PENAL CODE S 341
I L R 44 Mad 913

RESTRICTION OF HABITUAL OFFENDERS (PUNJAB) ACT 1918—

——— s 3 and 7—*Order of restriction following an order of security for good behaviour—whether legal* *Held* that a restriction order under *s* 7 of the Restriction of Habitual Offenders (Punjab) Act following an order for security for good behaviour is *ultra vires* under the proviso to the section and must be set aside KABIR BAKHSH *v* CROWN
I L R 1 Lah 100

——— ss 8 12 and 13—*Whether an order of restriction for a period exceeding one year passed by a Magistrate requires confirmation by the Sessions Judge—Criminal Procedure Code Act V of 1898 s 123* *Held* that an order of restriction for a period exceeding one year passed by a Magistrate under the provisions of the Restriction of Habitual Offenders (Punjab) Act does not require confirmation by the Sessions Judge CROWN *v* SURELA
I L R 1 Lah 614

RESULTING TRUST

See LIMITATION ACT (XV OF 1877) S 10
I L R 35 Bom 49

See SETTLEMENT BY A HINDU WOMAN OF TRUSTS **I L R 40 Bom 341**

——— *Purchase by husband of land in Rangoon and conveyed to wife—Erection on land of dwelling houses—Suit by husband against wife as a mere benamidar—Parties born of English parents but with permanent residence in India—Law applicable to such a suit—English Law with rebuttable presumption of advancement to wife—Onus of proof* The parties in this case were husband and wife born in India of English parents and who had resided in India all their lives except for a visit to England occasionally The appellant had bought land with money of his own or borrowed and had procured it to be conveyed to the respondent by two deeds and had at his own expense erected thereon two dwelling houses In a suit brought by the appellant against his wife for a declaration that the houses were held by her as his *benamidar* and that he was the true owner of them and for an order that she should convey them to him the respondent while admitting that the sites of the houses had been so purchased and conveyed to her and that the houses had been built upon them as stated alleged that the sites were conveyed and the houses built on them for her as an advancement and that she was consequently entitled to a beneficial interest in them as her own property *Held* that the principles and rules of law which would be applicable to the case if it were tried in a Chancery Court in England were applicable to it when tried in Rangoon There would be a presumption of an intended advancement which might be rebutted but that the onus of rebutting it rested in the appellant *Gopeekrist Gosain v Gungapersaud Gosain 6 Moo I A 53* and *Uzhur Ali v Ultaf Fatima 13 Moo I A 3* distinguished To rebut such a presumption it was not sufficient for the appellant merely to state that he did not intend to confer any beneficial interest on the respondent but he must establish with reasonable clearness that he had other and different motives for the action he took *Devoy v Devoy 3 Sm & G 403 per V C Sir Page Wood* applied in principle *Held* further that on the evidence the onus had been discharged by the appellant and he was entitled to succeed KERWICK *v* KERWICK (1920) **I L R 48 Calc 260**

PESUMPTION

See ASSESSMENT **I L R 43 Calc 973**

See CANTONMENT PROPERTY
I L R 36 Bom 1

See CHAUKIDARI CHAKRAN LANDS
I L R 42 Calc 710
I L R 45 Calc 685
I L R 37 Calc 5[illegible]
I L R 44 Calc 841
I L R 45 Calc [illegible]65

See CIVIL PROCEDURE CODE 188[illegible] S 4 [illegible]
I L R 35 Bom 382

See FORFEITURE **I L R 36 Bom 539**

See GRANT **I L R 36 Bom 438**
I L R 39 Bom 63

RESUMPTION—*contd*

See JAGIRS I. L. R. 39 Calc. 1
I. L. R. 46 Calc. 683

See INAM

See MADRAS REGULATION (XXX OF 1802) s. 4 I. L. R. 38 Mad. 620

See RESUMPTION BY GOVERNMENT

See RESUMPTION OF SARANJAM

See SHETSANDI LANDS
I. L. R. 31 Bom. 560

See VRITTI I. L. R. 37 Bom. 403

—— distinguished for enfranchisement—

See CHARITABLE INAMS
I. L. R. 40 Mad. 939

—— of grant—

See GRANT OF LAND
I. L. R. 43 Bom. 37

—— of muafi—

See AGRA TENANCY ACT (II OF 1901) s. 158 I. L. R. 39 All. 689

—— of Pasaila Inam land—

See BOMBAY LAND REVENUE CODE (BOM ACT V OF 1879) s. 202
I. L. R. 45 Bom. 894

—— of Saranjam—

See SARANJAM I. L. R. 41 Bom. 408

—— *Resumption for public purposes by Government of land granted by East India Company—Scheme to erect dwelling houses at adequate rent for the accommodation of Government Officials in Bombay—Construction of lease and sanad—English decision under 43 Eliz c. 2 as to exemption from rating—Notice of resumption addressed to one party and served on another—Waiver.* In these appeals the Judicial Committee held (affirming the decisions of the Courts in India) that the providing of housing accommodation for Government Officials by the erection of dwelling houses for their private residences at adequate rents was a public purpose within the meaning of a lease of land from the East India Company given in 1851 and a Sanad or Government Permit of land granted in 1859 by the same Company which made such lands (situate on Malabar Hill Bombay) liable to resumption for public purposes upon certain terms as to notice and compensation. The scheme was one which their Lordships agreed with the Courts below would under the circumstances in evidence redound to public benefit by helping the Government to maintain the efficiency of its servants. *Held* also (agreeing with the Courts below) that the English decisions which construed the words "public purposes" as used in the Statute 43 Eliz c. 2 with reference to exemptions from rating afforded no help as to the proper construction to be put on the words in the contracts in suit. The definition of a "public purpose" that the phrase whatever else it may mean must include a purpose that it is an object or aim in which the general interest of the community as opposed to the particular interest of individuals is directly and vitally concerned approved by their Lordships of the Judicial Committee. A notice which though addressed to one of the defendants (a testator who was dead) was served on one of his executors and trustees also a defendant and accepted and acknowledged by his solicitors who corresponded on the basis of it with the Government as to the resumption was held to be a valid notice the irregularity having been thereby waived. HAMABAI FRAMJEE *v.* SECRETARY OF STATE FOR INDIA (1914) I. L. R. 39 Bom. 279

—— *Land held under Sanad from Government—Valuation of land to be determined by a committee appointed by Government—Construction of the word "committee"—Valuation fixed by the majority binding on parties to the Sanad—Distinction between arbitrators and valuers.* Land was held by the plaintiffs under a Sanad from Government which provided "the said ground to be at any time resumable by Government for public purposes six months notice being previously given and a just valuation of all buildings or improvements thereon being paid the owner the amount of which a committee appointed by Government is in such a case to determine." The land being resumed with due notice given under the above clause the Government appointed a committee of three persons to value the compensation to be paid to the plaintiffs. Two members of the committee valued the land at Rs. 80,383 the third valuing it at Rs. 1,9?,?74. The Government accepted the report of the majority as the determination by the committee under the terms of the Sanad and took possession of the land after payment of Rs. 80,383 to the plaintiffs. The plaintiffs filed the present suit to recover compensation at the higher valuation or any sum in excess of Rs. 80,383 which the Court might think just and proper. *Held* dismissing the suit (i) that it was the understanding and within the contemplation of all the parties to the Sanad that the determination of the just value of the land to be made by a committee appointed by Government should be accepted if that determination represented the concurrent opinion of a majority of the committee; (ii) that the valuation agreed upon by the majority of the committee appointed by Government was the valuation expressed to be determined and so made binding upon the parties to the resumption term in the Sanad. MAHOMEDALY ADAMJI *v.* SECRETARY OF STATE FOR INDIA (191)
I. L. R. 42 Bom. 668

RETAINER

See BAR COUNCIL RESOLUTIONS OF
I. L. R. 40 Calc. 898

RETRACTION OF STATEMENT BY WITNESS

See SANCTION FOR PROSECUTION
I. L. R. 37 Calc. 618

RE TRIAL

See A[illegible] OF EXAMINATION OF
I. L. R. 40 Calc. 163

See AUTREFOIS ACQUIT
I. L. R. 41 Calc. 1072

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) 33[illegible]
I. L. R. [illegible]9 Mad. 527

See EVIDENCE ACT (I OF 1872) [illegible] 81 I. L. R. 6[illegible]

See TRIAL BY JURY
I. L. [illegible]

RE-TRIAL—*contd*

——————— *Power of High Court to order after obtaining additional evidence—Code of Criminal Procedure (Act V of 1898) s 428—Government of India Act (5 and 6 Geo c c 61) s 107—Witnesses duty of Court to secure attendance of—Petitions filed by parties duty of Court to pass order on* The High Court has power to direct the Sessions Judge to re hear an appeal after obtaining additional evidence It is the duty of the Court when processes have once been issued for the attendance of witnesses to exhaust all the powers allowed by law to enforce their attendance unless the party citing such witnesses can be shown to have been guilty of wilful obstruction and delay Where the accused repeatedly requested that certain persons should be summoned as witnesses and the Court twice issued process without securing their attendance *held* that the fact that the accused had failed to deposit the travelling and diet expenses of the witnesses did not excuse the Court from its duty to secure their attendance as the accused had never been requested to deposit the sum necessary for the expenses MAHOMED ZAMIRUDDIN *v* KING EMPEROR 3 Pat L. J 632

REUNION

See HINDU LAW—JOINT FAMILY
I L R 41 All. 361

See HINDU LAW—PARTITION
I L R 37 Calc 703
I L R 35 Bom 293
I L R 35 All. 41

REVENUE

——————— attachment of arrears of—

See CONTRACT ACT (IX OF 1872) ss 69 70 I L R 39 Mad 795

——————— covenant to pay—

See CONSTRUCTION OF DOCUMENT
I L. R 38 All. 230

REVENUE COMMISSIONER

See COMMISSIONER POWER OF
I L. R. 40 Calc 552

REVENUE COURT

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 105 CLS (*b*) AND (*c*)
I L. R 38 Bom. 642
s. 476. 4 Pat L. J 475

See JURISDICTION OF CIVIL COURT

See JURISDICTION OF CIVIL AND REVENUE COURTS

See MADRAS ESTATES LAND ACT (I OF 1908) ss. 189 ETC
I L. R 39 Mad 239

See PENSIONS ACT (XXIII OF 1871) s 4 I L. R. 36 Mad. 559

——————— jurisdiction of—

See CERTIFICATE OF SALE
I L. R. 37 Calc 107

See MADRAS ESTATES LAND ACT (I OF 1908) I L. R 38 Mad. 33
I L. R. 41 Mad. 121

——————— proceedings in—

See PARTITION I L. R 46 Calc 236

REVENUE COURT—*contd*

——————— sales by—

See LIMITATION ACT (IX OF 1908) ART 12A I L R 45 Bom 45

REVENUE-FREE LAND

See UNITED PROV LAND REVENUE ACT (III OF 1901) s 32 (*d*)
I L R 36 All. 631

REVENUE JURISDICTION ACT (X OF 1876)

See BOMBAY REVENUE JURISDICTION ACT (X OF 1876)

——————— s 4 (*a*)—

See HEREDITARY OFFICES ACT (BOM III OF 1874) ss 11 11A
I L. R 37 Bom. 37

See SARANJAM
I L R 41 Bom. 408

——————— ss. 4 (*c*) 5 and 6—*Bombay Land Revenue Code (Bom Act V of 1879) s 140—Realisation of land revenue—Attachment of goods by Mamlatdar—Suit against Mamlatdar for recovery of damages—No denial of the allegation that the goods belonged to plaintiff—Jurisdiction of Civil Courts—Delegation of the powers by the Collector for his own district* S 4 (c) of the Revenue Jurisdiction Act Bombay (X of 1876) is not a bar to a suit in which there is a claim arising out of the alleged illegality of the proceedings taken for the realisation of land revenue Where the legality of the proceedings initiated by a revenue officer is in question the Court has to inquire under s 6 of the Act whether the act complained of was done *bond fide* by the officer in pursuance of the provisions of *any law* The Mamlatdar in order to justify his acts under s 140 of the Land Revenue Code (Bom Act V of 1879) must show that the Collector of the District in which he is the Mamlatdar had delegated his powers The Mamlatdar can only exercise delegated powers in the taluka in which the delegation occurred The delegation by the Collector of any other District would not justify his act. GANGARAM HATIRAM *v* DINKAR GANESH (1913)
I L R 37 Bom 542

——————— s. 4 sub-s (*a*)—*Act XI of 1852—Land held as Saranjam—Decision of the Inam Commissioner—Finality—Suit for declaration of title and possession—Exclusion of jurisdiction of Civil Courts* In the year 1858 the Inam Commissioner decided that a certain estate was Saranjam of P and not his Sarv Inam. On P's death in 1909 Government resumed the estate on the ground that it was Saranjam and re granted it to F one of P's grandsons Subsequently the plaintiff another grandson of P brought a suit against the Secretary of State for India and F for declaration of title and possession on the ground that the immoveable property in suit was plaintiff's Sarv Inam property and could not be taken from his possession by Government or its officers or re granted to any one else. *Held* (i) that the decision of the Inam Commissioner was by virtue of the provisions of Rule 8 Sch A of Act XI of 1852 final as regards the land and interests concerned in the decision (ii) That after such final decision the title and continuance of the estate must be determined under Sch B Rule 10 of the Act under such rules as Government may find it necessary to issue from time to time (iii) That in accordance with these

REVENUE JURISDICTION ACT (X OF 1876)—contd

———— s 4, sub-s,—contd

rules the estate was on P's death resumed by Government who re granted it to I *Held* further that the suit having been against Government relating to land as Saranjam was excluded from the jurisdiction of the Civil Courts by the provisions of sub s (a) of s 4 of the Revenue Jurisdiction Act (X of 1876) PANRAY GOVINDRAO v SECRETARY OF STATE (1909) I L R 34 Bom 232

———— s. 5, cl. (c)—

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887) SCH II ART 13 I. L. R 39 Bom 131

REVENUE OFFICER

See JURISDICTION I L R. 43 Calc. 136

REVENUE PAYING ESTATE.

See CHAUKIDARI CHAKRAN LANDS I L R. 45 Calc 765

REVENUE RECORDS

———— entry in—

See MAMLATDARS COURTS ACT (BOM II OF 1906) ss 19 23 I L R 35 Bom 487

———— Entry in more than 12 years—whether sufficient for acquisition by adverse possession—

See EQUITY OF REDEMPTION I L R 1 Lah 549

REVENUE RECOVERY ACT (MAD II OF 1864)

See MADRAS REVENUE RECOVERY ACT

REVENUE REGISTER

See LIMITATION ACT (IX OF 1908) SCH I ART 118 I L R 37 Bom 513

REVENUE SALE

See BENGAL LAND REVENUE SALES ACT

See CONTRACT ACT s 59 15 C W N 443

See REVENUE SALE LAW

See SALE FOR ARREARS OF REVENUE

See TRANSFER OF PROPERTY ACT (IV OF 188) s 65 (c) I L R 39 Mad 959

———— An incumbrance or under tenure is not *ipso facto* avoided by the sale of an estate for arrears of revenue and is only liable to be avoided at the option of the purchaser at such sale RAMRATAN KAPALI v ASWINI KUMAR DUTT I L R 37 Calc 559

———— *Revenue Sale Law (Act XI of 1859) ss 6 33—Publication of notification sale in the Vernacular Government Gazette if necessary—Omission thereof is an irregularity and not illegality—Bengal Land Revenue Sales Act (Beng VII of 1868) 8* Where the Subordinate Judge of Cuttack decided that it was absolutely necessary that the notification of a Revenue Sale should be published in the Vernacular Gazette in *Uriya* and that its non publication had made the sale null and void apart from any consideration as to in adequacy of price: *Held* that the publication of a notification of sale in the *Calcutta Gazette* only was sufficient compliance with a provision of Law (Act XI of 1859 s 6) requiring the publication of such notification in the "Official Gazette" *Held* further that even if it had been necessary to publish the notification in the *Uriya Gazette* the omission to do so would not have rendered the sale null and void in the absence of any proof of substantial injury by reason of this omission as s 33 of Act XI of 1859 applied to such a case *Gobind Lall Roy* v *Ramjaram Misser I L R 21 Calc 70 L R 20 I A 165* followed *Lala Mobarak Lall* v *Secretary of State for India I L R 11 Calc 200* referred to RADHA CHARAN DAS v SHARFUDDIN HOSSEIN (1913) I L R 41 Calc 276

———— *Notification— Official Gazette —Calcutta Gazette—Government Vernacular Gazette—Bengal Land Revenue Sales Act (XI of 1859) s 6 33* The Official Gazette in which by s 6 of Act XI of 1859 a notification is to be published of the revenue sales therein referred to is the *Calcutta Gazette* A sale is not contrary to the provisions of this Act within s 33 by reason of no notification having been published in a Government Vernacular Gazette circulating in the locality SHARFUDDIN HOSSAIN v RADHA CHARAN DAS (1918) L. R. 45 I A 205

———— *Revenue Sale Law (Act XI of 1859) s 37 and 4th exception to s 37—Scope of s 37—Benefit of the 4th exception to s 37 when can be claimed* S 37 of Act XI of 1859 applies to sale of an entire estate for recovery of arrears due on account of an entire estate as well as to a sale for recovery of arrears due on account of a share only provided the entire estate is sold under the provisions of s 14 of the Act and that so long as it is the entire estate which is sold and the arrears are due on account of the estate itself and not on account of estates other than that which is sold s 37 applies The benefit of the 4th exception to s 37 is limited only to such portions of land as are covered by buildings tanks etc and cannot be extended to cover those lands included in the lease on which no permanent works have been constructed *Najemoddeen Moonshi* v *Syed Hassan Hyder Chowdry 9 C W N 852 Wahid Ali* v *Pahat Ali 12 C W N 1029 Bisweshwar Ghatak* v *Fatteh Hussain 10 C W N XXIVn and Mathura Nath Ghosal* v *Ratnesuar Sen 23 I C 917* referred to *Kiron Chunder Roy* v *Naimuddi Talukdar I L R 30 Calc 498* not followed JOGENDRA NARAIN ROY CHOWDHURY v KIRAN CHANDRA ROY (1918) I L R 46 Calc 730

REVENUE SALE LAW ACT (XI OF 1859)

See CHAUKIDARI CHAKRAN LANDS I L R 45 Calc 765

———— ss 2, 3—

See s 20 5 Pat L J 66

———— *Beng Act VII of 1868 s 30—Panchannagram tenure in if may be sold for arrears of revenue— Default date of fixed by statute or notification thereunder if may be varied by administrative Rules—Rent when becomes arrears and when default in payment takes place* Tenures held under Government in Dihi Panchannagram in the District of 24 Pargunnahs are saleable

RE-TRIAL—*contd*

——— *Power of High Court to order after obtaining additional evidence—Code of Criminal Procedure (Act V of 1898) s 428—Government of India Act (5 and 6 Geo c c 61) s 107—Witnesses duty of Court to secure attendance of—Petitions filed by parties duty of Court to pass order on* The High Court has power to direct the Sessions Judge to re hear an appeal after obtaining additional evidence It is the duty of the Court when processes have once been issued for the attendance of witnesses to exhaust all the powers allowed by law to enforce their attendance unless the party citing such witnesses can be shown to have been guilty of wilful obstruction and delay Where the accused repeatedly requested that certain persons should be summoned as witnesses and the Court twice issued process without securing their attendance *held* that the fact that the accused had failed to deposit the travelling and diet expenses of the witnesses did not excuse the Court from its duty to secure their attendance as the accused had never been requested to deposit the sum necessary for the expenses MAHOMED ZAMIRUDDIN v KING EMPEROR 3 Pat L J 632

REUNION

See HINDU LAW—JOINT FAMILY
I L R 41 All. 361

See HINDU LAW—PARTITION
I L R 37 Calc 703
I L R 35 Bom 293
I L R 35 All. 41

REVENUE

——— attachment of arrears of—

See CONTRACT ACT (IX OF 1872) ss 69 70 I L. R 39 Mad 795

——— covenant to pay—

See CONSTRUCTION OF DOCUMENT
I L. R 38 All. 230

REVENUE COMMISSIONER

See COMMISSIONER POWER OF
I L. R. 40 Calc 552

REVENUE COURT

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 195 CLS (*b*) AND (*c*)
I L. R 38 Bom. 642

s. 476 4 Pat L J 475

See JURISDICTION OF CIVIL COURT

See JURISDICTION OF CIVIL AND REVENUE COURTS

See MADRAS ESTATES LAND ACT (I OF 1908) ss. 189 ETC
I L. R 39 Mad 239

See PENSIONS ACT (XXIII OF 1871) s 4 I L. R. 36 Mad 559

——— jurisdiction of—

See CERTIFICATE OF SALE
I L. R 37 Calc 107

See MADRAS ESTATES LAND ACT (I OF 1908) I L. R 38 Mad. 33
I L. R 41 Mad. 121

——— proceedings in—

See PARTITION I L. R 46 Calc 236

REVENUE COURT—*contd*

——— sales by—

See LIMITATION ACT (IX OF 1908) ART 12A I L. R 45 Bom. 45

REVENUE-FREE LAND

See UNITED PROV LAND REVENUE ACT (III OF 1901) s 32 (*d*)
I L. R 36 All. 231

REVENUE JURISDICTION ACT (X OF 1876)

See BOMBAY REVENUE JURISDICTION ACT (X OF 1876)

——— s 4 (*a*)—

See HEREDITARY OFFICES ACT (BOM III OF 1874) ss 11 11A
I L. R 37 Bom. 37

See SARANJAM
I L R 41 Bom. 408

——— ss 4 (*c*) 5 and 6—*Bombay Land Revenue Code (Bom Act V of 1879) s 140—Realisation of land revenue—Attachment of goods by Mamlatdar—Suit against Mamlatdar for recovery of damages—No denial of the allegation that the goods belonged to plaintiff—Jurisdiction of Civil Courts—Delegation of the powers by the Collector for his own district* S 4 (*c*) of the Revenue Jurisdiction Act Bombay (X of 1876) is not a bar to a suit in which there is a claim arising out of the alleged illegality of the proceedings taken for the realization of land revenue Where the legality of the proceedings initiated by a revenue officer is in question the Court has to inquire under s 6 of the Act whether the act complained of was done *bonâ fide* by the officer in pursuance of the provisions of any law The Mamlatdar in order to justify his acts under s 140 of the Land Revenue Code (Bom Act V of 1879) must show that the Collector of the District in which he is the Mamlatdar had delegated his powers The Mamlatdar can only exercise delegated powers in the taluka in which the delegation occurred The delegation by the Collector of any other District would not justify his act GANGARAM HATIRAM v DINKAR GANESH (1913)
I L. R 37 Bom 542

——— s. 4, sub s. (*a*)—*Act XI of 1852—Land held as Saranjam—Decision of the Inam Commissioner—Finality—Suit for declaration of title and possession—Exclusion of jurisdiction of Civil Courts* In the year 1858 the Inam Commissioner decided that a certain estate was Saranjam of *P* and not his Sarv Inam On *P*'s death in 1899 Government resumed the estate on the ground that it was Saranjam and re granted it to *V* one of *P*'s grandsons Subsequently the plaintiff another grandson of *P* brought a suit against the Secretary of State for India and *V* for declaration of title and possession on the ground that the immoveable property in suit was plaintiff's Sarv Inam property and could not be taken from his possession by Government or its officers or re granted to any one else. *Held* (i) that the decision of the Inam Commissioner was by virtue of the provisions of Rule Sch A of Act XI of 1852 final as regards the land and interests concerned in the decision (ii) That after such final decision the title and continuance of the estate must be determined under Sch B Rule 10 of the Act under such rules as Government may find it necessary to issue from time to time (iii) That in accordance with these

REVENUE SALE LAW ACT (XI OF 1859)—contd

———— ss 13, 54—contd

in the previous portion of that section. Where a separate account in respect of a 5 as. odd share owned by H in a revenue paying estate was recorded in the Collector's books as for a 7 as. odd share and revenue proportionate to a 7 as. odd share was apportioned to it *Held* that upon sale of the share under s. 13 of Act XI of 1859 the purchaser acquired the share recorded in the Collector's books and not the share actually owned by H *Debi Das Chowdhury* v *Priya Charan Ghosal I L R 22 Calc 641 Panalata Dasi* v *Monmotha Nath Goswami 11 C W N 81 Sarada Prosad Ghose* v *Rajendra Kumar Ghose I L R 29 Calc 223 s c 6 C W N 3 5* and *Gangadeen Misser* v *Kheroo Mundul 14 B L R 10* r lied on KHEMESH CHANDRA PAKRIT v ABDUL HAMID SIRDAR (1915) 19 C. W N 782

———— s. 14—*Separate account—Separated share not in fact in arrear shown in Collector's books as in arrears—Consequential sale of whole estate if valid—Failure of co sharers to buy share—Sale of whole estate after closing separate accounts—Up to what date accounts to be closed—Sale as for March kist without arrears after estate falls into arrear for June kist if valid—Mahalwar Register extract from if evidence* Where owing to the revenue payable on account of a share of a revenue paying estate in respect of which a separate account had been opened, being erroneously recorded in the Collector's books as Rs 10 11 6 when the correct amount was Rs 2 11 11 less the share though not in fact in default was shown in those books to be in arrears at the end of the March *kist* of 1904 (29th March 1904) to the extent of Rs 54 3 5 and was put up for sale for that amount on 6th June 1904 but the bids not reaching that amount the Collector gave 10 days time i e up to 17th June 1904 to co sharers to buy up the share by paying the arrears under s 14 of Act XI of 1859 but the latter not doing so the Collector closed the accounts of the whole estate up to 29th March 1904 and found the arrears for the whole estate on that date to be Rs 3 odd but by reason of payments made since 29th March 1904 there were in fact no arrears due for the March *kist* on 17th June 1904 though an arrear of Rs 2 0 6 appeared to be due if the June *kist* was included and the whole estate was put up for sale on the 19th September 1904 as for the arrears due up to 29th March 1904 *Held* (by the High Court) that as in point of fact the share in question was not in arrear on 29th March 1904 the proceeding for the sale of that share was void and consequently the sale of the entire mahal under s 14 was also void That assuming that the Collector's books were correct the Collector was bound to close all the separate accounts on 17th June 1904 on which date he became entitled to sell the whole estate and as on that date there were no arrears due in respect of the March *kist* a sale of the estate as for arrears due to the March *kist* was *ultra vires* though the sale might legitimately have been held for the June *kist* *Bal Kishen Das* v *Simpson L R 25 I A 151 s c I L R 25 Calc 833 2 C W N 513* followed An attested copy of entries in Mahalwar Registers kept under s 4 of Act VII of 1876 B C showing the revenue assessed on each of two mauzas comprising a revenue paying estate was admissible in evidence The mere fact that the Register the entire nature of the Superintendent of Survey on one corner did not make it a document kept by that officer The Judicial Committee saw no reason to interfere with the judgment of the High Court MITTASARDI MIAN v MAHOMED IDRIS (1915) 19 C. W N 764

———— ss. 14, 33—*Sale of share not fetching amount of arrears—Several co sharers making deposit within time allowed who is purchaser—Sale when void* When on a share of a revenue paying estate in respect of which a separate account has been opened being put up for sale the highest offer does not equal the amount due thereon and the Collector stops the sale and declares that the entire estate will be put up to sale for arrears unless the other recorded sharer or sharers or one or more of them shall within 10 days purchase the share in arrears by paying to Government the whole arrear due from the share and more than one such recorded co sharer separately make the necessary payment within the time specified the Collector must recognize as purchaser the depositor who first pays the whole amount or if there are more depositors than one to recognize as joint purchasers those whose payments first amount to the total arrears due S 33 of Act XI of 1859 applies to sales under s 14 and when the first payer has been declared by the Collector to be the purchaser a co-sharer who has paid up the arrears subsequently cannot have the sale set aside by suit in the Civil Court except upon proof of the circumstances specified in s 33 Such a sale under s 14 cannot be attacked as a nullity and as such not requiring proof of those circumstances *Chooturbhuj Dutt* v *Ishri Mul I L R 1 Calc 884 Gobindlal Roy* v *Ramjanam Misser I L R 21 Calc 70* followed *Quære* Whether the s 14 of Act XI of 1859 precludes sharers of the share exposed for sale from purchasing the defaulting share SAMBHO KOER v HARIHAR PERSHAD (1914) 18 C W N 1071

———— s 25—

See COMMISSIONER I L R 40 Calc 552

———— ss 25 2 and 3—*Date from which revenue due becomes an arrear—Sale before such date illegal—Power of Commissioner to set aside sales not restricted to case of error of procedure* In a revenue paying estate in which there were three separate accounts and a residuary share one of the separate accounts and the residuary share were in arrears when the March *kist* of 1915 became due to the extent of Rs 3 10 0 and Rs 6 8 6 respectively while there was a total excess of Rs 7 1 0 in respect of the other two separate accounts In April Rs 3 10 0 was paid in respect of the separate account in arrears with the permission of the Collector and this account was exempted from sale in May The residuary share was put up for sale in respect of the arrear of Rs 6 8 6 and sold The Commissioner set aside the sale on the ground that Rs 3 10 0 having been paid the excess payment in respect of the other two separate accounts was sufficient to cover the arrear due on the residuary share The purchaser sued for a declaration that the residuary share was sold for its own arrear of revenue and that he had acquired a good title *Held* (i) that

REVENUE SALE LAW ACT (XI OF 1859) —*contd*

——— *ss* 25 2 and 3—*contd*

after Rs 3 10 0 had been accepted in respect of the separate account in arrear there was no arrear due on the whole estate and the residuary share was no longer liable to be sold (ii) that the default in payment did not become an arrear until the 1st April and the property was not liable to be sold until the date fixed by the Board of Revenue namely the 28th June S 25 of the Revenue Sales Act 1889 does not restrict the Commissioner s power to set aside a sale to cases in which there has been an irregularity in procedure CHHAKOWRI SINGH v THE SECRETARY OF STATE FOR INDIA IN COUNCIL **5 Pat L J 66**

——— ss 29 37—*Sale of entire estate for arrears if ipso facto annuls incumbrances—Sale voidable at purchaser s option—Option how may be exercised—Annulment by notice—Mesne profits claim for when arises—Compensation for use and occupation* The sale of an entire estate for arrears of revenue does not *ipso facto* avoid incumbrances and under tenures but only renders them voidable at the option of the purchaser The purchaser may elect to annul an under tenure not only by institution of a suit or by giving notice to vacate but may indicate it by other means The delivery of possession by the Collector under s 20 of Act X of 1859 does not convert under tenure holders into trespassers The persons whom in terms of that section the Collector may remove in delivering possession must refer to the former proprietors or persons claiming proprietory right through them and does not refer to under tenure holders *Mir Waziruddin v Lala Deokinandan 6 C L J 472* referred to The purchaser is not entitled to mesne profits for the period antecedent to the exercise by him of his option of annulment He is only entitled to compensation for use and occupation on the basis of the rent payable by the tenure holder of the first decree Where the under tenure has been annulled by notice the purchaser is entitled to claim mesne profits from the date on which the notice was expressed to expire DURSAN SINGH v BHAWANI KOER (1913)
17 C W N 984

——— s 31—

See ARREARS OF REVENUE
I L R 47 Calc 331

See SALE FOR ARREARS OF REVENUE
I L R 38 Calc 537

——— ss 31 53—*Estate left in arrear and purchased by proprietor benami at revenue sale—Encumbrancers if can demand satisfaction from both surplus sale proceeds and the mortgage property—Court s power on appeal to grant relief in favour of party who did not appeal—Civil Procedure Code (Act V of 1908) ss 107 151 and O XLI r 33—Estoppel by conduct in suit—Fraud punishment of* During the pendency of a suit by *B* to enforce a mortgage upon a revenue paying estate the mortgagor deliberately let the property fall into arrear which being sold under Act XI of 1859 was purchased by the mortgagor in the *benami* of another A suit was then brought by *K* to enforce a prior mortgage over the property in which (not being presumably aware of the real character of the sale) he claimed a decree for payment of his dues out of the surplus sale proceeds Before this suit was decreed *B* (whom *K* had joined as a party in his

REVENUE SALE LAW ACT (XI OF 1859) —*contd*

——— *ss* 31 53—*contd*

suit) brought a suit in which he alleged the purchase at the sale for arrears of revenue to have been *benami* by the proprietor and claimed a decree either for setting aside the sale or for a declaration that his mortgage should remain valid and operative against the estate In view of this suit the Court, whilst decreeing *K* s suit as prayed further ordered that in the event of the sale being set aside the mortgage monies, interest and costs due to *K* should be realised by the sale of the mortgaged property *B* appealed against this decree and his appeal was heard in the High Court along with appeals against *B* preferred from decrees obtained by him in his suits by one of which his allegations as to the real character of the purchase at the revenue sale had been found proved whilst the other had given him the usual mortgage decree All three appeals were dismissed but at the instance of the mortgagor the High Court varied the decree in K s suit by setting aside the direction that his mortgage monies should be paid out of the surplus monies of the revenue sale Upon further appeals to the Privy Council the mortgagor urged *inter alia* that *B* was estopped by his conduct as defendant in K's suit from questioning the sale under Act XI of 1859 and *B* urged that *K* not having appealed to the High Court the decree of the lower Court could not be varied in the manner stated and also that *K* was in spite of what was found as to the real character of the sale entitled to be satisfied out of the proceeds of the sale so that in case *K* was entirely paid off out of the sale proceeds, *B* would have a more abundant security in the mortgaged property to satisfy his decree *Held* that s 53 of Act XI of 1859 distinctly contemplates purchase of property by a recorded proprietor and the only effect of the finding that the purchase was *benami* by the proprietor was that so far as the encumbrances were concerned, the sale was of no effect and that therefore the direction of the High Court in *K* s suit was in accordance with the law That the High Court had abundant power to give that direction notwithstanding that *K* did not appeal under ss 107 and 151 of the Civil Procedure Code and O XLI r 33 thereof the Court having had authority under the first mentioned provision if necessary to take additional evidence That *B* who had no power of controlling the form of *K* s suit and did not appear to have taken any step therein irrevocably asserting his intention to rely on the sale and not impeached the whole proceedings was not estopped from claiming the reliefs which he prayed for in his suit to set aside the sale That if the sale had in fact been to a stranger the encumbrances would have been transferred to the sale proceeds since the purchaser would obtain a title free from encumbrances is not right to punish a man for fraudulent behaviour by making him suffer other penalties than those which are the direct consequence of his fraud TARINI CHARAN SARKAR v BISHUN CHAND (1917) **22 C W N 505**

——— *s* 33—

See s 14 **18 C W N 1071**

See SALE FOR ARREAR OF REVENUE

——— *Revenue Sale Law (Act XI of 1859) ss 5 28 33—Exemption in respect of land revenue—Sale of property for arrears other than*

REVENUE SALE LAW ACT (IX OF 1859) —contd.

——— s 33—contd.

land revenue for which certificate proceedings initiated —Formal order of exemption absence of—Special notice under s 5 necessity for Where after an estate has been advertised for sale for arrears of land revenue the Collector upon the defaulter s application for exemption ordered that the arrears may be accepted if paid to day and the plaintiff duly paid the amount and the same was received and acknowledged but nevertheless the property was put up to sale on account of certain arrears of embankment charges the intention to recover which by sale under Act XI of 1859 did not appear to have been conveyed to the defaulter by the Collectorate mohurrir when enquiries were made of him as to the amount to be deposited and which arrears the Collector had already elected to recover by the certificate procedure from the defaulter and a usufructuary mortgagee from him —*Held* that the Collector was not justified in putting up the property for sale on account of these arrears without serving special notice on the defaulter under s 5 of Act XI of 1859 on the mere ground that no special exemption order had been made There were in the circumstances no arrears for which the property could be sold *Gobind Lal Roy v Ramjanam Misser I L R 21 Calc 70 83 Bunwari Lall v Mahabir Prasad 12 B L R 297 Deonandan Singh v Manbodh Singh I L R 37 Calc 111* referred to HARI DASI DEBI *v* DHIRAJ CHANDRA BOSE (1910)
15 C W N 38

——— ss 33 34—*Sale for arrears of revenue set aside on appeal by Commissioner—Commissioner's order reviewing that order and affirming sale declared by Civil Court to be ultra vires—Application to execute decree—Limitation* Where the Commissioner of Revenue on appeal preferred by the proprietors of a revenue paying estate set aside a sale for arrears of revenue but subsequently in review cancelled that order and affirmed the sale and the Civil Court in a suit by the proprietors declared the Commissioner s order on review *ultra vires* and upheld his previous order setting aside the sale and also awarded possession and mesne profits to the plaintiffs *Held* that the decree was not one annulling a sale as contemplated by s 34 of Act XI of 1859 as it only held that the Commissioner s order setting aside the sale must stand good That s 34 did not apply to this case as it was not a suit under s 33 of the Act to annul a sale the contention of the plaintiffs being that there was no subsisting sale to be annulled S 34 refers to cases brought under s 33 and the rule of limitation laid down in s 34 (requiring the decree holder to apply for execution within six months of the decree) applies only to suits brought under s 33 BAIJNATH GOENKA *v* BAIJNATH SINGH (1914)
19 C W N 464

——— s 36—*Suit against certified purchaser for specific performance of agreement to convey purchased property made before purchase—Maintainability* The plaintiff who wished to purchase a mehal at a revenue sale requested the defendant to watch the sale and to offer bids and the defendant agreed to do so and to convey the property to the plaintiff Defendant bid for the property in plaintiff s absence took one fourth of the purchase money for deposit from the plaintiff and

REVENUE SALE LAW ACT (XI OF 1859) —contd

——— s 36—contd

deposited the same but refused to accept the balance of the purchase money from the plaintiff and having procured the same from other sources took out a certificate in his own name *Held* that a suit by the plaintiff against the defendant for specific performance of the contract was maintainable and s 36 of Act XI of 1859 was no bar to it MONMOTHA NATH PAL *v* GIRISH CHANDRA RAY (1912) **17 C W N 75**

——— s 37—

See s 29 **17 C W N 984**

See HOMESTEAD LAND
I L R 42 Calc 638

See OCCUPANCY HOLDING
I L R 42 Calc 745

See REVENUE SALE.
I. L. R 46 Calc 730

——— *Public documents chittas prepared for distributing public revenue on partition of an estate if—Revenue Sale Law (Act XI of 1859) s 37—Protected interest—Portion of taluk existing at Permanent Settlement but transferred and held under different names if protected* When a portion of a taluk existing from before the time of the Permanent Settlement is transferred and the said portion is subsequently held at a proportionate *jama* under a name different from the original taluk but the subsequent transfers and descent thereof can be traced from the original taluk the portion so transferred is also protected under s 37 of Act XI of 1859 NOBENDRA KISHORE ROY *v* DURGA CHARAN CHOWDHURY (1910)
15 C W N 515

——— *Purchaser if means certified purchaser —Person in adverse possession for more than 12 years if may be ejected—Thak map evidence of possession and so of title—Presumption backward when proper* The word purchaser in s 37 of Act XI of 1859 does not mean the certified purchaser only and the certified purchaser is not the only person who can sue an incumbrancer for ejectment under that section An adverse possessor is an incumbrancer within the meaning of that section The Thak map is used primarily as evidence of possession of the party who relies thereon and as soon as it is established from the Thak map that the claimant was in possession at that time such possession may legitimately be attributed to title Where the Thak map however showed the lands as included in the plaintiff s estate but to be in possession of the defendant this principle did not apply Although it cannot be affirmed as a proposition of law that merely because certain specified lands were included in an estate at the time of the Thak survey in 1859 they must have been included within that estate at the time of the Permanent Settlement yet it is open to the Court to draw such inference from all the surrounding circumstances The land in dispute in this case not being *chur* land and its history not showing that its area or situation had in any way been changed from the time of the Permanent Settlement *Held* that the Courts below were justified in inferring from all the circumstances of the case that the land (shown in the Thak map of 1859 as within a certain estate) was included within that estate at

REVENUE SALE LAW ACT (XI OF 1859) *—contd*

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after Rs 3 10 0 had been accepted in respect of the separate account in arrear there was no arrear due on the whole estate and the residuary share was no longer liable to be sold (ii) that the default in payment did not become an arrear until the 1st April and the property was not liable to be sold until the date fixed by the Board of Revenue namely the 28th June S 25 of the Revenue Sales Act 1859 does not restrict the Commissioner s power to set aside a sale to cases in which there has been an irregularity in procedure CHHAKOWRI SINGH v THE SECRETARY OF STATE FOR INDIA IN COUNCIL **5 Pat L J 66**

——— ss 29, 37—*Sale of entire estate for arrears if ipso facto annuls incumbrances—Sale voidable at purchaser s option—Option how may be exercised—Annulment by notice—Mesne profits claim for when arises—Compensation for use and occupation* The sale of an entire estate for arrears of revenue does not *ipso facto* avoid incumbrances and under tenures but only renders them voidable at the option of the purchaser The purchaser may elect to annul an under tenure not only by institution of a suit or by giving notice to vacate but may indicate it by other means The delivery of possession by the Collector under s 20 of Act X of 1859 does not convert under tenure holders into trespassers The persons whom in terms of that section the Collector may remove in delivering possession must refer to the former proprietors or persons claiming proprietory right through them and does not refer to under tenure holders *Mir Wazirruddin v Lala Deokinandan 6 C L J 472* referred to The purchaser is not entitled to mesne profits for the period antecedent to the exercise by him of his option of annulment He is only entitled to compensation for use and occupation on the basis of the rent payable by the tenure holder of the first decree Where the under tenure has been annulled by notice the purchaser is entitled to claim mesne profits from the date on which the notice was expressed to expire DURSAN SINGH v BHAWANI KOER (1913) **17 C W N 984**

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See ARREARS OF REVENUE **I L R 47 Calc 331**

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REVENUE SALE LAW ACT (XI OF 1859) *—contd*

——— ss 31, 53—*contd*

suit) brought a suit in which he alleged the purchase at the sale for arrears of revenue to have been *benami* by the proprietor and claimed a decree either for setting aside the sale or for a declaration that his mortgage should remain valid and operative against the estate In view of this suit the Court, whilst decreeing K s suit as prayed further ordered that in the event of the sale being set aside the mortgage monies interest and costs due to *K* should be realised by the sale of the mort a ed property *B* appealed against this decree and this appeal was heard in the High Court along with appeals against *B* preferred from decrees obtained by him in his suits by one of which his *allegations* as to the real character of the purchase at the revenue sale had been found proved *whilst the other had* given him the usual mortgage decree All three appeals were dismissed but at *the instance of the* mortgagor the High Court varied the decree in *K* s suit by setting aside the *direction that* his mort a e monies should be paid out of the surplus monies of the revenue sale Upon *further* appeals to the Privy Council the mortgagor urged *inter alia* that *B* was estopped by his conduct as defendant in *K's* suit from questioning the *sale* under Act XI of 1859 and *B* urged that *K* not having appealed to the High Court the decree *of the* lower Court could not be varied in the manner *stated and* also that *K* was in spite of what *was found* as to the real character of the sale entitled to be satisfied out of the proceeds of the *sale so* that in case *K* was entirely paid off out of the sale proceeds, *B* would have a more abundant *security* in the mortgaged property to satisfy his decree *Held that* s 53 of Act XI of 1859 *distinctly contemplates* purchase of property by a *recorded* proprietor *and* the only effect of the *finding that the* purchase was *benami* by the proprietor was that *so far as* the encumbrances were concerned, the sale was of no effect and that therefore the direction of the High Court in *K* s suit was in accordance with the law That the High *Court* had abundant power to give that direction notwithstanding that *K* did not appeal under ss 107 and 151 of the Civil Procedure Code and O XLI r 33 thereof the Court having had authority under *the* first mentioned provision if necessary to take additional *evidence* That *B* who had no power of *controlling* the form of *K* s suit and did not appear to have taken a y step therein irrevocably *asserting* his intention to rely on the sale and not impeached the whole proceedings was not estopped from claimin the relefs which he prayed for in his suit *to set* aside the sale. That if the sale had in fact been to a stranger *the* encumbrances would have been *transferred* to the sale proceeds since the purchaser would *obtain a* title free from encumbrances *It is* not right to punish a man for fraudulent behaviour by *making* him suffer other penalties than those which are the direct consequence of his fraud. TARINI CHARAN SAKKAR v BISHUN CHAND (1917) **22 C. W N 505**

——— s 33—

See s 14 **18 C W N 1071**

See SALE FOR ARREAR OF REVENUE.

——— *Revenue Sale Law (Act XI of 1859) ss 5 28 33—Exemption in respect of land revenue—Sale of property for arrears other than*

REVENUE SALE LAW ACT (IX OF 1859) —contd.

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land revenue for which certificate proceedings initiated —Formal order of exemption absence of—Special notice under s 5 necessity for Where after an estate has been advertised for sale for arrears of land revenue the Collector upon the defaulter s application for exemption ordered that the arrears may be accepted if paid to day and the plaintiff duly paid the amount and the same was received and acknowledged but nevertheless the property was put up to sale on account of certain arrears of embankment charges the intention to recover which by sale under Act XI of 1859 did not appear to have been conveyed to the defaulter by the Collectorate mohurrir when enquiries were made of him as to the amount to be deposited and which arrears the Collector has already elected to recover by the certificate procedure from the defaulter and a usufructuary mortgagee from him —*Held* that the Collector was not justified in putting up the property for sale on account of these arrears without serving special notice on the defaulter under s 5 of Act XI of 1859 on the mere ground that no special exemption order had been made There were in the circumstances no arrears for which the property could be sold. *Gobind Lal Roy* v *Ramjanam Misser I L R 21 Calc 70 83 Bunwari Lall* v *Mahabir Prasad 17 B L P 297 Deonandan Singh* v *Manbodh Singh I L R 32 Calc 111* referred to HARI DASI DEBI v DHIRAJ CHANDRA BOSE (1910)
15 C W N 38

——— ss 33, 34—*Sale for arrears of revenue set aside on appeal by Commissioner—Commissioner s order reviewing that order and affirming sale declared by Civil Court to be ultra vires—Application to execute decree—Limitation* Where the Commissioner of Revenue on appeal preferred by the proprietors of a revenue paying estate set aside a sale for arrears of revenue but subsequently in review cancelled that order and affirmed the sale and the Civil Court in a suit by the proprietors declared the Commissioner s order on review *ultra vires* and upheld his previous order setting aside the sale and also awarded possession and mesne profits to the plaintiffs *Held* that the decree was not one annulling a sale as contemplated by s 34 of Act XI of 1859 as it only held that the Commissioner s order setting aside the sale must stand good That s 34 did no apply to this case as it was not a suit under s 33 of the Act to annul a sale the contention of the plaintiffs being that there was no subsisting sale to be annulled S 34 refers to cases brought under s 33 and the rule of limitation laid down in s 34 (requiring the decree holder to apply for execution within six months of the decree) applies only to suits brought under s 33 BAIJNATH GOENKA v BAIJNATH SINGH (1914)
19 C W N 464

——— s 36—*Suit against certified purchaser for specific performance of agreement to convey purchased property made before purchase —Maintainability* The plaintiff who wished to purchase a mehal at a revenue sale requested the defendant to watch the sale and to offer bids and the defendant agreed to do so and to convey the property to the plaintiff Defendant bid for the property in plaintiff s absence took one fourth of the purchase money for deposit from the plaintiff and deposited the same but refused to accept the balance of the purchase money from the plaintiff and having procured the same from other sources took out a certificate in his own name *Held* that a suit by the plaintiff against the defendant for specific performance of the contract was maintainable and s 36 of Act XI of 1859 was no bar to it MONMOTHA NATH LAL v GIRISH CHANDRA RAY (1912) **17 C W N 75**

——— s 37—

See s. 29 **17 C W N 984**

See HOMESTEAD LAND **I L R 42 Calc 638**

See OCCUPANCY HOLDING **I L R 42 Calc 745**

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15 C W N 515

——— *Purchaser if means certified purchaser —Person in adverse possession for more than 12 years if may be ejected—Thak map evidence of possession and so of title—Presumption backward when proper* The word purchaser in s 37 of Act XI of 1859 does not mean the certified purchaser only and the certified purchaser is not the only person who can sue an incumbrancer for ejectment under that section An adverse possessor is an incumbrancer within the meaning of that section The Thak map is used primarily as evidence of possession of the party who relies thereon, and as soon as it is established from the Thak map that the claimant was in possession at that time such possession may legitimately be attributed to title Where the Thak map however showed the lands as included in the plaintiff s estate but to be in possession of the defendant this principle did not apply Although it cannot be affirmed as a proposition of law that merely because certain specified lands were included in an estate at the time of the Thak survey in 1859 they must have been included within that estate at the time of the Permanent Settlement yet it is open to the Court to draw such inference from all the surrounding circumstances The land in dispute in this case not being *chur* land and its history not showing that its area or situation had in any way been changed from the time of the Permanent Settlement *Held* that the Courts below were justified in inferring from all the circumstances of the case that the land (shown in the Thak map of 1859 as within a certain estate) was included within that estate at the time

REVENUE SALE LAW ACT (XI OF 1859)— *—contd*

———— s 37—*contd*

of the Permanent Settlement *Jagadindra Nath Poy* v *The Secretary of State I L R 30 Calc 291 s c 7 C W N 193* distinguished MOIZUDDI BISWAS *v* ISHAN CHANDRA DAS (1910)
15 C W N 706

———— *Revenue Sale Law (Act XI of 1859) s 5—The question of notice if may be raised after confirmation of sale—Laches if can arise without knowledge—Mortgagee in possession a trustee, default in payment of revenue and subsequent purchase of mortgaged property mortgagee if bound to account—Co sharer if may make default and purchase at revenue sale—Trustee for co sharer, position of* Although the question as to proper service of notice cannot be rai ed after confirmation of a sale under Act XI of 1859 that is only so far as setting aside the sale on the ground of irregularity is concerned, but it does not prevent the Court from a certaining for other purposes whether notice was so served as to fix on the party served the knowledge of it Defendant was the mortgagee of a share belonging to some of the plaintiffs out of a revenue paying estate Defendant was bound under the mortgage contract to pay his share of the land revenue for the portion of the estate held by him In one of these kists he made an over payment of Rs 3 6 as which was credited as an excess in the ijmali account On a subsequent occasion the other co sharers took advantage of the excess standing to the credit of the estate and paid only the balance remaining due from them After this the defendant on one occasion paid Rs 3 less than he was bound to pay without however asking to be credited with the excess paid by him previously Some days after this short payment the plaintiffs paid their share of the revenue For the short payment thus made by the defendant the estate was subsequently sold under XI of 18ᴗ9 and purchased by the defendant *Held* that in the absence of evidence that they knew of the default the plaintiffs could not be held guilty of laches in not seeing whether there was a deficit as laches signify knowledge or at least such abstinence from legitimate enquiry as to amount to constructive notice That the defendant as mortgagee could not take advantage of his purchase as against his mortgagors A mortgagee in possession is for certain purposes a trustee for his mortgagors and cannot take advantage of that position to the detriment of his mortgagors *Nawab Sidhee Nuzur Ali Khan* v *Ojodhyaram 10 Moo I A 540* referred to Where a co sharer who makes default in paying up his share of the land revenue subsequently purchases the property at a sale for arrears of revenue the purchase enures to the benefit of all co sharers *Carter* v *Home 1 Eq Ca Ab 7 Khadim* v *Sheomung S D N W P 1854 57 p 164 (1855)* referred to A trustee for co sharer cannot derive any benefit for himself at the expense of the co sharers of the *cestui que trust* by committing a breach of trust JANKI SINGH *v* DEBINANDAN PROSAD (1910)
15 C W N 776

———— *Onus of proof—Lakhiraj or mal lands* In a suit for *khas* possession free of incumbrance of lands on the ground that they were included within a taluk purchased by the plaintiff at a revenue sale it was found

REVENUE SALE LAW ACT (XI OF 1859)— *—contd*

———— s 37—*contd*

that the defendants held certain rent free tenures within the estate and that these tenures existed from before the Permanent Settlement *Held* that the onus was on the plaintiff to prove that the lands in suit were included within the mal lands of the estate HALODHAR CHATTOPADHYA *v* PAMENDRA NARAIN RAY CHOUDHRY (1912)
16 C W N 930

———— *Purcha er s suit for recovery of possession—Defendant s plea that land included in houla which is protected—Onus* Where a suit for recovery of possession of land by a purchaser of an undivided share in an estate at a revenue sale was resisted by the defendants on the plea that the land in suit was included within their *houla* which was a protected interest *Held* that the onus lay on the defendants to prove their allegation *Phidoy Krista* v *Nobin Chunder 1 C L J 457 Rajendro Kumar* v *Mohim Chunder 3 C W N 763* explained *Sheodeni Poy* v *Chatoorbhuj Roy 12 C L J 576* approved RUTNESSUR SEN *v* KALI KUMAR BIDYABHUSAN (1912)
16 C W N 693

———— *Taluk in existence before permanent settlement—Portion thereof transferred and held under a new name—Such portion if protected when it can be traced to original taluk* When a portion of a taluk existing from before the permanent settlement is transferred and that portion is subsequently held in proportionate *jama* under a name different from the original taluk, but the subsequent transfer and descent thereof can be traced from the original taluk the portion so transferred is also protected under s 37 Act XI of 1859 DOYAMAYEE CHOWDHURANI *v* NARENDRA KISHORE ROY (1913)
19 C W N 79

————*Registered putnidar purchasing estate at revenue sale if may annul subordinate tenures* The plaintiff who was the owner of a *putni* which was specially registered and so protected at a sale for arrears of revenue purchased the parent estate at a sale for arrears and sought to annul the tenures subordinate to the *putni* *Held* that the plaintiff was not entitled to annul the tenures subordinate to the *putni* PRIYANATH BASU *v* SATCOWRI CHATTERJEE (1913)
18 C W N 6?0

———— s 37 (4)—*purchaser at revenue sale if may eject lakherajdar from land which has been planted or built upon—Incumbrance how annulled* S 37 of the Revenue Sale Law does not protect land held without payment of rent upon which dwelling houses manufactories or other permanent buildings have been erected or whereon gardens plantations etc have been made The auction purchaser at a Revenue sale is entitled to exercise the rights of a purchaser It is not essential on the part of the auction purchaser or his assignee or transferee of the auction purchaser who seeks to annul an incumbrance to give a formal written notice to avoid it All that is necessary is to notify to the incumbrancer by some unequivocal act the intention to annul KRISHNA KALYANI DASI *v* R BRAUNFELD (1915)
20 C W N 10?3

———— s 53—
See s 31
22 C W N 5?5

REVENUE SALE LAW ACT (XI OF 1859)—*contd*

——— s 54—

See s 13. 19 C W N 782

See SALE FOR ARREARS OF REVENUE. I L R 43 Calc 48

——— s 58—

———*Collector's peon starting the bidding according to custom by bidding one rupee—Subsequent bids falling short of arrears—Collector if may legally buy property for the highest bid—Irregularity or illegality—Ss 6 and 7—Notices signed by Sub Deputy Collector if vitiates sale* Where a revenue paying estate in arrears having been put up for sale the peon a Government official started the bidding according to custom as a matter of form by bidding Re 1 and thereafter other people having bid for the property the highest bid came up to Rs 58 which being less than the amount in arrears the Collector purporting to act under s 58 of Act XI of 1859 purchased the property for the highest amount bid *Held* (by the majority) that this was a different case from *Halimannessa Choudhurani v The Secretary of State for India I L R 31 Calc 106 8 C W N 550* and the purchase by the Collector was not in contravention of the letter or the spirit of s 58 of the Revenue Sales Act The fact that the notices under ss 6 and 7 of the Act were signed not by the Collector or other officer authorised to hold sales but by a Sub Deputy Collector on behalf of the Collector did not vitiate the sale AMRITA LAL ROY v SECRETARY OF STATE FOR INDIA (1918) 22 C W N 769

REVERSAL OF JUDGMENT

———*Effect of on connected and dependent orders—Restitution of money taken away by decree holder in execution of decree under erroneous decision on question of limitation—Restitution if must be with interest—Limitation Act (IX of 1908) Art 181* The decree holders made an application for execution of a decree by attachment and sale of moveables which was opposed by the judgment-debtors on the ground of limitation The objection was treated as a separate case While this application for execution was pending the decree holders made a fresh application for execution to attach funds in Court standing to the credit of two of the judgment debtors This application was treated as a separate proceeding The objection case was decided against the judgment-debtors and the Court thereupon made an order in the second execution case directing the decree holders to take steps Then on the decree holders application payment of the fund in deposit in Court was ordered. An appeal was preferred to the High Court in the objection case but none against the payment order This appeal was decreed and the High Court directed that any sums taken away by the decree holders under the order of the Court below must be refunded at once The judgment debtors whose deposit had been taken away by the decree holders then applied to the Court below for restitution *Held* that it is a general rule that upon the reversal of a judgment order or decree all connected or dependent judgments or orders fall with it specially judgments subsequently entered and dependent thereon although this rule does not operate by implication to set aside a distinct and independent judgment or proceeding though it forms a part of the same litigation That the payment order was in essence ancillary to the decision in the objection case and the cancellation of the order in the objection case by the High Court in appeal involved by necessary implication a cancellation of the consequential payment order The judgment-debtors were therefore entitled to restitution even though they did not formally appeal against the payment order That the only Article of the Limitation Act which may possibly apply to an application by the judgment debtors for restitution is Art 181 and the period of three years provided therein commences from the date when the erroneous order is set aside That restitution must be made of the sum withdrawn together with interest thereon at 6 per cent per annum ASUTOSH GOSWAMI v UPENDRO PROSAD MITRA (1916) 21 C W N 564

REVERSAL OF SALE

See PARTIES I L R 39 Calc 881

REVERSIONARY HEIR

See CONSENT DECREE I L R 38 Calc 639

See LIMITATION ACT (IX OF 1908) SCH I ARTS 141 144 I L R 42 Bom 714

REVERSIONARY INTEREST

See HINDU LAW—PARTITION I L R 43 Calc 1118

——— attachment of—

See HINDU LAW—WIDOW *I L R 39 Mad 565*

——— transfer of—

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 6 I L R 41 All 611

———*Transferability of* The interest of a Hindu reversioner is an interest expectant on the death of a qualified owner It is not a vested interest but a *spes successionis* or mere chance of succession It cannot be sold mortgaged assigned or relinquished and is not transferable under s 6 of the Transfer of Property Act 1882 but he may estop himself from claiming as Reversioner ANNADA MOHAN ROY v GOUR MOHAN MALLIK 25 C W N 496

REVERSIONARY TRUST

See WILL. L R 45 I A 257

REVERSIONER

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XXIII R 1 (3) I L R 33 Mad 987

See DECLARATORY DECREE. I L R 45 Calc 510

See DECLARATORY DECREE SUIT FOR *I* L. R. 43 Calc 694

See FRAUD I L R 36 Bom 185

See HINDU LAW—ADOPTION L L R 40 Mad. 848

See HINDU LAW—ALIENATION
I L R 40 Calc. 721
I L R 41 Calc 793
I L R 45 Bom 105

REVERSIONER—*contd*

See Hindu Law—Gift
I L R 37 Calc 1

See Hindu Law—Joint Family
I L R 42 Bom. 69

See Hindu Law—Reversioner

See Hindu Law—Widow
14 C W N 226
I L R 32 All. 176
16 C W N 106
I L R 34 All. 207
I L R 35 All. 326
I L R 47 Calc 466
I L R 39 All. 1 520
I L R 43 Bom 249
I L R 43 All 535

See Limitation Act 1908—
Sch I Art 91
I L R 40 Bom 51
Sch I Art 125
I. L. R 41 Mad. 659

See Specific Relief Act (I of 1877) s 42 I L R 33 All 430

See Succession Certificate Act s 4
15 C W N 1018

See Transfer of Property Act (IV of 1882) s 6 cl. (*a*)
I L R 32 All. 88

——— claim by—
See Hindu Law—Inheritance
I L R 40 Mad 654

——— consent of—
See Hindu Law—Alienation
I L R 42 Calc 878

See Hindu Widow
I L R 42 Bom. 719

——— redemption by after foreclosure decree—
See Mortgage I L R 36 Mad 426

——— relinquishment of right of suit by—
See Registration Act (XVI of 1908) s 17 I L. R 40 All. 384

——— right of—
See Appeal to Privy Council.
I L R 38 Mad 406

——— right of several independent—
See Limitation Act (IX of 1908) s 6 Sch I Art 125
I L R 36 Mad. 570

——— suit by—
See Abatement of Suit
I. L R 73 Mad 406

See Hindu Law I L R 33 Mad 410

See Limitation Act (XV of 1877) Sch II Art 141 I L R 33 All. 312

See Limitation Act 1908
Art 118 I L R. 41 Bom. 728
Arts. 140 141 I. L. R 40 Bom 239

——— title of—
See Res Judicata I. L. R. 41 Calc. 69

REVERSIONER—*concld*

——— contingent interest of reversioner during widow s lifetime—
See Hindu Law I L R 45 Bom. 1187

——— Gift by a Hindu widow—Reversioners alone can dispute validity of—
See Hindu law I L R 45 Bom 105

——— deed of gift by widow and next reversioner—
See Hindu Law I L R 44 Bom. 483

——— Widow s estate—
See Hindu Law I L R 44 Bom 255

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See Appeal. I L. R 43 Calc 1,3
14 C W N 944

See Appeal to Privy Council.
I L R 41 Calc 734

See Arbitration I L R 43 Calc 990

See Arbitration by Court
I L R 38 Calc 421

See Civil Procedure Code 1908—
s 2 4 Pat L. J 57
ss 14 151 O XLVII r 1
I L R 2 All. 71
s 114
O XLVII
O XLVIII r 1 I L. R 33 All. 566
O XLVIII r 9 I. L R 38 All. 280

See Commissioner Power of
I L. R 40 Calc 552
I L. R 47 Calc 974

See Costs.

See Counterfeit Coin
I L. R. 44 Calc 477

See Criminal Cases.
I L R 46 Calc 60

See Criminal Procedure Code 369
I L. R 38 All. 134

See Execution of Decree
3 Pat L J 5,1

See Jurisdiction
I L. R. 39 Bom. 416

See Limitation Act (IX of 1908) ss. 5 14 I L. R 42 Bom. 295

See Possessory Suit
I L. R 45 Calc 519

See Practice I L. R. 44 Calc 98

See Privy Council, Practice of
I. L. R 38 Calc 5?6

See Review of Judgment

See Small Cause Court Suit
I L R 44 Calc 950

See Transfer of Property (Validating) Act 1917 s. 3. I. L. R. 42 All. 430

——— application for—
See Limitation L. R 44 I A 219

——— High Courts power of—
See Criminal Procedure Code s. 369
I. L. R. 38 All. 134

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——— **Power of the Small Cause Court to review its judgment—**

See PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882) CHAP VII s 48
I L R 45 Bom 972

——— **subsequent filing of appeal—**

See CIVIL PROCEDURE CODE 1908 O XLVII R. 1 I L R 42 All. 79

1 ——— **Appeal against order granting review of judgment**—*Civil Procedure Code (Act V of 1908) O XLIII r 1 cl (w)* and *O XLVII r 7* O XLIII r 1 cl (w) must be read with and subject to r 7 O XLVII An order granting application for review of judgment can only be objected to on grounds specified in r 7 of O XLVII *Jugernath Persad Singh v Ram Autar Singh Mis A No 341 of 1909 (unrep) Tripura Charan Kal v Sora hi Lala C P No 1?3 of 1913 (unrep) Surendra Nath Talukdar v Sita Nath Das Gupta Mis A No 155 of 1912 (unrep)* referred to HARI CHARAN SAHA v BARAN KHAN (1914)
I L R 41 Calc 746

2 ——— **New Evidence**—*Dismissal of application for admission of second appeal—Application for review based on alleged discovery of new and important evidence—High Court Jurisdiction of—Civil Procedure Code (Act V of 1908) O XLI r 11 and O XLVII r 1* The High Court has no authority merely on the ground of alleged discovery of new and important evidence to review an order dismissing an application for the admission of a second appeal under O XLI r 11 of the Code of Civil Procedure *Bhyrub Nath Tewe v Kally Chunder Chowdhry 16 W R 119* followed *Heera Lall Ghose v Ram Taruck Dey 23 W R 323* discussed *Paru Kutti v Mamad I L R 18 Mad 480* and *In re Nand Kishore I L R 32 All 71* referred to RAJANI KANTA DAS v KALI PRASANNA MUKHERJEE (1914)
I L R 41 Calc 809

3 ——— **High Court judgment**—*Application for review presented to Court presided over by Chief Justice under special circumstances—Deputy Registrar certifying application not in order—Application if must be presented within seven days of return of application with such certificate* The application for review was properly presented to the Court presided over by the Chief Justice as there was no time after the application was put in order to present it to the Bench which had disposed of the appeal in the first instance one of them having retired from the Court some days before and the other having gone away on furlough two days after that date R 4 of Chap XI of the Appellate Side Rules was intended to apply to the case where the Deputy Registrar gives a certificate that the review application was in order and not to cases where the certificate is to the effect that the proceedings were not in order GANGADHAR KARMAKAR *v* SHEKHAR BASINI DASYA (1916)
20 C W N 967

4 ——— **Application for review subsequent to filing of second appeal**—*Civil Procedure Code (Act V of 1908) s 114 O XLVII r 1* Where an application for review of judgment is filed and later during the pendency of the same an appeal is preferred *Held* that the Court has power and in fact is bound to proceed with the application for review of judgment notwithstanding the fact that an appeal has been subsequently filed But the power exists so long as the appeal is not heard *Bharat Chandra Majumdar v Ramgunga Sen (1866) B L R (F B) 369 Chenra Reddi v Peddacbi Reddi I L R 32 Mad 416* followed *Placcor Prosad v Baluck Ram 12 C L R 64 Sarat Chandra Dhal v Damodar Manna 1 C W N 885 Narayan Purushottam Gargote v Laxmibai I L R 38 Bom 416* referred to On the other hand if the application is successful the appeal cannot proceed *Kanhaiya Lal v Baldeo Prasad I L R 28 All 240* referred to PYARI MOHAN KUNDU v KALU KHAN (1917)
I L R 44 Calc 1011

5 ——— **Appeals under clause 15 of the Letters Patent**—*Petitions for review in maintainability of* It is competent to the High Court to review judgments in appeals preferred under clause 15 of the Letters Patent VENKATA SUBBARAYADU v SRI RAJAH KRISHNA YACHENDRULU VARU BAHADUR (1916)
I L R 40 Mad 651

6 ——— **Discovery of new and important matter of evidence—Procedure and Practice**—*Character of evidence—Trial of issue—Appeal against order granting review—Civil Procedure Code (Act V of 1908) O XLIII r 1 (u) O XLVII rr 1 4 7 8* The plaintiff obtained a decree in a suit instituted against the defendant Subsequently the defendant applied for a review of the decree on the ground of the discovery of new and important matter of evidence which was not within his knowledge and could not be produced by him at the trial and obtained a Rule calling upon the plaintiff to show cause why the said decree should not be reviewed and why this suit should not be set down on the peremptory list of suits for hearing Upon the Rule coming on for hearing the Court directed an issue to be tried as to the new and important matter discovered after the judgment in this case This issue having come on for trial the Court decided the issue in favour of the defendant and the Rule was made absolute *Held* that this application for review was not granted in contravention to r 4 of O XLVII of the Civil Procedure Code and it was not possible for the Court on this appeal to say that the learned Judge ought not to have made an order for review *Held* also that the additional evidence was of such an unsatisfactory nature and it came into existence in such an unsatisfactory way and the learned Judge was apparently in such doubt as to whether it should be accepted that it ought not to be taken as sufficient to overrule the distinct and clear opinion which he had formed *Per* SANDERSON *C J* It is most important that there should be some finality in the trial of cases and the greatest care ought to be exercised in granting a review when that review is asked for upon the allegation that fresh evidence has been discovered since the judgment was given In an ordinary case where the appeal is on a question of fact where the learned Judge of the Court of first instance has heard and seen the witnesses and has come to a conclusion upon the question of fact upon the evidence on the one side and on the other there is a very great onus upon the shoulders of the appellant when he comes to this Court and asks it to overrule the decision of the learned Judge upon the question of fact *Per* MOOKERJEE *J* Under *O XLVII r 7* an order granting an application for review may be attacked by way of appeal on the ground that the application has been

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granted on the ground of discovery of new evidence without strict proof of the applicant that such new evidence was not within his knowledge or could not be adduced by him when the decree was passed. NANDALAL MULLICK v PANCHANAN MUKERJEE (1917) I L R 45 Calc 60 21 C W N 1076

7 ———— **Criminal cases**—*Order summarily rejecting an appeal—Application for review of the order—Criminal Procedure Code (Act V of 1898) s 369* The High Court has no power to review an order passed in its Criminal Appellate jurisdiction rejecting an appeal summarily *In the matter of Gibbons I L R 14 Calc 42* followed Where a case is disposed of merely for default of appearance or an order is passed to the prejudice of the accused and by mistake or inadvertence no opportunity was given him to be heard the High Court may review the same *Bibhuti Mohan Roy* v *Dasimoni Dasi 7 C W N* *ix n* *Bibhuti Mohan Roy* v *Dasimoni Dasi 10 C L J 80* and *in the matter of an Attorney I L R 41 Calc 734* referred to RAJJAB ALI v EMPEROR (1918) I L R 46 Calc 60

8 ———— **Power of Collector to review his own order** —The Collector has no power to review his own order refusing to interfere with an order passed by his subordinate confirming a sale for arrears of land revenue DAVID NADAR v MANIKKA VACHAKA DESIKA GNANA SAMBANDA PANDARA SANNADI (1909) I L R 33 Mad 65

9 ———— **Application for leave to appeal to Privy Council**—*Order rejecting such application if subject of review—Interest subsequent to decree how far can be allowed by the High Court to be calculated—Order rejecting application for review by a Court other than High Court if appealable —Civil Procedure Code (Act V of 1908) s 114 OO XLVII and XLIII r 1 (u)* An order rejecting an application for leave to appeal to His Majesty in Council comes within the description of orders contemplated in s 114 of the Code of Civil Procedure 1908 and is subject to review *Lutf Ali Khan* v *Asgur Reza I L R 17 Calc 455,* distinguished The High Court should not grant leave to appeal to His Majesty in Council in cases in which the specified amount of R 10 000 can only be reached by the addition of interest subsequent to the decree *Gooroopersad Khoond* v *Juggutchunder 8 Moo I A 166* followed NAND KISHORE SINGH v RAM GULAM SAHU (1912) I L R 39 Calc 1037

10 ———— **Appeal from original decree** —*Review of judgment—Effect of order on review—* The effect of the granting of an application for review is to supersede the decree which is the subject of such application No appeal can therefore be maintained against the decree anterior to the review but only against the subsequent decree *Kuar Sen* v *Ganga Pam All Weekly Notes (1890) 144* and *Kanhaiya Lal* v *Baldeo Prasad I L R 28 All 240* followed *Uma Kunwari* v *Jarbandhan I L R 30 All 479* distinguished BRIJBASI LAL v SALGI RAM (1912) I L R 34 All. 282

11 ————*Application for review—Suit—Res judicata—Compromise decree* An application for review is not a suit within the meaning of s 13 of the Code of Civil Procedure 1882 and a decision of a question arising in an application for review cannot operate as constructive *res judicata* *Gulab Koer* v *Badshah Bahadur 10 C L J 420* referred to *Ram Gopal Majumdar* v *Prasanna Kumar Samad 2 C L J 508* distinguished SRISH CHANDRA PAL CHOWDHRY v TRIGUNA PRASAD PAL CHOWDHRY (1913) I L R 40 Calc. 541

12 ———— **Vendor and purchaser**—*Conditions of sale effect of—Title—Commissioner of Partition sale by not sale by Court—Rules and Orders of the High Court r 4?6 scope of* Under an order of Court that he be at liberty to sell a Commissioner of Partition sold certain property by public auction The conditions of sale *inter alia* stipulated that there were no documents of title except those mentioned in the abstract of title that the purchaser should not be entitled to call for any other document or to object to the title on the ground of the non production thereof and that no objection to the title should be allowed. The purchasers at the auction subsequently obtained an order of Court directing the Registrar to enquire and report under r 4?6 as to the vendor's title On an application for review of judgment *Held* that the review must be granted on the ground that the sale was not a sale by the Court *Golam Hossein Cassim Ariff* v *Fatima Begum 16 C W N 394* and *Chandranath Biswas* v *Biswanath Biswas 6 B L R 498n* followed. The conditions of sale did not preclude the purchasers from raising the question of the vendor's title where it appeared (i) that the abstract of title commenced with a bond of indemnity which was in no sense a root of title and (ii) that the abstract did not expressly disclose the nature of the title or indicate that the property was subject to a permanent lease at a small rent (191) JOGEMAYA DASSEE v AKHOY COOMAR DAS I L R 40 Calc 140

13 ———— **Criminal cases**—*Power of a Division Bench of the High Court to review its judgment discharging a Rule before signature—Discharge of the accused in a part heard case for absence of remaining witnesses without consideration of the evidence already on the record—Criminal Procedure Code (Act V of 1898) ss 253 369—Practice* It is competent to a Division Bench of the High Court which has erroneously discharged a rule on a point of law and a misapprehension of the facts in connection therewith to review its judgment before it has been signed. *In the matter of the petition of Gibbons I L R 14 Calc 42 Queen Empress* v *Lalit Tiwari I L R 21 All 117* referred to *Queen Empress* v *For I L R 10 Bom 176* dissented from. Where a Magistrate after some of the prosecution witnesses had been heard by another Bench of Magistrates, discharged the accused because the other witnesses were not present the High Court set aside the order of discharge and directed him to dispose of the case after argument with reference to the evidence already on the record AMODINI DASEE v DARSAN GHOSE (1911) I L R. 38 Calc. 828

14 ———— **Point of law not taken during trial**—*Whether affords ground for review—Civil Procedure Code (Act V of 1908) O XLVII r 1—other sufficient reasons —occupancy holding—mortgage to proprietors—sale to co-proprietor to satisfy mortgage whether valid* The mere fact that a point of law which might have been raised was not raised during the trial is not necessarily

REVIEW—*contd.*

in itself sufficient to support an application for review *Query*—Whether an omission to raise a point of law which, had it been raised might and probably would have brought about a different result, is necessarily a mistake or error apparent on the face of the record for which a review can be claimed. *Query*—Whether in the case of a mortgage to the landlords of a *raiyati* holding where the holding is not transferable without the landlords consent, they are bound to permit the mortgagor to transfer the holding to anybody whom he may choose (in this case a co-proprietor) in order to put himself in funds to pay off the mortgage KAMLA PRASAD CHOWDHRY *v* KUNJ BEHARI MANDER.

5 Pat L J 344

15 ———— **Appeal—Revision**—*Revision of an order rejecting an application for review not maintainable when the original decree has been the subject of appeal* A Munsif decided a suit in favour of the plaintiff One of the defendants filed an application for review of judgment whilst another of them filed an appeal in the court of the District Judge The application for review was rejected and the applicant then applied in revision to the High Court against the order of rejection. Before however this application came on for hearing the appeal before the District Judge had been disposed of *Held* that although the Munsif might have been wrong in rejecting the application for review the Munsif s decree no longer subsisted and the application for revision could not be heard. RAM PRASAD UPADHYA *v* NAGESHAR PANDE **I L R 42 All 317**

16 ———— **Discovery of new matter or evidence**—*Appeal— Strict proof meaning of— Civil Procedure Code (Act XIV of 1882) ss 626 cl (b) 629 Civil Procedure Code (Act V of 1908) O XLVII rr 4 (2) (b) 7 (1) (b)* In s 626 of the Code of 1882 strict proof does not mean proof that convinces the Appellate Court but that there must be legal proof adduced before the Court that has to deal originally with the question of granting a review The whole scheme of the Act recognises that with proper safeguards the Court of first instance is the proper Court to determine whether or not there should be a review but that before a review is granted those safeguards must be observed *Per* JENKINS *C J* Proof ordinarily has one of two meanings either the conviction of the judicial mind on a certain fact or the means which may help towards arriving at that conviction the use of the word strict points to the second of these two meanings and strict proof means anything which may serve directly or indirectly to convince a Court and has been brought before the Court in legal form and in compliance with the requirements of the law of evidence It is formality that is prescribed and not the result that is described *Per* WOODROFFE *J* Cl (*b*) of sub s (*1*) of r 7 of O XLVII of the new Code does not refer to the weight or sufficiency of the evidence If the legal formalities are observed it is no objection that the probative force of evidence legally taken appears to be different to the Appellate Court from what it appeared to the Court granting review Strict proof means proof according to the formalities of law It does not refer to sufficiency of proof in securing a particular conviction Whether the proof is according to law or not is within the jurisdiction of the Appellate Court to determine the question of sufficiency

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of evidence is for the Court admitting the review *Gyanund Asram v Bepin Mohun Sen I L R 22 Calc 734 Bhyrub Chunder Surmah Choudhuri v Madhub Chunder Surmah 11 B L R (F B) 403 20 W R 84 Chunder Churn Auggrodany v Loodunram Deb 25 W R 374 Koleemooddeen Mundul v Heerun Mundul 24 W R 186* referred to ABID KHONDKAR *v* MAHENDRA LAL DE (1915) **I L R 42 Calc 830**

17 ———— **Appeal against order granting review**—*New and important evidence—Civil Procedure Code (Act V of 1908) O XLVII rr 1 4 and 7* An application for review was made by a defendant on the ground that the evidence of B who could not be got at the time the decree was made was very relevant and material and if that could be given at the time of hearing might possibly have altered the judgment The applicant obtained a rule and that was made absolute without strict proof as to the important nature of the evidence its discovery after the decree or the applicant s inability to produce it at the time the decree was made —*Held* that the order for review was made in contravention of O XLVII r 4 of the Civil Procedure Code consequently there was a right of appeal *Per* MOOKERJEE *J* It is the duty of the Court to come to the conclusion before it grants an application for review that the evidence in question is new and important and that it was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or order was made *Abid Khandakar v Mahendra Lal De I L R 42 Calc 830 Nanda Lal Mullick v Panchanan Mukerjee I L R 45 Calc 60 Young v Kershaw 81 L T 531 16 T L R 52* and *Brown v Dean [1910] A C 373* referred to CHIRANJILAL RAMLAL *v* TULSIRAM JANKIDAS (1919) **I L R 47 Calc 568**

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See ACQUITTAL **I L R 42 Calc. 612**

See ADMINISTRATION BOND **I L R 39 Calc. 563**

See AGRA TENANCY ACT (II OF 1901)
- ss 58 167 **I L R 41 All 28**
- ss 167 199 **I L R 41 All 226**

See APPEAL **I L R 38 Calc 717**
I L R 41 Calc 323

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See CIVIL PROCEDURE CODE 1908—
- ss 10 AND 115 **I L R 42 All. 409**
- ss 105 AND 115 **I L R 43 All. 305**
- 115
- O XXI RR 89 AND 115 **4 Pat L J 340**
- O XXI R 95 **I L R 40 All 216**
- O XXI RR 97 103 **4 Pat L J 95**
- O XXIII R 1 S 115 **I L R 40 All. 612**
- O XXXIV R 5 **5 Pat L J 342**
- O XLI R 10 **I L R 42 All. 626**
- O XLIV R 1 **I L R. 40 All. 381**

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I L. R 43 Calc 1143

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s 125 I L R. 39 All. 466
I L R 41 All. 651

s 145 I L R 39 All. 612
I L R 40 All. 364

ss 145 435 I L R 36 All. 233

ss 145 435 AND 439
I L R 42 All. 214
I L R 41 All. 302

ss 145 439 I L R 32 All. 132

s 195 I L R 35 All. 90

ss 195 439 I L R 36 All. 403

s 345 I L R 37 All. 127

ss 345 438 439 I L R 42 All. 474

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I L R 32 All. 153

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See INSOLVENCY 14 C W N 143

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I L. R 34 Bom. 267

See JURISDICTION OF CRIMINAL COURTS
I L. R 34 All. 118

See JURISDICTION OF HIGH COURT
I L R 38 Calc 832

See LAND ACQUISITION ACT 1894 s 49
2 Pat L. J 204

See LEGAL PRACTITIONERS ACT (XVIII OF 1879) s 36 I L. R 40 All. 153

See LIMITATION I L. R 45 Calc 94

See MAMLATDARS COURTS ACT (BOM II. OF 1906) ss 19 23
I. L. R 35 Bom. 487

See PENAL CODE s 280
15 C W N 835

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I L R 48 Calc 534

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ss 24 26 I. L. R. 34 All. 442

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887)—

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s 5 I L. R 43 All. 50

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I L R 42 All. 31

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——— converted into an appeal on deposit of Court fee—

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——— execution order of District Judge—

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——— grounds for—

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I L. R 38 Calc 933

——— in petition by private parties—]

See CRIMINAL PROCEDURE CODE (ACT OF 1898) ss 439 490 493
I L. R 39 Mad. 505

——— non maintainability of—

See AWARD I. L. R. 48 Mad. 256

——— power of the High Court to interfere in—

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 115 I L. R 39 Mad 195

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887) s 25
I. L. R. 45 Bom 29

——— Want of sanction to prosecute—whether a ground for revision—

See CRIMINAL PROCEDURE CODE s 23
I. L. R 45 Bom. 835

——— application to set aside order of acquittal—

See CRIMINAL PROCEDURE CODE 1898 s 247 1 Pat L. J 254

REVISION—*contd*

———— Board of Revenue, powers regarding—

See ESTATES PARTITION ACT 1897 s 11
1 Pat L J 491

———— for irregularity of subordinate court—

See RECEIVER 4 Pat L J 20

———— Interlocutory order—High Court's power to call fo record—

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 11 I L R 44 Bom 619

———— Perjury—Contradictory statements made before different Courts—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) ss. 236 19 537 (b) 164
I L R 45 Bom 835

———— under Criminal Procedure Code—

See PRACTICE I L R 48 Calc 534

———— whether application should be made to Sessions Judge or district Magistrate—

See CRIMINAL PROCEDURE CODE ss 435 AND 439 I L R 43 All 497

————*Extradition warrant issued by Resident in Nepal—Proceedings the con by District Magistrate in British India and order of surrender of fugitive—Power of High Court to interfere in revision with such order—Nepal whether a Foreign State —Criminal Procedure Code (Act V of 1898) ss 435 439 491—Extradition Act (XV of 1903) ss 7 15* Nepal is not a Foreign State within the meaning of the Indian Extradition Act (XV of 1903) Where a warrant has been issued by the Political Agent under s 7 of the Act its execution by the District Magistrate in British India in accordance with the Act is an executive act and the High Court cannot interfere in revision with the proceedings of the Magistrate and the order to surrender the fugitive criminal but if the latter considers him elf aggrieved thereby he can invoke the action of the Government under s 15 The power of the High Court however to interfere under s 491 of the Criminal Procedure Code which applies whatever be the occasion of the deprivation of the liberty of the subject remains untouched by the Extradition Act GULLI SAHU *v* EMPEROR (1914) I L R 42 Calc 793

————*Civil Procedure Code (Act V of 1908) s 115—Government of India Act of 1915 s 107—Difference of opinion in a Divisional Bench in disposing of a Rule—Appeal under s 15 Letters Patent if lies* Judgment debtor whose two thirds share of a *putni* was sold in execution of his landlord's decree for rent and purchased by the owner of the remaining one third of the *putni* applied to have the sale set aside under O XXI r 90 alleging *inter alia* that the value of the property sold was deliberately underestimated and the property sold at an inadequate value The Munsif upheld both objections to the sale and set it aside but the District Judge on appeal restored it holding that the value fetched was not seriously inadequate To this conclusion the District Judge was led by a suming that what wa sold was only one third and not two thirds of the *putni* and that the purchaser was a stranger On an application for revision the Judges of the Division Bench (N P CHATTERJEA and MULLICK JJ) differing in opinion the order of the senior Judge setting aside the order of the District Judge and remanding the case prevailed *Held per* CURIAM that a further appeal lay under s 15 of the Letters Patent *Held* (by the majority TEUNON J *contra*) (affirming MULLICK J) that this was not a case for interference in revision for although the District Judge made a grave mistake of fact the failure of justice was not due to a fault of procedure such as is contemplated by s 115 cl. (c) of the Civil Procedure Code nor was it a case for interference under s 107 of the Government of India Act as this mistake could have been corrected by an application for review *Per* TEUNON J (agreeing with N P CHATTERJEA J) —The District Judge having in this case set himself to value not the property sold but an entirely different property the error was not one of fact only and the High Court should interfere CHANDRA KISHORE ROY CHOUDHURY *v* BASARAT ALI CHOWDHURY (1917) 22 C W N 627

————*Delay in applying to High Court* The Revisional jurisdiction of the High Court is discretionary and the Court will not interfere in revision at the instance of applicants who do not shew reasonable diligence in prosecuting their cases *Avadh Behari Misra v Dwarka Prasad Singh* 1 Pat L J 165

————*Proceeding under s 145 Criminal Procedure Code—Difference of opinion —Jurisdiction of High Court —Grounds for exercise of its jurisdiction—Omission to add a party—Material prejudice—Criminal Procedure Code ss 145 435 439—Government of India Act (5 & 6 Geo V c 61) s 107—Letters Patent cl 36* S 439 of the Criminal Procedure Code does not apply to a proceeding under s 145 which is outside s 435 On a difference of opinion on revision of such a proceeding the opinion of the senior Judge prevails under cl 36 of the Letters Patent *Laldhari Singh v Sukdeo Narain Singh I L R 27 Calc 892* and *Shaikh Sujaddi Mondal v Cork 22 C W N 499* commented on *Emperor v Har Prasad Das I L R 40 Calc 477* relied on *Mathura Sahu v Damri Ram 15 C L J 337* and *Bapu v Papu I L R 39 Mad 650* approved *Queen Empress v Dada Ana I L R 15 Bom 452* dissented from *Semble* If it be held that cl 36 applies only to original or appellate jurisdiction the Court should act in the absence of any provision to the contrary upon the principle underlying the clause The power of the High Court to interfere under s 107 of the Government of India Act in cases under s 145 of the Criminal Procedure Code is not confined to questions of jurisdiction alone It may also interfere when the Magistrate has acted with illegality or material irregularity and a party has been prejudiced thereby *Sukh Lal Sheikh v Tara Chand Ta I L R 33 Calc 68* followed *Per* NEWBOULD J The omission to add a party in a proceeding under s 145 of the Code is not an error of jurisdiction *Krishna Kamini v Abdul Jubbar I L R 30 Calc 155* followed There was no irregularity in the present case resulting in such material prejudice as would justify the Court's interference *Per* SHAMS UL HUDA J Where the refusal of the Magistrate to add a party on his application to the proceedings has resulted in a serious failure of justice the Court will set aside

REVISION—*contd*

the order under s 145 There was such failure of justice in the case MARIAM BEWA *v* MERJAN SARDAR (1919) I. L. R. 47 Calc. 488

——*Injunction issued by Mamlatdar—Order set aside by Collector—Summary proceedings—High Court not to exercise powers of revision unless the party has no other remedy* In a case where the proceedings which are sought to be revised are purely summary proceedings and which do not finally decide the dispute between the parties the High Court should not exercise its powers of revision. IRBASAPPA *v* BASANGOWDA (1919) I. L. R. 44 Bom. 595

——*Power of High Court to interfere where Subordinate Courts with concurrent jurisdiction have not been moved—Code of Criminal Procedure (Act V of 1898) ss 10, 435 and 439* In cases where the High Court has concurrent revisional jurisdiction with a subordinate Court the aggrieved party should in the first instance seek his remedy before the subordinate Court The High Court will not interfere with an order under s 107 of the Code of Criminal Procedure 1898 unless and until the party aggrieved by the order has moved, and failed to obtain satisfaction from the District Magistrate or Sessions Judge BEPIN BIHARI MUKERJI *v* KING EMPEROR

3 Pat. L. J 302

——*Withdrawal of suit—Order of appellate Court granting withdrawal—Revision power of High Court to interfere in—Code of Civil Procedure (Act V of 1908) s 115 and O XXIII r 1* The High Court has power in its revisional jurisdiction to interfere with an order passed by a subordinate appellate Court granting the plaintiff leave to withdraw his suit with permission to bring a fresh suit upon the same cause of action. Where in an appeal by the plaintiff from an order dismissing his suit the plaintiff-defendants filed cross-appeals in which they alleged that the suit must fail owing to a formal defect in the pleadings *Held* that the Court had power to allow the plaintiff to withdraw the suit with permission to bring a fresh suit on the same cause of action BISHESHA AHIR *v* BRIJRA MISSIR 3 Pat L. J 630

REVISIONAL AND APPELLATE JURISDICTIONS

——*Distinction between* *Held* (as regards the application for revision of the order of the District Judge) that a Court in the exercise of its appellate jurisdiction investigates the facts and if necessary substitutes its own appreciation of the evidence for that of the primary Court but when the Court as a Court of revision looks into the evidence it does so with a view to determine whether the subordinate Court has assumed a jurisdiction which it did not possess or declined a jurisdiction which it did possess or has in the exercise of its jurisdiction acted illegally or with material irregularity and in the present case the High Court could not be rightly invited by the petitioner to examine the evidence with a view to determine whether the District Judge correctly appreciated its effect RASHMONI DASSI *v* GANODA SUNDARI DASSI (1914)

19 C. W N 84

REVISION SURVEY

See LAND REVENUE CODE (BOM. ACT V OF 1879) s 48. I. L. R 42 Bom. 19

REVISIONAL JURISDICTION

See APPEAL, RIGHT OF I. L. R. 44 Calc. 94

See CIVIL PROCEDURE CODE, 1908 s. 115

See HIGH COURT JURISDICTION OF I. L. R 39 Calc. 473

See REVISION

See SANCTION FOR PROSECUTION I. L. R. 43 Calc. 59

——over Presidency Small Cause Court—

See HIGH COURT ORIGINAL SIDE, JURISDICTION OF I. L. R 37 Calc. 74

REVIVAL.

——of pending execution—

See MORTGAGE. I. L. R. 37 Calc. 708

——of proceedings—

See SANCTION FOR PROSECUTION I. L. R 40 Calc. 554

——of decree Original Side of the High Court—

See LIMITATION ACT (IX OF 1908), SCH I ART 183. I. L. R 38 Mad. 1102

——*Procedure and practice—Execution of decree—Decree barred by limitation—Order on—Application for transmission—Notice—Order of Court—the notice effect of—Master authority of—Act VII Jurisdiction of—Civil Procedure Code (Act XIV of 1882) ss. 223, 231, 235, 248 and 249—High Court chambers Rules and Orders r 3 0—Limitation Acts (XV of 1877) Sch. II Art. 179 and 180 (IX of 1908) Sch I Arts 182 and 183.* On the 21st May 1896, the plaintiffs obtained a money decree in the High Court against the defendant This decree was subsequently transmitted to the District Court of Purnea for execution, but was returned by that Court as unsatisfied. Then after another application for execution by arrest and imprisonment of the defendant was made to the High Court on its Original Side and the returnable date of the order on this application was fixed finally for the 12th July 1901 No further steps were again taken until the 1st June 1908, when the plaintiffs made another application to the High Court on the tabular form provided under s 235 of the Code of Civil Procedure 1882 for execution of their said decree by transmission of the same to the District Court of Murshidabad and attachment of the defendant's property situate within the jurisdiction of the latter Court, and the Registrar directed notice to issue on the defendant under s. 248 (a) of the Code. On the 30th June 1908, the defendant not having appeared to show cause the Master ordered execution to issue as prayed. Again no steps were taken until the 18th January 1918 when a fresh application was made to the High Court for execution by attachment of No. 147 Cotton Street in Calcutta. The defendant thereupon applied to set aside

REVIVAL—*contd*

this attachment but the High Court refused his application as barred On appeal to the High Court in its Appellate Jurisdiction reference was made by this Court to a Full Bench *Held* that the application of the 1st June 1908 and the order of the 30th June 1908 did not constitute a revivor within Art 183 of the 1st Schedule of the Limitation Act 1908 *Per* SANDERSON *C J* The substance and not the form of the matter must be looked at and considered from that point of view the application was for the transmission of a certified copy of a decree together with a certificate of *non-satisfaction* and no more and the order made in substance was that the application should be granted The notice which was issued under s 248 was inapplicable to the proceedings in question The question whether a decree was capable of execution would have to be determined by the Court itself under s 249 of the Civil Procedure Code The Registrar was not clothed with authority to decide such a question as arises in this case viz whether the decree was barred by the Statute of Limitation P 3 0 in Bel chambers Rules and Orders was not consistent with the scheme of the Code of 1882 These rules must be read as modified by the Civil Procedure Code 1882 under which the application in this case was made and the notice issued and the order made did not operate as a revivor within the meaning of Article 183 of the Limitation Act Schedule I The fact that the word revivor is used in Art 183 instead of the different matters specified in Art 182 being set out again or referred to in Art 183 as might have been done shows that something different to such matters was intended Further the conditions dealt with by the two clauses are essentially different and the periods of limitation vary materially *Per* WOODROFFE *J* An order for transmission as such is not an order on an application for execution though it is an order on an application in execution It is a proceeding taken with a view to further action by way of execution elsewhere on which action unless previously determined the question of the right to execute the decree is decided If the Registrar had power to issue as a *quasi* judicial Act notice under s 248 he had no power to determine judicially that the decree was alive had the debtor contested the point The Judge must have done that and the fact that the debtor did not appear on the notice cannot give the order passed that judicial character which is necessary for an order operating as revivor The last two words of the Order (Let execution issue as prayed) make the order operative as one for transmission of the decree for this was what was asked. *Per* MOOKERJEE *J* S 230 makes it plain that the application for execution must be presented to the Court to which the decree has been transmitted for execution while the explanation to s 248 shows that the notice required by that section must where the decree has been transmitted be issued by the Court to which the decree has been sent for execution Consequently the issue of the notice in this case under s 248 on the basis of the application for transmission of the decree was not in conformity with the Code of 1882 which was in force at the time Upon the application for transmission of the decree under s 223 a notice under s 248 could not properly be issued such notice though issued did not by itself operate as revivor of the decree and there was not an act and could not in law be such a determination by the Master under s 249 as would operate to revive the decree CHUTTERPUT SINGH *v* SAIT SUMARI MULL (1916) I L R 43 Calc 903

REVOCATION

See HINDU—LAW—WILL. I L R 39 Mad. 107

See LETTERS OF ADMINISTRATION I L R 40 Calc 5

See PROBATE I L R 37 Calc 387
I L R 42 Calc 480

See SANCTION FOR PROSECUTION I L R 40 Calc 423

———— of authority—

See GUARDIAN I L R 38 Mad 807

———— of gift—

See MUHAMMADAN LAW—GIFT I L R 36 All. 333

See CONTRACT ACT s 19 I L R 38 Bom 37

———— power of—

See GIFT I L R 39 Calc 933

———— presumption of—

See WILL I L R 45 Bom 906

REVOLUTIONARY ACTIVITY

See SECURITY FOR GOOD BEHAVIOUR I L R 46 Calc 215

RHANDERIAS

See MAHOMEDAN LAW—ENDOWMENT I L R 43 Calc 1085

RICE MERCHANTS ASSOCIATION RULES

See JURISDICTION OF CIVIL COURTS I L R 34 Bom 13

RIGHT OF APPEAL

See APPEAL TO PRIVY COUNCIL I L R 40 Calc 21

RIGHT OF AUDIENCE

See JURISDICTION I L R 48 Calc 768

RIGHT OF CROSS EXAMINATION

———— continuance of—

See CROSS EXAMINATION I L R 37 Calc 236

RIGHT OF OCCUPANCY

See LANDLORD AND TENANT I L R 37 Calc 449

See OCCUPANCY HOLDING

See OCCUPANCY TENANT

———— acquisition of—

See LANDLORD AND TENANT I L R 38 Calc 432

RIGHT OF PRIVATE DEFENCE

See ASSESSORS EXAMINATION OF
I L R 40 Calc 163

See PENAL CODE ss 96 to 106

See PRIVATE DEFENCE

See RIOTING I L R 39 Calc 896
I L R 41 Calc 43

See SEARCH WITHOUT WARRANT
I L R 38 Calc 304

RIGHT OF RE ENTRY

See BOMBAY RENT (WAR RESTRICTIONS ACT II OF 1918) ss 3 9 AND 12
I L R 45 Bom 535

RIGHT OF REPLY

See APPEAL. I L R 38 Calc 307

———— *Right of reply—Duty of App llate Court to determine accomplice character of Evidence—Criminal Procedure Code (Act V of 1898) s 421—Practice* The appellant has a right of reply to the Crown on the hearing of an appeal *Promoda Bhusan Roy* v *Emperor 11 C W N xlii* followed The Appellate Court is bound to find specifically whether witnesses said to be accomplices are so or not and to weigh their evidence accordingly AMANAT SARDAR v NAGENDRA BISWAS (1910)
I L R 38 Calc 307

———— *Exhibiting documents not part of the record on behalf of the accused during the cross examination of the prosecution witnesses—Doctrine of surprise—Criminal Procedure Code (Act V of 1898) ss 289 and 292* S 292 of the Criminal Procedure Code is not to be read in dependently but in connection with s 289 and gives a right of reply only when the accused or any of them adduces evidence after the case for the prosecution has concluded. The prosecution has no right of reply when the counsel for the accused has during the cross examination of a prosecution witness and before the close of the case for the Crown put certain lett rs which do not form part of the record to such witness and then tendered and had them admitted in evid ence The question whether the prose ution has been taken by surprise is not the correct test under s 292 of the Code EMPEROR v SREENATH MAHAPATRA (1916) I L R 43 Calc 426

RIGHT OF SUIT

See ALIEN ENEMY
I L. R 46 Calc. 526

See CIVIL PROCEDURE CODE (ACT V OF 1908) ss 47 73 104
I L R 39 Mad 570

See CONTRACT
I L R 38 Mad 788

See EXECUTION SALE.
I L. R 39 Mad. 803

See LESSOR AND LESSEE
I L R 39 Mad 1042

See PARTIES I L. R 45 Calc 862

See RIGHT TO SUE

———— destruction of—

See DEED I L. R 38 Mad 746

See RIGHT TO SUE.

RIGHT OF SUIT—*contd*

1 ———— Non service of Summons—*Fraud—Civil Procedure Code (Act XIV of 1882) s 108—Ex parte decree* A fresh suit would not lie to set aside a decree on the mere ground of non service of summons though it would be main tainable on the ground of fraud. *Radha Raman Shaha* v *Pran Nath Roy I L R 28 Calc 475* and *Khagendra Nath Mahata* v *Pran Nath Roy I L R 29 Calc 395* referred to *Puran Chand* v *Seodat Rai I L R 29 All 212* followed NARSINGH DAS v RAFIKAN (1909) I L R 37 Calc 197

2 ———— Suit by person not party to an instrument—*sustainable when charge created in such person s favour—Decrees for relief not specifically asked for when allowable* A plaintiff asking for certain specific reliefs and for such other relief as the Court should deem fit should on being found disentitled to the specific reliefs asked for be given such relief as the circumstances justify A person who is no party to a document but in whose favour a charge is created by such document is entitled to maintain a suit to enforce its terms either as the actual beneficiary or as the charge holder SAUTRI AMMAI v SUBRAMANIYAN (1909)
I L. R 33 Mad. 238

3 ———— Election suit—*Madras District Municipalities Act (IV of 1884)—Election as Municipal Councillor—Declaration of its invalidity by Collector under r 36 of Election Rules—Civil Courts no jurisdiction to question it — Appointed by election in s 10—Meaning of election* An order of a Collector declaring the invalidity of an election of a candidate to a seat in a Municipal Council passed under r 36 of the Election Rules (i e after enquiry and based on proper grounds complying those set forth in r 35) and otherwise with the requirements of the rules framed under s 250 of Madras Act IV of 1884 (District Muni i palities Act) cannot be questioned in a civil suit but is conclusive as far as the result of the election is concerned *Bhaishankar* v *The Municipal Corporation of Bombay I L R 31 Bom 604 609* followed Maxwell on Interpretation of Statutes 4th Edition p 197 referred to *Vijaya Ragava* v *The Secretary of State for India I L R 7 Mad. 466 Sabhapat Singh* v *Abdul Gaffur I L R 24 Calc 107 Lalbhai* v *The Municipal Commissioner of Bombay I L R 33 Bom 334* distinguished. *Per* CURIAM The status of a Municipal Councillor is the creation of s 10 of Act IV of 1884 and the creation is subject *inter alia* to the conditions imposed by the Election Rules framed by the Governor in Council under s 250 of the Act and invested by clause (3) with the force of law One of these rules in r 36 the election gives the candi date elected no vested status as the election is liable to be declared invalid an invalid election can confer no status whatever The words "ap pointed by election in s 10 refer only to a valid election i e one which is not set aside under r 36 *Semble* If an order is pas ed without any enquiry at all or is based on grounds other than those set forth in r 35 a suit would probably lie to set it aside as *ultra vires* A suit for damages in consequence of an invalid order and a suit for a declaration of the validity of an election and an injunction stand on very different footings thou h based on the same facts The former may be decreed while the latter may not NATARAJA MUDALIYAR v THE MUNICIPAL COUNCIL OF MAYAVARAM (1913) I L. R. 36 Mad. 120

RIGHT OF SUIT—*contd.*

4 ———— **Suit for exemption from land revenue**—*Owner alone can bring suit for land by A against B ending in favour of A—Third parties cannot question—*Res Judicata Civil Procedure Code *Act V of 1908 s 13 not exhaustive* A suit for a declaration that the land is not liable to assessment can be instituted only by the person entitled to it as owner If a suit relating to ownership of the land between two persons has ended in favour of one of them third parties having no interest in the land at the time of the litigation cannot in the absence of any collusion or fraud on them dispute the settlement of the dispute between them as to title even for supposed want of jurisdiction and it is equally true that neither of the parties to the litigation can be permitted to aver as against third persons in the like position that the land belongs to himself and not to his opponent in the litigation. Second Appeal No 5 4 of 1909 followed Bigelow on Estoppel 5th edition, 44 referred to PER CURIAM The question does not depend upon the application of the doctrine of *res judicata* S 13 Civil Procedure Code does not cover all cases of estoppel by judgment. The suit was for a declaration that the defendant the Secretary of State for India was not entitled to levy any assessment on certain lands which the plaintiffs claim as part of their *agraharam* In previous suits by *B* against plaintiffs once for a declaration of title and afterwards for possession of the lands the judgments were in favour of *B* *Held* (i) that the plaintiffs in the present suit cannot be permitted to prove as against the present defendant that they were the owners and (ii) that the suit was not maintainable *Semble* Even if the previous litigation had ended in favour of the present plaintiffs the Government though it would not be entitled to question the plaintiff's title would not be bound to regard the land as exempt from revenue RAMAMURTI DHORA *v* SECRETARY OF STATE FOR INDIA (1913) I L R 36 Mad. 141

5 ———— **Transfer of property in consideration of transferee paying sums to third parties**—*Failure of transferee to pay in reasonable time—Right of transferor to sue for same irrespective of damage* If *A* transfers his property to *B* in consideration of *B* agreeing to pay certain sums to third person, *A* is himself entitled to sue *B* for the recovery of those sums as if they are due to him in case of *B's* failure to pay the third persons within a resonable time and *A* is not in such a case bound to show that he was in any way damnified by *B's* failure *Doraisinga Tevar* v *Arunachalam Chetti I L R 23 Mad 441 Rungganatham* v *Appala Naidu* [*C M A No 119 of 1908* (unreported)] and *Gopala Aiyar* v *Ramaswami Sastrigal* [*S A No 183 of 1907* (unreported)] followed *Siva Subramania Mudaliar* v *Gnanasambanda Pandara Sannadhi 21 Mad L J 359 Chenchuramayya* v *Subaramayya 9 Mad L T 79 Doraisami Tevar v Lakshmanan Chetty 14 Mad L J 284 Thangammal Nachiar* v *Subbammal 16 Mad L J 90 Putti Narayanamurthy Ayyar* v *Marimuthu Pillai I L R 26 Mad 322 Kumar Nath Bhattacharjee* v *Nobo Kumar Bhuttacharjee I L R 26 Calc 441* and *Lalun Nissa Begam* v *Kunwar Pertab Singh L R 36 I A 203* distinguished *Subba Naidu* v *Bathula Bee Sahiba 8 Mad L T 188* referred to RAGHUNATHA *v* SADAGOPA (1913)

I L R 36 Mad. 348

6 ———— **Acquisition of inam land by Government for municipal purposes**—*Madras District Municipalities Act (IV of 1884) s 2 9 effect of—Sale by Municipalities—Imposition by Government of ground rent on occupier—Ground rent liability to pay—G O No 210 of 20th February 1889 effect of—Exemption from ground rent to be express* Even an inam land which is subject only to a quit rent becomes when acquired by Government under the Land Acquisition Act ordinary Government land liable to assessment in the hands of any person who might afterwards become the occupier whether deriving his title directly from the Government or from a Municipality which after such acquisition by the Government becomes owner under s 2 9 of the Madras District Municipalities Act (IV of 1884) by payment of the amount settled as compensation Acquisition is only by the Government and not by the Municipality hence the previous inamdar's right to exemption from assessment does not rest in the Municipality A transferee from the Municipality of such land cannot therefore claim as against the Government exemption from assessment A person who claims exemption from the payment of such assessment as the Government may fix must show some grant exempting him from the payment of the ordinary assessment No exemption can be claimed without a grant or exemption in express words Effect of G O No 210 dated 20th February 1889 permitting Municipal Councils to transfer lands vested in them by sale mortgage or otherwise was not to exempt the transferees from ordinary assessment that might be imposed but was only to remove all objection to the transfer on the ground that the transferor is a Municipal Council HANUMANLU *v* SECRETARY OF STATE (1913)

I L R 36 Mad. 373

7 ———— **Title to property seized**—*Civil Court—Jurisdiction—Order of forfeiture passed by Magistrate—Criminal Procedure Code (Act V of 1898) ss 523 524—Disposal of property—Sale proceeds credited to Government—Suit to recover the amount* The plaintiff's house was searched in connection with a dacoity and certain property was attached on suspicion On a proclamation being issued by the 2nd Class Magistrate under s 523 (2) of the Code of Criminal Procedure 1898 the plaintiff appeared before the Magistrate to establish his claim to the property The claim was disallowed and an order was passed under s 524 of the Criminal Procedure Code for sale of the property The sale proceeds having been credited to Government the plaintiff brought a suit for the recovery of the amount The defendant pleaded that a Civil Court had no jurisdiction to entertain the suit The Assistant Judge decided the suit in plaintiff's favour The District Judge on appeal dismissed the suit holding that as under s 524 the property was at the disposal of Government Government had an absolute right to it and that the special provisions relating to investigation of claims to property mentioned in s 523 made the decision of the Magistrate final and deprived the person aggrieved of any right of action On appeal to the High Court —*Held* reversing the decree that the order of the Magistrate disposing of the property under s 524 of the Criminal Procedure Code was not final and that it did not deprive the plaintiff of his right to establish his claim in a Civil Court *Queen Empress* v *Tribho*

RIOTING—*concld*

Bengal Excise Act (V of 1909) confers wider powers on excise officers than were given under the former Act Under s 67 read with r 75 of the Rules framed by the Local Government an excise inspector and sub inspector may enter a house for the purpose of arresting without a warrant a person found in the illicit distillation of liquor S 67 does not relate to any search and an excise officer not below the rank of a sub inspector entering a house for the purpose mentioned therein is not required to comply with the formalities prescribed in Ch X r (8) of the Instructions of the Board of Revenue unless he finds it necessary further to make a search in the house Where an excise sub inspector accompanied by a constable and two chowkidars and excise peons went to the house of the accused in order to arrest without warrant persons found in the act of illicit distillation of liquor and were attacked and beaten by them before they had time to enter or search the same *Held* that they were acting legally under s 67 of the Bengal Excise Act and that the accused were rightly convicted under ss 147 and 353 of the Penal Code On a charge of rioting with the common object of assaulting public servants persons shown to have committed a separate offence under s 353 of the Penal Code may be separately sentenced thereunder Formalities required by law prior to search considered PROKASH CHANDRA KUNDU *v* EMPEROR (1914)

I L R 41 Calc 836

6 ——————— *Autrefois acquit—Common object—Penal Code (Act XLV of 1860) ss 79 141 147 and 342—Criminal Procedure Code (Act V of 1898) s 403* Several police constables were convicted of rioting Two of them were previously tried and acquitted on a charge of wrongful confinement for having taken into custody some persons in course of such rioting —*Held* that the second trial was not vitiated by contravention of the rule embodied in s 403 (*1*) of the Criminal Procedure Code *R* v *Barron* [*1914*] *2 K B 570* followed *Suresh Chandra* v *Banku 2 C L J 629* distinguished RAM SAHAY RAM *v* EMPEROR (1920) **I L R 48 Calc 78**

RIPARIAN RIGHTS

See EASEMENT

I L R 37 Mad 304

See FISHERY

See MADRAS IRRIGATION CESS ACT

I. L. R 40 Mad. 886

See NAVIGABLE RIVER

I L R 46 Calc 390

——————— *Nature of —Rights of upper riparian owner—Grant of right for user apart from the tenement validity of—artificial reservoir fed by natural stream, grant by riparian owner of right to take water from validity of—Obstruction to exercise of riparian rights—Limitation Act (IX of 1908) ss 23 and 26* The right of a riparian owner is not an easement but a right based on the principle that all streams are *publici juris* and all the water flowing down any stream is for the common use of mankind living on the bank of the stream A riparian owner is entitled to use the water from a stream for all reasonable purposes and may therefore permanently divert water for the purpose of irrigating his tenement He may also make a grant to another riparian owner to take water by

RIPARIAN RIGHTS—*concld*

means of a channel running through the grantor's land from an artificial reservior created by the grantor The question as to whether such an user would be reasonable would depend upon the proper requirements of all the riparian owners S 26 of the Limitation Act 1908 has no application to the case of an obstruction to the right to take water from a stream whether such right is founded on riparian ownership or a lost grant An obstruction to such enjoyment is a continuing wrong within the meaning of s 23 MAHANTA KRISHNA DAYAL GIR *v* MUSAMMAT BHAWANI KOER

3 Pat L J 51

——————— *Natural stream flowing in artificial channel rights of user in* The proper inference for the user of water in a natural stream flowing in an artificial channel is that the same as if the stream had been a natural one that is that the water should come without obstruction RAM KRIPAL SINGH *v* HANUMAN SINGH

6 Pat L J 6

RISK NOTE

See CONTRACT **I L R 43 Bom 469**

See RAILWAYS ACT S 72 AND 75

See RAILWAY COMPANY

——————— Sender's risk note—*making Railway administration liable only if complete package lost whether opposed to public policy* The sender's risk note used in the East Indian Railway system under which the Railway Company takes liability only when there is a loss of a complete package due to wilful negligence of their staff or theft by their servants is not opposed to public policy KALI DAS MULLICK *v* E I RAILWAY Co (1916)

21 C W N 815

RITES AND CEREMONIES

See HINDU LAW—MARRIAGE

I L R. 38 Calc 700

RIVAL CANDIDATE

See MUNICIPAL ELECTION

I L R 46 Calc. 130

RIVAL DECREE HOLDERS

See EXECUTION OF DECREE

I L R 44 Calc 1012

RIVER

See GRANT **I L R Mad. 840**

See RIVER BED

RIVER BED

See GRANT

See PUBLIC NAVIGABLE RIVER

24 C W N 639

See REGULATION XI OF 1825

See RIPARIAN OWNERS

——————— *silting up and becoming culturable whether part of public domain when river admitted or proved non navigable—Presumption that it was part of permanently settled estate—River bed Suit to contest wrongful assessment of such river bed —Limitation—Reg II of 1819 ss 0 93 [—Act IX of 1847] As Reg III of 18 8 s 10—Act IX* [illegible] soon as it is shown or admitted that a river within the ambit of the zemindari was never a public navigable river the onus which lies on the zemindar to show that its bed was included within the limits

FIVER BED—contd

of his permanently settled estate is di charged or shifted. The test for determining whether a river is a public navigable river or not is whether or not the river is navigable for boats at all seasons of the year The question of size may not be without importance but speaking generally the presumption in the one case is that the bed belongs to the public or is public domain and in the other that the bed belongs to a private proprietor In the absence of any other evidence than that afforded by a *thak* or survey map these natural pre umptions may be sufficient to displace the contrary evidence of the map *Maharaja Jagadindra* v *Secretary of State L P 30 I A 44 s c I L P 30 Calc 291 7 C W N 193 (1902) Haridas* v *Secretary of State 26 C L J 590 (P C) (1917) Secretary of State* v *Bijoy Chand Mahatab I L P 6 Calc 90 s c 22 C W N 5 2 (1918)* and *Secretary of State* v *Fakamidunnissa L P 17 I A 40 s c I L P 1 Calc 590 (1889)* referred to The bed of a river included in a permanently settled estate is in no respect different from other waste lands included in the e tate and whatever changes may have occurred from natural or artificial cau es and however the land may have improved in value Government is not entitled to additional revenue for such land *Lopez* v *Muddun Mohun 13 M I 1 467 at p 4.7 5 B L P 521 11 W P 11 (18 0)* and *Bala Surya Prashad* v *Secretary of State L P 44 I A 166 at p 185 s c I L R 40 Mad 886 21 C W N 1089 (1917)* referred to When the bed of such a river silts up and becomes fit for cultivation neither Reg II of 1819 nor Act IX of 1847 authorises the revenue authorities to assess the lands with revenue Where never theless the revenue authorities have assessed such land with revenue under Act IX of 1847 *Quære*—Whether upon the enactment of Act IX of 1847 the limitation provided by s 24 of Reg II of 1819 ceased to be applicable to a suit by the owner to contest the validity of the assessment and to recover possession of the land SECRETARY OF STATE FOR INDIA v PROFULLANATH TAGORE

24 C W N 809

———————*Suit to cont st order of Board of Revenue confirming assessment of land formed by silting up of river bed—Limitation—Reg II of 1819 s 24—Reg III of 1828 s 10—Act IX of 1847 s 6—Bed of public navigable river shown in thak and revenue survey maps as within p rmanently settled estate—Bed if to be presumed part of estate* The rules con ained in s 10 of Reg III of 1828 and s 24 of Reg II of 1819 govern a suit to contest an order of the Board of Revenue under s 6 of Act IX of 1847 confirming an asse s ment under the Act and to obtain incidental relief such as recovery of possession of lands of which possession has been taken under s 10 of Reg III of 1828 *Fahamidunnis a s case I L P 14 Calc 67 (F B) (1886)* on *P C L R 17 I A 40 (1889)* referred to An order under s 6 of Act IX 1847 confirming an assessment of revenue corres ponds to a decision of the Board under Reg II of 1819 and unle s the suit of the nature indicated by cl (3) of s 10 of Reg III of 1828 is brought within the time limited by s 24 of Reg II of 1819 the decision of the Board declaring the land liable to a se sment becomes final and conclusive for all purpo es Where the Board of Revenue found that a river the channels whereof had not materially changed between 1793 and 1854 was a public navigable river but the *thak* and survey maps of 1850 1861 shewed the whole width of the river as included in the permanently settled estate of the Plaintiff the Plaintiff offering no other evidence *Held*—That the *thak* and survey maps were not in themselves sufficient to justify the Court in saying that the Board s order was wrong and should be reversed *Maharaja Jagadindra s case L P 30 I A 44 s c I L R 30 Calc 91 7 C W N 193 (190)* referred to The question whether a river or watercourse is navigable or not does not depend on its name PRAFULLA NATH TAGORE v SECRETARY OF STATE FOR INDIA 24 C W N 813

RIWAJ I AM

See CUSTOM I. L. R 39 All 574

——————— evidentiary value of—

See CUSTOM I L. R 44 Calc 749

——————— Jhelum District Jats succession to acquired property—

See CUSTOM (SUCCESSION)

I L R 2 Lah. 98

——————— Karnal District—Succession by daughter to self acquired property—

See CUSTOM—SUCCESSION

I L R 2 Lah 366

——————— Ludhiana District—Adoption by an adopted son—

See CUSTOM (ADOPTION)

I L R 1 Lah 39

——————— Jullundur District—Adoption of daughter s son—

See CUSTOM (ADOPTION)

I L R 2 Lah 193

——————— Jullundur District—Succession of sister—

See CUSTOM (SUCCESSION)

I L R 1 Lah 1 & 433

——————— Jullundur District—Adoption of brother s daughter s son—

See CUSTOM (ADOPTION)

I L R 1 Lah 15

——————— Jullundur District—Succession—daughter or collaterals—

See CUSTOM (SUCCESSION)

I L R 1 Lah 464

——————— Shahpur—Succession—daughter or near collaterals—

See CUSTOM (SUCCESSION)

I L R 1 Lah 284

——————— Tahsil Chakwal District Jhelum—alienation in favour of daughter—

See CUSTOM (ALIENATION)

I L R 2 Lah. 170

ROAD

See BHAGDARI VILLAGE.

I L R 37 Bom 87

See MUNICIPALITY

I L R 43 Calc 130

——————— making and maintenance of—

See TORT I L R 39 Mad 351

ROAD AND PUBLIC-WORKS CESS ACT

See CESS ACT

ROAD CESS

——— arrears of—

See PUBLIC DEMANDS RECOVERY ACT s 10 14 C W N 007

——— sale for arrears of—

See MUTT, HEAD OF I L R 38 Mad 356

ROAD CESS RETURN

See TEISHUKHANA PAPER I L R 39 Calc, 995

1 ———Evidence—*Road cess return filed by a temporary lessee—Bengal Cess Act (IX of 1880) s 95—Evidence Act (I of 1872) s 21* The provisions of s 95 of the Bengal Cess Act are not exhaustive They merely limit the application of s 21 of the Indian Evidence Act and exclude road cess returns when they are sought to be admitted in favour of the person by or on behalf of whom they have been filed A road cess return filed by a person in his capacity as a temporary lessee of a certain property is admissible in evidence in favour of the superior landlord inasmuch as he could not be regarded as a person by or on behalf of whom the return was filed SEWDEO NARAIN SINGH v AJODHYA PROSAD SINGH (1912) I L R 39 Calc 1005

2 ———Statements made in road cess returns by *Khorpo kdars* or holders of a maintenance grant as to the character of their tenure are good evidence of title against a defendant claiming under them, if not as admissions certainly as positive evidence in support of plaintiff's claim KALI SANKAR SAHAI v MAHARAJA PRATAP UDAI SAHI DEO (1911) 16 C W N 683

ROAD CESS ACT (BENG IX OF 1880)

——— ss 6 72 76 80 81—The Royalty or percentage on the products of a mine payable by mine owners to the proprietor of the land is part of the annual net profits of the mine and liable to cess MAHARAJA MANINDRA CHANDRA NANDI v THE SECRETARY OF STATE 15 C W N 201

——— s 20—*Rent suit for—Rent claimed at higher rate than amount entered in Road Cess Return* Unless there has been a material alteration of the holding a landlord is not entitled to claim rent at a rate higher than that stated in the Road Cess Return Mere alteration in area due either to re measurement or encroachment will not take a case out of s 20 of the Road Cess Act 1880 Neither an entry in the Record of Rights which only raises a presumption nor an entry in a *jama wasil baki* which states what the tenant's rent for a particular year was can override the provisions of the Act DHANUKDHARI MAHTON v SAYID SERAJUL HUDA 1 Pat. L. J 521

——— ss 47 and 64 (A and B)—

See BENGAL TENANCY ACT 1885 s 65 1 Pat L J 181

ROYAL PROCLAMATION OF AUGUST 1914

See CONTRACT WITH ENEMY I L R 44 Bom 631

ROYALTY

See INCOME TAX ACT 1918 s 5 6 Pat L J 8?

See MINES I L R 38 Calc 3?

——— action for—

See TRADE MARK I L R 42 Calc 26?

——— arrears of—

See MORTGAGE I L R 39 Calc 810

——— payment of—

See LANDLORD AND TENANT I L R 46 Calc 55?

——— suit for—

See LIMITATION I L R 44 Calc 759

ROYALTY OR SEIGNIORAGE FEES

——— right of Government to buy—

See INAM I L R 40 Mad 26?

RULES

See CALCUTTA RENT ACT 1920 25 C W N 661

See ULTRA VIRES I L R 48 Calc 935

RULES AND ORDERS OF COURTS

See UNDER VARIOUS HIGH COURTS

RULES OF EVIDENCE

See APPEAL I L R 38 Calc 143

RULING CHIEF

——— suit against—

See CIVIL PROCEDURE CODE 1908 s 86 6 Pat L J 155 I L R 38 Mad. 635

RULING OF COURT

———*of co ordinate jurisdiction* A Judge on the Original Side is ordinarily bound to consider with respect the decision of another Judge on the Original Side produced before him but that if he is convinced that the decision is erroneous he is not under any obligation to follow it against his own judgment VIRJIVEN DASS MOOLJI v BISSESSWAR LAL HARGOVIND 24 C. W N 103?

RYOT

See MADRAS ESTATES LAND ACT (I of 1908) s 3 I L R 38 Mad 1133

RYOTI LAND

See MADRAS ESTATES LAND ACT (MAD I OF 1908)—

s 3 I L R 38 Mad ?35 I L R 40 Mad 5?9

ss 9 11 151 157 I L R 3? Mad 43

SALE—*contd*

———— by Mahomedan to Hindu

See PRE EMPTION I L R 45 Bom 658

———— by mother—

See MAHOMEDAN LAW—MINOR
I L R 37 Mad 514

———— by prior mortgagee—

See MORTGAGE I L R 45 Calc 702

———— by servant or partner—

See ADULTERATION
I L R 39 Calc 682

———— Constructive Notice—

See NOTICE I L R 45 Bom 910

———— by minor co parcener—

See PARTITION SUIT
I L R 45 Bom 983

———— by a Municipality—without written contract.

See BOMBAY DISTRICT MUNICIPALITIES ACT (BOM ACT III OF 1901) ss 96 AND 40 (6) I L R 45 Bom 797

———— By natural guardian—

See CIVIL PROCEDURE CODE 1908 O XXXII r 7 I L R 44 Bom 574

———— Compromise in a suit for land—whether a sale—

See LUNACY (DISTRICT COURTS) ACT 1858
I L R 1 Lah 109

———— consideration—whether past co habitation sufficient—

See CONTRACT I L R 44 Bom 542

———— claimant paying into Court the decretal amount to set aside sale—

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XXI rr 89 99 (2)
I L R 45 Bom 1094

———— Execution proceedings transferred to the Collector—

See HIGH COURT CIVIL CIRCULARS P 106 r. 17 I L R 45 Bom 1132

———— Decree against a judgment debtor who dies—

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 2 cl (II) O XXI r 22
I L R 45 Bom 1186

———— Oral evidence to prove transaction only a mortgage—

See DEKKHAN AGRICULTURISTS RELIEF ACT 1879 s 2 I L R 44 Bom 217

———— confirmation of—

See CIVIL PROCEDURE CODE 1882 s 316
I L R 33 All 63
See CIVIL PROCEDURE CODE (1908) s 65
I L R 41 All 526
See PRE EMPTION I L R 33 All 45
See SECOND APPEAL
I L R 39 Calc 687

———— contract of—

See CHUKANI RIGHT
I L R 42 Calc 28
See VENDOR AND PURCHASER.
I L R 38 Calc 458

SALE—*contd*

———— Deposit or Earnest money on—

See CONTRACT I L R 41 All. 3?1

———— free of incumbrance—

See PROVINCIAL INSOLVENCY ACT (III OF 1907) ss 20 22
I L R 39 Mad. 479

———— in execution of a decree—

See CIVIL PROCEDURE CODE (1908) O XXI r 90 I L R 38 All 358

———— knowledge of—

See LIMITATION ACT (IX OF 1908) SCH I ART 120 I L R 38 Mad. 67

———— necessity of—

See MAHOMEDAN LAW—MINOR
I L R 35 Bom. ?17

———— of mortgaged property—

See MORTGAGE I L R 37 Calc 28?

———— of mortgagor's rights—

See BUNDELKHAND ALIENATION ACT (II OF 1903) s 3 I L R 37 All. 457

———— of right title and interest of mortgagor—

See TITLE I L R 37 Calc 239

———— of trust property—

See TRUSTS I L R 43 Bom 319

———— properties advertised for by the Official Receiver as subject to mortgage—

See PROVINCIAL INSOLVENCY ACT (III OF 1907) ss 20 AND 22
I L R 39 Mad. 479

———— Putni Taluk—

See PATNI REGULATION 1819 s 14
25 C W N 42

———— right of repurchase reserved on—

See CONTRACT I L R 42 Bom 344

———— stay of—

See MORTGAGE I L R 37 Calc 897

———— suit for on a mortgage—

See CIVIL PROCEDURE CODE (1908) O XXXIV rr 4 5 AND 10
I L R 40 All 109
r 5 I L R 40 All 203

———— to prior mortgagee after creation of a puisne mortgage—

See MORTGAGE I L R 38 Mad. 18

———— validity of—

See CERTIFICATE OF SALE
I L R 37 Calc. 107

See CIVIL PROCEDURE CODE (ACT V OF 1908) ss 47 AND 70
I L R 38 Mad. 10?8

See TRANSFER OF PROPERTY ACT (IV OF 1882) ss 85 91
I L R 3? Mad. 418

1 ———— Order for stay of—Order becomes effective only when communicated to the lower Court An order by the Appellate Court for stay of sale takes effect only when communicated to the lower Court ; and a sale by the lower Court

SALE—*contd*

after the passing of the order but before the order was communicated is valid *Beseswari Chowdhrani v Horromunder Mozumdar I C W N 276* followed *Hukum Chand Boid v Kamalanand Singh I L R 33 Calc 927* not followed MUTHUKUMARASAMI POWTHER MINDA NAYINAR v KUPPUSAMI AIYANGAR (1909)

I L R 33 Mad 74

2 ———— Option of re-purchase—*Suit by vendor's grandson against the vendee's daughter in law—Covenant to repurchase purely personal* A deed of sale with an option of repurchase contained the following clause — I have given the land into your possession if perhaps at any time I require back the land I will pay you the aforesaid Rs 600 and any money you may have spent on bringing the land into good condition and purchase back the land In a suit brought 35 years after execution of the deed by the grandson of the vendor against the daughter in law of the vendee to exercise the option of repurchase — *Held* that the covenant to repurchase was purely personal and the suit was not maintainable GURUNATH BALAJI v YAMANAYA (1911)

I L R 35 Bom 258

3 ———— Sale by Receiver—*Sale by the Court and sale by Receiver under direction of Court distinction between—Sale by Receiver if requires confirmation of sale certificate by Court—Civil Procedure Code (Act V of 1908) O XXI rr 9 and 94* A sale by a Receiver under direction of Court is not a sale by Court and in such a sale the Court does not grant a sale certificate nor does it confirm the sale *Mynatoonnissa Bibee v Khatoonissa Bibee I L R 21 Calc 479* explained. GOLAM HUSSAIN CASSIM ARIFF v FATIMA BEGUM (1910) 16 C W N 354

4 ———— Covenant for title—*Claim made against purchaser compromised before suit brought—Right of purchaser to claim indemnity from covenantor* The purchaser of immovable property concerning which the seller has covenanted to indemnify the purchaser in the event of the title proving defective is not bound to wait until a suit is brought and he is deprived of the property by reason of a decree passed therein but if a claim which the purchaser has substantial reason to believe to be valid is brought against him he may after notice to the covenantor compromise such claim and sue the covenantor on his covenant to recover the amount paid by him to effect the compromise *Smith v Compton 3 B & A 407* referred to DURGA KUNWAR v KALI CHARAN (1913) I L R 35 All 168

5 ———— Contract for sale—*Transfer of Property Act (IV of 1882) s 54—Patni—Rent liability for—Mere possession without assignment of lease effect of* A contract for sale as defined by s 54 of the Transfer of Property Act does not of itself create an interest in property and therefore a mere agreement to buy does not create a liability to pay the rent of the tenure the subject matter of the contract for sale *Cox v Bishop 8 DeG M & G 815* and *Chaturbhuj Morarji v Bennett I L R 29 Bom 323* referred to Mere possession of a *patni* will not render a man liable for rent if the lease has not been assigned to him *Close v Wilberforce 1 Beav 112 Sanders v Benson 4 Beav 350 Flight v Bentley 7 Sim 149* and *Walsh v Lonsdale L R 21 Ch 9* referred to *Prosunno Coomar Paul Chowdhury v Koylash Chunder Paul Chowdhury S W R 428 Macnaghten v Bheekaree Singh 2 C L R 323 Kali Kinkar Sen v Satyendra Nath Bhadra 15 C W N 191* and *Abdul Wahab Chowdhury v Eggar I L R 35 Calc 182* distinguished ANANDA CHANDRA ROY v ABDULLAH HOSSEIN CHOWDHURY (1913)

I L R 41 Calc 148

6 ———— Court sale—Acceptance of bid—*if incomplete without Court's sanction—Court and Nazir's respective functions in regard to bids Per* COXE J —Under the rules it is the Nazir's business to complete the sale though the Court (as well as the Nazir) has a discretion to decline acceptance of the highest bid when the price offered appears so clearly inadequate as to make it advisable to do so The Court has a quasi revisional discretion in the matter and is not required itself to knock down the property If a person goes to bid at a sale and in full knowledge of this condition offers bids for the property and the property is knocked down to him the mere fact that the Court has subsequently the discretion to confirm or annul the Nazir's action does not leave it open to the bidder to withdraw his bid *Quære* Whether a second appeal lies from an order refusing leave to the decree holder to withdraw his bid RAJENDRA PROSAD JHA v UPENDRA NATH JHA (1913) 19 C W N 633

7 ———— Execution sale decree reversed after—*Purchases in parts by decree holder by a defendant not a judgment debtor and by a stranger how affected—Mother of infant defendants appointed guardian without express consent—Decree if binds infants—Infants interest if passes at sale* A Court is not competent to appoint the mother of infant Defendants their *guardian ad litem* without her express consent Where in a mortgage suit the mother who was proposed by the plaintiff as guardian did not appear or signify her willingness to act as *guardian ad litem* of the infant defendants but the Court nevertheless appointed her guardian and the suit ended in a decree and a sale of the infants and others properties *Held* that the infants were not properly before the Court and were not bound by the decree and the sale did not pass the right title and interest of the infant *Where a decree* is set aside subsequently to a sale in execution of the decree the sale will be cancelled if the purchase has been made by the decree holder but not when the purchaser is a stranger The sale will also be cancelled when the purchaser though not the decree holder is one who was a party to the proceeding Though r 4 of O XXXIV of the Civil Procedure Code contemplates a sale of the mortgaged properties the decree must be suitably modified in exceptional circumstance *e g* when the mortgaged properties have already been converted into money by operation of law NARENDRA CHANDRA MANDAL v JOGENDRA NARAYAN ROY (1914) 19 C W N 537

8 ———— Execution of rent decree—Encumbrance—*Bengal Tenancy Act (VIII of 1885) ss 159 163 to 167—Decree for arrears of rent—Sale under the Bengal Tenancy Act effect of—Purchase by landlord* Where a tenure is sold under the provisions of the Bengal Tenancy Act in execution of a decree for arrears of rent and the procedure prescribed in the Act has been observed the result therein described as follows namely the purchaser becomes entitled to annul

SALE—*contd*

all encumbrances other than registered and notified en umbrances the consequence of the sale does not depend upon the amount of the bid offered by the successful purchaser it is independent of the value of the bid. S 165 of the Act was enacted solely for the benefit of the decree holder if the bid is not sufficient to satisfy his decree and costs it entitles him to have the property sold with power to annul all encumbrances but it is not obligatory upon him to adopt this extreme measure and he is not in peril if he decides not to pursue this special remedy *Banbihari Kapur v Khetra Pal Singh Roy I L R 38 Calc 293* not followed SALIMULLAH v PAHEYUDDIN (1915) I. L. R 43 Calc. 263

9 ———— District Board, sale by—*Immoveable property—Transfer of Property Act (IV of 1882) s 54—Incorporated Company—Suit dismissal of—Contract recission of—Waiver—Respondent—Cross-objection—Civil Procedure Code (Act V of 1908) O XLI rr 22 (3) 33—Corporation duty of when it receives money under an illegal or ultra vires agreement* S 54 of the Transfer of Property Act provides that a sale of tangible immoveable property of the value of Rs 100 and upwards can be made only by a registered instrument Title to land therefore cannot pass by a mere admission when the statute requires a deed. *Jadu Nath v Rup Lal I L R 30 Calc 967 Dharam Chand v Manji Sahu 16 C L J 436 Narak Lall v Mangoo Lal 22 C L J 380* referred to *Hemendra Nath Mukerjee v Kumar Nath Roy I L R 32 Calc 169* distinguished The effect of rr 93 and 98 of the Statutory Rules made by the Lieutenant Governor on the 15th December 1885 under s 138 (d) of Beng Act III of 1885 is that no immoveable property vested in a District Board can be sold except with the previous approval of the Local Government and except by an instrument under the common seal signed by the Chairman and by two members of the Board It is well settled principle of interpretation that Courts in construing a statute will give much weight to the interpretation put upon it at the time of its enactment and since by those whose duty it has been to construe execute and apply it although such interpretation has not by any means controlling effect upon the Courts and may be disregarded for cogent and persuasive reasons. *Baleshwar v Bhagirathi I L R 35 Calc 701* referred to When a public body or a Company is established by statute or is incorporated for special purposes only and is altogether the creature of Statute Law the prescriptions for its acts and contracts are imperative and essential to their validity *Ward v Peck 13 C B (N S) 668 Stapleton v Haymen 2 H & C 918 The Andalusian 3 P D 182 Le Feuvre v Miller 8 E & B 321 Cope v Thames Haven 3 Exch 841 Diggle v London and Blackwell Ry 5 Exch 442 Frend v Dennett 4 C B (N S) 576 Cornwall Mining Co v Bennett 5 H & N 423 Irish Peat Co v Phillips 1 B & S 598 Bottomley's Case 16 Ch D 681* and *In Re Gifford and Bury Town Council 20 Q B D 368* referred to A suit need not be dismissed merely because the authority for its institutions such as a certificate under the Pensions Act 1871 or s 78 of the Land Registration Act or s 60 of the Bengal Tenancy Act or s 4 of the Succession Certificate Act is not produced with the plaint but this principle has no application to a case where the plaintiff at the date of the institution of the suit had no title at all *Sarat Chandra v Apurba Krishna, 14 C L J 5* referred to One contract is rescinded by another between the same parties when the latter is inconsistent with and renders impossible the performance of the former but if though they differ in terms their legal effect is the same the second is merely a ratification of the first and the two must be construed together where the new contract is consistent with the continuance of the former one it has no effect unless and until it is performed. *Hunt v South Eastern Railway Co 45 L J C P 87 Dodd v Churton (1897) 1 Q B 562 Patmore v Colburn 1 Cr M & R 65 Thornhill v Neats 8 C B (N S) 831* referred to. Even where parties enter into a contract which if valid would have the effect, by implication of rescinding a former contract and it turns out that the second transaction cannot operate as the parties intended it does not have the effect by implication of affecting their rights in respect to the former transaction *Noble v Ward 4 H & C 149 L R 1 Exch 177 Doe dem. Biddulph v Poole 11 Q B 713* referred to Where the question is whether the one party is set free by the action of the other the real matter for consideration is whether the acts or conduct of the one do or do not amount to an intimation of an intention to abandon and altogether to refuse performance of the contract The true question is whether the acts and conduct of the party evince an intention no longer to be bound by the contract. *Naylor Benzon and Mersey Steel and Iron Co v General Bill posting Co v Co 9 App Cas 434 General Bill posting Co v Atkinson (1908) A C 118* referred to The Court requires as clear evidence of the waiver as of the existence of the contract itself and will not act upon less *Carolan v Brabazon 3 J & L 200* referred to Where a corporation receives money or property under an agreement which turns out to be *ultra vires* or illegal it is not entitled to retain the money The obligation to do justice rests upon all persons natural and artificial if one obtains the money or property of others without authority the law independently of express contract, will compel restitution or compensation *Chapleo v Brunswick Building Society 6 Q B D 696* referred to As an ordinary rule a respondent in an appeal is not entitled to urge cross-objections except as against the appellant But r 22 (3) of O XLI of the Code of 1908 has materially altered the pre-existing law by the substitution of the words party who may be affected by such objection for the word appellant contained in s 561 (3) of the Code of 1882 Further r 33 of O XLI has conferred wide discretionary powers on the Court of Appeal to alter the decree of the Court below as the case may require MATHURA MOHAN SAHA v RAM KUMAR SAHA (1915) I L R 43 Calc. 790

10 ———— Benami—*Suit by purchaser under registered kobala against defendant in possession—Plaintiff if has to prove passing of consideration—Recital in deed admitting receipt of consideration value of—Second appeal—Onus* A plaintiff has to prove his title when a defendant in possession pleads he is only a benamidar but he shows a *prima facie* title by producing and proving a conveyance which usually contains a recital of

SALE—*contd*

the receipt of consideration The onus in such a case is on the defendant to show non payment of consideration The fact that the defendant is in possession is an important element to be taken into consideration in determining whether the transaction is *benami* But there is no presumption in favour of *benami* even where the defendant is in possession Where the lower Appellate Court held that the plaintiff's purchase was *benami* being influenced by the erroneous view that the onus was on the plaintiff though it relied also on the fact that the defendant was in possession the finding was reversed in second appeal and the case was sent back for re hearing A recital in a deed of sale admitting the receipt of consideration is evidence though not conclusive against the vendor DURGA CHARAN CHANDRA *v* THE KHAPDA CO LD (1915) 20 C W N 254

11 ———— Sale of Tenancy—*Bengal Tenancy Act (VIII of 1885)—Status of the decree holder—Effect of the cessation of interest (partial or entire) of the landlord* Where the decree holder continued to be the sole landlord at the date of the application for execution of the decree and in his character as landlord decree holder took the necessary steps for the sale of the under tenure in conformity with the statutory provisions the effect of the execution sale is to pass the under tenure to the purchaser even though the decree holder has lost his interest as landlord before the actual sale *Forbes* v *Maharaj Bahadur Singh I L R 41 Calc 926* distinguished *Hem Chunder Bhunjo* v *Mon Mohini Das* 3 C W N 604 *Chhatrapat Singh* v *Gopi Chand Bothra I L R 26 Calc 760 Srimant Roy* v *Mahadeo Mahata I L R 31 Calc 550 Khetra Pal Singh* v *Kritarthamoyi Dasi I L R 33 Calc 566 Profulla* v *Nasibannessa 24 C L J 331* referred to SYEDUNNESSA KHATUN *v* AMIRUDDI (1917) I L R 45 Calc 294

12 ———— Date of sale—*Whether date of confirmation—Bengal Tenancy Act (VIII of 1885) ss 167 169* The words date of sale referred to in s 167 of the Bengal Tenancy Act mean the date when the sale is confirmed and not the date when the property is actually sold to the purchaser *Matangini Choudhurani* v *Sreenath Das 7 C W N 552* referred to *Banko Behary Das* v *Krishna Chandra Bhowmick 18 C W N 419 18 C L J 170* approved *Yusuf Gazi* v *Asmat Mollah 17 C W N 440* dissented from NANDA LAL BANERJEE *v* UMESH CHANDRA DAS (1917) I L R 45 Calc 151

13 ———— Application to set aside—*Limitation—Civil Procedure Code (Act V of 1908) s 47 O XXI r 90—Application to set aside a sale in execution of a decree on the ground that the property did not belong to the original judgment debtor—Limitation Act (IX of 1908) Sch II Arts 166 181* An application under s 47 of the Code of Civil Procedure for setting aside the sale of a property on the ground that it did not belong to the original judgment debtor is governed by Art 166 of the Limitation Act and not Art 185 SATISH CHANDRA KUNUNGOE *v* NISHI CHANDRA DUTTA (1919) I L R 46 Calc 975

14 ———— *Application to set aside sale on the ground that application for execution was barred by limitation—grounds for setting aside sale which has been confirmed* No application to set aside a sale held in execution of a decree on the ground that the application for attachment and sale was barred by limitation can be made after confirmation of the sale *Lakhu Rai* v *Maharaja Kesho Prosad Singh Bahadur* 2 Pat L J 157

15 ———— *Application to set aside sale—Fraud involving suppression of processes and submission of false returns its continuing influence—Burden of proving clear and definite knowledge of facts constituting fraud—Civil Procedure Code (Act V of 1908) s 115* In a case to set aside sale under O XXI r 90 Civil Procedure Code the applicant must have knowledge not merely of the factum of the sale but a clear and definite knowledge of the facts which constitute the fraud before time can run against him or her When by a fraud involving suppression of processes and submission of false returns the applicant is kept out of knowledge of the sale of his property such fraud must be held to have a continuing influence Indeed in such a case it is for the other side to show that the injured party had clear and definite knowledge of the facts which constitute the fraud at a time from which taken as a starting point the suit is barred by limitation *Narayan Sahu* v *Mohanth Damudar Das 16 C W N 894* and *Rohimbhoy Habibbhoy* v *Turner I L R 17 Bom 341* referred to The Court below in shutting out evidence acted with material irregularity in the exercise of its jurisdiction BHUSAN MANI DASI *v* PROFULLA KRISTO DEB (1920) I L R 48 Calc 119

16 ———— Notice—In the case of an oral sale with possession and payment followed by a registered sale to another person with notice of first sale it was held that first sale had priority and could claim a registered sale deed DESAIBHAI JORABHAI *v* ISWAR JESHING I L R 44 Bom 586

17 ———— Sale under mortgage decree—*High Court Original Side—Mortgage Decree—Civil Procedure Code (Act V of 1908) O XXI r 89* The provisions of O XXI r 89 of the Civil Procedure Code (Act V of 1908) apply to a sale under a mortgage decree and in the Original side of a Chartered High Court A Judge on the Original Side is ordinarily bound to consider with respect the decision of another Judge on the Original Side produced before him, but if he is convinced that the decision is erroneous he is not under an obligation to follow it against his own judgment *Surendra Kristo Roy* v *Guru Pada Ghosh 24 C W N 536* overruled *Chaitram Rambilas* v *Bridhichand Kesrichand I L R 42 Calc 1140* explained VIRJIBAN DASS MOOLJI *v* BISESWAR LAL HARGOVIND (1920) I L R 48 Calc 69

18 ———— Procured by fraud—Reconveyance —Where a sale under Act XI of 1859 was brought about by deliberate default on the part of the agent of one of the co owners of the estate and the purchase at the sale was effected under a pre arranged plan to which the said agent was a party in the name of a person who under that arrangement was to hold the property for the benefit of himself and the other parties to it *Held*—That the sale had no higher effect than a private alienation and the purchaser had taken with notice of or was imp

SALE—*contd*

fraud should be made to reconvey the property to the rightful owners KUMAR SATISH KANTO ROI *v* SATISH CHANDRA CHATTOPADHYA
24 C W N 662

19 ———— For rent arrears under Bengal Tenancy Act—In Orissa since the extension there to of Ch XIV of the Bengal Tenancy Act 1885 a sale under Bengal Act VIII of 1865 is liable to be set aside under s 174 of the Bengal Tenancy Act upon the Judgment Debtor depositing in Court within 30 days of the sale the amount of the decree LAKSHMIDAR MAHANTI *v* RATNAKAR MAHAPATRA I L R 48 Calc 811

SALE ABSOLUTE

See INCUMBRANCE I L R 43 Calc 558

SALE BY GOVERNMENT

See WASTE LANDS ACT 1863 s 18
I L R 44 Calc 328

SALE CERTIFICATE

See ADVERSE POSSESSION
I L R 40 Calc 173

See CIVIL PROCEDURE CODE 1908—

s 66 24 C W N 1011

s 115 AND O XXI R 66
2 Pat L J 130

O XXI R. 94

See MORTGAGE
I L R 44 Mad 483

See SALE IN EXECUTION OF DECREE
20 C W N 819

———— *Misdescription of property to be sold—Right of auction purchaser to recover possession of property actually liable to sale* Where a holding is sold in execution of a rent decree the paramount description in the sale certificate is ordinarily the general description of the holding The plot numbers are a subordinate description RAJENDRA PRASAD SAHU *v* GANGAN KOER 2 Pat L J 623

SALE-DEED

See AGREEMENT TO SELL.
I L R 36 Bom 446

See CONSTRUCTION OF DEED
I L R 39 Bom 119
I L P 40 Bom 74

See DEKKAN AGRICULTURISTS RELIEF ACT (XVII OF 1879) ss 3 CL (y) AND 10A
I L R 40 Bom 397
I L R 45 Bom 87

See EVIDENCE ACT 1872 s 92
I L R 34 Bom 59
I L R 35 Bom 93

See LIMITATION ACT 1877 SCH II ARTS 132 144 I L R 35 Bom 438

See LIMITATION ACT 1908 SCH I ART 91 I L R 42 Bom 638

See SUIT FOR CANCELLATION OF DOCUMENT I L R 38 All 232

See TRANSFER OF PROPERTY ACT 1882 s 54 I L R 40 Bom 313
I L R 41 Bom 5.0

See TRUST ACT 1882 s. 88
I L R 43 Bom. 173

SALE-DEED—*contd*

———— for a low value from client—

See PROFESSIONAL MISCONDUCT
I L R 40 Mad. 69

———— mistake in—

See EVIDENCE ACT (I OF 18?) s 9? CL (a) I L R 39 Mad ?9?

———— Minor's suit to set aside—

See SPECIFIC RELIEF ACT 1877 s 41 I L R 44 Bom 1?5

———— Old document—admissibility of—

See EVIDENCE ACT 1872 s 9?
I L R 44 Bom 710

———— price specified in—

See EVIDENCE ACT (I OF 18?) s. 9?
I L R 38 Mad. 514

———— *Covenant for title breach of—Limitation Act (IX of 1908) Art 116—Transfer of Property Act (IV of 188?) s 55 (?)* A suit for compensation for breach of an express or implied covenant for title and quiet enjoyment in respect of a sale deed executed after coming into force of the Transfer of Property Act is governed by Art 116 of the Limitation Act Case law reviewed *Subbarya Reddiar v Rajagopala Reddiar (1914) Mad W N 516 approved* Covenant for title under s 55 (?) of the Transfer of Property Act is annexed to the contract of sale as well as to the conveyance ARUNACHALA *v* RAMASMI (1914) I L R 38 Mad 1171

———— *Unregistered agreement to reconvey—Mortgage by conditional sale—* The plaintiff purchased the property in suit for defendant in 1895 and at the same time passed an agreement to reconvey the property after 5 years This document was not registered Thereafter the plaintiff leased the land to the defendant from time to time and in 1916 sued to recover possession on the strength of the rent notes passed to him by defendant The Court of first instance allowed the plaintiff's claim holding that s 10A of the Dekkhan Agriculturists Relief Act did not apply and that the agreement to reconvey could not be looked into for want of registration The lower Appellate Court reversed the decree on the ground that the sale deed was obtained by misrepresentation and that the defendant would never have passed the same if the plaintiff had not assured him that his ownership was not lost and that he would be allowed to redeem The plaintiff appealed to the High Court *Held* decreeing the suit (1) that the lower Appellate Court's view that the transaction must be considered a mortgage because there had been a misrepresentation at the time the document was signed could not be upheld (2) that the defendant's case did not proceed upon the footing that the two documents together constituted a mortgage by conditional sale nor was there evidence before the Court to come to that conclusion (3) that the case set up by the defendant was one for specific performance of an agreement to reconvey and that defence could not succeed in law *Per* MACLEOD C J—Where the question is whether a sale-deed and the agreement to reconvey make together a mortgage by conditional sale the Court has strictly speaking to look to the actual contents of the documents and to construe them accordingly But it may

SALE-DEED—contd

be that there is such extrin ic evi lence and circums tances which show the relation of the written language to exi ting facts that therefore it woul l be possible to come to the conclusion that the documents whi h on the face of them constitute a sale and an agreement to reconvey within a certain period or after a certain period amount to a mortgage NAIDEO SATYA UET v DHONDU (19 0) I L R 44 Bom 961

SALE FOR ARREARS OF RENT

See LIMITATION ACT 1908 s 2 I L R 38 Mad 8‹2

See SALE

——— *Purchase of putni—Opposition to purchaser's po session—Application for proclamation—The District Judge or the Collector the proper authority to issue proclamation—Rent Recovery (Under Tenures) Act (Beng VIII of 1865) s 3—Repealing Act (XVI of 18 4)—Regulations VIII of 1819 ss 8 9 15 (²) I of 18 0 and VII of 183² s 16* Cl (²) of s 15 of Regulation VIII of 1819 has not been affected by s 3 of Beng Act VIII of 186‹ Proceedings taken to annul the sale of certain *putni* lands sold for arrears of rent having terminated in favour of the purcha er and the sale having become final and conclusive the purcha er in attempting to realise the rents from the cultivators of the lands comprised in the tenure purchased by him was opposed in his attempt by some of the interme diate holders who claimed intere t between the late *putnidar* and the cultivators Thereupon he applied to the District Judge to issue a proclama tion under s 15 of the Putni Reg VIII of 1819 The District Judge returned the application and directed that it should be made to the Collector who was the proper authority to is ue the procla mation *Held* that the view taken by the Dis trict Judge was erroneous and that he had failed to exercise the jurisdiction still vested in him by law under cl (2) s 15 of the Putni Reg VIII of 1819 MANMATHA NATH MITTER v DISTRICT JUDGE 24 PARGANAS (1916) I L R 44 Calc 715

——— *Sale under Ben Act VIII of 1865—Deposit in Court—Setting aside sale* In Orissa since the extension thereto of Ch XIV of the Bengal Tenancy Act (VIII of 1885) a sale under Ben Act VIII of 1865 is liable to be set aside under s 174 of the Bengal Tenancy Act 1885 upon the judgment debtor depositing in the Court within 30 days of the sale the amount recoverable under the decree Judgment of the High Court affirmed LAKSHMIDAR MAHANTI v RATNAKAR MAHAPATRA (19²1) I L R 48 Calc 811

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See PROVINCIAL INSOLVENCY ACT 1907 ss 20 AND 22 I L R 39 Mad 479

See REVENUE SALE LAWS

See SALE

——— **Judgment Debtor remaining in Possession—Suit to recover—**

See LIMITATION ACT 1908 SCH I ART 12A I L R 45 Bom 45

1 ——— **Irregularity**—*Substantial loss—Sale Notification incorrect entry in—Notice—Beng*

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Act VII of 1868 ss 8 11—Beng Act XI of 1859 s 33 An incorrect entry in a sale notification resulting in misleading intending bidders is an irregularity such as is contemplated by s 33 of Bengal Act XI of 18 9 *Deorardan Singh v Monbodh Singh I L R 3? Calc 111* discussed Though s 8 of Bengal Act VII of 1868 prevents a plaintiff from proving any irregularity in the service of notice required by s 11 yet it would not preven him from proving that a notice in contravention of the provisions of that Act was served in a wrong mehal which in itself and by its service supported the conclusion that the mis statement in the sale notification constituted a s rious irregularity LAJPANI DA v GANESH PRASAD SRICHANDAN MAHAPATRA (1910) I L R 37 Calc 407

2 ——— **Incumbrance**—*Lis pendens of applies to property attached in e ecution of money decree—Attachment in execution of money decree if creates a charge—Revenue Sale Law (Act XI of 1859) s › —Attachment if incumbrance—Sale for arrears of revenue if alienation by proprietor* The doctrine of *lis pendens* is applicable to sales *in invitum* The doctrine is applicable to pro ceedings to reali e the mortgage money after a decree for sale of the property But where a property not mortgaged is attached in execution of a money decree the doctrine of *lis pendens* does not apply to the sale of that property Where a property was attached in execution of a money decree and in the course of the execution pro ceedings was sold for arrears of revenue *Held* that the attachment did not create any title or charge on the property and did not constitute an incumbrance within the meaning of s 54 of Act XI of 18‹9 *Frederick Peacock v Madan Gopal I L R 29 Calc 428 s c 6 C W N 577 Moti Lal v Karrabuldin Singh I L R 25 Calc 179* referred to *Peari Lal Singh v Chandi Charan Singh 5 C L J 80 s c 11 C W N 163* distinguished *Held* further that a sale for arrears of Government revenue cannot be regarded as an alienation made by the proprietor so as to make the doctrine of *lis pendens* applicable MAHDEO SARAN SAHU v THAKUR PRASAD SINGH (1910) 14 C W N 677

3 ——— *Incumbrance or under tenure how avoided and when—Mesne profits—Liability of several classes of tenure holders—Damages* An incumbrance or under tenure is not *ipso facto* avoided by the sale of an estate for arrears of revenue and is only liable to be avoided at the option of the purchaser at such sale *Titu Bibi v Mohesh Chunder Bagchi I L R 9 Calc 683* followed The law does not require any notice as a necessary preliminary to a suit to avoid an under tenure but the option of the purchaser may be exercised by the institution of a suit within the time approved by law Where such a suit has been instituted the tenure must be regarded annulled from the date of the com mencement of the suit For the period antecedent to a suit for annulment of an incumbrance the pos ession of the under tenure holder is not wrong ful and purchasers at the revenue sale are not entitled to claim by way of damages for use and occupation any sum in excess of what actually represents the rent payable by the tenure holder of the first decree A decree for rent in such a case can be made only against such of the defen dants as held the tenure directly under the

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defaulting proprietors and not against all of them jointly and severally In respect of mesne profits which accrue during the pendency of a suit for *possession* the liability of different tenure holders of the same degree and of separate under tenure holders of different degrees should be apportioned according to the share of the profits intercepted by each *Jotindra Mohan Lahiri* v *Guru Prosunno Lahiri, I L R 31 Calc 597 L R 31 I A 94* referred to A release of one joint wrong doer without any intention to release the other joint tort feasors, but only as a partial satisfaction discharges the others only *pro tanto* Where the plaintiffs released some of the wrong doers from liability the claim against the others have been split up by their own conduct and a joint decree ought not to be passed against all the defendants *Bissonath Tewary* v *Koylashbany Narain Singh 2 Hay 297* followed PANRATAN KAPALI v ASWINI KUMAR DUTT (1910)

I L R 37 Calc 559

4 ———— Liability of auction purchaser in respect of payment of arrears of revenue—*Appropriation of payment to particular kist and acceptance and acknowledgment of Treasury Officer —Subsequent appropriation by Treasury Officer to earlier kist—Sale for arrears so created suit to set aside—Contract Act (IX of 1872) ss 59 60* Where the proprietor of an estate made a payment in respect of arrears of revenue and in the document which accompanied the payment to the Government expressly appropriated it to the satisfaction of a particular kist and the money was accepted and acknowledged by the Treasury Officer as paid on that account *Held* it was not in the power of one of the parties to the transaction without the assent of the other to vary the effect of transaction by altering the appropriation in which both originally concurred After a payment had been so specially appropriated and accepted as paid in respect of a kist due in January 1902 the Treasury Officer applied part of it to the satisfaction of an earlier kist due in September 1901 and only paid the remainder towards the January kist with the result that an arrear was created in the January kist to which the payment had been wholly appropriated and a sale took place for such arrear In a suit to set aside the sale —*Held* (reversing the decision of the High Court) that no arrears in respect of the January kist were really due at the date of the sale which was therefore without jurisdiction and invalid *Semble* Ss 59 and 60 of the Contract Act (IX of 1872) relating to the appropriation of payments might have been applicable to the case if the parties to the transaction had not by their own actions placed the matter beyond doubt MAHOMED JAN v GANGA BISHUN SINGH (1911)

I L R 38 Calc 537

5 ———— Incumbrance extinguished by sale under mortgage-decree—*at the date of sale not of confirmation—Liability of mortgage purchaser for revenue —Act XI of 1859 s 54* The appellant as a purchaser at a revenue sale of the property in suit sued to eject the respondent who claimed title under a certificate dated April 23rd 1900 confirming his purchase thereof on March 19th 1900 under a decree for sale obtained by himself as mortgagee The revenue became in arrear on March 29th 1900 *Held* that the respondent's proprietary title was complete on March 19th and that it passed to the appellant by the revenue sale His mortgagee title could not be kept alive so as to operate on March 29th 1900 as an incumbrance within the meaning of s 54 of Act XI of 1859 BHAWANI KUWAR v MATHURA PRASAD SINGH (1912) L R 39 I A 228

6 ———— Common Tenancy—*Revenue Sale Law (Act XI of 1859) ss 10 11 and 53—Purchase at a revenue sale of an undivided interest of specific mouzas in an estate in respect of which separate accounts were opened effect of—Reference to a third Judge—Civil Procedure Code (Act XIV of 1882) s 575—Act V of 1890 s 98 (2)* Per MOOKERJEE and VINCENT JJ (BRETT J dissenting) that a proprietor who is not a recorded sharer of a joint estate held in joint tenancy within the meaning of s 10 of the Revenue Sale Law nor a recorded sharer whose share consists of a specific portion of the lands of the estate within the meaning of s 11 but is recorded as proprietor of an undivided interest held in common tenancy of a specific portion of the lands of the estate but not extending over the whole estate within the meaning of s 70 of the *Land Registration* Act is not entitled to acquire the estate purchased by him at a sale held for arrears of revenue free of encumbrances The expression *estate held* in common tenancy in s 10 of the Revenue Sale Law means an estate where *all the sharers* have a common right and interest in the whole *of the estate* Where therefore various co-sharers have certain interest *not in the whole estate but only in* particular villages of that estate it cannot be said that the estate *is held* in common tenancy *Nunkoo Shahe* v *Ram Pershad Narain Singh 21 W R 38 followed* MAHAMMAD MEHDI HASSAN KHAN v SHEOSHANKAR PERSHAD SINGH (1911) I L R 39 Calc 353

7 ———— Government Land—*Act XI of 1859—1859 s 2 and 3—Bengal Act VII of 1868—Government tenure in mahal Panchannagram in the 24 Pergannahs—Kabuliyat fixing date for payment of revenue in every year—Sale for arrears when no arrears were due—Variation of contract of parties by general considerations or administrative rules not permissible* S 2 of Act XI of 1859 enacts that if the whole or a portion of a kist or instalment of any month of the era according to which the settlement and *kist bandi* of any mahal have been regulated be unpaid on the 1st of the following month of such era the sum so remaining unpaid shall be considered *as an arrear* of revenue S 3 provides that the Board *of Revenue at Calcutta* shall determine upon what dates all arrears of revenue shall be *paid up* in each district under their jurisdiction in default of which payment estates in arrear shall be sold and a notification duly published *in compliance* with that section on 6th October 1871 fixed the 28th June of each respective *year* as the latest date of payment of the rents of all descriptions of tenures in Khas Mahal Panchannagram in default of which payment on or previous to that date tenures in arrears in that Mahal will be sold The appellant was the holder of a Government tenure in *Dihi* Panchannagram to which by virtue of Bengal Act VII of 1868 Act XI of 1859 was applicable; and the *kabuliyat* under which he held stipulated for payment of the whole *jumma* in the Collectorate within 28th

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June every year. The revenue remaining unpaid on 28th June 1902 the tenure was, after the preliminary procedure prescribed by the Acts, sold for arrears of revenue on 10th March 1903 and purchased by the respondent. *Held* (reversing the decision of the High Court) that on the construction of the Acts and the above notification the revenue was not in arrear until 1st July 1902 and the date fixed as that on which the tenure could be sold in default of payment of the arrears was 28th June 1903. There were therefore at the date of the sale no arrears of revenue and in accordance with the decision in *Pallulen Das v Simpson I L R 25 Calc 833 L R 25 I A 151* the sale was consequently invalid. No variation of the contract of parties and the statutory provisions applicable thereto is possible by reason of general considerations of administrative rules which have not the sanction of Indian statute. HAJI BUKSH ELAHI *v* DURLAV CHANDRA KAR

I. L. R. 39 Calc. 981

8 ———— Sale within 30 days of service of sale proclamation if nullity—*Revenue Sale Law Act (Act XI of 1859) ss 6 33—Question of one of due service—Beng Act VII of 1868 s 8—Second appeal—Finding of irregularity and inadequacy of price—Sale if must be held bad as matter of law.* The fact that the proclamation of sale was affixed in the Collectorate less than 30 days before the date of sale in contravention of the provisions of s 6 of Act XI of 1859 does not make the sale a nullity. The sale in such a case is a sale under the provisions of the Act and the restrictions imposed by it on the right of the defaulter to have the sale set aside apply. *Lala Mobarak Lal v The Secretary of State I L R 11 Calc 200 held* not binding by reason of the decision in *Tasadduk Rasul v Ahmad Hussain I L R 21 Calc 66* and *Gobind Lal v Ramjanam I L R 21 Calc 70*. Where the Court of Appeal below found (i) that the sale proclamation was affixed in the Collectorate within less than 30 days of the sale (ii) and that the price realised at the sale was inadequate (iii) but that there was no evidence to connect the inadequacy of the price with the irregularity and dismissed the suit to set aside the sale. *Held* that it was not open to the High Court in second appeal to hold as a matter of law that the inadequacy of the price was the consequence of the irregularity and the appeal was concluded by the findings of fact of the lower Appellate Court. *Semble Per* COXE *J*—The question whether notice of the proclamation was served in time is part of the larger question whether it has been duly served within the meaning of s 8 of Beng Act VII of 1868. *Janhavi v Secretary of State 7 C W N 377 Sheikh Mohamed Aga v Jadunandan 10 C W N 137 Sheo Ratan v Net Lal I L R Calc 1 6 C W N 698* doubted. GANGADHAR DASS *v* BHIKARI CHARAN DAS (1911)

16 C W N 227

9 ———— Suit to recover from person in wrongful possession from before sale—*Revenue Sale Law (Act XI of 1859) s 54—Purchaser of share of revenue paying estate—Limitation.* A purchaser at a revenue sale of a share in a revenue paying estate is not a person claiming from or through the defaulter but rather adversely to him and under a paramount title. A person who has not acquired title as against the defaulter by adverse possession [illegible] cannot [illegible] the purchaser [illegible] to the purchaser for the statutory period [illegible] Kumar Das (1911)

16 C. W. N. [illegible]

10 ———— Purchase by mortgagee in execution of his mortgage decree of the mortgaged property—[illegible] sale for such arrear—[illegible] execution of decree of Civil Court [illegible] purchaser at sale for arrears [illegible] Act XI of 1859 enacts that when a share in an estate is sold the purchaser shall acquire the share subject to all incumbrances and shall not acquire any rights which were not possessed by the previous owner. On 9th August 1896 a mortgage was granted in favour of the respondent over a certain share in 4 out of 71 villages. On 31st May he obtained a decree on his mortgage which was made absolute on 19th December 1899. He executed his decree and a sale took place on 10th March 1900 at which the respondent himself became the purchaser. On 28th March an instalment of Government revenue on the 71 villages fell into arrear and the whole residuary share of 71 villages including the 4 villages purchased by the respondent was notified for sale. The respondent did not pay the revenue due but on 23rd April he obtained a certificate confirming the sale of 10th March in execution of his decree. On 6th June 1900 the whole of the villages was sold for arrears of revenue and was purchased by the predecessor in title of the appellant. In a suit against the respondent for the share purchased at the execution sale—*Held* by the Judicial Committee (reversing the decision of the High Court) that the sale in execution of the mortgage decree took effect from the actual date of the sale and not from its confirmation and therefore from 10th March 1900 the respondent by his purchase became the proprietor of the estate sold and not merely the purchaser of such right title and interest in it as the mortgagor might have had. He was therefore notwithstanding the provisions of s 54 of Act XI of 1859 (which in fact rather confirmed the view taken) not in a position to maintain as against himself or as against third parties unconnected with mortgage transactions upon the property the position that his mortgage still remained an incumbrance thereon. That incumbrance had become extinct by the mortgagee's overriding right when he became complete owner of the lands. To keep it alive as the respondent sought to do would introduce confusion into the mechanism of transfer and insecurity into the rights in immovable property which were not warranted by the Act. BHAWANI KUWAR *v* MATHURA PRASAD SINGH (1912)

I L R 40 Calc 89

11 ———— Share of estate not sold at auction—*Payment of arrears by defaulting proprietor—Subsequent payment by co sharer—Priority between depositors—Suit to set aside sale—Revenue Sales Act (XI of 1859) ss 13 14 33 53.* In respect of a certain lot numerous separate accounts had been opened in the Collector's register. The plaintiff had an interest in separate account No 282 the 1st in No 168

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and th 2nd d fendan in No 222 Several of these accounts fell in o arrears and among them was No 222 and a residuary share No 222, whi l formed the subject matter of the present suit was among o hers advertised to be put up for sale on th 20 h Se emoe 1909 but a no b d was rece ved the Collecto under s 14 of Act XI of 1859 de lared that the en ire estate would be put up fo sal a a future date unle s the other sharer o sharers paid up the arrears within 10 days On the 21st and 25 h Se tember 1909 the 1 t d fendant paid into the Treasury the whole of the arrears in re pect of all the various a counts in luding No 222 and the re iduary share On the 30 h September 1909 the plaintiff d posited into the Treasury the arrears du on son of the accoun in luding No 222 but ex ep ing the residuary share. Subsequen ly the Cole tor d clar d the defendant 1 c 1 pur chas of th e ates repres nted by the various separate a counts On appeal to the Commis sioner the d ision of the Collector was upheld and the sale confirm d on the 8th February 1910 Thereafter the 1st d fendant took po session of the several properties and on the 21st December 1910 he conveyed the same by sale to the 3rd defendant On the 7th February 1911 the plaintiff pres nt d his plaint for recovery of possession of No 222 and in the alternative for the posse sion of the half share in it but owing to the plaint b ing insuffi iently stamped time to pay in the proper court fee was grant d to the plaintiff with the complian e of the d fendants At the expiry of su h time some holidays inter ven d and it was not till the 2nd March 1911 that the plaint was a tually fil d. The District Judge having decreed the suit the 3rd d fendant alone app aled to the High Court *Held* that the question of limitation could not now be raised but it is improper for a Court to extend the period of limitation for the institution of a suit merely for the convenien e of the plaintiff *Held* further that there could be no doubt that the 2nd defen dant was the real purchaser both in the purcha e by the 1st defendant in September 1909 and in the sal by the 1st defendant to the 3rd defendant in D cember 1910 *Held* further that in s 14 of the Revenue Sales Act 1859 the words other r ord d sharer must mean a recorded sharer of a share other than the share exposed for sale *Quære* Whether the Legislature intended to ex lude a d faulting sharer of a share expo ed for sale from pur hasing such share under s 14 *Held* further that the estate could only be sold if the whole of it was in arrears and that it could not be said that the plaintiff s depo it was insufficient without proof of that fact *Held* further that as soon as the payment was made the purchase was complete and there was nothing left for any one else to buy and that the Collector was bound to recognize the depositor who first paid the whole amount or if there were more depositors than one to recogni e as joint purchasers those whose payments first amounted to the total arrears due *Debi Pershad* v *Akho Koer* 4 C W N 465 r ferred to *Held* further that the suit was barred by s 33 of the Revenue Sales Act 1859 *Ossain Chutturbhooj Dut* v *Ishri Mul* I L R 1 Calc 814 and *Gobind Lal Roy* v *R*... *Misser* I L R 21 Calc 70 followed HANDRIA SAMBHO KUAR v HARIHAR PRASAD (1914) I L R 41 Calc 1092

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12. ———— Setting aside sale—*Irregularity —Arrears under Act XI of 1859 paid—Embankment charges due—Sale under Act XI of 1859 as for arrears of revenue instead of under Public Demands Recovery Act (Beng Act I of 1895 as amended by Beng Act I of 18..)—Embankment Act (Beng Act II of 1882)* In thi ca e the High Court set aside a sale fo arrears of revenue holding that where the Collecto had acknowledged payment in full of the arrears of land revenue of whi h the sa e had been advertised, and had elected to proceed by certificate procedure against an arrear of different character and had already directed a sale under that procedure he could no turn round and t ea the arrear under the certificate as an arrear of land revenue without any notice to the parties under s 5 and proceed to sell under the Land revenue p o lamation on the mere ground that no special exemption had been pa sed The embankment charges ordered to be levied unde the Certifica e Act (Beng Act I of 1890 as amended by Beng Act I of 18..) were taken out of the purview of Act XI of 1859 unless and until fresh notices were i sued under s 5 and they could not be treated as arrears of land revenue The sale therefore not being fo an arrear of land revenue was liable to be set aside An appeal from that decision was dismissed by their Lordships of the Judicial Committee who said they saw no reason to inter fere with it DHIRAJ CHANDRA BOSE v HARI DASI DEBI (1914) I L R 42 Calc 765

13 ———— *Setting aside sale—Defect in specification of property to be sold in notification of sale—Ijmali share in property where there are many separate accounts opened—Revenue Sale Law (Act XI of 1859) s 6 10 11 13 33—Inadequacy of price caused by want of* ... The proper specification of the property for sale. The ijmali or joint share in a mahal in which 148 of the owners of specific but undivided shares had obtained from the Collecto separation of accounts under s 10 and 11 of Act XI of 1859 was put up to sale for arrears of revenue and purchased by the respondent In the notification under ss 6 and 13 of the Act the specification of the share to be sold was in the following te ms — Ijmali share which cannot be specified excluding the separate account number— Then followed a li t of the 148 separate accounts referred to and at the end it was stated that All other shares besides that specified are excluded from the sale And the entry in column 5 (the specification column) was *The ijmali share cannot be particularized owing to separate accounts having been opened. The shares to be sold are those given in a separate sheet after excluding the shares in respect of which the separate accounts had been opened.* In a suit to set aside the sale —*Held* (reversing the deci ion of the High Court) that the notification of sal was insufficient and irregular and not in compliance with the requirements of the law ... ca e mu t depend on its own particular f ... and what had to be con idered was whet ... regard o all circumstances ... ear to induce like ... sale It was no ... obtain the ... or s office ... be sufficient

SALE FOR ARREARS OF REVENUE—*contd*

tell purchasers what they were invited to bid for *Held* also on the evidence that the property had been sold at an inadequate price and that the lowness of the price was due to the defectiveness of the specification of the property to be sold in the notification of sale which was not merely an irregularity but a defect that rendered the sale void. Lavan Iwar Ira ad Singh v Baijnath Ram Goenka (1915)

I L R 42 Calc 897

14. ———— Purchaser of a share—*Meaning of the words the purchaser shall not acquire any rights which were not possessed by the previous owner or owners —Revenue Sale Law (Act XI of 1859) s 54* At a sale under s 13 of Act XI of 1859 it is not the rights of the recorded proprietor that pass, but the share itself The policy of the revenue law is to protect the revenue and make the share on which the revenue is assessed available for the arrears of revenue due upon it *Debi Das Choudhuri v Bipro Charan Ghosal I L R 2 Calc 641* followed *Tanalata Dasi v Monmotha Nath Goswami 11 C W N 81 Kumar Kalanand Singh v Syed Sarafat Hussain 12 C W N 578 Fahimuddi Munshi v Nalini Kanta Lahiri 13 C W N 40 Bilas Chandra Mukerjee v Akshoy Kumar Das 16 C W N 587 Bhawani Koer v Mathura Prasad 7 C L J 1 Annoda Prosad Ghose v Rajendra Kumar Ghose I L R 29 Calc 223* and *Gunnadeen Misser v Kheeroo Mundal 11 B L R* referred to Khemesh Chandra Pakshit v Abdul Hamid Sikdar (1915)

I L R 43 Calc 46

15 ———— Adverse possession—*Limitation—Incumbrance—Limitation Act (IX of 1908) Sch I Arts 121 142 144—Assam Land and Revenue Regulation (I of 1886) ss 70 71* In a suit for *khas* possession and mesne profits in respect of certain lands purchased by the plaintiffs at a sale for arrears of Government revenue the defendants contended that they had been in adverse possession of the said lands for a long time that their occupation was in the nature of an incumbrance and that the plaintiffs were not entitled to avoid the same —*Held* that the interest which the defendants acquired was an incumbrance within the meaning of Art 121 and the suit was barred by limitation *Karmi Khan v Brojo Nath Das I L R 22 Calc 214* and *Nufer Chandra Pal Choudhury v Rajendra Lal Goswami I L R 25 Calc 167* approved *Kumar Kalanand Singh v Syed Sarafat Hossein 12 C W N 578* and *Fahimuddi Munshi v Nalini Kanta Lahiri 13 C W N 407* distinguished Prasanna Kumar Dutt v Narendra Kumar Dutt (1915)

I L R 43 Calc 779

16 ———— Co owners of a share of estate subject to usufructuary mortgage—*Mortgagee in possession undertaking to pay revenue—Default deliberately made by agents of minor mortgagee—Purchase at sale for arrears by mortgagee's agents—Benami purchase—Fiduciary relation between mortgagee and mortgagors—Suit by other co-owners to set aside sale—Terms on recovery of property—Contribution towards expenses properly incurred by mortgagee—Duty of counsel in ex parte case—Privy Council practice of* Of a 12 annas share of revenue paying estate a 3 annas share belonged to the plaintiffs (respondents subject to a usufructuary mortgage of that share for the benefit of the defendant (appellant) a minor who as mortgagee in possession undertook (as was stipulated in the mortgage deed) to pay the revenue to Government for the mortgaged share The remaining nine annas belonged to others of the plaintiffs In June 1903 a sum of Rs 3 annas 6 in excess of the quota payable was paid on the mortgagee's behalf by his agents In September 1903 only Rs. 9 instead of Rs 12 was so paid and that left a balance owing which in due course amounted to an arrear within the meaning of Act XI of 1859 and to recover this arrear the 12 annas estate was sold by the Collector on 20th March 1904 and purchased by the agents benami on behalf of the mortgagee defendant The High Court reversing the judgment of the Subordinate Judge who had dismissed the suit found that the purchase was fraudulent while their Lordships of the Judicial Committee acquitted the minor of any personal misconduct in relation to the default or sale and were of opinion that regarding the position as a whole it led to the conclusion that the revenue was intentionally allowed by the agents to fall into arrear with a view to the property being put up for sale and bought on behalf of the minor *Held* that the arrear which occasioned the sale was due to the insufficient payment made in respect of the three annas share and this was none the less the result of the default of those interested in that share because an excess payment had been made in June 1903 that had been long absorbed and had ceased to be an excess credit in the ledger However free from personal blame the minor may have been he could not profit by his agents deliberate default committed in breach of the terms of his mortgage As against his mortgagors therefore the mortgagee could not be allowed to hold for himself any advantage gained by the default for which his agents were responsible nor could he be permitted to hold such advantage to the prejudice of the co owners *Doorga Singh v Sheo Pershad Singh I L R 16 Calc 194* dissented from *Faizer Rahman v Maimuna Khatun 17 C W N 1233* approved The mortgagee here through his representatives had a duty to perform which was inconsistent with his becoming a purchaser in the way he did his title therefore could not operate to the exclusion of his co owners It was no answer to say that Act XI of 1859 contemplates a purchase by a co sharer The sale would stand but under the circumstances the transaction was in effect nothing more than payment of an arrear for the benefit of all But that gave a right to contribution so that it must be a term of granting the plaintiffs equitable relief that they should contribute to the expenses properly incurred by or for the mortgagee in the purchase of the property Where an appeal is heard *ex parte* it is the duty of counsel to bring to the notice of the Board adverse as well as favourable authorities Deo Nandan Prasad v Janki Singh (1916)

I L R 44 Calc 573

17 ———— Defaulter—*Defaulter—Assam Land Revenue Regulation (I of 1889) ss 63 67 85—Limitation—Limitation Act (IX of 1908) Sch I Arts 121 142* Where persons are in actual possession of a part of the est[illegible]old for arrears of revenue under the Assam [illegible]d Revenue Regulation they are d[illegible] n of s 67 *Aftar Ali v Brojendra* [illegible]*oudhury*

SALE FOR ARREARS OF REVENUE—*concld*

24 C L J 60 referred to A suit for recovery of possession brought within 12 years from the date on which the Collector gave symbolical possession to the purchasers is within time *Mo uffer Wahid v Abdus Samad, 6 C L R 639* followed S 63 cannot be construed as restricted to persons who *profess* to hold the land as included in the estate sold for arrears of revenue MAHIM CHANDRA CHOWDHURY v PIYARI LAL DAS (1916)
I L R 44 Calc 412

18 ———— Notification of Sale—*publication of—Act XI of 1859 ss 6 and 33— Calcutta Gazette' the Official Gazette within the meaning of s 6—Non publication in Uriya Vernacular Government Gazette not an illegality in sale proceedings—Grounds for annulling sale under s 33 of Act XI of 1859* The provisions of s 6 of Act XI of 1859 are for the purpose of notifying a sale for arrears of revenue under the Act sufficiently complied with by the publication of the notification of sale in the *Calcutta Ga ette* which is the ' *Official Ga ette* within the meaning of that section on its proper interpretation Where a sale has been so notified the non publication of the notification of sale in the Uriya Vernacular Government Gazette is not an illegality which renders the sale contrary to the provisions of the Act and is therefore not a ground for setting it aside under s 33 SHARFUDDIN HOSSAIN v RADHA CHARAN DAS (1918)
I L R 46 Calc 255

19 ————*Act XI of 1859 secs 2 and 3—Bengal Act (VII of 1868)—Tenures in Dihi Panchannogram—Board's Notification regarding time for sale effect of—Sale for arrears of revenue when premature and* ultra vires—*Date of payment of revenue* The effect of the Notification of the Board of Revenue dated the 6th October 1871 is that no holding can be sold till after the 28th June next after the first day of the month following the month in which the revenue or rent should have been paid The date on which the revenue is payable depends primarily not on general or administrative considerations such as the course of business in the Collectorate or the mode in which the accounts are kept but on the contract between the parties Where a tenure was held under a kabuliyat dated the 10th November 1862 containing a stipulation to pay rent year by year in Dihi Panchannogram to which by virtue of Bengal Act VII of 1868 Act XI of 1859 was applicable and the tenure was sold for arrears of revenue of 1914 and 1915 on the 17th May 1915 it was held that the sale was premature and *ultra vires* and conferred no *title* on the purchaser as the current demand for 1914 1915 was not payable till the 10th November 1914 so that the tenure could not be sold before the 28th June 1915 MANMOTHO NATH MULLICK v MAHAMED SOLEMAN
26 C W N 140

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See APPEAL TO PRIVY COUNCIL.
I L R 40 Calc 635

See ATTACHMENT BEFORE JUDGMENT
I L R 45 Calc 780

See BENGAL TENANCY ACT (VIII OF 1885) ss 85 159
I L R 43 Calc 178

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 47

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See CIVIL PROCEDURE CODE 1908
s 115 O XXI r 89
I L R 43 Bom 735

O XXI r 89 I L R 40 Bom 557

See EXECUTION OF DECREE.

See EXECUTION SALE—

See PARTIES I L R 39 Calc 881

See SALE—

———— duty of Courts in India in conducting—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O XXI s 66
I L R 38 Mad 387

———— incorrect entry in sale notification—

See SALE FOR ARREARS OF REVENUE
I L R 37 Calc 40[illegible]

1 ———— Caveat emptor doctrine of—*Sale in execution of decree—Refund of purchase money suit for—Civil Procedure Code (Act XIV of 1882) ss 313 315* Under s 313 of the Civil Procedure Code (Act XIV of 1882) a purchaser can apply to have a sale set aside on the ground that the person whose property purported to be sold had no saleable interest therein The doctrine of *caveat emptor* has not the same effect under the Code of Civil Procedure of 1882 as under the old Code (VIII of 1859) *Dorab Ally Khan v Executors of Khajah Moheeooddeen I L R 3 Calc 806* and *Sowdaminee Chowdhrain v Kishen Kishore Poddar 12 W R 8 F B* distinguished Under s 315 of the Civil Procedure Code (Act XIV of 1882) a suit lies to recover purchase money paid at a Court sale for property to which the judgment debtor had no title or saleable interests *Sheikh Samsuddin 5 Har Doyal Singh Roy v Juggat C W N 240* and *Nityanund Roy v Chandra Ghuha 7 C W N 105* followed. RAM KUMAR SHAHA v RAM GOUR SHAHA (1909)
I L R 37 Calc 67

BUT *See* CIVIL PROCEDURE CODE 1882 s 315
I L R 35 All 419

2 ———— Fresh proclamation—*Civil Procedure Code (Act XIV of 1882) ss 287 291—Execution-sale proclaimed by July 13th and held on July 20th without fresh proclamation—Sale upheld* A sale in execution was not in contravention of ss 287 and 291 Civil Procedure Code merely because having been proclaimed to be held at the monthly sale commencing on July 13th it was not held till July 20th and then without a fresh proclamation It appeared that July 13th was the day on which the monthly sales were to commence that owing to the presiding officer s absence they did not actually begin till the 17th that on that day a postponement was refused and that the monthly sale was continued on the 20th RANG LAL SINGH v RAVANESHWAR PERSHAD SINGH (1911) L R 38 I A [illegible]00

3 ———— Claim or objection—*Civil Procedure Cod (Act V of 1908) s 47 O XXI r 58 s 115—Claim or objection by purchaser during attachment in execution of money-decree if may be entertained—High Court Revisional jurisdiction exercised on appeal where order was without jurisdiction* Where after the attachment of the judgment debtor s property in execution of a

SALE IN EXECUTION OF DECREE—contd

money-decree the property was sold in execution of a mortgage-decree and the purchasers applied to the Court for exemption of the property from sale *Held* that the purchase being subsequent to the attachment the application could not be treated as a claim or objection under O XXI r 58 of the Civil Procedure Code That as the purchasers were really setting up an antagonistic title based on their purchase they could not be said to be representatives of the judgment-debtors for the purposes of s 47 of the Code An order exempting the property from sale on the application of the purchasers not being contemplated by any provision in the Code was without jurisdiction and can be set aside by the High Court in revision MAHADEO LAL v DARSAN GOPE (1910) 15 C W N 512

4 ———— Fraud—*Execution sale—Suit to set aside as collusive and fraudulent after application refused under s 311 Civil Procedure Code (Act XIV of 1882)—Benami purchase allegation of—Misrepresentation by judgment-debtor's pleader—Auction purchaser if to be held responsible—Concurrent findings of fraud reversed* In a suit to set aside an auction sale on the ground that it was brought about by the fraud of the decree holder and the judgment debtor it being alleged further that the auction purchaser was a *benamidar* of the judgment-debtor it was found that the debt and the decree of the decree holder were genuine that the property was purchased by the auction purchaser who was a man of substance out of his own funds which thereupon went to pay off the judgment-debtor's creditors *Held* on the evidence that the allegation of fraud and conspiracy made against the auction purchaser had not been brought home to him and that under all the circumstances there was no sufficient ground for setting aside a sale confirmed by the Court after prompt local enquiry and for inflicting on the auction purchaser a forfeiture of the considerable purchase money paid by him out of his own funds *Held* further that if the allegation that the plaintiff's men were dissuaded from bidding at the sale by the pleader for the judgment debtor falsely assuring them that he had instructions to apply for a postponement was true the auction purchaser could not be held responsible for the misrepresentation The concurrent judgments of the Courts in India holding the sale to be fraudulent and collusive reversed BISHUN CHAND BACHHAOT v BIJOY SINGH DUDHURIA (1911) 15 C W N 648

5 ———— *Understatement of value if fraud—Limitation—Limitation Act (IX of 1908) s 18 Sch I Art 166—Sale before Act new or old Act applicable—General Clauses Act (X of 1897) s 6 Per* COXE J (TEUNON J *expressing no opinion*) —An understatement of value in the sale proclamation cannot by itself justify an inference of fraud on the part of the decree holder *Semble* S 18 of the Limitation Act does not apply to a case in which the fraud is antecedent to the accrual of the right *Purna Chandra Mandal v Anukul Biswas I L R 36 Calc 651 Rahimbhoy Hobibhoy v C A Turner I L R 17 Bom 341* referred to *Held* that s 18 can apply only to such fraud as amounts to concealment and is intended to keep from the injured party the knowledge of the wrong or its remedy The section therefore can have no application where the fraud alleged by a party applying to set aside an execution sale is understatement of the value of the properties in the sale proclamation The burden of proving fraud lies on the applicant *Semble* An application to set aside on the ground of fraud an execution sale held prior to the coming into operation of Act IX of 1908 will be governed by Art 166 of Sch I of that Act if made after that Act came into operation. S 6 of the General Clauses Act does not preserve the right the applicant had to apply within three years from the date of the sale HARENDRA NATH DASYA v MUKUNDA LAL DUTT (1911) 15 C W N 965

6 ———— — Agreement between judgment-debtor and decree-holder before confirmation setting aside sale *Auction purchaser if bound—Right to object—Right of appeal Civil Procedure Code (Act V of 1908) O XXI rr 89 90 92 s 148—Limitation Act (IX of 1908) s 5—Extension of time to deposit decretal money etc to set aside* Where after the sale of a property in execution of a decree but before confirmation thereof the decree holder consented to the sale being set aside on payment of the decretal amount by the judgment debtor and the payment was made and certified in Court *Held* that this did not preclude the auction purchaser whose right is independent of that of the decree holder from asking for confirmation of the sale in his own right He would also if his application were rejected be entitled to appeal from that decision being a party prejudicially affected by that order *Poorna Chandra v Doorga Prosad 3 Shome 101* commented on The High Court has no power to extend the time allowed to the judgment debtor by O 21 r 89 sub r (2) to deposit the decretal amount etc with a view to setting aside the sale either under s 5 Limitation Act or under s 148 Civil Procedure Code SHAFOFAN v MAHOMED HABIBUDDIN (1911) 15 C W N 685

7 ———— Application to set aside—*Limitation Act IX of 1908 s 18 Sch I Art 166—Fraud employed to bring about sale if may save bar of limitation—Fraudulent concealment what amounts to—Fraud plea of—Proof* When an application to set aside an execution sale was made more than 30 days after the sale but it was urged that s 18 of the Limitation Act applied to the case *Held* that the fraud which it is necessary to prove to bring the case within s 18 of the Limitation Act may have occurred prior to the sale—for fraud at any rate of the nature generally employed in bringing about an illegal sale is a continuing influence and until that influence ends it retains its power of mischief *Purna Chandra Mandol v Anukul Biswas I L R 36 Calc 654* explained *Rahimbhoy Habibhoy v Turner I L R 17 Bom 341* referred to Fraud is not to be lightly charged or lightly found specially in cases of applications to set aside an execution sale where this reserve is too often neglected Misstatement of value if it can be described as fraud does not constitute fraudulent concealment and non publication of sale proclamation in the mofussil even if it exposes the sale to attack at the instance of the judgment debtor would not by itself bring the case under s 18 of the Limitation Act unless it is shown that the judgment debtor was by means of fraud

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of which the decree-holder was guilty or to which he was accessory been kept from the knowledge of his right NARAYAN SAHU v MOHANTH DAMODAR DAS (1912) 16 C W N 894

8 ——— Deposit—Civil Procedure Code (Act V of 1908) O XXI r 89—Previous purchaser of property not affected by the sale if may apply to make deposit—Conditional deposit if valid—Withdrawal of condition effect of—Deposit not made on the last day owing to absence of Judge—Effect Where on the last day allowed by law to make a deposit under r 89 of O XXI of the Civil Procedure Code for the purpose of setting aside a sale the petitioner owing to the presiding officers having left the Court earlier than usual was unable to make the required deposit Held that the petition and the deposit were properly received on the next day as no act of the Court itself ought to be allowed to prejudice the position of the petitioner A conditional deposit is not a good deposit under r 89 O XXI but where the petitioner withdrew the condition the moment the decree holder auction purchaser objected Held that there were no sufficient grounds under the circumstances to treat the deposit as invalid R 89 O XXI does not confer a right to make deposit to a person who had purchased the property sold so far back from the date of the sale and the execution proceeding that his interest was not affected by the sale DULHIN MATHURA DAS KOER v BANSI DHAR SINGH (1911) 16 C W N 904

9 ——— Setting aside Sale—Application to set aside sale by some of the judgment-debtor if whole sale can be set aside—Sale proclamation gross understatement of value by decree holder if by itself vitiates sale—Waiver by judgment debtor of fresh sale proclamation if amounts to waiver of other irregularities Where a decree was obtained jointly against several persons and their respective liabilities were not ascertained therein and the decree holder proceeding against jointly had their property sold in execution Held that upon good cause shown the whole sale should be set aside although only some of the judgment debtors applied within time to set aside the sale The application of the other judgment debtors though made out of time could very well be treated as applications to be added as parties to the previous application of their co judgment debtors having regard to the fact that all the applications were tried together and were thus virtually consolidated Where on the date fixed for the sale of immovable property in execution of a decree the judgment debtor applied for a postponement and agreed that if the decree was not paid up by the adjourned date the sale might be held without the issue of fresh proclamation and the decree not having been paid up the sale took place on the adjourned date Held that in the absence of evidence to show that they were aware of the contents of the sale proclamation it could not be said that the judgment debtor had waived any irregularities in the sale proclamation which contained a gross understatement of the value of the attached properties (...thari Singh v Hurdeo Narain L R 3 I A ... 26 W R 44 ... Arunachelam v Arunachelam L R 15 I A 171 I L R 12 Mad 19 distinguished Where with the object of seizing a very valuable property for the smallest possible price the decree holder grossly understated its value in the sale proclamation with the consequence that he was able to purchase the property without competition at a fraction of its real price Held that the deliberate misstatement of value in the sale proclamation was by itself a sufficient ground for vacating the sale Sadat Yard Khan v Phul Kuar I L R 20 All 412 I R 25 I A 146 2 C W N 550 followed Abdul Kashem v Benode Lal 12 C W N 757 not followed. KADILANUND THAKUR v PIRTHI CHAND LAL CHOWDHURY (1911) 16 C W N 704

10 ——— Setting aside sale—Material irregularity allegation of—Civil Procedure Code (Act XIV of 1882) s ... 290—Proclamation of sale—Sale fixed to take place at monthly sales naming day place and hour of commencement of such sales—Absence of presiding officer A sale in execution of a decree was adjourned from 16th May until 13th July and in the fresh proclamation of sale issued it was notified that in the absence of any order of postponement the sale would be held at monthly sales commencing at 6 o clock on the morning of 15th July 1903 at Monghyr Owing to the absence of the presiding officer from the station the monthly sales did not begin until 17th July and in the course of them the sale in question was held on the 20th. On an application under s 311 of the Civil Procedure Code (Act XIV of 1882) to set aside the sale on the ground of material irregularity within the meaning of ss 287 and 291 of the Code Held (affirming the decision of the Courts in India) that in holding the sale on 20th July the Court had not acted in contravention of the provisions of the Code and there had been no material irregularity in publishing or conducting the sale RANG LAL SINGH v PAVANESHWAR PERSHAD SINGH (1911) I L R 39 Calc 26

11 ——— Description of property in schedule to execution proceedings—Confirmation of sale—Order granting certificate of sale of property different from that described in schedule—Alleged mistake—Order set aside as having been made without jurisdiction Certain property to be sold under a decree was described in the schedule to the application for execution and in the proclamation of sale as a six-anna share of a mahal subject to an existing mortgage and after the sale had been confirmed the auction purchasers applied for a certificate of sale and alleging that a mistake had been made in the schedule by the omission of the word ... asked to have the purchased property declared in the certificate to be a six anna share of the mahal ... encumbered by the mortgage The alleged mistake was stated to have been corrected before the sale by an advertisement in the Calcutta Gazette The Subordinate Judge granted a certificate of sale in that form, and his order was upheld by the High Court Held (reversing those decisions) that what is sold at a judicial sale can be nothing but the property attached which in this case was the property described in the schedule in the execution proceedings It was not a case of misdescription which might have been treated as an irregularity Identity and not description had here to be dealt with An existing property was accurately described in the schedule and the order of the Subordinate Judge granted

SALE IN EXECUTION OF DECREE—*contd*

a sale certif ate which stated that another and a different property had been purchased at the judi ial ale If by mis ake the wrong property was attached and sold the only course was for the decree lold rs to commence the execution proceedings over again The adverti ement in the *Gaze te* purporting to correct the alleged mi take could not validate a sale of property which wa not that to which the attachment related. The order of the Subordinate Ju lge was made without juri di tion as there was no power to sell in the judicial proceedings the pro perty which the certifcate of sale declared had been purcl a ed Their Lord hips set aside the order confirming the sale together with the sale certificate granted thereunder THAKUR BAR HA v JIBAN RAM MARWARI (1913)

I L R 41 Calc 590

12 ———— Sale certific te—*Purchaser at suit for rent b after registration under Land Regis ration Act—Decre obt ined therein sale in execution of—Purcha e by decree holder—Certi ficat sale subs qu ntly cancelled—Rent decr e and sale of th reby reversed* A having purchased property at a sale under the Public Demands Recovery A t on 7th September 1909 sold it to *B* who duly obt ined a ale certificate from the revenue authorities was placed in pos ession and had his name registered under the Land Regis tration Act *B* then sued the tenant on the pro perty for rent and obtained an *ex parte* decree in execution whereof the tenure was sold and purchased by the decree holder himself on 20th November 1909 The sale under the Public Demands Recovery Act was cancelled on 29th March 1910 on the ground that no notice had been served under s 10 of the Ac and that the pro ceedings were invalid and inoperative in conse quence *Held* that the rent decree and sale thereunder which were duly and regularly had at the instance of a stranger who had no concern with the irregularities in connection with the certificate sale were not affected by the reversal of the certificate sale NAGENDRA NATH BOSE v PARBATI CHARAN (1914) 20 C W N 819

13 ———— If hold good when ex parte d cr e set aside where property has been assigned by decree holder purchaser to st anger—*Decree subsequently passed if validates sale—Court s power to take notice of facts which have occurred since institution of proceedings* The assignee from the decree holder who has purchased property in execution of his own decree is in no better position than his assignor and the sale is set aside when the decree is set aside even when the decree holder has sold the property to a stranger *Satis Chandra* v *Ram swari 20 C W N 655* followed As soon as an *ex parte* decree is set aside the sale where the decree holder is the purchaser falls through and is not validated by a fresh decree subsequently made *Set Umedmal* v *Srinath Roy I L R 27 Calc 810 s c 4 C W N 692 Hazari Mull* v *Janaki Prasad 6 C L J 92* and *Ram Yead* v *Bindesvari 6 C L J 102* distin guished the decree in those cases though tem porarily set aside having been ultimately main tained It is well settled that the Court may in order to shorten litigation or to do complete justi e between the parties take notice of events which have happened since the in titution of the proceedings and may afford relief to the parties on the basis of the altered conditions ABDUL RAHAMAN v SARAFAT ALI (1915)

20 C W N 667

14 ———— Sale in execu tion when to be s t aside when decree set aside—*Decree holder purchaser—Purchase by stranger from latter before decree set aside—Equity* The Court as a matter of policy has a tender regard for honest purchasers at ales held in execution of its decree though the decree may be subsequently set aside where tho e purchasers were not parties to the suit and the decree had not been passed without juri diction But the same measure of protection is not extended to purcha ers who are themselves the decree holders nor can pur chasers from such decree holders claim that the Court owes them any duty or to be within the policy which prompts the extension of pro tection to strangers since they have bought from one who e title is liable to be defeated *Sheik Ismail Rowther* v *Rajab Rowther I L R 30 Mad 295* dissented from SATISH CHANDRA GHOSE v RAMESSARI DASSI (1914)

20 C W N 665

15 ———— If void or voidable when decree fraudul nt—*Suit to set aside decree barred by limitation—Sale if may be vacated* A sale in execution of a fraudulent decree is not a void but a voidable sale till vacated by an appro priate proceeding the rights created thereby are effective Such a sale cannot be set aside without setting aside the decree consequently where the right to have the decree set aside as fraudulent has become barred by limitation no decree can be made setting aside the sale only as made in execution of a fraudulent decree *Ram Narayan* v *Sheo Bhunjan I L R 27 Calc 197* di tin guished RAJ KUMAR SARKEL v RAJ KUMAR MALI (1915) 20 C W N 659

16 ———— Sale of putni—*in execution of decree for arrears of rent—Purchaser if liable for arrears previous to confirmation of sale* The plaintiff purchased a *putni* taluq at a sale held in execution of a decree for arrears of rent due thereon Some of the *putnidars* applied to et aside the sale and while the proceedings for setting aside the sale were pending the zemindar brought the suit against the recorded *putnidars* for arrears of rent subsequent to the period covered by the decree in execution of which the sale was held at which the plaintiffs purchased the *taluq* The plaintiffs were made parties to this suit which was decreed and in execution of the decree the *putni* was put up for sale and the plaintiffs whose purchase at the previous sale had been by that time finally confirmed deposited the decretal amount and saved the *putni* from sale *Held* that in the absence of anything to denote the contrary a sale of a tenure held in execution of a decree for its own arrears of rent passes it free from liability for previous arrears and the plaint iffs were not liable for the arrears of rent for the period to the date of confirmation of ale at which they purchased the *putni* MATHURA MOHAN SAHA v NABIN CHANDRA DUTT (1916)

20 C W N 749

17 ———— Hindu Joint Family—*Decree against father of joint mitakshara family—Suit by sons the other members of the family to have it declared that their shares were not affected by the sale under mortgage decree— Right title and in*

SALE IN EXECUTION OF DECREE—*contd*

terest of judgment debtor—Substance and not technicalities of transaction to be regarded in cases of this kind In execution of a mortgage decree against the father of a joint mitakshara family who was alone was a party to the mortgage the decree and the execution proceedings his two sons the other members of the family objected that only one third of a *patni* taluk forming the joint family property could be sold on the allegation that the debts in respect of which the decree had been made were contracted for illegal and immoral purposes and the order for sale was amended by adding the words right title and interest of the judgment debtor as indicating what was to be sold which expression the Court said was not calculated to affect the case of either party The property was sold and purchased by the decree holder In a suit by the sons to have it declared that only one third of the property passed by the sale both Courts in India found that the debts were for legal and necessary purposes The Subordinate Judge made a decree in the plaintiffs favour which was reversed by the High Court on appeal *Held* (affirming the decision of the High Court) that the proper construction of the order for sale as amended was that if the plaintiffs succeeded in establishing that the debts had been incurred for immoral purposes only one third of the property would be affected by the sale while if they failed in that contention the whole of the property would be held to have passed by the sale The expression right title and interest did not limit what was to be sold to a one third share In cases of this kind the substance and not the mere technicalities of the transaction should be regarded *Mahabir Pershad v Moheswar Nath Sahai I L R 17 Calc 584 L R 17 I A 11*, followed. SRIPAT SINGH DUGAR *v* PRODYOT KUMAR TAGORE (1916) I L R 44 Calc 524

18 ——— Benami purchase—*Purchase on behalf of another person—Certified purchaser—Agreement to convey made after sale to carry out agreement made before sale—Civil Procedure Code 1908 s 66 sub s (1)* S 66 of the Code of Civil Procedure 1908 sub s (*1*) enacts that No suit shall be maintained against any person claiming title under a purchase certified by the Court in such manner as may be prescribed on the ground that the purchase was made on behalf of the plaintiff or on behalf of some one through whom the plaintiff claims The appellant purchased at an execution sale certain immovable property which he had before the sale agreed with the respondents to convey to them After the sale agreements were made by which the appellant bound himself to carry out the original agreement with the respondents In suits by the respondents against the appellant for specific performance the defence was that the suits were barred by s 66 sub s (*1*) *Held* that the fresh agreements made after the sale though carrying out those made before the sale were not affected by s 66 and the suits were therefore not barred *Venkatappa v Jalayya (1919) I L R 42 Mad 615* approved VADIVELU MUDALIYAR *v* PERIA MANICKA MUDALIYAR (1920)

I L R 43 Mad (P C) 643

SALE OF GOODS

See CIVIL PROCEDURE CODE (1908) s 20
I L R 39 All 368

SALE OF GOODS—*contd*

See CONTRACT
I L R 43 Calc 77
I L R 47 Calc 458
I L R 45 Bom 129 1222

See CONTRACT ACT 1872—
ss 55 AND 63 I L R 43 All 257
ss 76 to 123
s 103 I L R 40 Bom. 630

——— contract for—Stamp duty on—
See STAMP DUTY I L R 39 Calc 669

——— re sale on purchasers default—
See CONTRACT
I L R 39 Calc 568

——— return of rejected goods
See CONTRACT
I L R 35 All 395

——— Warranty of fitness for purpose for which bought—
See CONTRACT
15 C W N 931

1 ——— Contract for forward monthly deliveries—*Construction—Anticipatory breach—Measure of damages* In a contract dated June 4th for the purchase of 300 tons of Java sugar it was stipulated shipments to be made by steamers during July to December 1914 *the agreement* to be construed as a separate contract in respect of each shipment *Without giving any delivery on the 18th August the sellers repudiated the contract In an action for breach of contract brought by* the buyer on the *26th August claiming damages in respect of the whole contract for 300 tons Held* that on the *true* construction of the contract the buyer had the right to demand *delivery* of the goods by separate *shipments spread over* the months from July to December and the true measure of damages was the aggregate of the differences between the contract price and the market price at the appointed *times* of delivery in each month *Roper v Johnson L R 8 C P 167 Wertheim v Chicoutimi Pulp Co (1911) A C 301, Frost v Knight L R 7 Ex 111* and *Brown v Muller L R 7 Ex 319* referred to *Per* MOOKERJEE *J*—In the circumstances of the case the instalments must be deemed to have been intended to be distributed rateably over the whole period appointed for the delivery of the whole quantity of the goods *Calamnius v Dowlais Iron Co 47 L J Q B 575 Coddington v Paleologo L R 2 Ex 193* referred to *Thornton v Simpson 6 Taunt 556 Tarling v O Riordan L R Ir 82 Colonial Insurance Co of New Zealand v Adelaide Marine Insurance Co L R 12 A C 128* cited by MOOKERJEE *J*—*It being found that* the principle applied by the Court of first instance in assessing damages was erroneous but that on the application of the proper principle the damages to be allowed would be larger on the defendant s appeal the Court declined to disturb the judgment or order a remand BILLASIRAM THAKURDAS *v* GUBBAY (1915) I L R 43 Calc 305

2 ——— C I F Contract—*Insurance of goods against war risk without buyer s instruction—Buyer not obliged to pay for such insurance—Payments against documents—Bill of lading must be tendered—Bill of lading what*

SALE OF GOODS—*contd*

s a—War—Government proclamations prohibiting trading with the enemy—Effect of proclamations on contract goods shipped in enemy port—Performance of contract becomes illegal On the 9th June 1914 the defendants purchased from the plaintiff 5 tons round copper bottoms c i f Mahomerah July shipment and agreed to pay for the said copper in Bombay on being tendered the bills of lading and other documents in respect thereof The copper was shipped on board the S S Tangistan on or about the 28th July 1914 the plaintiff obtained relative bills of lading and insured the goods against ordinary marine risks On the 5th August in consequence of war having broken out between Great Britain and Germany the plaintiff's agent in England although not instructed to do so by the defendants insured the copper against war risks and paid 10 per cent premium The documents arrived in Bombay on the 7th September whereupon the plaintiff tendered them to the defendants and demanded payment of the invoice price of the goods including the abovementioned extra premium of 10 per cent in respect of insurance against war risks The defendants refused to pay the amount demanded on the ground that they were not liable to pay the aforesaid extra premium *Held* that in the absence of express instructions from the defendants to effect insurance against war risks the defendants were not liable to pay the extra premium By another contract dated 17th July 1914 the defendants purchased from the plaintiff 900 bags of sugar c i f Mahomerah July shipment and agreed to pay for the said sugar in Bombay on being tendered the bills of lading and other documents in respect thereof The plaintiff got the sugar shipped at Hamburg on the S S Nicomedia on the 28th July 1914 and obtained as he alleged relative bills of lading in respect thereof and he insured the goods Subsequently after the documents relating to the said sugar had arrived in Bombay the plaintiff presented them to the defendants and demanded payment but the defendants refused to accept the document or to pay the money on the grounds firstly that by reason of the state of war which existed and the Government proclamations prohibiting trade with the enemy performance of the contract would be impossible and secondly that the documents which the plaintiff presented as bills of lading were not bills of lading and were not therefore the proper documents to be tendered in accordance with the terms of a c i f contract *Held* that in view of the Government proclamations the tender of the shipping documents was not a valid tender and that acceptance of and payment against the said documents would be a violation of the said proclamation *Duncan Fox & Co* v *Schrempft and Bonke (1915) K B 365* followed *Held* also that a bill of lading as known to merchants is a receipt for goods actually delivered over and shipped on board the ship named therein and signed by the Captain or his representative and that the documents tendered to the defendants as bills of lading were not bills of lading but mere receipts for warehousing or shipment As such they were no evidence of any shipment and a purchaser under a c i f contract if tendered such a receipt would be entitled to ask for a bill of lading for he is not obliged to pay upon proof merely that the goods had arrived at the port of departure NISSIM ISAAC BEKHOR *v* HAJI SULTANALI SHASTARY AND CO (1915) I L R 40 Bom 11

3. ——————— *C I F contract—Payment to be made after goods had been landed—Breach of contract—Failure of vendors to deliver bill of lading or goods—Contract of affreightment—Property consigned on enemy vessel —War declared whilst cargo at sea—Capture of vessel and cargo—Adjudication by Prize Court—Condemnation of vessel—Release of cargo—Effect of war on executory contract—Impossibility of performance—Void contract—Contract Act (IX of 18) s 56* On the 2nd February 1914 the defendant firm agreed to sell to the plaintiffs 1 0 tons of basic steel bars under a c i f contract free Hooghly The shipments were to be made in June July and October and delivery to be completed within three days from the date of the landing of the goods Furthermore it was agreed between the parties that 45 days credit from the date of the delivery of the goods should be allowed to the plaintiffs In respect of the July shipment the goods which consisted of partly Belgian and partly German manufacture were shipped on the 2nd July 1914 from Antwerp per S S *Steinturm* a German steamer On the 4th August 1914 when war was declared between England and Germany the S S *Steinturm* was at sea She was subsequently captured with her cargo by a British cruiser and taken to Colombo for adjudication The Prize Court condemned the vessel but released the cargo which was brought to Calcutta at the expense of Government The Government thereupon notified the vendors that the goods had arrived and the latter immediately communicated with the purchasers asking them to take delivery of the goods on payment of certain extra charges to Government The plaintiffs having refused to do so the goods were sold by the defendants on purchasers account and risk In a suit for breach of contract and for damages *Held* that the variation of the terms as to the time of payment did not alter the nature of the contract as a c i f contract *Held* also that it was an implied part of the contract of the 2nd February 1914 that the defendants should procure a contract of affreightment under which the goods would be delivered in the Hooghly *Held* also that the contract between the plaintiffs and the defendants included the performance of an act (*viz* the procuring of the contract of affreightment under which the goods would be delivered in the Hooghly) which after the contract was made become impossible by reason of the outbreak of war within the meaning of s 56 of the Indian Contract Act and consequently the contract of the 2nd February 1914 was void MADHORAM HURDEO DAS *v* G C SETT (191) I L R 45 Calc 28

4 ——————— *Contract under C I F terms—Policy of insurance omitted from shipping documents—Payment made under mistake—Bank remitting the money to the drawer—Instructions by drawee to withhold payment after remittance—Liability of the Bank as agent—Indian Contract Act (IX of 1872) s 7 —Estoppel—Posting of a demand draft whether equivalent to payment* In May 1915 the plaintiff entered into two contracts under c i f terms with one P Vella for supply to him of certain goods P Vella drew

SALE OF GOODS—*contd*

a demand draft on the plaintiff and endorsed it over for collection to the Anglo Egyptian Bank Ltd Malta who in turn endorsed it to the defendant Bank at Aden On August 10th 1915 the plaintiff was informed by the defendant Bank that the latter held a demand draft upon him and would deliver shipping documents to him on payment of the draft On August 12th 1915 the plaintiff paid the amount due on the draft and removed from the Bank certain shipping documents among which on inspection at his office the plaintiff failed to discover the policy of insurance On discovery of this omission the plaintiff wrote to the defendant Bank on August 13th 1915 stating that the draft had been honoured under a mistake and requested the Bank not to pay the amount of the draft to the drawer of the bill and in case the remittance had already been made to cable at the plaintiff's expense instructions to withhold payment The defendants having refused to stop payment of the sum paid by the plaintiff the latter filed a suit claiming refund of the money The defendant Bank replied that they were acting merely as agents for collection on behalf of the Anglo Egyptian Bank at Malta through whom the demand draft was received and that they having given telegraphic intimation of the receipt of money to their principal on the 12th August that is before the receipt of the plaintiff's letter of the 13th *idem* were unable to do anything further in the matter The plaintiff's suit was dismissed by the Judge at Aden He appealed to the Resident s Court and pending the appeal a reference being made to the High Court Bombay under s 8 of the Aden Act II of 1864 for consideration of questions *inter alia* (i) whether the money was paid by plaintiff to the defendant Bank under a mistake of fact as to the documents delivered in exchange therefor (ii) whether the defendants could and should have stopped payment of the price as instructed by the plaintiff (iii) whether the defendant Bank acted as principals or agents in collecting the price of goods (iv) whether if defendants acted as agents in collecting the price of the goods they had any better rights than the sellers P Vella (v) whether in the circumstances the plaintiff was entitled to repayment of the price from the defendants under s 72 of the Indian Contract Act 1872 *Held* (1) that the money was paid by the plaintiff to the defendant Bank under a mistake of fact (2) that although the posting of the draft was neither payment nor an act so prejudicing the defendant Bank that it would be inequitable to require them to refund yet in view of the telegraphic intimation to the defendant s principals at their express request to the effect that money had been paid by the plaintiff he (the plaintiff) was estopped having regard to the peculiar relation of the parties and therefore the defendants could not nor should they have stopped payment of the price as instructed by the plaintiff (3) that the defendant Bank were mere agents (4) that the defendants had higher rights than P Vella in consequence of estoppel arising from plaintiff's conduct (5) that the plaintiff would not be entitled to repayment under s 72 of the Indian Contract Act 1872 as that section should be read subject to the law of estoppel and in view of the fact in the present case there was a clear case of estoppel *Deutsch Bank (London Agency)* v *Beiro & Co* 73 *L T* 669 referred to *Shu cs Chand* v *The Govt* N *W P* I *L P* 1 All 9 dissented from SOLOMON JACOB v THE NATIONAL BANK OF INDIA LTD ADEN (1917)

I L R 42 Bom 16

5 ———— *Indentor who has accepted the shipping documents and the drafts for the amount due but refused to take delivery on the ground of goods not being in accord with description—Plea of failure of consideration—Whether admissible—C I F Contract* Defendants accepted the shipping documents and the drafts for the amount due but refused to take delivery on the ground that the goods were not in accord with the description as entered in the *indent* The contract was a c i f contract and the indents also expressly showed that the indentors were bound to pay the drafts at maturity and if they had any claim in regard to the nature of the goods they would bring it in the manner laid down in the indent *Held* that the defendants could not in answer to the claim upon the draft plead failure of consideration because what they contracted for were the shipping documents and not the actual goods *Marsh II and Co* v *Nagin Chand Phul Chand* (3 *Indian Cases* 644) referred to STIRLING MASON AND Co v JAWALA NATH BAGHWAN DAS

I L R 1 Lah 22

6 ———— **Insolvency of purchaser before delivery**—*Vendor s right to refuse delivery—Official Assignee duties and rights of—Election within reasonable time—Tender of cash before delivery—Presidency Towns Insolvency Act (III of 1909)—ss 52 62 64—Joint Hindu family insolvency of member of—Infant partner—Contract Act (IX of 1872) s 247* On the insolvency of the karta of a mitakshara Hindu family a suit is not maintainable by the Official Assignee for damages for breach of a contract entered into by the firm which was the joint business of the family Under s 52 of the Presidency Towns Insolvency Act the rights that passed to the Official Assignee were the rights the insolvent had under the contract *as an insolvent* hence it was the duty of the Official Assignee to declare his election to take up the contract within a reasonable time and to tender cash before calling for delivery *Ex parte Chalmers L R 8 Ch App* 289 and *Morgan* v *Bain L R 10 C P* 15 followed. GREY v LAMOND WALKER (1913)

I L R 40 Cal 593

7 ———— **Bought and sold notes**—*Bought by your order and for your account from our principals —Principal and Agent—Personal liability of broker—Contract Act (IX of 1872) s 230 (2)—Broker an intermediary—Contract of employment—Award* Where a broker signed and sent to a party a bought note in the following terms We have this day bought by your order and for your account from our principals 250 bales of jute (name) Brokers and a corresponding sold note was signed and sent by the broker to another party the names of the principals being disclosed to each other by the broker at a subsequent date *Held* in proceedings taken by the buyer that the broker was merely an intermediary and not an agent for sale and was not liable under s 230 (2) of the Contract Act The contract (if any) between the broker and the buyer was a

SALE OF GOODS—*contd*

contract of employment the employment being to negotiate and not to sell on behalf of another *Sou l'well* v *Lowdilch L P 1 C P 3.4* followed *Gubboy* v *Aetoom I L P 1" Calc 449* distin guished. PATIRAM BANERJEE v KANKINARRAH Co LD. (1915) I L R 42 Calc 1050

8. ———— Exception clause excusing delay due to late shipment—*Failure of seller to deliver on due dat —Tender on a subsequent date—Onus on party relying on exception—Ship m nt to be shown to be unavoidably delayed—"Shipm nt" meaning cf—Measure of dam g* Defendant contrac ed with plaintiff to deliver to him in Cal utta 50 tons of Rangoon rice in June 1909 and another 50 tons in July 1909 A clause in the contract provided that no objec tion was to be raised by the plaintiff in ca e of the delivery of the goods being delayed by reason of the non arrival in time of the steamer carrying the goods on account of the shallowness of water at Diamond Harbour damages to the steam engine accidents of the sea and other causes no under human control as al o owing to late shipment at Rangoon The June consignment was not tendered by defendant until the 9th of July and the July consignment until the 3rd August The market rates on both thes d ys were the same as those on 30th June and 31st July respectively The plaintiff refu ed the tenders on both days and sued for damages being the difference between the contract p ice and the market price on the said two dates Defendant relying on the clause relating to late shipment pleaded that under the contract there was no particular due date of delivery *Held* that the defendant could not rely on that clause unle s he was able to prove that the circumstances which led to delay in shipment w re not attributable to his negligence *Dunn* v *Bucknall (1902) 2 K B 614 C 1* followed That the burden of establishing that his case was covered by the exception on which he relied was on the defend ant *Sandeman and Sons* v *Tyzack and Branfoot Steamship Co Ld (1913) A C 680 689* followed. The term shipment in the contract included not merely the loading of goods on board the ship but also the starting of the ship That as soon as the contract had been broken the obligation of the purchaser to take delivery of the goods vanished and he was not bound to accept the goods when they were delivered and that the right measure of damages was the difference between the contract price and the market price on the dates of delivery originally agreed upon by the parti s *Grenon* v *Lachmi Narain I L R 24 Calc 8* relied on KALI KANTA SHAHA v ISMAIL (1914) 20 C W N 159

SALE OF GOODS ACT (56 & 57 VIC C 71)

———— ss 45 and 47 —Stoppage in tran sit—*Ultimate destination of goods—Duration of transit—Pledgee of bill of lading—Measure of damages—Sale of Goods Act (56 and 57 Vic c 71) ss 45 and 47* The plaintiffs a Bombay firm imported hardware goods from M & Co of Manchester for sale on commission the business being carried on and financed in the following manner M & Co on shipping the goods handed over the complete shipping documents to *B* and received from him an advance of 65 per cent of the invoi e price *B* then handed

SALE OF GOODS ACT (56 & 57 VIC C 71) —*contd*

———— ss 45 and 47—*contd*

over the shipping documents to the National Bank of India in England and himself received a similar advance by drawing on a credit opened with the Bank by the plaintiffs The Bank then forwarded the shipping documents to India where they were handed over to the plaintiffs in exchange for tru t receipt the plaintiffs be coming responsible to the Bank for any short fall in the advances made to *B* On 12th February 1907 M & Co contracted to purcha e from L & Co 500 boxes of tin plates delivery to be f o b Newport in four or five weeks after date On 20th February M & Co wrote to L & Co enclosing instructions and marks for shipment of the 250 boxes to Bombay and on 2nd March requested them to forward the goods to W & Co at Newport in time for shipment in S S Clan Macleod for Bombay On 21st March L & Co enclosed to M & Co an invoice for 200 boxes and on 27th March another invoice for the re maining 50 boxes the material part of the invoice in each ca e being No claim concerning these goods can be recogni ed unless made within fifteen days from delivery to Messrs W & Co Newport for shipment on your account The 250 boxes were put on board the steamer by W & Co as the agents of L & Co but in obtaining a bill of lading for 500 boxes (including the 250 in question) W & Co acted as the agents of M & Co The steamer left Newport on 4th April Following the usual course of business as above described M & Co handed over to *B* the shipping documents relating to the 500 boxes and obtained an advance of £2.. . 2 (being 65 per cent of the invoice value) *B* on the 6th April obtained a similar advance from the Bank On the same day M & Co suspended payment and on 9th April L & Co as unpaid vendors of 250 boxes notified the steamship owners the first defend ants to stop these goods in transit The S S Clan Macleod arrived in Bombay on 13th May and the bill of lading which had been duly handed over by the Bank to the plaintiff on 29th April was in due course presented by the latter They were informed however of the stop put on the 250 boxes and were offered a delivery order for the remaining 250 alone This they declined refusing to accept anything but the full payment of the advance or the full amount of the good On 29th June the plaintiffs repaid the Bank the amount of the advance and the trust receipt of 29th April was duly cancelled On the plaint iffs sub equently suing the steamship owners and their agents for damages *Held* that the transit did not cease at Newport and L & Co were entitled to stop the goods after they had started for Bombay *Ex parte Golding Davis & Co 13 Ch D 628* followed *Held* further that the plaintiffs were after 9th June—on which date they had fulfilled their obligations to the Bank—pledgees for value of the bill of lading if indeed they did not occupy that position from 29th April being transferees of the Bank s rights in respect of the advance as again t the defendants *Held* further that the plaintiffs were entitled to join both defendants in the suit The utmost benefit which the defendants were entitled to obtain from the position of L & Co as sureties (Sc to the plaintiffs for the advance made by the latter to [illegible] Co) was the right

SALE OF GOODS ACT (56 & 57 VIC, C 71) —*concld*

——— ss 45 and 47—*concld*

to the security of the 250 boxes which they were willing from the outset should be received by the plaintiffs The plaintiffs by refusing to take delivery of the 250 boxes had omitted to do an act which their duty to the surety required them to do and to the extent to which that omission had resulted in loss the surety was discharged *In re Westhinthus 5 B & Ad 817* discussed BAPUJI SORABJI *v* THE CLAN LINE STEAMERS LD (1910) I L R 34 Bom 640

SALE OF LAND

See LIMITATION ACT (IX OF 1908) SCH I ARTS 97 62
I L R 37 Bom 538

See MORTGAGE
I L R 47 Calc 377 924

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 55 (*4*)
I L R 39 Mad 997

——— agreement for—

See SPECIFIC PERFORMANCE
I L R 38 Calc 805

——— By Municipality without written Contract

See BOMBAY DISTRICT MUNICIPAL ACT 1901 s 96 AND 40
I L R 45 Bom 797

——— *Agreement by vendee to pay revenue—Reservation of portion out of property sold—Agreement not binding on transferee* The vendor of a village reserved for her maintenance 196 bighas and the vendee also agreed not to ask for rent of those 196 bighas Vendee further did not insist upon payment of the proportionate share of Government revenue due from the vendor but paid it himself *Held* that any agreement which might have existed as between the vendor and the vendee as regards the payment of Government revenue was a purely personal matter and could not bind the vendee after the death of the vendor when the land was in the possession of her legatee *Sri Thakurji Maharaj* v *Lachmi Narayan 11 All L J 212 Ram Gobind* v *Sri Thakurji Maharaj 11 All L J 231* and *Ali Hussain* v *Hakim ullah I L R 38 All 230* referred to LACHAN SINGH *v* JANGJIT SINGH (1916) I L R 39 All 166

——— *Duty of vendor—Right of vendee to be put in possession* A vendor of land when he holds himself out in that capacity is bound to ascertain whether in fact the subject matter of what he is selling exists and he must be in a position to give possession of the physical thing which he has contracted to sell The obligation is upon the vendor to give the vendee possession and not upon the latter to get possession for himself especially when any difficulty arises in identifying the particular land sold DARPAN KUER *v* KEDAR NATH 1 Pat L J 140

——— *Contract of re sale—Time essence of the contract—Doctrine applicable to contracts of sale whether applicable to contracts of re sale—Rule of English law applicability of to India* The doctrine that time may not be of the essence of the contract which arises on the construction of contracts of sale of immovable property is not applicable to contracts of *re sale* of property conveyed If the transaction is not a mortgage the right to repurchase being an option must be exercised according to the strict terms of the power Rule of English law followed—*Joy* v *Birch 7 F R 22 Ranelagh* v *Melton 62 E R 627* and *Dibbins* v *Dibbins (1896) 2 Ch 348* referred to SAMARAPURI CHETTIAR *v* SUDARSANCHARIAR (1919)
I L R 42 Mad 802

SALE OF LAND—*contd*

——— *Non payment of price—Right of vendee to sue for possession—Decree for possession whether can direct payment of price or be conditional on payment—Transfer of Property Act (IV of 1882) ss 54 and 55* A vendee who has not paid the purchase money of the lands bought by him is entitled to a decree against the vendor for possession of such lands *The Court* cannot make the decree conditional on payment of the purchase money nor can it decree payment of the price to defendant in the vendee's suit KRISHNAMMA *v* MALI (1920)
I L R 43 Mad 712

——— *Duty of to protect vendee's title*—caveat emptor Where in a suit brought by a third party against a vendor and vendee of immovable property *the former admits* the claimant's title and the suit is decreed upon that admission he cannot in a subsequent suit for the recovery of the purchase money paid to him by the vendee plead that the former suit was wrongly decided *Per* IMAM *J*—In vernacular conveyancing the expression *pak saf* means a flawless title BHATTU RAM *v* GANGA PRASAD GOPE 3 Pat L J 358

——— *Sale of specific area of land—vendees evicted from part of this area—Vendor's liability—Transfer of Property Act IV of 1882 s 55—Measure of damages—Indian Contract Act IX of 1872 s 73* On the 16th September 1907 *C D* and his son *M B* the predecessors of defendants 3 to 8 sold to the plaintiff 79 *kanals* and 4 *marlas* of land The property comprised several plots of land which formed part of different *khasra* numbers specified in the sale deed The price paid by the vendees was Rs 83 160 and was calculated as expressly stated in the deed at the rate of Rs 1 050 per *kanal* The plaintiffs asserted that they got possession of the 79 *kanals* and 4 *marlas* but were subsequently evicted by the defendants 1 and 2 from an area measuring 4 *kanals* 4 *marlas* It was found that defendants 1 and 2 were as a matter of fact the owners of the latter area *Held* that as under the terms of the deed of conveyance the vendors sold 79 *kanals* and 4 *marlas* at so much per *kanal* to the plaintiffs it was the duty of the vendors either to make good the deficiency or to pay damages for the loss caused to the vendees having regard *to the* admission by the defendants that there was a guarantee of title and to the provisions of s 55 of the Transfer of Property Act *Held* further that the measure of damages is the price of the land at the time of eviction—*vide* s 73 of the Indian Contract Act *Nagardas Saubhagyadas* v *Ahmed Khan (I L R 21 Bom 175) Ramchhod Bhagwan* v *Manmohandas (I L R 32 Bom 165)* and *Nabinchandra Saha* v *Krishna Barana (I L R 38 Calc 455)* followed JAI KISHEN DAS *v* ARYA PRITI NIDHI SABHA I L R 1 Lah 380

SALE OF MORTGAGED PROPERTY

See MORTGAGE I L R 39 Calc 527

SALE OR AGREEMENT TO SELL.

See CONSTRUCTION OF DOCUMENT I L R 37 Mad 480

SALE OR EXCHANGE

See TRANSFER OF PROPERTY ACT (IV OF 188?) ss 54 118 I L R 37 Mad 423

SALE-PRICE

See PRE EMPTION 14 C W N 295

SALE PROCEEDS

See CRIMINAL BREACH OF TRUST I L R 41 Calc 844

See LIMITATION I L R 41 Calc 654

——— attachment of—

See PAYABLE DISTRIBUTION I L R 46 Calc 64

——— surplus of—

See MORTGAGE I L P 37 Calc 907

——— surplus sale-proceeds in the hands of Coll ctor attachment of—

See MORTGAGE 14 C W N 484

SALE-PROCLAMATION

See EXECUTION OF DECREE I L R 38 Calc 482

See PROVINCIAL INSOLVENCY ACT (III OF 1907) ss 20 22 I L R 39 Mad 479

——— decision of question of valuation—

See CIVIL PROCEDURE CODE 1908 ss 2 AND 47 5 Pat L J 270

——— Po ition of purchaser with notice of incumbrance—

See CIVIL PROCEDURE CODE 1908 O XXI R 66 I L R 43 All 489

——— *Valuation of property* To order property which is to be put up for sale in execution of a decree to be valued at twenty times the Government revenue is merely a colourable pretence of making the valuation required by law and such an order cannot be sustained JAGGARNATH PERSHAD *v* CHITRAGUPTA NARAIN SINGH 3 Pat L J 680

——— *Insertion of parties valuation legality of* The insertion of any valuation in a sale proclamation other than the valuation fixed by the Court is calculated to mislead intending bidders and is therefore wrong Neither the valuation assessed by the decree-holder nor by the judgment debtor should be inserted RAI BENI PRASAD *v* EDUL SINGH 4 Pat L J 37

SALE WITH OPTION OF RE PURCHASE

See SALE

See CONSTRUCTION OF DOCUMENTS I L R 40 Bom 378

——— A deed of sale contained the following decree I have given the land into your possession If perhaps at any time I require it back I will pay you the aforesaid

SALE WITH OPTION OF RE PURCHASE— *contd*

Rs 600 and any money you may have spent in bringing the land into good condition and purchase back the land In a suit 3? years later by vendor s grandson against vendee s daughter in law *Held* the option was personal GURUNATH BALAJI *v* YAMANURA I L R 35 Bom 259

SALTPETRE

See NIMAK SAYAR MEHAL I L R 41 Calc 286

SALT WORKS

See ASSESSMENT I L R 42 Bom 692

SALVAGE

See CIVIL PROCEDURE CODE 1908 O XXI R 89 2 Pat L J 676

See SHIPPING

SAMBALPUR DISTRICT

See APPEAL I L R 38 Calc 391

See CENTRAL PROVINCES LAND REVENUE ACT 1881 s 130 1 Pat L J 290

SAME TRANSACTION

See JURY RIGHT OF TRIAL BY I L R 37 Calc 467

SANAD

See BOMBAY LAND REVENUE CODE 18?9 s ?1 I L R 44 Bom 110

See PROOF 16 C W N 683

See PRESUMPTION OF LAND I L R 42 Bom 668

——— construction of—

See BOMBAY HEREDITARY OFFICES ACT, s 2 I L R 43 Bom 323

See BOMBAY REVENUE JURISDICTION ACT (X OF 1876) s 12 I L R 45 Bom 463

See JAIGIR I L R 42 Calc 305

See PENSIONS ACT (XXIII OF 1871) s 6 I L R 32 All 148

See PRESUMPTION I L R 39 Bom 279

——— *Sanad construction of—Grant creating title of Rajah of Deur in 186?—Meaning of Lands attached to Deur —Whether confined to lands in Satara where Deur is situated or extended to other lands in Bombay Presidency—Use of* contemporanea expositio *in interpretation of documents—Jaghir nature of tenure—Saranjam—Inam—Vatan—Hakk—Nature of evidence in interpreting documents—Alterations of records* The plaintiff and the defendant were brothers descendants of the Bhonsle family (Rajahs of Nagpur) whose possessions lapsed to the British Government in 1853 The object of the suit was to have it declared that the whole of the property in dispute (all situated in the Bombay Presidency) belonged to the two brothers in equal shares The elder brother the defendant (appellant) was Rajah of Deur and his defence was that he had succeeded to the property in suit under the law of primogeniture as an appanage to the title of Rajah conferred on him by a s[illegible] sued by the Governor General Lord Can[illegible] 1862 The question depended mainly [illegible] nstruction

SANCTION FOR PROSECUTION—*contd*

——— by single Judge of Chief Court—

See CRIMINAL PROCEDURE CODE 1898 s 195 I L R 1 Lah 209

——— public servants—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) 19 239 537 I L R 43 Bom 147

——— refusal by 1st class Magistrate—Whether Additional Session Judge may on appeal—

See CRIMINAL PROCEDURE CODE 1898 s 59 I L R 44 Bom 877

——— Subordination of Courts—

See CRIMINAL PROCEDURE CODE 1898 s 195 I L R 2 Lah 57

——— Perjury—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) ss 236 19 537 (b) 161 I L R 45 Bom 834

——— refusal of—

See DEFAMATION I L R 48 Calc 388

1 ——— Contradictory statements—*False statement before the Committing Magistrate retracted and true evidence given at the trial—Prosecution of witness for contradictory statements—Consideration of circumstances under which false evidence was given and repudiated—Criminal Procedure Code (Act V of 1898) s 195* It would be dangerous to hold that the mere fact of contradictory statements having been made by a witness would justify the Court in granting sanction to prosecute him for giving false evidence It is necessary to consider the circumstances under which they were made and repudiated Where a witness was arrested and after pointing out the spot where the stolen property was concealed as alleged by one of the accused was released but stayed with the police and was examined the next day in Court before the date fixed for the hearing of the case the question having been put by a police officer in violation of s 495 of the Criminal Procedure Code and the evidence so given was false and was retracted at the trial when he gave true evidence alleging that he had been tutored and threatened by the same officer before his deposition in the lower Court *Held* that having regard to the events leading up to the examination before the Committing Magistrate the conditions under which it was conducted and the fact that the witness did not persist in his false statements but gave true evidence at the trial sanction should not be granted EMPEROR v TRIPURA SHANKAR SARKAR (1910)

I L R 37 Calc 618

2 ——— Procedure—*Criminal Procedure Code s 195—Court if bound to take evidence* In disposing of the application for sanction to prosecute for bringing a false suit under s 195 of the Criminal Procedure Code the Court has to decide whether the original suit was false and whether if it was false sanction should be granted and must make a full enquiry into the matter even if it involves trying the case *de novo* So where there was no evidence in the records of the original case to prove that it was false and the Small Cause Court refused sanction on the ground that it was not bound to go beyond the record the Court ordered the case to be sent back and tried according to law LAKHMI BANIA v SEWPALAK SINGH (1910) I L R 37 Calc 714

14 C W N 806

3 ——— False information to Police—*Criminal Procedure Code (Act V of 1898) s 195 (b) 476* No sanction should be granted or prosecution directed unless there is a reasonable probability of conviction though the authority granting a sanction under s 195 or taking action under s 476 should not decide the question of guilt or innocence Great care and caution are required before the Criminal law is set in motion and there must be a reasonable foundation for the charge in respect of which a prosecution is sanctioned or directed *Ishri Parsad* v *Sham Lal I L R* 111 *Sel Kali Charan Lal* v *Basudeo Narain Singh 12 C W N 3* and *Queen* v *Baijoo Lal I L R 1 Calc 450* referred to Where there had been prolonged litigation between the petitioner and the opposite party in which the former had been successful so that the case was by no means improbable and two Magistrates had in the course of the judicial investigations preceding the trial accepted the prosecution story as substantially true and the Assessors had only found the case not proved *Held* that under the circumstances it was not a proper case for a prosecution under s 476 of the Code JADU NANDAN SINGH v EMPEROR (1909)

I L R 37 Calc 250

4 ——— Disobedience of order—*Penal Code s 188—Disobedience of order under s 144 of the Code of Criminal Procedure (Act V of 1898)—Sanction to prosecute essentials for granting* A Magistrate should not sanction a prosecution under s 188 Penal Code unless he thinks that all the elements necessary for a conviction are present Where the order sanctioning a prosecution under s 188 Penal Code for an alleged disobedience of an order under s 144 Criminal Procedure Code did not show that the disobedience caused or tended to cause obstruction annoyance or injury or a riot the High Court set it aside in revision PROJAPAT JHA v THE EMPEROR (1909)

14 C W N 234

5 ——— Forgery—*Criminal Procedure Code s 195 (c)—Sanction for prosecution want of effect of* On the prosecution of the accused for an offence under s 467 Indian Penal Code alleged to have been committed in respect of a document which was subsequently produced at the hearing of a suit tried on the Original Side of the High Court in which the accused was a party *Held* that the prosecution was incompetent without the previous sanction of the Court which tried the suit or of the Court to which it was subordinate That s 463 Indian Penal Code referred to in s 195 (c) of the Criminal Procedure Code covers forgery of the description for which penalty is provided under s 467 Indian Penal Code TENI SHAH v BOLAHI SHAH (1909)

14 C W N 479

6 ——— Sanction refused by Munsif—Appeal—*Sanction granted by Subordinate Judge—Jurisdictional—Criminal Procedure Code (Act V of 1898) s 195—Civil Courts Act (XII of 1887) ss 21 and 22—Civil Procedure Code (Act V of 1908) ss 24 (1) (a) and 1[illegible]* suit having been

SANCTION FOR PROSECUTION—*contd*

dismissed by the Munsif and on appeal by the Court of Appeal the defendants applied to the Munsif for sanction to prosecute the plaintiffs for offences under ss 468 and 471 of the Indian Penal Code This application was refused but on appeal the Subordinate Judge granted such sanction *Held* that the Court of the District Judge was the only Court to which such an appeal would properly lie *Per* N R CHATTERJEA J — For the purposes of s 195 of the Criminal Procedure Code a Munsif is not subordinate to a Subordinate Judge RAM CHARAN CHANDA TALUKDAR v TARIPULLA (1912) I L R 39 Calc 774

7 ———— Jurisdiction—*Application to District Judge under s 195 cl (6) of the Criminal Procedure Code (Act V of 1898)—Transfer of such application to a Subordinate Judge for disposal—Jurisdiction—Civil Courts (Act XII of 1887) ss 21 (2) (4)* and *22 (1)—Appeal* An application made to a District Judge under s 195 sub s (6) of the Criminal Procedure Code against the order of a Munsif cannot be transferred by the District Judge to a Subordinate Judge for disposal *Ram Charan Chanda Talukdar* v *Taripulla I L R 39 Calc 774* approved *Semble* An application under s 195 sub s (6) of the Criminal Procedure Code is not an appeal within the meaning of s 22 sub s (1) of the Bengal Civil Courts Act 1887 HARI MANDAL v KESHAB CHANDRA MANA (1912)
I L R 40 Calc 37

8 ———— Appeal—*Right of—Grant or refusal of sanction by a lower authority—Application to superior authority whether a matter of appeal or revision—Limitation of the period of such application—Criminal Procedure Code (Act V of 1898) s 195 (6)—Limitation Act (IX of 1908) Sch I Art 154* Sub s (6) of s 195 of the Criminal Procedure Code does not confer a right of appeal to the superior authority but only invests the latter with powers by way of revision *Hardeo Singh* v *Hanuman Dat Narain I L R 26 All 244 Mathuswami Mundali* v *Veeni Chetti I L R 30 Mad 382* discussed and distinguished *Hari Mandal* v *Keshab Chandra Manna 16 C W N 903 Mehdi Hasan* v *Tata Ram I L R 15 All 61* approved *Ram Charan Talukdar* v *Taripulla I L R 39 Calc 774* referred to Where the question arises with reference to Art 154 of the Limitation Act (IX of 1908) it has merely to be stated that there is a doubt as to whether an appeal lies or not in such a case in order to give the applicant the benefit of the longer period The High Court accordingly directed the Sessions Judge to hear an application to revoke a sanction made to him after the expiry of a month from this date *In re North Ex parte Hasluck (1895) 2 Q B 264 Gopal Lal Sahai* v *Bahorni 15 C L J 190* followed POCHAI METEH v EMPEROR (1912)
I L R 40 Calc 239

9 ———— Jurisdiction—*Criminal Procedure Code (Act V of 1898) s 195—Verbal application—Jurisdiction—Revocation—Power of Court granting sanction—Practice* Where a verbal application was made ny counsel for sanction to prosecute under s 195 of the Criminal Procedure Code and granted by the Court but no order could be drawn up as the application was not made upon formal petition *Held* that upon a formal petition being subsequently presented the Court had jurisdiction to grant such sanction the former sanction being inoperative *Held* further that a Judge sitting on the Original Side has no jurisdiction to revoke a sanction previously granted by him and that application for such revocation must be made to a Civil Appellate Bench of the Court *Kali Kinkar Sett* v *Dinobandhu Kundy I L R 32 Calc 379* discussed. THADDEUS v JANAKI NATH SAHA (1912)
I L R 40 Calc 493

10 ———— Second sanction—*Criminal Procedure Code (Act V of 1898) s 195—Subsequent order only a repetition of the first order—Revival of Proceedings—Penal Code (Act XLV of 1860) ss 193 471—Limitation* Where there are two orders purporting to grant sanction to the same prosecution the later order will ordinarily be taken to be merely a repetition of the first and the period of limitation will begin to run from the date of the first order *Durbari Mandar* v *Jajoo Lal I L R 22 Calc 573* referred to DURGA PROSAD PATHAK v LACHMAN BANIA (1913)
I L R 40 Calc 584

11 ———— Disobedience of prohibitory order—*Necessity of application for sanction—Police report setting forth the facts of disobedience and containing a request for prosecution—Criminal Procedure Code (Act V of 1898) s 195 (1) (a)—Penal Code (Act XLV of 1860) s 188* A police report which sets out the facts of disobedience of an order under s 144 of the Criminal Procedure Code prohibiting the slaughter of cows on a certain day and contains a request that the accused should be prosecuted under s 188 of the Penal Code is a sufficient application for sanction within s 195 (1) (a) of the Criminal Procedure Code *Per* CHAPMAN J —No application for sanction is necessary in *cases falling* under s 195 (1) (a) of the Code PANCHU MANDAL v EMPEROR (1913) I L R 41 Calc 14

12 ———— Discretion—*Judicial decisions application of—Criminal Procedure Code (Act V of 1898) ss 4 (t) 195 476 492—S 195 scope of and practice under—Public Prosecutor* S 195 of the Code of Criminal Procedure vests in the Court an absolute discretion as regards granting sanction to prosecute this discretion cannot be restricted by judicial decisions but must be fairly exercised according to the exigencies of each case the Court being astute to see that there is no abuse of the administration of criminal justice *Gardner v Jay L R 29 Ch D 50* and *Saunders v Saunders (1897) P 89* referred to Under s 195 no notice of the application for sanction need issue and the accused person need not even be named The validity of the sanction cannot be questioned in the enquiring or the trying Court *Per* STEPHEN J —Proceedings under s 195 should frequently and even usually be *ex parte* *In re Paree Kunhammed I L R 26 Mad 116 Pampapati Sastri* v *Subba Sastri I L R 23 Mad 210 In the matter of Gauri Sahai I L R 6 All 114 Ram Prosad Roy* v *Soba Roy 1 C W N 400 Radha Nauth Banerjee* v *Kanglee Mollah 1 Marsh 407 Queen* v *Mahomed Hossain 16 W R Cr 37 Sharp* v *Wakefield (1891) A C 173 Khepu Nath Sikdar* v *Grish Chunder Mukerji I L R 16 Calc 730 Raperam Surma* v *Gaurinath Dutt I L R 20 Calc 474 Mahomed Bhakku* v *Queen Empress I L R 23 Calc 532 In the matter of Mutty Lall Ghose I L R 6 Calc 303* cited and discussed by CHAUDHURI J An attorney

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is criminally liable for a false statement in an affidavit made by him in answer to a Rule issued against him under the disciplinary jurisdiction of the Court *In re* AN ATTORNEY (1913)

I L R 41 Calc 446

13 ———— Jurisdiction of High Court and District Court—*District Judge—Criminal Procedure Code (Act V of 1898) s 195 (1) cl (b) and 4 6—Revision—Civil Procedure Code (Act V of 1908) s 115* Neither the High Court nor the District Judge has power under s 4 6 of the Criminal Procedure Code to direct prosecution for an offence committed before a Provincial Small Cause Court *Begu Singh v Emperor I L R 34 Calc 551* referred to The High Court itself is precluded from granting sanction in such a case under s 195 sub s.(1) cl (b) of the Criminal Procedure Code as a Provincial Small Cause Court is no subordinate to it within sub s (c) cl (c) nor can it interfere under sub s (6) with an order of a District Judge revoking a sanction granted by such Small Cause Court *Hamijuddin Mondal v Damodar Ghose 10 C W N 10 6 Girija Sankar Roy v Binode Sheikh 5 C L J 2?? and Muthuswami Mudali v Veeni Chetti I L R 30 Mad 38?* referred to Where the District Judge revoked a sanction granted by a Subordinate Court to a District Magistrate on the ground that a sanction could not be granted to a third party and initiated proceedings under s 4 6 of the Criminal Procedure Code *Held* that he acted illegally in the exercise of his jurisdiction, and that the High Court had power to set aside his order under s 115 of the Code of Civil Procedure (Act V of 1908) *Hamijuddin Mondal v Damodar Ghose 10 C W N 1026* distinguished *In re* RAM PRASAD MALLA (1909)

I L R 37 Calc 13

14. ———— Jurisdiction—Resistance to attachment—*of movables on evidence only of the executing peon—Other evidence called for by the Court but not heard when produced notwithstanding previous summonses on witnesses and adjournments for their appearance—Delay in granting sanction—Criminal Procedure Code (Act V of 1898) s 195* The Court executing a decree has jurisdiction if satisfied on the evidence without cross examination solely of the peon who was alleged to have been resisted in the attachment of movable that a *primâ facie* case had been made out to sanction the prosecution of the persons so resisting execution under s 183 of the Penal Code notwithstanding the fact that the Court had previously called for evidence from both parties issued summonses on their witnesses who were produced on the date of the hearing of the application for sanction and adjourned the case several times for their appearance The High Court deprecated the dilatoriness in disposing of the application by the Court of first instance MAKHAN LAL SAHA v SAROJENDRA NATH SAHA (1920)

I L R 47 Calc 741

15 ———— Offences committed in the Court of a Deputy Magistrate—*Transfer of same from the sub division—Successor in office—Application for sanction to another Deputy Magistrate subsequently posted to the sub-division—Power of latter to grant sanction—Criminal Procedure Code (Act V of 1898) s 195* Where there are several Deputy Magistrates at a place and one of them is transferred the Deputy Magistrate who comes to fill the gap is not the successor in office of the Magistrate *Mohesh Chandra Shah v Emperor I L R 35 Calc 4* referred to Where a proceeding under s 107 of the Code during the course of which a forged patah was filed and evidence given in support thereof was disposed of by H K C a Deputy Magistrate who became afterwards the officer next senior to the Subdivisional Magistrate and on the transfer of the former two other Deputy Magistrates became successively the next senior officers and ultimately K L M a Deputy Magistrate joined the subdivision as the next senior officer and an application was made to him for sanction to prosecute the petitioners for offences under ss 4 1 and 193 of the Penal Code committed in the Court of H K C *Held* that K L M was not the successor in office of H K C and had no power to grant sanction under the circumstances CHINTA CHANDRA ROY v SARAT CHANDRA SINGH (1914) I L R 42 Calc 667

16 ———— Revisional jurisdiction of High Court over Presidency Small Cause Court—*Civil Procedure Code (Act V of 1908) s 115—Criminal Procedure Code (Act V of 1898) s 195—Stage in a judicial proceeding what is—Oath—Delay* A Judge of the Presidency Small Cause Court Calcutta had dismissed six applications for sanction to prosecute the plaintiffs for having made false claims On an application to the High Court under s 115 of the Civil Procedure Code to set aside the orders *Held* that under s 195 of the Criminal Procedure Code the High Court is the superior Court to the Presidency Small Cause Court and has power to deal with the order which was made by that Court *Held* also that an application for leave to sue is a stage in a judicial proceeding where such leave is necessary to give the Court jurisdiction *Held* also that the delay in making the application for sanction to prosecute had been satisfactorily explained and was not in the circumstances such as to prejudice the plaintiffs BUDHU LAL v CHATTU GOPE (1916)

I L R 43 Calc 597

17 ———— Information to the police reported false—No subsequent application to the Magistrate—*Order of Magistrate calling on informant to prove case and examination of witnesses—Grant of sanction—Necessity of sanction when false charge made to the police but not followed by complaint— Complaint —Power of Magistrate to direct prosecution himself in such case—Judicial proceeding —Criminal Procedure Code (Act V of 1898) ss 4 (l) 19 (1) (b) 476* No sanction is necessary under s 195 (1) (b) of the Criminal Procedure Code to prosecute an informant under s 211 of the Penal Code when a false charge has been made by him only to the police *Karim Bakhsh v King Emperor – Cr L J 66 Bhimaraja Venkatesumrulu v Moora Bapulu 13 Cr L J 480 Emperor v Sheikh Ahmad 13 Cr L J 578* followed But sanction is requisite under the section when he has subsequently preferred a complaint to the Magistrate praying for judicial investigation *Queen Empress v Sham Lall I L R 14 Calc 707 Jogendra Nath Mookerjee v Emperor I L R 33 Calc 1 Queen Empress v Sheikh Beari I L R 10 Mad 232* followed When a person who has laid an information before the police reported [illegible] false has not

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subsequently applied to the Magistrate for an investigation or has not impugned the correctness of the police report and prayed for a trial he has not made a complaint' within the meaning of s 4 (h) of the Code An order for prosecution cannot be made under s 476 of the Criminal Procedure Code when the alleged offence under s 211 of the Penal Code has not been committed in Court but in relation to a police investigation only *Dharmadas Kauar v King Emperor 7 C L J 373 Jadunandan Singh v King Emperor 10 C L J 564* followed The procedure of calling on the informant who is reported by the police to have made a false charge before them to prove his case and the examination of witnesses is not contemplated by the Code and the proceeding is not a judicial one within s 476 of the Code *Mouli Durzi v Naurangi Lall 4 C W N 391* followed TAYEBULLA v EMPEROR (1916) I L R 43 Calc 1152

18 ———— Preferring a false charge—*Refusal to revoke by superior Court—Application to High Court to set aside refusal under Criminal Procedure Code (Act V of 1898) s 195 (6) maintainability of—Judges of High Court equally divided in opinion—Senior Judge's opinion to prevail under cl 36 Letters Patent—Criminal Procedure Code (Act V of 1898) ss 429 and 439 inapplicability of to such application—Application to a superior Court under Criminal Procedure Code (Act V of 1898) s 195 to set aside a sanction given by an inferior Court not an appeal within the Indian Limitation Act (IX of 1908) Art 154* Held by the Full Bench (i) An order refusing to revoke a sanction granted by a lower Court is one granting sanction from which an appeal lies to a superior Court under s 195 cl (6) Criminal Procedure Code *Muthusami Mudali v Veeni Chetti I L R 30 Mad 382* followed (ii) When Judges composing a bench of the High Court are equally divided on opinion on hearing an application under s 195 cl (6) of the Criminal Procedure Code against an order of the lower Court in a sanction matter the procedure to be followed is that laid down in cl 36 of the Letters Patent and not the one in s 429 or 439 of the Criminal Procedure Code accordingly the opinion of the senior Judge prevail *Per* CURIAM —The power conferred upon the High Court by s 195 (6) Criminal Procedure Code is not a part of the appellate and revisional jurisdiction of the High Court conferred by Chapters 31 and 32 of the Criminal Procedure Code but it is a special power conferred by s 195 (6) of the Code *Held* by the Division Bench (SUNDARA AYYAR and SPENCER JJ) that an application to a superior Court under s 195 cl (6) Criminal Procedure Code to revoke a sanction granted by an inferior Court is not an appeal within the meaning of Art 154 of the Limitation Act and hence is not governed by the rule of 60 days allowed by that Art for criminal appeals *Per* SPENCER J in the Division Bench —But delay in applying may be a ground for refusing to grant sanction BAPU v BAPU (1912) I L R 39 Mad 750

19 ———— False information to the police followed by a complaint to the Magistrate—*Complaint investigated by the Magistrate—Necessity of sanction to prosecute informant only in respect of the false charge to the police—Criminal Procedure Code (Act V of 1898) s 195 (1) (b).* Where an information to the police is followed by a complaint to the Court based on the same allegations and the same charge and such complaint has been investigated by the Court the sanction or complaint of the Court itself is necessary even for a prosecution of the informant under s 211 of the Penal Code in respect of the false charge made to the police *Tayebullah v King Emperor 24 C L J 131 I L R 43 Calc 1152* approved *Futiram Ruidas v Mahomed Kasem 3 C W N 33* discussed *Jadu Nandan Singh v Emperor I L R 37 Calc 250* distinguished. *Emperor v Hardwar Pal I L R 34 All 522* referred to BROWN v ANANDA LAL MULLICK (1916)

I L R 44 Calc 60

20 ———— Jurisdiction of High Court—*Practice—Procedure—Suit in the Presidency Small Cause Court—Statement made in the course of a judicial proceeding—Sanction refused by Presidency Small Cause Court—Revision by single Judge sitting on the Original Side of High Court—Remand—Powers of the Chief Justice to remit case for retrial by Division Bench of High Court—Civil Procedure Code (Act V of 1908) s 115—Criminal Procedure Code (Act V of 1898) ss 195 (6) and (7) (c) 435 and 439—High Court Rule Appellate Side Ch II r V* The assistance of a Judge of a High Court can in a matter of sanction to prosecute from the Presidency Small Cause Court be invoked only under s 195 (6) of the Criminal Procedure Code Under that provision the only order which such a Judge is competent to pass is to revoke a sanction given or grant a sanction refused by the Subordinate Court He has no jurisdiction to remand the case to the Small Cause Court for further enquiry Under the Rules of Court (Ch II r V) he would have such jurisdiction if this were a matter under s 115 of the Civil Procedure Code but as it falls within s 195 (6) of the Criminal Procedure Code it can be decided only by a Judge or Judges to whom it may have been allocated by the Chief Justice The Judge exercising jurisdiction under s 195 (6) of the Criminal Procedure Code is competent to take additional evidence to enable him to decide whether he should confirm or reverse the order of the Subordinate Court BUDHU LAL v CHATTU GOPE (1916)

I L R 44 Calc 816

21 ———— "Produced" meaning of—*Document called for by a party and brought into Court and referred to by his pleader and the Court—Antecedent forgery and user before the Sub Registrar—Subsequent production of document in Court—Necessity of sanction—Criminal Procedure Code (Act V of 1898) s 195 (1) (c)* Where a document was called for by a party to a proceeding under s 145 of the Criminal Procedure Code brought into Court and referred to by his pleader in argument and by the Magistrate in his judgment though he expressly refrained from any opinion as to its authenticity *Held* that the document was produced in the proceeding within the meaning of s 195 (1) (c) of the Code *Guru Charan Shaha v Girija Sundari Dassi I L R 9 Calc 887 Akhil Chandra De v Queen Empress I L R 22 Calc 1004 Sew Bollol Singh v Ramdhin Dass 9 14 C W N 806* and *In re Gopal Sidheshwar 9 Bom L R 735* referred to Where before complaint made a document has been produced in a Court by a party to a proceeding before it

SANCTION FOR PROSECUTION—contd

the sanction of such Court is necessary for his prosecution in respect of an antecedent forgery and antecedent user before a Sub Registrar *Teri Shah* v *Bulaki Shah* 11 C W N 1 9 *Emperor* v *Bhawani Das* I L R 38 All 169 and *In re Parameswaran Nambudri* I L R 39 Mad 6 followed *Noor Mahomed Cassum* v *Kaikhosru Maneckjee* 4 Bom L R 68 dissented from NALINI KANTA LAHA v ANUKUL CHANDRA LAHA (1917) I L R 44 Calc 1002

22 ———— Procedure—*Propriety of process under s 500 Penal Code—Discharge—Acquittal—Penal Code (Act XLV of 1860) ss 211 500—Criminal Procedure Code (Act V of 1898) s 195* Where an offence though described as an offence under s 500 of the Penal Code still remains an offence punishable under s 211 Process should not issue under the former section on the application of a person discharged or acquitted when the Court has refused sanction under the latter section *Per* RICHARDSON J — The care taken to protect complainants from being harassed by prosecutions for instituting false cases is a clear indication that the Legislature never intended that upon refusal of leave to prosecute under s 211 a person who has been discharged or acquitted or allowed to fall back upon s 500 To permit such a course to be taken would render entirely nugatory the salutary provisions of s 195 of the Criminal Procedure Code The question moreover does not rest entirely upon inferences in regard to the intention of the Legislature The offence charged in the present case though it is described as an offence under s 500 is not altered by that description. It still remains an offence punishable under s 211 When the Magistrate had refused leave to prosecute under the latter section he ought not to have issued process under s 500 PRAFULLA KUMAR GHOSE v HARENDRA NATH CHATTERJEE (1916) I L R 44 Calc 970

23 ———— "Court" — *Court of Justice—Calcutta Improvement Tribunal whether a "Court" —Criminal Procedure Code (Act V of 1898) s 195—Calcutta Improvement Act (Beng V of 1911) ss 70 71 (a) (c) and 77 as amended by the Calcutta Improvement (Appeals) Act (XVIII of 1911)—Evidence Act (I of 1872) s 3* The word "Court" in s 195 of the Criminal Procedure Code has a wider meaning than "Court of Justice" under s 20 of the Penal Code and includes a tribunal entitled to deal with a particular matter and authorized to receive evidence bearing thereon in order to enable it to arrive at a determination upon the question *Raghoobuns Sahoy* v *Kokil Singh* I L R 17 Calc 872 and *Chandi Charan Giri* v *Gadadhar Pradhan* 22 C W N 165 referred to The Tribunal constituted by the Calcutta Improvement Act (Beng V of 1911) as amended by the Calcutta Improvement (Appeals) Act (XVIII of 1911) is a "Court" within the meaning of s 195 of the Criminal Procedure Code *Hari Pandurang* v *Secretary of State for India* I L R 27 Bom 424 distinguished NANDA LAL GANGULI v KHETRA MOHAN GHOSE (1918) I L R 45 Calc 585

24 ———— Sanction by Deputy Collector in appraisement proceedings—*No appeal from orders in such proceeding —Jurisdiction—Subordination of such Deputy Collector to the District Judge or Commissioner of the Division—Bengal Tenancy Act (VIII of 1885) ss 69 and 70—Criminal Procedure Code (Act V of 1898) s 195 (6) (7) (b) (c)* A Collector or a Deputy Collector exercising the powers of a Collector under ss 69 and 70 of the Bengal Tenancy Act (VIII of 1885) is a "Court" within s 195 of the Criminal Procedure Code *Raghoobuns Sahoy* v *Kokil Singh* I L R 17 Calc 872 followed *Abdullah Khan* v *Emperor* I L R 3 Calc 5 referred to Proceedings under s 69 of the Bengal Tenancy Act are civil in nature and the Court of the Deputy Collector acting thereunder is subordinate to that of the District Judge under s 195 (7) *Per* CHITTY J —S 195 (7) (c) is intended to apply only where no appeal lies from any decision of a particular Court and not where a particular order is non appealable Appeals from the Collector under the Bengal Tenancy Act do not *ordinarily* lie to the Commissioner of the Division In some cases they lie to him and in others to the Civil Court The Collector in proceedings under ss 69 and 70 of the Act by reason of s 195 (7) (b) of the Criminal Procedure Code is subordinate to the Court of the District Judge *Per* RICHARDSON J —Cl (c) includes both a particular case or class of cases in which no appeal lies and a Court from which no appeal lies in any case *Nilaran Chandra Chakrabarty* v *Akshoy Kumar Banerjee* 1 C W N 948 referred to *Per* CHITTY J —The words "Principal Court of Original Jurisdiction" do not refer to a Court of any particular class but to a Civil Criminal or Revenue Court according to the nature of the case in which the question of sanction arises *Ajudhia Prasad* v *Ram Lall* I L R 34 All 197 referred to by RICHARDSON J CHANDI CHARAN GIRI v GADADHAR PRADHAN (1917) I L R 45 Calc 336

25 ———— False suit—*application for sanction to prosecute plaintiff for bringing whether Court can grant while ex parte decree remains in force—Revision—Delay* A defendant against whom an *ex parte* decree has been passed is not bound to have that decree set aside before applying for sanction to prosecute the plaintiff for bringing a false suit and such sanction can be given even though the period of limitation for setting aside the *ex parte* decree has expired When an offence against public justice has been committed the offenders are liable to punishment irrespective of the state of affairs in the civil Court Ordinarily delay on the part of a private prosecutor in obtaining sanction in respect of offences against public justice is material as bearing upon the question of *bona fides* but where the Government is in fact the real prosecutor the question of *bona fides* does not arise JUGESHWAR TEPSHAD v RAGHO MISSER 2 Pat L J 688

26 ———— Delay in applying for—*Whether is evidence of mala fides when Government is the applicant—Revision* Generally delay by a private person in applying for sanction to prosecute indicates want of *bona fides* or culpable negligence or laches Where however the real applicant for sanction to prosecute for bringing a false suit was the Government and before the application was made the Criminal Investigation Department of Bihar and Orissa had to make inquiries from the Criminal Investigation Department of the United Provinces and a reference had also to be made [illegible] Legal Remem-

SANCTION FOR PROSECUTION—*concld*

brancer and seven months elapsed between the date of dismissal of the suit and the date of the application *held* that the delay was not such as to show want of *bona fides* and did not amount to wilful negligence THE GOVERNMENT ADVOCATE AND THE PUBLIC PROSECUTOR *v* MAHARAJ SINGH
2 Pat L J 692

27 ———— Duty of Court in granting—*Code of Criminal Procedure (Act V of 1898) ss 195 and 409—Whether Court of Magistrate with first class powers is subordinate to Additional Sessions Judge—Penal Code (Act XLV of 1860) s 211 when sanction should be granted* An Additional Sessions Judge is competent to grant sanction in a matter arising out of a trial before a Magistrate having first class powers In dealing with an application for sanction the sanctioning Court must proceed with caution and discernment and must be guided by two principles namely (i) whether there is a *primâ facie* case against the person for whose prosecution sanction is asked and (ii) whether the real object of the applicant is not to satisfy his private ends or personal spite Before sanctioning a prosecution under s 211 of the Indian Penal Code there must be a reasonable belief in the mind of the Court that there was no foundation for the criminal charge and that in instituting criminal proceedings the complainant acted knowingly without belief in the truth of the allegations made by him or recklessly without caring whether the allegations were true or false KUSOM SAO *v* JANAK LAL
4 Pat L J 374

28 ———— Expiry of sanction before date of complaint—*Plea of guilty at trial—Validity of conviction without sanction—Absence of failure of justice—Criminal Procedure Code (Act V of 1898) s 537 (b)* Section 537 (*b*) of the Criminal Procedure Code applies equally to the case of an expired sanction as to one of a total want of it A conviction of an offence mentioned in s 195 of the Code cannot be reversed or altered on appeal or revision on the ground that the sanction required by the section had expired when the prosecution was initiated unless it is shown that the absence of sanction has in fact occasioned a failure of justice Where the accused pleaded guilty it was further *held* that there had been no failure of justice in the case *Raj Chunder Mozumdar* v *Gour Chunder Mozumdar I L R 12 Calc 176* overruled *Sunder Dasadh* v *Sital Mahto I L R 28 Calc 217* approved *Perumalla Nayudu* v *Emperor I L R 31 Mad 80* referred to KHETRA MOHAN DAS *v* EMPEROR (1920) I L R 48 Calc 867

SANCTION OF COURT

———— for sale of Immovable property—
See TRUSTS I L R 43 Bom 519

SANCTION OF GOVERNMENT

See LOTTERY I L R 42 Bom 676

SANCTION TO SELL

See MAHOMEDAN LAW—WAKF
I L R 37 Calc 870

SANCTION TO SUE

———— to two persons jointly—
See RELIGIOUS ENDOWMENTS ACT (XX OF 1863) ss 14 AND 18
I L R 38 Mad 119?

SANITARY CESS

———— Owners of private latrines connecting with Municipal sewers—
See BOMBAY DISTRICT MUNICIPALITIES ACT 1901 s 59 I L R 44 Bom 527

SANTAL CIVIL RULES

———— r 36—
See DECLARATORY DECREE
6 Pat L J 85

SANTAL PARGANAS

See DECLARATORY DECREE
6 Pat L J 85

SANTAL PARGANAS SETTLEMENT REGULATION 1872

———— s 6—
See EXECUTION OF DECREE
4 Pat L J 49

———— ss 11 24 and 25—*Entry in record of rights effect of—Whether suit maintainable to set aside—Fraud effect of* Where the record of right has been finally published under s 5 a Civil Court has no jurisdiction to question any decision of the settlement officer made during the settlement *Plaintiff s right to a 8 anna share* in an estate having been *recorded* under the Regulation he sued for a partition In the plaint he stated he also claimed the *entire estate* in another suit and prayed *for temporary partition* should only be decreed *on terms to be annulled* if he won his other suit The Court decreed partition without saying whether it was temporary or permanent *Held* (MULLICK J dissenting) (1) that it must be assumed that the Court had granted plaintiff leave under O 11 r 1 to reserve for subsequent decision whether he was entitled to entire estate (2) that plaintiff was not debarred by *res judicata* from claiming the property not awarded to him by a subsequent suit (3) that the entry in the record of rights barred this suit unless he could prove it was fraudulent HARI KRISHNA SEN *v* UMESH CHANDRA DUTT
6 Pat L J 373

SANTAN

———— "Santan" means issue generally and is not limited to male issue KUMUD KRISHNA MANDAL *v* JOGENDRA NATH SARKAR (1917)
21 C W N 854

SANYASIS

See HINDU LAW—SUCCESSION
I L R 39 Bom 169
14 C W N 191

SAPINDAS

See HINDU LAW—STRIDHAN
I L R 43 Calc 944

See HINDU LAW—INHERITANCE
I L R 42 Calc 384

———— consent of remoter—
See HINDU LAW—ADOPTION
I L R 39 Mad. 77

SARANJAM

See BOMBAY HEREDITARY OFFICES ACT 1874 s 15 I L R 44 Bom 237

See REVENUE JURISDICTION ACT s 4 sub s (a) I. L. R. 31 Bom 232

See SANAD I L R 36 Bom 639

——— *Grant of royal share of revenue—Resumption of Saranjam—Lands can be still held on payment of assessment—Suit to recover possession of land—Revenue Jurisdiction Act (X of 1876) s 4—Pensions Act (XXIII of 1871) s 4* It is well established that in the case of Saranjam or Jaghir (the terms being convertible) the grant is ordinarily of the royal share of the revenue and not of the soil and that the burden of proving that in any particular case it is a grant of the soil lies upon the party alleging it. *Krishnarao Ganesh* v *Rangrao 4 Bom H C R (A C J) 1 Ramchandra* v *Venkatrao I L R 6 Bom 598 606* and *Ramkrishnarao* v *Nanarao 5 Bom. L R 983* followed The right to the possession of the land in the case of the Saranjam grant of the royal share of the land revenue does not form part of the Saranjam and is independent of it The Government can therefore resume what they granted as Saranjam is the royal share of the land revenue and the right to the occupation of the land subject of course to the payment of the full assessment can and does survive the resumption of the Saranjam Neither s 4 of the Revenue Jurisdiction Act (X of 1876) nor s 4 of the Pensions Act (XXIII of 1871) bars a suit to recover possession of land the Saranjam rights in which have been resumed by Government GURURAO SHRINIVAS v SECRETARY OF STATE FOR INDIA (1917) I L R 41 Bom 408

——— Inam rights—*Mirasi (permanent tenancy)—Denial of Saranjamdar's title—Attornment to successive Saranjamdars—Estoppel—Claim to hold as Mirasi tenant—Limited interest—Adverse possession* In an ejectment suit brought by an inamdar against persons claiming to hold as mirasi or permanent tenants it was conceded that the inam rights in the land in suit appertained to a saranjam held on political tenure and that the present incumbent of the saranjam was the plaintiff The defendants resisted the plaintiff's claim to eject them on the ground that the inam rights were merely the right to receive the royal share of the revenue and that the proprietary rights in the soil were prior to the date of the grant vested in the grantee of the inam had descended to his heirs independently of the inam and furnished the lease hold or mirasi rights *Held* that the defendants contention involved the denial of the title to the reversionary rights in the lands in the defendants occupation of the successive saranjamdars approved by Government The defendants had however been continuously paying rent for their holding to the successive saranjamdars including the plaintiff They were thus estopped by attornment from disputing the plaintiff's title *Vasudev Daji* v *Babaji Ranu 8 Bom H C R (A C) 175* and *Doe dem Marlow* v *Wiggins 4 Q B 367* referred to The rights of successive holders of hereditary and impartible estates not governed by the ordinary rules of inheritance but subject to the condition that Government shall approve of the heir may be barred by adverse possession *Tekait Ram Chunder Singh* v *Srimati Madho Kumari L R 12 I A 197* referred to Where in an ejectment suit by an inamdar it was shown that the defendants for more than twelve years before the suit openly asserted their claim to hold as permanent mirasi tenants *Held* that the defendants had acquired a title to the limited interest claimed by them and could not be ejected TRIMBAK RAMCHANDRA v SHEKH GULAM ZILANI (1909) I L R 34 Bom 329

SARANJAM—*concld.*

——— *Succession to Saranjam—Title by inheritance—Saranjam rr 2 and 5 under Act XI of 1852—Suit by previous holder of Saranjam—Subsequent holder filing a suit for the same relief—Res judicata—Civil Procedure Code (Act V of 1908) s 11—Adverse possession against the previous holder—Rights of successive holder barred by limitation—Establishment of right to levy assessment—Indian Limitation Act (IX of 1908) Sch I Art 130* The plaintiff was a Saranjamdar of an ancestral and hereditary Saranjam village where the land in suit were situate The lands were in defendant's possession on tenure in consideration of rendering certain Shetsanadi services The defendants having no longer rendered any service the plaintiff prayed for possession of the lands or in the alternative for a declaration establishing his right to levy assessment The defendants contended that the suit was barred by limitation and also by *res judicata* in consequence of a previous decision in a suit (No 4 8 of 1888) between the plaintiff's brother and the predecessor in title of the defendants for substantially the same reliefs as claimed by the plaintiff *Held* that the previous decision operated as *res judicata* as against the present plaintiff because he was claiming under the previous holder and was litigating under the same title as the previous holder in 1888 *Held* further that since the decision in suit of 1888 the defendants and their predecessors in title had been holding adversely without payment of assessment and therefore the claim for assessment was barred by limitation inasmuch as neither special mode of devolution nor an incapacity of alienation would prevent limitation operating against an estate *Padlabai and Ramchandra Konker* v *Anantrav Bhagvant Deshpande I L R 9 Bom 198* followed *Per* HEATON J The words between parties under whom they or any of them claim litigating under the same title in s 11 of the Civil Procedure Code 1908 are intended to cover and do cover a case where the later litigant occupies by succession the same position as the former litigant The words of the section are not intended to make any distinction between different forms of succession MADHAVRAO HARIHARRAO v ANUSUYABAI (1916) I L R 40 Bom 606

SARANJAM RULES

See SARANJAMDAR I L R 45 Bom 694

SARANJAMDAR

——— *Grant of sub Inam and Mirasi rights—Enjoyment of sub Inam for statutory period—Sub Inam binding on succeeding Saranjamdar—Saranjam r 5—Indian Limitation Act (IX of 1908) s 28 Art 1 0* The defendant was the Saranjamdar of the village of Bagni which was descendible by inheritance to the eldest member of his family An ancestor of his had many years ago granted a sub-Inam of two fields in to an ancestor of the

SARANJAMDAR—*concld*

plaintiff since when the plaintiff's family enjoyed the lands rent free After the introduction of the survey settlement into the village in 1908 the defendant levied assessment for the lands from the plaintiff The plaintiff having sued to recover the amount of the assessment so levied from him —*Held* that the grant of a sub Inam made by the Saranjamdar was binding on his successors inasmuch as the Saranjamdar had, on the date of the subgrant absolute interest in the estate *Dosibai v Ishvardas Jagjivandas (1891) 15 Bom. 222* applied *Held* further that a suit to levy assessment on rent free lands being a suit for possession of property under s 28 of the Indian Limitation Act 1908 the effect of the failure to institute such a suit within the time allowed by Art 130 of the Act was the extinguishment of the right to levy the assessment *Abhoy Churn Pal v Kally Pershad Chatterjee (1880) 5 Calc 949* followed. SAKHARAM GOVIND v TRIMBAKRAO PANCHANDRARAO (1920)
I. L. R. 45 Bom. 694

SARANJAMI

——— meaning of—

See PATNI LEASE.
25 C W N 308

SARBARAKARS

——— in Orissa—

See LAND TENURE L R 45 I. A 246
I L. R 46 Calc. 378

——— *Sarbarakar in Orissa*—*status of, if that of tenure holder—Dalbehera jagirs—resumption and settlement of—Effect—Lands reserved to Dalbeheras at resumption tenure in* The *jagirdars* of the military *jagirs* into which under Native Princes the greater part of Killah Khurdah (in Orissa) was parcelled out (styled Dalbeheras) and native revenue officers known as Pradhans, Bhuimals Kotekharans, Kowri Bhagias, when the *jagirs* were resumed by the British Government engaged with Government under the denomination of *sarbarakars* for the collection and payment of the revenue assessed by it *Held* on the evidence, that although from 1818 onwards the tendency of Government and of the majority of its officers was to regard the *sarbarakars* as mere office holders, they themselves had never before 1861 distinctly acknowledged that this was their position and on the other hand had asserted their status as tenants and there were circumstances connected with their tenure of the lands which militated against the Government s view of their position as servant and their status under their engagement with Government was something higher than that of servants That from 1861 to 1896 defendant No 1 the present *sarbarakar* and his father before him were regarded and treated as tenants and they have successfully asserted their status and maintained their possession as such. That the defendant No 1 s status is that of a tenure holder *Sarbarakars* who were originally Dalbehera *jagirdars* could not in any case be ejected from lands which were reserved to the Dalbeheras at the general resumption of the *jagirs* KRIPA SINDHU POY v PARMANAND DAS (1913) 18 C W N 74

SARBARAKARI TENURE.

See BENGAL RENT ACT 1865 s 13.
2 Pat L. J 75

SARBARAKARI TENURE—*concld*

See LANDLORD AND TENANT
14 C W N 339

——— *Tenure holder of mouzahs in Khurdah in Orissa—Liability of Sarbarakar to dismissal for misconduct—Penalties attached to dismissal—No heritable or transferable right in office of Sarabarkar* In this case which related to the tenure of a Sarbarakar in Orissa, and to the question whether the first defendant was a tenure holder under the plaintiff or merely a Sarbarakar *Held* on the evidence (reports and other papers in Selections from the correspondence on the settlement of the Khurdah Estate in the district of Puri, Vol. I and II. published in 1879 and 1881) that Sarbarakars in Khurdah had under the Government no heritable or transferable right in their office of Sarbarakar or in the Sarbarakari jagirs that they were liable to be dismissed for misconduct and that on dismissal they lost all right to occupy any Sarbarakari jagirs and that on the termination of a settlement they were bound to enter into a fresh engagement with the Government if they wished to be continued in the office of Sarbarakar. *Saddanando Maiti v Nowrattan Maiti 8 B L R 280 16 W R 289* dissented from *Held* therefore (reversing the decision of the High Court), that the first defendant was not a tenure-holder that he was liable to be dismissed for misconduct from his office of Sarbarakar that he was rightly dismissed from that office and that on his dismissal he ceased to be entitled to hold the Sarbarakari lands in mouzah Bande and that except as to the Sarbarakari lands in mouzah Panasbasta the plaintiffs were entitled to the decree in ejectment and for possession and to the declaration of title which the Subordinate Judge gave to them. PARAMANANDA DAS GOSWAMI v KRIPA SINDHU POY (1916) I. L. R 46 Calc 378

SARDESHMUKHI HAQ

See PENSIONS ACT (XXIII OF 1871) ss 4 AND 6 I. L. R. 45 Bom. 196

SARDRAKHTI

See PUNJAB PRE EMPTION ACT 1913 s. 3
I. L. R. 1 Lah. 567

SARSA WANTA LAND

See GUJERATH TALUKDARS ACT (BOM. ACT VI OF 1888) s. 31
I. L. R 35 Bom. 97

SATI.

See PENAL CODE s. 306
I. L. R 36 All. 26

SATISFACTION

See CIVIL PROCEDURE CODE (1882), s. 257A I. L. R 39 Bom 219

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XXI R 2.
I L. R 40 Bom. 333

SATTA.

See CONTRACT ACT 1872 ss. 30 AND 65
I L. R 42 All 449

SATYAGRAHA MOVEMENT

See HIGH COURT JURISDICTION OF
I. L. R 44 Bom 418

SAYADS

——— of Khatkhanda—

See CUSTOM (SUCCESSION)—
I L R 2 Lah 383

SCANDALOUS MATTER

See AFFIDAVIT 14 C W N 153

SCHEDULED DISTRICTS ACT (XIV OF 1874)

——— Whether applicable to South Par ganas—

See JURISDICTION I L R 42 Calc 116

——— s —R 44 not ultra vires—*Jurisdiction of High Court over conviction and sentences by Mewas Agent* R 44 framed by the Government of Bombay under the Scheduled Districts Act 1874 is not *ultra vires* The High Court of Bombay may therefore take cognizance of any case decided by the Mewas Agent on the petition of a convicted party and if it thinks fit send for the proceeding and pass a fresh decision EMPEROR v NAZAR MAHOMED (1917)
I L R 41 Bom 657

——— rr 8 16—

See AGENCY RULES OF GODAVARI DISTRICT I L R 41 Mad 325

SCHEME

See RELIGIOUS ENDOWMENT
I L R 43 Calc 493

SCHOLARSHIP

See DEKKHAN AGRICULTURISTS RELIEF ACT s 2 I L R 36 Bom 199

SCHOOLMASTER

——— *Contract of service—Termination by notice—Reasonable notice what is in case of schoolmaster—Custom how proved* One G H W was appointed a teacher at the Armenian College Calcutta for a period of three years from the 1st March 1912 After the expiry of the period he continued in the employ of the College until July 1916 when he received notice terminating his service as from the 1st August and in lieu of a month s notice was paid a month s salary and a certain sum of money for a month s board and lodging *Held* that he was entitled to a reasonable notice and that in such a case in the absence of misconduct either three months notice or a term s notice would be reasonable notice *Toll v Kenrich 9 Exch 151* referred to *Held* further that on the evidence adduced no custom had been established by virtue of which the plaintiff's employment could be terminated by a month s notice Usage is proved by the oral evidence of persons who become cognisant of its existence by reason of their occupation in the particular trade or business and the evidence establishing custom or usage must be clear convincing and consistent and to prove an usage in a particular trade it must be shown that the usage is consistent and reasonable and was universally acquiesced in and that everybody acknowledged it in the trade and knew of it or might know of it if he took the pains to enquire WITTENBAKER v J C GALSTAUN AND OTHERS (1917) I L R 44 Calc 917

SCIENCE—

——— Gains of—whether partible property of a joint family—

See HINDU LAW—JOINT FAMILY PROPERTY I L R 2 Lah 40

SCOPE OF AGENCY

See PRINCIPAL AND AGENT
I L R 43 Calc 511

SCREENING OFFENCE

See PENAL CODE (ACT XLV OF 1860) ss 213 214 I L R 37 Bom 658

SCRIBE

——— attestation by—

See EVIDENCE ACT 1872 s 68
I L R 35 All 254
1 Pat L J 129

See MORTGAGE (MISC) 4 Pat L J 511

See MORTGAGE BOND
I L R 46 Calc 522

See TRANSFER OF PROPERTY ACT 1882 s 59 I L R 44 Bom 405

SEA CUSTOMS ACT (VIII OF 1878)

——— notifications under—

See CONTRACT ACT (IX OF 1872) s 56
I L R 40 Bom 301

——— ss 167 (3) 182 188 191—*Attachment of silver ingots by Police—Inquiry by Customs clerk in absence of plaintiff—Sentence of confiscation and fine passed by the Collector of Customs merely on the report of the clerk—Civil suit by the plaintiff to recover value of silver confiscated and amount of fine levied—Jurisdiction of Civil Court to try the suit* A Sub Inspector of Police while conducting a search of the plaintiff s house for a criminal offence found no incriminating articles but came across silver ingots which he attached and sent over to a clerk in the Customs Department The clerk suspected that the silver was imported into British India without payment of duty made an inquiry in plaintiff s absence and submitted a report to the Collector of Customs The Collector without taking any evidence himself and without hearing the plaintiff passed an order confiscating the silver under the provision of s 182 and fining the plaintiff in a sum of Rs 1 000 under s 167 (3) of the Sea Customs Act 1878 The plaintiff sued to recover the value of the silver confiscated and the amount of the fine levied but the trial Court rejected the claim on the ground that it had no jurisdiction to hear the suit as the Collector s decision was final under the provisions of s 182 of the Act The plaintiff having appealed —*Held* that the jurisdiction of the Civil Court to hear the suit was not ousted if it appeared that there had been no legal adjudication of the matter by the Collector in accordance with the provisions of the Sea Customs Act 1878 GANESH MAHADEV v THE SECRETARY OF STATE FOR INDIA (1918)
I L R 43 Bom. 221

SEAMAN

See MERCHANT SEAMEN ACT (I OF 1859) s 83 CL 4 I L R 39 Bom 558

SEARCH

See CRIMINAL PROCEDURE CODE—

——— ss 96—105—

s 103 I L R 42 All 67

s 165 I L R 38 All 14

——— formalities of—

See RIOTING I L R 41 Calc 836

——— irregularities in—

See DACOITY I L R 41 Calc 350

——— *Search by Police officers*

Power to search the house of an accused for specific documents and things—Resisting such search—Criminal Procedure Code (Act V of 1898) ss 94 165—Penal Code (Act XLV of 1860) s 353 Ss 94 and 165 of the Criminal Procedure Code extend to accused persons The latter section authorizes a search of the house of the accused for specific documents and things necessary to the conduct of an investigation into an offence *Mahomed Jackriah & Co v Ahmed Mahomed I L R 15 Calc 109* followed *Nizam of Hyderabad v Jacob I L R 19 Calc 52* referred to *Bajrangi Gope v Emperor I L R 38 Calc 304* and *Prankhang v King Emperor 16 C W N 1078* commented on and explained *Ishwar Chandra Ghoshal v Emperor 12 C W N 1016* distinguished Where information was laid at the thana of criminal breach of trust by a servant of a particular sum of money and he was arrested and thereafter the sub inspector of Police proceeded with the informant and searched a house in the joint possession of the suspect and his brothers whereupon they and others resisted the search and assaulted the sub inspector and confined and assaulted the informant *Held* that the search was lawful under s 165 of the Criminal Procedure Code and that the conviction therefor must be upheld BISSAR MISSER v EMPEROR (1913)

I L R 41 Calc 261

SEARCH FOR ARMS

See TRESPASS I L R 39 Calc 953

——— *Right of Magistrate to search for arms—Arms Act (XI of 1878) s 25 Judicial functions—Trespass—Criminal Procedure Code (Act V of 1898) ss 36 96 105—Act XVIII of 1850* In a suit for trespass against the District Magistrate instituted by one of the zamindars whose cutcherry had been searched and no arms of any kind found *Held* (reversing the decision of the first Court and of the majority of the Appellate Court and upholding the decision of BRETT J) that the search was warranted by the Code of Criminal Procedure (Act V of 1898) A serious offence had been committed against the public tranquillity into which it was the duty of the District Magistrate to enquire and by virtue of his superior rank he was at Jamalpore the proper person to conduct the enquiry By s 36 Sch III and s 96 of the Code the power of issuing a search warrant was among his ordinary powers and therefore under s 105 he had power to direct a search to be made in his presence if he thought it advisable to do so That being so it was unnecessary to decide on the other defences set up but *semble* (agreeing with the majority of the Court of Appeal) that the District Magistrate not having complied with the preliminary condition prescribed by s 25 of the Arms

SEARCH FOR ARMS—*concld*

Act (XI of 1878) could not defend his action under that statute Also (agreeing with BRETT J) that the District Magistrate in directing a general search of the plaintiff's cutcherry in view of an enquiry under the Criminal Procedure Code was acting in the discharge of his judicial functions and had it been necessary might have appealed for protection to Act XVIII of 1850 CLARKE v BRAJENDRA KISHORE ROY CHOWDHRY (1912) I L R 39 Calc 953

SEARCH FOR EXPLOSIVES

See MAGISTRATE I L R 39 Calc 119

SEARCH WARRANT

See MAGISTRATE JURISDICTION OF I L R 39 Calc 403

See PENAL CODE ACT (XLV OF 1860) ss 332 323 I L R 37 All 353

See PUBLIC GAMBLING ACT (III OF 186) s 5 I L R 34 All 59

See UNITED PROVINCES EXCISE ACT (IV OF 1910)—

s 60 I L R 35 All 545

s 63 I L R 35 All 358

——— Endorsement of warrant by officer to whom issued—

See PUBLIC GAMBLING ACT 1867 ss 3 4 5 10 AND 11 I L R 42 All 385

——— issue of—

See CRIMINAL PROCEDURE CODE s 96 22 C W N 1598

——— *Search warrant for production of a person confined—Form of warrant—Use of warrant prescribed in Form VIII Sch V—Legality of warrant—Criminal Procedure Code (Act V of 1898) s 100* It is immaterial what form is used for a search warrant under s 100 of the Criminal Procedure Code provided that the substance of it complies with the requirements of the section A search warrant intended to be issued under s 100 of the Criminal Procedure Code and drawn up in accordance with Form VIII Sch V relating to search warrants under s 96 but with alterations adapted to meet the requirements of the former section is legal *Gurameah v King Emperor 16 C W N 56* approved *Bisu Haldar v Emperor 11 C W N 836* distinguished LEGAL REMEMBRANCER v MOZAM MOLLA (1918) I L R 45 Calc 905

——— *Power of Magistrate to issue same—Condition of jurisdiction—Pendency of enquiry trial or other proceeding—Existence of materials on which he can form an independent opinion as to the necessity of granting it—Opinion of police officer as to such necessity insufficient—Criminal Procedure Code (Act V of 1898) s 96 (1)* A Magistrate must under s 96 (1) paragraph (3) of the Criminal Procedure Code apply his mind to the question whether the purposes of any enquiry trial or other proceeding under the Code will be served by a general search and unless there are materials before him connecting the person against whom the warrant is applied for with the offences alleged upon which he can come to an independent decision on the point he has no power to issue a search warrant He cannot grant such warrant simply because a

SEARCH WARRANT—*contd*

police officer informs him that it is necessary and asks him to do so *Per* CHAUDHURI J A Magistrate has no power to issue a search warrant under paragraph (3) when there is no enquiry trial or other proceeding under the Code pending before him but there is only some investigation into alleged offences being made by the police *Clarke v Brojendra Kishore Roy Chowdhury I L R 39 Calc 953* distinguished T R TRATT v EMPEROR (1920) **I L R 47 Calc 597**

———— *Purposes of enquiry trial or other proceeding—Legality of warrant for production of infringing books plates letters and orders relating thereto to be dealt with under s 10 of the Copyright Act—Order staying execution of warrant on the passing of a bond for the production of infringing book etc in Court—Legality of such order—Criminal Procedure Code (Act V of 1898) s 96—Indian Copyright Act (III of 1914) ss 7 10* The Magistrate has power under s 96 of the Criminal Procedure Code to issue a search warrant for the production of copies of the infringing books proof plates printed and set up matter together with letters and orders with reference to the book for the purpose of making an order under s 10 of the Indian Copyright Act (III of 1914) Where the person against whom such search warrant was issued prays for the stay thereof and offers and undertaking not to sell copies of the infringing books but to produce them before the Court whenever required the Magistrate has jurisdiction to stay execution of the warrant conditionally on the execution of a bond to produce the copies in Court *Purna Chandra Bandopadhya v Sasi Bhusan Mullick* " C W N 5° distinguished KISHORI MOHAN BAGCHI v HARI DAS BYSACK (1919) **I L R 47 Calc 164**

SEARCH WITHOUT WARRANT—

———— *Power of the police to search the house of an absconding offender generally for stolen property on information of dacoity against him—Legality of Search—Criminal Procedure Code (Act V of 1898) ss 94 and 165—Rioting—Common object to resist such search—Right of private defence—Penal Code (Act XLV of 1860) ss 99 14 353 353* S 165 of the Criminal Procedure Code does not authorize a general search for stolen property in the house of the absconding offender against whom an information has been laid of having committed a dacoity It refers only to specific documents or things which may be the subject of a summons or order under s 94 of the Code and the latter does not extend to stolen articles or any incriminating document or thing in the possession of the accused *Ishuar Chandra Ghosal v Emperor 12 C W N 1016* referred to Where a Sub Inspector on receiving information of the commission of a dacoity searched the house of one of the alleged offenders accompanied by the complainant and the village officer but without a search warrant whereupon they were beaten by the petitioners who were charged with and convicted of rioting with the common object of resisting the search assault and causing hurt under ss 147 3 3 and 353 of the Penal Code —*Held* that the search was illegal and that the common object having failed the conviction under s 147 was bad BAJRANGI GOPE v EMPEROR (1910) **I L R 38 Calc 304**

SEAWORTHINESS

See BILL OF LADING **I L R 38 Mad 941**

SEBAIT

See BUSTEE LAND **I L R 41 Calc 104**

See LIMITATION **L R 41 I A 267**

See SHEBAIT

———— indemnity to estate of—

See PARTIES **I L R 37 Calc 229**

SECOND APPEAL

See APPEAL **I L R 38 Calc 391**

See CIVIL PROCEDURE CODE 1882 ss 584 585 **I L R 34 All 579**

See CIVIL PROCEDURE CODE 1908—

ss 14 151 O XLVII R 1 **I L R 32 All 71**

ss 100 to 104 and O XLII

s 110 O XLV R 5 **I L R 42 Bom 609**

O XLI RR 1 AND 3, **I L R 43 All 660**

O XLI R 23 AND 25 **4 Pat L J 645**

See COURT FEES ACT 1870 s 17 **I L R 36 Bom 628**

See CUSTOM OR USAGE **I L R 45 Calc 285**

See EASEMENT **I L R 1 Lah 206**

See ESTOPPEL **L R 44 I A 213**

See EVIDENCE ACT 1872—

s 32 **3 Pat L J 306**

32 (5) **I L R 39 All 426**

See EXECUTION OF DECREE **I L R 40 Calc 45**

See HOMESTEAD LAND **I L R 42 Calc 638**

See JUDGMENT **2 Pat L J 8**

See JURISDICTION **L R 46 I A 140**

See LIMITATION ACT (IX OF 1908) s 5 **I L R 38 Bom 613**

See MADRAS ESTATES LAND ACT (I OF 1908) s 192 **I L R 38 Mad. 655**

See ORISSA TENANCY ACT 1913 s 31 **3 Pat L J 351**

See POSSESSORY SUIT **I L R 45 Calc 519**

See PRE EMPTION **I L R 37 All 524**

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887) SCH II ARTS 3 AND 28 **I L R 37 Mad 533 538**

ART 8 **I L R 41 Bom 367**

ART 13 **I L R 39 Bom. 131**

See REMAND **I L R 43 Calc 1104**
I L R 42 Calc 888

See RENT **I L R 38 Calc 278**

See REVIEW **I L R 41 Calc 809**
I L R 44 Calc 1011

SECOND APPEAL—*contd*

by both parties to be false *Held* on second appeal that the High Court should proceed not on the pleadings but on the facts found. RAM NARESH OJHA v GOURI SHANKAR (1917)
22 C W N 149

14 ———— *Remand—whether court will remand in second appeal for admission of Record of Rights which was not in existence at the time of trial* The court will not remand a case for a fresh hearing in order that a Record of Rights which was published after the decision of the first Court might be taken into consideration. IMTIAZ HUSSAIN KHAN v BENGALI NONIA 2 Pat L J 564

15 ———— *Decree — Execution of decree—order setting aside sale on ground of fraud whether second appeal lies from—Code of Civil Procedure (Act V of 1908) ss 2 47 O XXI r 90 and O XLIII* It is not open to a party to impeach a sale under s 47 of the Code of Civil Procedure 1908 on the ground of fraud in conducting the sale If a Court professing to act under s 47 sets aside a sale on the objection of the judgment debtor the order setting aside the sale is not a decree O XLIII provides for an appeal from an order setting aside a sale on the ground of irregularity or fraud in publishing or conducting the sale but no second appeal lies from such an order O XXI r 90 covers a case of fraud committed after the publication of the sale proclamation Where the decree holder agreed not to hold the sale if payment was made within a certain time and he then fraudulently proceeded to sell the property in contravention of this arrangement *Held* that this amounted to fraud in the matter of the conduct of the sale SHEIKH MAULA BUX v RAGHUBAL GANJHU 3 Pat L J 645

16 ———— Findings on facts of lower Appellate Court should be clear for the High Court in second appeal cannot go behind them. HARIPADA MUKHERJEE v PADHA BULLAV PAL (1919) 23 C W N 1048

17 ———— *Filed originally as a revision and allowed by admitting Judge to be converted into an appeal on deposit of Court fees—whether the order is open to objection at the hearing—Limitation—date on which appeal must be held to have been presented—sufficient cause for extending period—Indian Limitation Act IX of 1908 s 5* A case was decided by the Lower Appellate Court on the 3rd of March 1915 and an application for revision was filed in the Chief Court on the 4th of June 1915 i e. within ninety days When it was pointed out to counsel who filed the revision that an appeal lay he merely stated that he had filed the revision instead of an appeal because he relied mostly on facts and not on law The application coming on for preliminary hearing before a Judge in chambers he held that no revision lay as the defendant could file a second appeal and directed notice to issue to the opposite party After hearing respondent's counsel the Judge by his order dated the 7th of February 1916 allowed the petition for revision to be treated as a second appeal subject to the payment of the necessary Court fee within one week The Court fee was accordingly paid on the 11th of February 1916 The appeal coming on for hearing before a Division Bench it was contended on behalf of the respondent that it was time barred. *Held* that the appeal was one which under the rules of the Court had to be heard by a Division Bench, and that the order of the single Judge who admitted it was subject to all just exceptions and to any thing which might be urged at the hearing The appeal could not be considered to have been presented till the date on which the memorandum of appeal was properly stamped and as there was no sufficient cause for extending the time under s 5 of the Limitation Act the appeal was barred by time *Ram Tahal Singh v Din Pai (I L R 38 All 310)* and *Resal Singh v Shadi (95 P R 1917)* followed *Per* SCOTT SMITH J It was argued here that the Judge in Chambers who allowed the petition for revision to be treated as an appeal in reality extended the time for payment of the Court fee within the meaning of s 149, Civil Procedure Code The appeal however was one which under the rules of the Court has to be heard by a Division Bench and we are of opinion that the Judge who admitted it did not intend to decide any question of limitation He could not admit the appeal at all until it was properly stamped and his order of admission was of course subject to all just exceptions and to anything which might be urged at the hearing UMED ALI v MUNICIPAL COMMITTEE JHANG MAGHIANA I L R 2 Lah 1

18 ———— *Power of Judicial Commissioner on second appeal to interfere with concurrent findings of fact of the lower Courts—Omission to decide real question in case or frame issue on it—Wrong decision on evidence—Civil Procedure Code (Act V of 1908) s 100* In this case the Judicial Commissioner in a second appeal set aside the concurrent findings of fact of the Courts below in favour of the appellants on the grounds that the real question in the case had not been considered nor had an issue been framed on it and that those Courts had wrongly decided that on the evidence there was fraud on the part of the respondent The Judicial Commissioner found that there was no evidence to support the finding of fraud and that the real question in the case should on the evidence have been found in favour of the respondent and made a decree in his favour *Held* that under the circumstances of the case the Judicial Commissioner had on the terms of s 100 of the Civil Procedure Code 1908 power to act as he had done and to decide what was the real question in the case notwithstanding that an issue had not been framed on it DAMUSA v ABDUL SAMAD (1919)
I L R 47 Calc 107

19 ———— *Court sale—Application to recover deficiency of price from a defaulting purchaser—Civil Procedure Code (Act V of 1908) O XXI r 71—Claim for rupees less than five hundred—Application must be treated as one made in execution of a Small Cause Court decree—No Second Appeal lies* The plaintiff decree-holder applied under O XXI r 71 Civil Procedure Code 1908 to recover deficiency of price from a defaulting purchaser The claim was made for rupees three hundred and sixty Both the lower Courts disallowed plaintiff's claim On appeal to the High Court a preliminary objection was raised that no second appeal lay *Held*, upholding the objection that the application made by the plaintiff must be treated as one made in execution of a Small Cause Court decree

SECOND APPEAL—*contd*

and there was no second appeal from such an application. RAJACHARYA v CHENNAPPA (1920) I L R 45 Bom 223

20 ——— *Held* that a memorandum of second appeal to the High Court must be accompanied by a copy of the judgment of the Court of first instance and if the latter is not presented till after the period of limitation has expired, the appeal should ordinarily be rejected as barred by limitation. *Dhanpat Mal v Mela Mal* (6 *P R* 191) followed MOLU MAL v SRI RAM I L R 2 Lah 227

20 (*a*) ——— *Misconstruction of a document does not always confer a right of second appeal* It must be shewn that there is a question of the legal effect of a document of title or a contract KULDIP NARAYAN RAI v BANWARI RAI 5 Pat L J 251

20 (*b*) ——— *Held* that where the question of burden of proof involves a question of custom no second appeal is competent without a certificate MILKHI v MAST PUNNI I L R 2 Lah 348

21 ——— *Held* that although the High Court in second appeal is bound by the findings of the lower Court such findings cannot stand when they have been arrived at on a consideration of the documentary evidence alone and without taking into consideration the oral evidence in the case BANKAWI RAI v KESHORI MANDAL 6 Pat L J 72

22 ——— *Findings of fact when can be challenged in*—In a suit for khas possession the defendants pleaded that they held under a lease The Court of Appeal below found that the lease required to be proved that there was no document evidencing settlement nor in fact any evidence in settlement at all and that though there were two rent receipts they were not properly proved In the Court of first instance the said rent receipts were admitted in evidence without objection by the plaintiffs Further as a matter of fact there was evidence both oral and documentary about the settlement *Held* that the rent receipts having been admitted in evidence without objection in the Court of first instance no objection could be taken in the appellate Court that they were not properly proved. *Held* further that when there was evidence of the settlement in question the finding of fact arrived at by the lower appellate Court on the point could be successfully challenged in second appeal 25 C W N 881

23 ——— *Finding of fact arrived at on consideration of evidence not admissible* The Lower Appellate Court in considering the question whether plaintiff had proved that he was a minor when he executed a certain mortgage referred to a judgment which was not admissible in evidence but which he considered could not be wholly ignored in a subsequent case in which plaintiff's age was in issue *Held* that a finding of fact arrived at on consideration of evidence which is inadmissible and which proceeds partly on such evidence can be assailed in second appeal *Mussammat Sumitra Kuer v Ram Kuar* (37 Indian cases 561) followed BALWANT SINGH v BALDEV SINGH I L R 2 Lah 271

SECOND APPEAL—*concld*

24 ——— *Onus probandi—mortgage—admission by mortgagors before Sub Registrar of receipt of full consideration—onus on them to prove non receipt* R and others the defendants executed a mortgage in favour of G R the plaintiff for Rs 4 580 made up of sums due to previous mortgagee previous debts due on *bahi* account price of buffaloes and payment of debts due to other persons Before the Sub Registrar the executants admitted receipt of full consideration but at mutation they stated that the whole of the consideration had not been received Mutation was therefore refused and G R was forced to bring the present suit for possession as mortgagee The first Court dismissed the suit holding that plaintiff had failed to prove that consideration had passed and the District Judge on appeal confirmed the dismissal *Held* that the question of *onus probandi* arising in this case was a question of law rendering a second appeal competent *Held also* that the admission before the Sub Registrar that full consideration had been received was a clear one and the *onus* to show that consideration had not passed in full was therefore upon the defendants who had made the admission *Kishen Chand v Sohan Lal* (25 Indian cases 913) followed GANGA RAM v RULIA I L R 2 Lah 249

SECOND MARRIAGE

See MAHOMEDAN LAW—BIGAMY I L R 39 Calc 409

SECOND MORTGAGE

See MORTGAGE I L R 45 Calc 702

SECOND MORTGAGEE.

——— claim of—

See MORTGAGE I L R 37 Calc 907

——— Sale by—

See MORTGAGE I L R 47 Calc 662

——— suit by for surplus proceeds—

See LIMITATION I L R 41 Calc 654

SECOND PROBATE

——— duty on—

See PROBATE I L R 43 Calc 625

SECOND SALE

See PATNI SALE I L R 47 Calc 780

SECOND SANCTION

See SANCTION FOR PROSECUTION I L R 40 Calc 584

SECOND TRIAL

See AUTREFOIS ACQUIT I L R 41 Calc 1072

SECONDARY EVIDENCE

See EVIDENCE I L R 38 All. 494

See EVIDENCE ACT

——— of Parsi marriage—

See PARSI MARRIAGE AND DIVORCE ACT (XV OF 1865) ss. 3 6 8 AND 9 TO 14 I. L. R 45 Bom. 146

SECRETARY OF STATE FOR INDIA

1 ———— *Pay and Pension —Cause of action—Pensions Act (XXIII of 1871) s 4* The plaintiff who was in the Educational Department drawing a salary of Rs 150 a month was in 1881 employed by the Government on special duty under an agreement one of the terms being from the 1st September 1881 his pay will be raised during good behaviour to Rs 300 a month It was assumed that this meant for the term of his natural life The special duty was completed but the plaintiff in spite of his protests was retained on deputation till 190? when he was made to revert to the Educational Department and was retired in 1904 Since or from shortly before his retirement he was paid only Rs 150 a month In an action instituted by the plaintiff against the Secretary of State for a declaration that he was entitled to be paid Rs 300 a month for his natural life and for arrears on the basis of that figure —*Held* that the plaintiff must be taken to have treated the whole of his service under Government as one service and that anything payable to him after the termination of that service was in the nature of a pension within the meaning of s 4 of the Pensions Act of

SECRETARY OF STATE FOR INDIA—*contd*

1871 and hence the suit was not maintainable SARAT CHANDRA DAS *v* SECRETARY OF STATE FOR INDIA (1910) I L R 38 Calc 3 8

2 ———— *Suit against in respect of illegal order of District Magistrate under Assam Labour Emigration Act (VI of 1901) s 91 and also for alleged defamation in a Government order—Damage remoteness of—Liability of defendant under the Government of India Act 1858 not liable here on the ground that the order was made in the course of employment nor for acts done by Government servants in exercise of statutory powers—Alleged ratification by the Local Government—Government order—Absolute privilege* Suit by the plaintiff who represented the Assam Labour Supply Association in Ganjam and other districts against the Secretary of State for India in Council for damages in respect of two orders of the District Magistrate of Ganjam suspending and dismissing one T S the local agent of the Association in Ganjam and closing his depôt to recruiting under the Assam Labour and Emigration Act (VI of 1901) whereby the plaintiff was prevented from earning from the members of the Association his commission of seven rupees for each labourer sent to Assam and for an alleged libel on the plaintiff in an order passed by the Governor in Council on appeals by the plaintiff and other against the afore said orders in which it was stated that the plaintiff's own conduct was not altogether above suspicion *Held* under the Notification issued pursuant to s 91 of the aforesaid Act as amended relaxing the provisions of the Act in favour of the Association, the District Magistrate had power to dismiss the local agent but not to suspend him or to close his depôt to recruiting under the Act independently of the Notification *Semble* That the damage to the plaintiff by reason of the loss of his commission was too remote The defendant's liability to suit is the same as that of the East India Company before the passing of the Government of India Act 1858 it can only be altered by Act of Parliament and is not affected by s 79 Civil Procedure Code Extent of such liability in respect of acts done in the exercise of sovereign powers not being acts of State discussed It was not sufficient to render the Company liable that an act of this nature had been done by its servant in the course of employment but without previous order or subsequent ratification Ratification must have been by the Company and must now be by the Secretary of State Essentials of ratification discussed In the present case the defendant was not liable for the act of the District Magistrate on the further ground that it was done by him in the exercise of statutory authority and not as an agent of Government Further as to the alleged defamation the order of the Government of Madras having been published in the execution of its duty and without exceeding it was absolutely privileged and in any case there was no evidence of malice *Dhaljee Dadajee v East India Company* ... *Mor D j 307 Peninsular and Oriental Steam Navigation Company v The Secretary of State 5 Bom H C R App I* ... *for India I L R* ... *Phanji v The Secretary of State for India I L R 4 Mad 344 Shivabhajan v The Secretary of State for India I L R 28 Bom 314* referred to ... *for India I L R* ... *Pajata v The Secretary of State for India I L R 7 Mad 466* questioned Ross *v* SECRETARY OF STATE FOR INDIA (1913) I L R 37 Mad 55

3 ———— *Held* by the Court on appeal (affirming the judgment in I L R 37

SECRETARY OF STATE FOR INDIA—*concld*

Mad. 55 above) that (i) as the action of the Collector and District Magistrate who was found to have acted without any malice was not directed again t the pla ntiff but only again t others an l as the injury to the plaintiff if any was not the direct con equence of the Collector s act but was only very remotely connected with it the plaintiff had no cause of action and (ii) the Governor in Council was not liable for the publication of the defamation and the same was done on a privileged occasion i e. in the course of its official duties *Held* further by SADASIVA AYYAR J (a) Even the Collector and District Magi trate was not personally liable as he only did his duty impo ed on him by the statute [ri s 22 Cl (c) of A am Labour and Emigration Act (VI of 1901) and (b) as in doing so he was not the agent of the Government and as the act was not done on Government s behalf the Government could not ratify the same nor can Government be liable even if it had ratified the same *Held* further by BAKEWELL, J that so far as the plaintiff was concerned as he was neither an employer nor his agent he was, according to the Act, carrying on an illegal bu ine s and his suit was liable to be dismissed also on this ground PO S v THE SECRETARY OF STATE FOR INDIA (1915) I L. R 39 Mad 781

SECRET SOCIETY

See JURY RIGHT OF TRIAL BY
I L P 37 Calc 467

SECURITIES ACT (XIII OF 1886)

S e GOVERNMENT SECURITIES

——— ss 3 sub s (2) 6 sub s (1) cl (f)—

See RECEIVER I L R 37 Calc 754

SECURITY

See CIVIL PROCEDURE CODE (ACT V 1908) O XXXVIII R 5
I L P 39 Mad 903

See CRIMINAL PROCEDURE CODE—
S 123 I L P 35 Bom 271
Ss 39, 1 I L P 37 Bom 1"8

See EXECUTION 24 C W N 265

See FORFEITURE I L R 47 Calc 190

See JUTE I L P 44 Calc 98

See MORTGAGE I L R 44 Calc 388

See PRESS ACT (I OF 1910) ss 3 (1) 4 (1) 17 19 20 AND 2?
I L P 39 Mad 1085

See PRIVY COUNCIL 14 C W N 420

See RECEIVER I L R 46 Calc 70

See SHEBAIT 24 C W N 879

See STAY OF EXECUTION
I L R 41 Calc 160

See SUCCESSION CERTIFICATE (VII OF 1889) ss 7 AND 9
I L R 40 All 81

——— demand of, by Magistrate—

See PRESS ACT (I OF 1910) s 3 (1) 4 (1) 17 19 20 AND 2?
I L R 39 Mad 1085

——— deposit of—

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XLI R 10 AND S 12?
I L R 3? Bom 5?2

See LIMITATION ACT 1908 SCH I ART 161 15 C W N 102

SECURITY—*concld*

——— for production of insolvent debtor—

See FORFEITURE I L R 39 Calc 104

——— Investing on unauthori ed—

See PRESIDENCY BANKS ACT (XI OF 1876) ss 36 37
I L R 39 Mad 101

See TRUSTEE I L R 38 Mad 71

——— mode of enforcement of—

See CIVIL PROCEDURE CODE (1908) s 145 O XXXIV R 14
I L P 38 All 327

——— scope of—

See MORTGAGE I L R 43 Calc 895

SECURITY BOND—

See EXECUTION OF DECREE
I L R 38 Calc 754
I L R 42 All 158

——— by the Secretary of State for India—

See EXECUTION OF DECREE
I L R 38 Calc 754

——— for decree holder—

See PROCEDURE L R 46 I A 228

——— Discretion of Court—

See CONTRACT ACT (IX OF 1872) s 74
I L R 45 Bom 1213

SECURITY FOR COSTS

See CIVIL PROCEDURE CODE (1908) ss 109 110 O XLI R 10
I L R 36 All 325

O XXV R 1 I L R 35 Bom 421
I L R 36 Bom 415

O XLI R 10

See COSTS I L R 46 Calc 156

See INSOLVENCY I L R 43 Calc 243

See LIMITATION ACT 1908 ss 5 AND 15
3 Pat L J 132

See PROCEDURE I L R 48 Calc 481

——— Failure to comply with order for—

See PROCEDURE
I L R 48 Calc 481

——— *Infant plaintiff—Civil Procedure Code (Act V of 1908) Sch I O XXV r 1—Practice* It is not desirable to run any ri k of stopping a suit filed on behalf of an infant which may be a proper suit to bring merely becau e of some inability on the part of the next friend to give security for costs BHAISHANKAR AMBASHANKER v MULJI A HARAM (1910)
I L R 35 Bom 339

——— *Appeal in formâ pauperis—Civil Procedure Code (Act V of 1908) O XLI r 10 not applicable to pauper appeals—Security should not be demanded* The plaintiff having obtained a decree in the lower Court the defendant appealed and applied for leave to appeal *in formâ pauperis* The application was granted The defendant appellant however resided out of British India and was not po e ed of sufficient immoveable property in British India. The plaintiff respondent having demanded security for co ts incurred in the lower Court and costs of the appeal

SECURITY FOR COSTS—*contd*

under O XLI r 10 of the Civil Procedure Code 1908 *Held* that the general provisions relating to appeals in O XLI r 10 Civil Procedure Code 1908 did not apply to pauper appeals so as to impose upon the Court the duty of demanding security from a pauper appellant who having been found to be a pauper *ex hypothesi* could not give security *Wylle* v *St John* [1910] *1 Ch 701* followed KHEMRAJ SHRIKRISHNADAS v KISANLALA SURAJMAL (1917) I L R 42 Bom 5

———— In an appeal the Lower Appellate Court called upon the appellant to furnish security for costs under O XLI R 10 and the order not being complied with dismissed the appeal Against this order an appeal was preferred to the High Court *Held* it was not appealable either as a decree or an order ROMES CHANDRA DAS v MONINDRA LAL DAS 26 C W N 1020

SECURITY FOR GOOD BEHAVIOUR

See CRIMINAL PROCEDURE CODE 1898—

Ss 108 AND 109

S 110

Ss 118 123 I L R 36 All 495

Ss 119 200 437 I L R 35 Bom 401

Ss 119 437 I L R 36 All 147

S 123 1 Pat L J 212

S 476 I L R 43 All 180

See PENAL CODE S 225B I L R 43 All 185

1 ———— Joint inquiry against members of a gang—*Admissibility of evidence of association with a gang and of acts by the members thereof—Inquiry into the fitness of Sureties—Rejection on the report of a subordinate Magistrate or police officer—Order of Judge on reference contents of—Criminal Procedure Code (Act V of 1898) ss 117 (4) 122 123 (3) 367 421—Evidence Act (I of 1872) s 11* An order under s 123 (3) of the Criminal Procedure Code should show on the face of it that the Sessions Judge has considered the case of each accused on its own merits and separately from that of the others even if such order need not contain all the details required by s 367 *Jamait Mullick* v *Emperor I L R 35 Calc 138* referred to A joint inquiry under s 117 of the Criminal Procedure Code against the members of a gang formed for the purpose of habitually cheating in concert is not illegal under sub s (4) though they were not all concerned together in each of the various acts alleged against them When the question is whether a person is a habitual cheat the fact that he belonged to an organization formed for the purpose of habitually cheating in concert is relevant under s 11 of the Evidence Act and it is open to the prosecution to prove against each person that the members of the gang do cheat A surety cannot be called upon to state in writing what influence he has over the accused nor can a Magistrate refuse to accept him on his failure to do so *Per* PYVES J (COXE J *contra*) Under s 122 of the Criminal Procedure Code the Magistrate passing an order for security should himself hold the inquiry into the fitness of the proposed sureties and he can not decide the matter merely on the report of a subordinate Magistrate or of a police officer which is not legal evidence *Queen Empress* v *Prithi Pal Singh (1898) All W N 154 Emperor* v *Tola I L R 24 All 272 Emperor* v *Balwant I L R 27 All 293 Re Abdul Khan 10 C W N 1027* and *Suresh Chundra Basu* v *Emperor 3 C L J 375* followed KALU MIRZA v EMPEROR (1909) I L R 37 Calc 91

2 ———— Evidence of acts committed several years before the proceedings—*Offences involving breach of the peace.—Acts of highhandedness not accompanied with actual breaches of the peace—Liability of zemindar for acts of his naib and lathials committed in his interest—Abetment of offences involving a breach of the peace—Criminal Procedure Code (Act V of 1898) s 110 (e)* Evidence of acts falling within the scope of s 110 of the Criminal Procedure Code but committed several years before the date of the institution of the proceedings thereunder is admissible *Wahid Ali Khan* v *Emperor 11 C W N 789* followed. To bring a case within the section a person must be found to have habitually committed attempted to commit or abetted the commission of offences of which a breach of the peace is an ingredient *Arun Samanta* v *Emperor I L R 30 Calc 366* followed Where the only conviction against a zemindar was one under s 150 of the Penal Code and there was evidence that he with his lathials (or his servants acting under his orders) took articles of food from bazar vendors that he assembled lathials to enforce the performance of puja by his own *purohit* threatened a witness with violence for deposing against him and with his lathials uprooted some trees cut the crops of his opponents, molested rival fisherman in boats and attempted to stop a marriage procession but no breach of the peace was committed or complaint made by the opposite party *Held* that such acts did not involve a breach of the peace so as to support a charge of habitually committing offences within cl (e) But where the zemindar s naib had led several riots in his master s interest and had been convicted in several such cases and there was evidence that certain lathials were always employed to help his cause *Held* that he had habitually abetted the commission of offences mentioned in that clause *Kasi Sundar Roy* v *Emperor I L R 31 Calc 419* followed A Magistrate should be careful to see that s 110 is not employed by private persons to wreck vengeance under the forms of a Crown prosecution KALI PRASANNA BOSE v EMPEROR (1910) I L R 38 Calc 156

3 ———— Ostensible means of subsistence—*Return of absconding suspect home on withdrawal of warrant and residence in his father s house without taking steps to conceal himself to commit an offence—Relevancy of evidence of previous connection with a criminal conspiracy or concealment outside the trying Magistrate s jurisdiction—Support by father possessing subsistence—Jurisdiction of Magistrate to require a person to give an account of his presence while in another jurisdiction—Criminal Procedure Code (Act V of 1898) s 109 cls (a) (b)* Cl (a) of s 109 of the Criminal Procedure Code should be read in its entirety The concealment referred to therein must be with a view to committing some offence. Where a person against whom a warrant had been issued, absconded from home for two years but returned thereto after its withdrawal and was found living in his father s house without having taken any particular

SECURITY FOR COSTS—*contd*

steps to conceal him elf for the purpo e of commit ing any offence thereafter the fact of previous connection with a criminal conspiracy or of pre ent correspondence with criminals out ide the Magis trate s juri diction, is not relevant under s 109 though it might form basis or a substantive pro ceeding under s 110 A person cannot be called on to furnish security under s 109 in respect of an alleged temporary concealment in his father s hou e unconnected with any intent to commit an offence nor with any previous concealment out side the Magi trate s juri diction As long as a young man out of employment is staying in the hou e of his father who is a man of sub tance and able if nece sary to support him he cannot be *held* to be without o tensible means of subsistence Where the account a per on gives of his pre ence within the limits of a Magi trate s juri diction is sati factory *e g* that he has returned to and is living in his father s hou e in strict seclu ion on the withdrawal of a warrant against him he cannot be called upon by such Magi trate to give an account of his pre en e in any other juri diction SATI H CHANDRA SARKAR v EMPEROR (1912)

I L R 39 Calc 456

4 ———— Fair Trial—*Proceedings taken and enquiry compl ted in one day—Production of party called upon for s curity under arrest before the Magistrate in Camp—Right of party to examine his own defence witnesses—Right of opportunity to examine or summon witnesses selected by such party —Criminal Procedure Code (Act V of 1898) s 110 (d) 117 117—Practice* Under s 117 (?) of the Criminal Procedure Code a per on called upon to furni h security for good behaviour mu t be given time as in warrant ca es to bring his wit nes es and have their evidence recorded Where a person was produce l in cu tody before a Magi trate in camp while on tour when only a sin le mukhtear was available and a proc eding under s 110 (d) was drawn up immedi tely read and explained to him after which pro ecution witne es were examined and cro s examined and he was called upon for his defence and some of the spec tators who happened to be pre ent were examined on his behalf and the enquiry was completed and the order for security pas ed on the same day *Held* that the order was bad as the per on directed to execute a bond had not been given the oppor tunity of sel cting hi own witnesses and of pro ducing them or having them summoned and that he did not therefore have a fair trial KERAM UDDIN SARKAR v EMPEROR (1914)

I L R 41 Calc 806

5 ———— Dissemination of matter likely to promote enmity or hatred—*between classes—Necessity of intention—Criminal Procedure Code (Act V of 1898) s 108 (b) Penal Code (Act XLV of 1860) s 153 A* To justify an order under s 108 (b) of the Criminal Procedure Code it is sufficient that the word use l are likely to promote feelings of enmity or hatred between different clas es and it is not necessary to establish an intention to promote such feelings as it would be on a trial for the offence under s 153A of the Penal Code *Dhammalolda v Emperor 1, Cr L J 248* di ented from *Joy Chander Sarkar v Emperor I L R 38 Calc 214 Ja avant Rao v Ahilavale 5 Cr L J 439 10 Punj Rec 2,* referred to SITAL PRASAD v EMPEROR (1915)

I L R 43 Calc 591

SECURITY FOR COSTS—*contd*

6 ———— Jurisdiction—*Person within the local limits of the Magistrate s jurisdiction—Resi dence—Commission of acts complained of within such local limits—Jurisdiction of Magistrate— Criminal Procedure Code (Act V of 1898) s 110* S 110 of the Criminal Procedure Code does not require residence within the local limits of the jurisdiction of the Magistrate who institutes pro ceedings thereunder Where the habits of the persons called upon to furni h security for good behaviour were practised and their evil reputation acquired within the local limits of the jurisdic tion of the Presidency Magistrate of the Northern Division of the town of Calcutta though they might be occa ionally residing el ewhere *Held* that the Magistrate was competent to take pro ceedings against such parties under s 110 of the Code *Ketabor v Queen Empress I L R 27 Calc 993* distingui hed EMPEROR v DURGA HALWAI (1915) I L R 43 Calc 153

7 ———— Previous convictions proof of—*Central Bureau register of thumb impressions evidentiary value of—Extract from jail register with out proof of identity—Locus pœnitentiæ—Criminal Procedure Code (Act V of 1898) s 110* Whenever proof of previous convictions is required whether und r s 75 of the Penal Code or Chapter VIII of the Criminal Procedure Code such previous con victions must be proved strictly and in accordance with law and unless so proved no Court can take them into con ideration A register produced from the Central Bureau purporting to contain the thumb impression of the accu ed that his descrip tive roll with a list of his previous conviction when there was no evidence how it came to be made and lodged in the Central Bureau nor from what particulars the previous convictions were record d an l certified was held in ufficient proof of such convict ons An extract from the jail reg ster showing previous convictions of a certain person with *aliases* and certified copies of previous conviction of the same in the ab ence of evidence of identity with the present accused *held* insuffi cient to prove previous convictions of the latter A person who has erved the period of his impri on ment should be given a chance of reformation and should not be proceeded with under s 110 of the Criminal Procedure Code oon after his emergence from jail *Junab Ali v Emperor I L R 31 Calc 783* referred to Although general statement of witnesses *e g* that the accu ed are all pick pockets and that every one is afraid of them may not be wholly inadmissible in evidence no Court should act on a body of such evidence without testing the statements of the witnesses and obtaining from them some particulars of the facts in which their general statements are made The ca e of each accused should be differentiated in the evidence and the order of the Court EMPEROR v SHEIKH ABDUL (1916) I L R 43 Calc 1128

8 ———— Menace— *Any person within the local limits —I r i i cu tody on the date of the initiation of proceeding — D sperate and danger ous —Menace to person and property—Associat on to spread d loyal doctrines—Revolutionary activit y and recruitment by men bers thereof—Connect on of As ociat on with an organi at on to commit dacoit y —Exce sive securit y—Criminal Procedure Code (Act V of 1898) ss 108 110 114—Adm s bil t y of ev d ence of finding of sed tious essays and l terature in the possession of one conspira cr as against the*

SECURITY FOR COSTS—*concld*

rest to ascertain the object of the association—Evidence Act (I of 1872) s 10 Cl (*f*) of s 110 of the Criminal Procedure Code is not limited to the case of menace to property but applies also where the security of the person is jeopardized *Rajendra Narain Singh* v *Emperor 17 C W N 238* explained and distinguished A man of desperate and dangerous character means one who has a reckless disregard of the safety of the person or the property of his neighbours *Wahid Ali Khan* v *Emperor 11 C W N 789* approved Where it was found that the petitioners were associated for the purpose of spreading disloyal doctrines among school boys and were conspiring to commit an offence under s 124A of the Penal Code that they were engaged in inculcating ideas of armed revolution in the minds of such persons and were collecting recruits and subjecting them to a course of self discipline and further that they were connected with an organization the object of which was the collection of money by dacoity *Held* that such facts involved a menace not only to the person but also to the property of the community and brought the case within s 110 cl. (*f*) of the Code though the time for the occurrence of the proposed revolution and dacoities had not been proved. The mere fact that s. 108 of the Code may be applicable to the findings does not necessarily make s 110 applicable Where the Sessions Judge used the finding of certain seditious literature and essays in the possession of one of the petitioners as evidence against the others under s 10 of the Evidence Act to prove the object of the association and it was contended that he had done so wrongly thereunder as such literature might have been obtained and the essays written before the association was formed. *Held* that the fact of the literature having been bought and the essays written before the formation of the association would not preclude the Court from considering the possession of them as one of the facts in the case independently of s. 10 of the Evidence Act in order to ascertain the object of the association The words *any person within the local limits* in s 110 of the Code do not imply residence but extend to the case of a person who has left the territorial jurisdiction of the Magistrate and has been brought back within the same in police custody and is in jail under the Defence of India Act on the date of the institution of the proceedings S 114 of the Code is not limited to arrest within the jurisdiction. *Held* also that under the circumstances the amount of the security was not excessive MANINDRA MOHAN SANYAL *v* EMPEROR (1918) I L R 46 Calc 215

SECURITY TO KEEP THE PEACE

See CRIMINAL PROCEDURE CODE 1898 —

Ss. 106 AND 107

S 12[illegible] I. L. R 33 All 624
I L R 35 All 103
I L. R 37 Mad 125
I L R 39 All 406
I L R 41 All. 651

Ss. [illegible] 107 117 118
I L R 32 All 642

See LETTERS PATENT (24 & 25 VICT C 104) CL 15 I L R 39 Mad 539

SECURITY TO KEEP THE PEACE—*concld*

——— proceedings for—

See TRANSFER I L R 41 Calc 719

1 ——— *Conviction under s 143 of the Penal Code—Absence of finding of acts involving breach of the peace or evident intention of committing the same—Legality of order for security—Criminal Procedure Code (Act V of 1898) s 106* To bring a case within the terms of s 106 of the Criminal Procedure Code the Magistrate should expressly find that the acts of the accused involved a breach of the peace or were done with the evident intention of committing the same or at all events the evidence *must* be so clear that without an express finding a superior Court is satisfied that such was the case *Jib Lal Gir* v *Jagmohan Gir I L R 26 Calc 576* followed. A finding that the common object of the unlawful assembly was by means of criminal force or show thereof to take possession of land cultivated by tenant of the rival landlord and that but for the direction of the latter to the tenants to retire which was carried out there might have been a serious riot *held* insufficient to bring the case within the purview of s. 106 of the Code ABDUL ALI CHOWDHURY *v* EMPEROR (1915) I L R 43 Calc. 6[illegible]1

2 ——— *Criminal Procedure Code s 107—Nature and quantum of evidence necessary before passing order for security* There must be definite evidence in the case of any and every person charged under s 107 of the Code of Criminal Procedure that there is danger of a breach of the peace by him. It is clearly insufficient against a collective body of persons to suggest that there are indulging in feelings of hostility towards another body of persons. *Queen Empress* v *Abdul Kader I L R 9 All. 45[illegible]* referred to EMPEROR *v* SHAMBHU NATH (1916) I L R 38 All. 468

SEDITION

See FORFEITURE I L R 47 Calc. 190

See HIGH COURT I L R 34 Bom 378

See PENAL CODE—
Ss 107 124A. I L R 34 Bom 394
Ss 124A, 511 I L R 34 Bom 378

See PRESS ACT

See PRINTING PRESSES AND NEWSPAPER ACT

1 ——— Attempt to publish sedition—*Penal Code (Act XLV of 1860) ss 511 124* Under the Indian Penal Code (Act XLV of 1860) all that is necessary to constitute an attempt to commit an offence is some external act something tangible and ostensible of which the law can take hold as an act showing progress towards the actual commission of the offence *It does not matter that the progress was interrupted.* An attempt to publish sedition is complete as soon as the accused knowingly sells a copy containing the seditious article It is none the less an attempt because something external to himself happens which prevents a perusal of the article by the buyers or any other member of the public. In cases of sedition the question of intention is one of fact EMPEROR *v* GANESH BALVANT MODAK (1909) I L R 34 Bom 378

2. ——— Wholesale imputation of bribery against ministerial and police officers and of neglect on the part of Govern

SEDITION—*contd*

ment to inquire into such abuses—*Sedition—Attempt to promote enmity between different classes—Inveighing against Hindus and Mahomedans alike—Penal Code (Act XLV of 1860) ss. 124A and 153A—Convictions at one trial under ss. 124A and 153A of the Penal Code—Appeal to the High Court—Criminal Procedure Code (Act V of 1898) ss. 35 (3) 408 prov. (c)* A single expression that the people of Bengal are trodden under the feet of outsiders used incidentally in a newspaper article otherwise innocuous does not constitute the whole seditious. An article imputing wholesale bribery to the ministerial officers of the Law Courts and to the lower officers of the police force and expressing grave doubts as to whether the Government ever inquire into such abuses so much is it occupied with investigations of boycott dacoity and sedition published when sedition is rife and the minds of people excited, may have the effect of creating a feeling that the Government is not doing its duty and exceeds the limits of fair comment and is seditious irrespective of the question of the truth of the allegations. Where the writer of an article inveighed both against the Babus and Mahs as professing brotherhood with the poor Mahomedan ryots and then robbing them and referred to the alleged conduct of Christian missionaries towards their converts by way of illustration without any deliberate attempt to excite one class against another the conviction under s. 153A of the Penal Code was set aside as bad in law. Per RICHARDSON J.—If a particular article is charged as being seditious on the ground that it says more than appears on the face of it it is the duty of the prosecution to show that it has in fact the guilty meaning or intent attributed to it. *Semble* An appeal lies under ss. 35 (3) and 408 prov. (c) directly to the High Court from a conviction and separate sentences under ss. 124A and 153A of the Penal Code passed on the same trial. JOY CHANDRA SARKAR *v.* EMPEROR (1910)

I. L. R. 38 Calc. 214

3. ———— Liability of declared printer and publisher of a newspaper for seditious matter appearing therein—*Sedition—Absence during the period of the publication of the seditious articles bona fides not made out—Printing Presses and Newspapers Act (XXV of 1867) s. 7.* The declared printer and publisher of a newspaper containing seditious articles is responsible for them unless he makes out on sufficient evidence that he had in fact nothing to do with them. Where the editor of a newspaper was convicted and sentenced under s. 124 A of the Penal Code and the accused made his declaration as printer and publisher thereafter and continued so to act after the editor had resumed work on release from jail and further allowed his name to appear as such though he was absent from the town of publication of the paper when certain seditious articles appeared therein and engaged during the period in his own private business without taking any interest in the paper it was *held* that he had not made out the *bona fides* of his absence and was therefore legally responsible for the articles. SURENDRA PROSAD LAHIRI *v.* EMPEROR (1910) I. L. R. 38 Calc. 227

4. ———— Attack on rival political party—*But not on Government established by law in British India—Limits of legitimate criticism of acts and measures of Government—Construction of letter or article in a newspaper—Admissibility of articles in other issues and for proving the identity of the charge when the identity of the writer is not proved—Penal Code (Act XLV of 1860) s. 124A—Press Act (I of 1910) s. 3—Liability of registered printer and publisher—Printing Presses and Newspaper Act (XXV of 1867) s. 7.* A letter or an article in a newspaper containing an attack on a rival political organization and not on the Government established by law in British India is not seditious within the meaning of s. 124A of the Penal Code. A man may criticise or comment on any act or measure of the Government legislative or executive and freely express his opinion on it. He may express the strongest condemnation of such measures and he may do so severely and even unreasonably perversely or unfairly provided he does not whether in his comments on measures or not hold up the Government itself to hatred and contempt. *Queen Empress* v. *Bal Gangadhar Tilak I. L. R. 22 Bom. 112* approved of. It is not sedition for a writer to describe the Reform Scheme as being monstrous and misbegotten because it is not founded on democratic principles and not a genuine reform or a genuine initiation of constitutional progress or to assert that some of the police officials and the judiciary are corrupt unscrupulous and partial or to state that if an organisation which he believes to be lawful is suppressed by proclamation it is arbitrary and that in such case the responsibility will not rest on him for the madness which crushes down open and legal political activity in order to give a desperate and sullen nation into the hands of fiercely enthusiastic and unscrupulous forces or to inculcate the doctrine of passive resistance or refusal of co-operation with the Government within legal limits or to describe the British Courts in India as ruinously expensive. In construing a newspaper article its meaning must be taken from the article as a whole and not from isolated passages. Words and expressions such as *arbitrary executive* must not be looked at as if the writer was a constitutional lawyer instead of a journalist. *Queen Empress* v. *Bal Gangadhar Tilak I. L. R. 22 Bom. 112* approved of. Articles not forming the subject of the charge and appearing in other issues of the same paper are not admissible to show the intention of the writer in the article complained of in the absence of proof of his identity. The declared printer and publisher of a letter or article in a newspaper is amenable to the law merely on proof that it is calculated to excite feelings of disaffection hatred or contempt against the Government but the prosecution must prove either that the writer does in fact excite such feelings or that his intention was to do so. The writer of an article may be guilty of sedition no matter how guardedly he attempts to conceal his real object but the registered printer and publisher cannot be punished if the concealed object is not established by the evidence on the record. *Queen Empress* v. *Amba Prasad I. L. R. 20 All. 55* referred to. MANO MOHAN GHOSE *v.* EMPEROR (1910)

I. L. R. 38 Calc. 253

5. ———— Publication proof of—*Necessity of proving posting or printing and publishing under the directions of the accused when it is shown that the handwriting is his and that the seditious matter was actually printed and published—Seditious manuscript transmitted by post but intercepted before it reached addressee—Attempt to commit sedition—Penal Code (Act XLV of 1860) s. 124A.* It is not necessary in order to establish the fact of publi

SEDITION—*concld*

cation of seditious matter transmitted through the post office on a charge under s 124 A of the Penal Code to prove the actual posting nor that it was printed and published under the directions of the accused If the seditious writing is shown to be in the handwriting of the accused and it is further proved that the contents were in fact printed and published there is sufficient evidence of publication by him. *Regina* v *Lovett 9 C & P 462* followed The sending through the post of a packet containing a manuscript copy of a seditious publication with a covering letter requesting the addressee to circulate it among others when the same was intercepted by another person and never reached the addressee constitutes an attempt within the purview of s 124 A of the Penal Code SURENDRA NARAYAN ADHICARY *v* EMPEROR (1911)
I L R 39 Calc 522

6 ———— **Handwriting proof of**—*Admissibility and value of expert opinion not based on comparison made in Court with admitted or proved handwriting of the person alleged—Penal Code (Act XLV of 1860) s 124 A —Evidence Act (I of 1872) s 45* On a charge under s 124A of the Penal Code the sending of a pamphlet by post addressed to a private individual not by name but by designation as the representative of a large body of students amounts to publication. It is necessary for the admission of the evidence of a hand writing expert under s 45 of the Evidence Act that the writing with which the comparison is made should be admitted or proved beyond doubt to be that of the person alleged and that the comparison should be made in open Court in the presence of such person *Cresswell* v *Jackson 2 F & F 24* *Cobbet* v *Kilminster 4 F & F 490* and *Phooddee Bibee* v *Gobind Chander Roy 22 W R 272* refered to SURESH CHANDRA SANYAL *v* EMPEROR (1912) **I L R 39 Calc 606**

SEDITIOUS LIBEL

See FORFEITURE **I L R 47 Calc 190**

SEIGNIORAGE FEES OR ROYALTY

———— **right of Government to levy**—

See INAM **I L R 40 Mad 268**

SEIZURE IN CUSTOM HOUSE

See COCAINE IMPORTATION OF
I L R 41 Calc 545

SELF ACQUIRED PROPERTY

See CUSTOM
I L R 2 Lah 366

See HINDU LAW—JOINT FAMILY
I L R 32 All 415

See HINDU LAW—PARTITION
I L R 34 Bom 106

See HINDU LAW—SELF ACQUISITION
I L R 32 All 394

———— **blending of**—

See HINDU LAW—JOINT FAMILY
I L R 45 Calc 733

———— **Meaning of**—

See CUSTOM (SUCCESSION)
I L R 1 Lah 365

SELF-ACQUISITION

See ALIYASANTANA LAW
I L R 39 Mad 1?

See MALABAR LAW **I L R 38 Mad ?3**

SELLER

———— **duty of**—

See CHUKANI RIGHT
I L R 42 Calc 23

SENATE AND SYNDICATE

———— **respective powers of**—

See SPECIFIC RELIEF ACT (I OF 1877) s 45 **I L R 40 Mad 125**

SENTENCE

See CRIMINAL PROCEDURE CODE 1898—

S 35 **3 Pat L J 135**
S 106 (3) **I L R 53 All 48**
S 235 **3 Pat L J 433**
Ss 307 123 **I L R 37 Bom 178**
Ss 408 415 **I L R 32 All 510**
S 423 **I L R 36 All 485**
S 439 **I L R 39 All 549**

See MURDER
I L R 44 Mad 443

See OFFENCE COMMITTED ON THE HIGH SEAS **I L R 38 Calc 48?**

See PENAL CODE (ACT XLV OF 1860) s 62 **I L R 36 All 395**

See PRACTICE **I L R 35 Bom 418**
I L R 39 Bom 3?6

———— **Alteration of—whether amounting to enhancement**—

See CRIMINAL PROCEDURE CODE s 423
I L R 36 All 485

———— **enhancement of**—

See CRIMINAL PROCEDURE CODE s 448
I L R 36 All 3?8

See RAILWAY PASSENGER
I L R 44 Calc 2?9

See CRIMINAL PROCEDURE CODE s 435
25 C W N 21?

———— **Exceeding Legal Maximum**—

See CRIMINAL LAW
I L R 44 Mad 297

———— *Conviction and sentence for rioting and for being member of unlawful assembly causing grievous hurt validity of—Penal Code (Act XLV of 1860) ss 71 147 149 and 325—Conviction for rioting and causing grievous hurt validity of* Where the accused were charged with offences under ss 147 and 325 read with 149 of the Indian Penal Code and were convicted and sentenced on both charges *held* that the lower appellate Court could not substitute for the convictions under s 325 read with s 149 convictions under s 325 and that the High Court in revision would not convict the accused of this offence in the absence of any opportunity to plead to a charge in respect of it *Held* that it is illegal to record separate convictions for offences under s 147 and s 325 read with s 149 and that their separate sentences in respect of the two offences are also illegal. An accused cannot in addition to being

SENTENCE—*contd*

convicted under s 147 be also convicted under s. 325 although it be shown that he himself caused grievous hurt to the opposite party PALTU SINGH v KING EMPEROR 3 Pat L J 641

SEPARATE CONVICTIONS

See PENAL CODE ACT (XLV OF 1860) ss 71 147 323 I L R 39 All 623

SEPARATE OFFENCES

See CHARGE I L R 41 Calc 66

See POLICE ACT 1861 29 I L R 42 All. 22

SEPARATE SENTENCES

See CRIMINAL PROCEDURE CODE 1898 s. 235 3 Pat L J 433

See CUMULATIVE SENTENCES. I L R 40 Calc 511

See MISJOINDER I L R 38 Calc 453

SEPARATE TRIAL

See EVIDENCE I L R 47 Calc 671

SEPARATION

See HINDU LAW—JOINT FAMILY I L R 35 All. 80 I L R 43 Calc 1031

See HINDU LAW—PARTITION I L R 39 Mad. 159

——— evidence of—

See HINDU LAW—INHERITANCE I L R 42 Calc 1179

SERVANTS QUARTERS

——— acquisition of—

See LAND ACQUISITION I L R 43 Calc 665

SERVICE INAM

See HINDU LAW—JOINT FAMILY I L R 44 Mad 179

See MADRAS PROPRIETARY ESTATES VILLAGE SERVICE ACT (II OF 1894) ss 5 10 CL. (2) I L R 39 Mad 930

——— resumption of—*Resumption not a fresh grant and does not put an end to prior encumbrances—Regulation—VI of 1831 s 2—Emoluments granted for gadaba service not within regulation* Resumption consists in putting an end to the grant remitting the services and requiring the grantee to pay the full assessment It has not the effect of putting an end to prior encumbrances *Gadaba* or bearer service is of a personal nature and an *inam* for such service does not fall within Regulation VI of 1831 where the grantee of an *inam* for *gadaba* service mortgages the *inam* and the *inam* is afterwards resumed by Government such resumption does not extinguish the mortgages. SREEYADHU YERRANNA v DONKIRA KANNAMMA (1912) I L R 35 Mad. 704

SERVICE OF NOTICE

See FOREIGN JUDGMENT I L R 37 Mad 163

See NOTICE TO QUIT I L R 46 Calc 458

SERVICE OF NOTICE—*contd*

See TRANSFER OF PROPERTY ACT 1882 s. 106

——— effect of omission of—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) ss 439 422 423 I L R 39 Mad 505

——— onus of—

See PUBLIC DEMANDS I L R 45 Calc 496

SERVICE OF SUIT

——— on principals outside jurisdiction—

See FOREIGN JUDGMENT I L R 37 Mad 163

SERVICE OF SUMMONS

See CIVIL PROCEDURE CODE O 5

See SUMMONS I L R 42 Calc 67

See SUMMONS TO PRODUCE DOCUMENTS I L R 47 Calc 647

SERVICE TENURE

See GRANT I L R 39 Bom 68

See GRANT OF LAND I L R 43 Bom 37

See MADRAS REGULATION (XXV OF 1802) s 4 I L R 38 Mad 620

SERVIENT ESTATE

See EASEMENT

——— forfeiture of—

See MADRAS IRRIGATION CESS L. R 46 I A 302

SESSIONS JUDGE

——— powers of—

See CRIMINAL PROCEDURE CODE s 339 I L R 37 All 331

——— power of to grant bail—

See BAIL I L R 37 Calc 439

SESSIONS TRIAL

See CRIMINAL PROCEDURE CODE s 339 I L R 37 All 331

See CROSS EXAMINATION I L R 41 Calc 299

——— *Refusal to enforce attendance of defence witnesses—Trial if vitiated thereby* Where in a Sessions case the Judge refused to enforce the attendance of some defence witnesses who had been summoned by the Committing Magistrate but who did not appear on the ground that the application should have been made at an earlier date the High Court in appeal set aside the conviction and sentence holding that the trial was vitiated FOIZUDDIN v KING EMPEROR 24 C W N 527

SET BACK

See BOMBAY MUNICIPAL ACT (BOM ACT III OF 1888) ss 297 301 I L R 43 Bom 181

SET FORWARD

See BOMBAY CITY MUNICIPAL ACT (BOM. ACT III OF 1888) ss. 297 301 I L R 43 Bom. 181

SET-OFF

See ATTORNEY
L. L. R. 43 Calc. 972

See CIVIL PROCEDURE CODE, 1 ... s. 111
14 C. W. N. 170 783

See CIVIL PROCEDURE CODE (ACT V OF 1908) s. 70, O. XXI, R. 7—
L. L. R. 42 Bom. 621

O. VIII, R. 6

O. XXI, R. 18 L. L. R. 38 All. 663

O. XXI, RR. 18, 19, 20
L. L. R. 33 All. 249

O. XXI, R. 19 L. L. R. 40 Bom. 60

See HANDNOTE. 2 Pat. L. J. 451

See INSOLVENCY ACT, s. 39
L. L. R. 33 Mad. 53 & 467

——— decree-holder allowed to bid—Power of Court to allow set-off—

See CIVIL PROCEDURE CODE, 1908, O. XXI, R. 72. L. L. R. 44 Bom. 346

——— equitable—

See MORTGAGE L. L. R. 40 Mad. 683

1. ——— *Equitable set-off when to be entertained—Court may impose terms on defendants—Barred debt claim of set-off in respect of.* The right of set-off exists not only in cases of mutual debts and credits but also where cross-demands arise out of the same transaction or are so connected in their nature and circumstances as to make it inequitable that the plaintiff should recover and the defendant be driven to a cross-suit. *Clark v. Rathnavaloo 2 Mad. H. C. R. 296* followed. As the inquiry into the cross-demand made in this case by the defendant would involve great delay the High Court allowed the inquiry to be made in this suit on certain terms imposed on the defendants. RAMDHARI SINGH v. PERMANUND SINGH (1913) 19 C. W. N. 1183

2. ——— *Limited Company—Right of shareholder to appropriate paid-up calls towards debt due from him to Company—Joint Stock Companies, Friendly Societies and Building Societies—Distinction between as to rule of set-off.* A shareholder in a Permanent Benefit Fund with limited liability who obtained a loan on executing a mortgage to the Fund which subsequently went into liquidation is not entitled to appropriate by way of set off his paid-up calls towards the mortgage-debt but is bound to pay the entire mortgage-debt before he can redeem the property. Principle of set-off in Court laid down in English decisions in the case of Joint Stock Companies and Friendly Societies as distinguished from Building Societies applied. *In re Overend, Gurney & Co., Grissell's case L. R. 1 Ch. App. 528, In re Paraguassu Steam Tramroad Company L. R. 8 Ch. App. 254* and *In re Hiram Maxim Lamp Company [1903] 1 Ch. 70* followed. *Brownlie v. Russell 8 A. C. 235* and *Jyoh v. North British Building Society 11 A. C. 489* distinguished. THE MYLAPORE PERMANENT BENEFIT FUND, LTD. v. AROOKIASWAMI PILLAI (1917) L. L. R. 40 Mad. 1004

3. ——— A barred decree cannot on equitable grounds be set-off against a decree under execution. MUNSAB ALI v. ABHOY CHARAN DAS (1917) 21 C. W. N. 1147

SET-OFF—*contd.*

4. ——— *Suit by Liquidators on joint promissory note—Claim to set off amounts debt—Indian Companies Act (VII of 1913), s. 229—Provincial Insolvency Act (III of 1907), s. 46—Mutual dealings—Indian Contract Act (IX of 1872), s. 43.* One of two defendants sued on a joint promissory note by the Liquidators of a bank sought to set off an amount admittedly due to him from the bank on his own separate deposit account. *Held* that under the Indian Companies Act (VII of 1913) s. 229 the provisions of the Provincial Insolvency Act (III of 1907) s. 46 applied, and the dealings in question not being "mutual dealings" within the meaning of that section, the amount claimed could not be set off. As to the effect of s. 43 of the Indian Contract Act. *Per* MACLEOD, *C.J.* "I do not think that the mere fact that a suit could be brought against one of two joint promisors only or the fact that the original liability of defendant No. 2 was incurred, not on his own account only but jointly with another and so remains in the nature of the dealings taken as a whole being altered." GOKHALE v. RAMCHANDRA TRIMBAK (1921) L. L. R. 45 Bom. 1219

SETTING ASIDE

See AWARD L. L. R. 47 Calc. 806

See EXPARTE DECREE 14 C. W. N. 182

See LIMITATION ACT, 1908 ART. 91.

See SALE L. L. R. 43 Calc. 811

See SALE FOR ARREARS OF REVENUE
L. L. R. 42 Calc. 765

——— Court Sale —

See CIVIL PROCEDURE CODE, 1908 O. XXI, RR. 89 TO 92.

SETTLEMENT.

See ASSAM LAND AND REVENUE REGULATION 14 C. W. N. 990
s. 6

See HINDU LAW—ADOPTION
L. L. R. 37 Bom. 251

See KHOJA MAHOMEDAN
L. L. R. 36 Bom. 214

See OCCUPANCY RAIYAT
L. L. R. 40 Calc. 160

See STAMP ACT 1899—

S. 2 (24) SCH. I, ART. —
L. L. R. 35 Bom. 4..

S. 4 L. L. R. 37 All. 157 25.

See SURVEY AND SETTLEMENT ACT
L. L. R. 38 Bom. 290

——— entry at last Settlement—

See AGRA TENANCY ACT 1901, s. 9
L. L. R. 42 All. 615

——— of family property—

See REGISTRATION L. L. R. 37 All. 105

——— construction of—*Settlement of mal-kana or Istimrari payable to zamindar in Jenna—Allowance as compensation for portions of area taken by Government for the ... of ... Liability of zamindars—Resumption ... ... effect of—Suit for sums referred to ... Permanent settlement and account of 1865—Long acquiescence in sum ... fixed in 1790.* This was a suit in which the appellant the Maharaja of Darbhanga claimed

SETTLEMENT—*contd*

to be paid an annual sum of Rs 48? odd by the Government of India as *da turat or malikana* an allowance by way of compensation to the proprietors for the loss of their proprietary rights in portions of their land taken by the Government for the creation of jagirs (or revenue free holding) and which until re umption by Government was payable by the jagirdar but for the payment of which on resuming them the Government themselves became liable The claim was ba ed upon an order of 10th May 1865 by which the appellant alleged that the annual malikana payable to him in respect of land called Mauzah Sahu was permanently fixed at P 48- 0 3 The d fence was that the malikana payable in respect of a jagir known as Meherullah Khan of which Mauzah Sahu formed part was settled in 1780 at Rs 706 2 9 and nothing further was recoverable and that the order made in 186 did not give the right claimed The sum of Rs 706 - 9 had admittedly been paid to the predecessors in title of the appellant since 1780 and was till being paid to the appellant him elf but he claimed to be paid the sum of P 48? odd in addition. His contention was that the fixing of the malikana in 1780 was not a final as ertainment of the rights of his predece ors in title in respect of it but was merely a temporary fixing of the pe centage by which the amount should be ascertained from time to time as it varied together with the variation of the amount of the proceeds of the land Both Courts in India held that the appellant was entitled to nothing more than the Rs 796 2 9 already paid to him *Held* (affirming tho e decisions) that what was done in 1 80 amounted to a final ettlement of the owner s rights in respect of the malikana the payment of which was to be made regularly every year from 1780 no term being fixed That it was regarded as final by the parties concerned was clear from the fact that the payment was made thenceforward for a century without any suggestion that it was in any way wrong or was subject to revision The settlement of 1865 only dealt with the method of payment of the malikana It provided neither for any alteration nor for any addition to the malikana already fixed in 1780 The account attached to the settlement was made for the purposes of the settlement only and the reference in it to malikana was made merely because the malikana was an item to be taken into account in fixing the annual jama to be paid by the person in whose favour the settlement was made in respect of the mouzahs comprised in the settlement That this was the right view to take of the settlement of 1865 and the account annexed to it was confirmed by the fact that no claim was ever made by the appellant for payment of the malikana until 189? 27 years after the date of the permanent settlement and that no such payment had ever been made to him RAMESHWAR SINGH *v* SECRETARY OF STATE FOR INDIA (1911) I L R 39 Calc 1

SETTLEMENT BY A HINDU WOMAN ON TRUSTS

———— *The Indian Trusts Act (II of 1882) s 83—Trusts failing after settlor s death—Resulting trust in favour of settlor s heirs at the tim of her death—The Indian Succession Act (X of 1865) s 191 effect of—The Probate and Administration Act (V of 1881) s 4 effect of—* Where by a deed of settlement a Hindu woman conveyed an immoveable property to trustees on certain trust some of which failed after her death (as being in favour of persons unborn at the date of the settlement) *Held* (i) that there was a resulting trust in favour of the ettlor (ii) that the persons entitled to the property on the failure of the trusts were the heirs of the settlor to be determined at the time of her death Where a person dies inte tate and no administration is granted to his estate the term legal repre entative in s 83 of the Trusts Act must include the person or persons beneficially entitled who repre ent the interests of the deceased by virtue of inheritance The repre entative by inheritance is to be found according to law at the moment of the death of the deceased the maxim being *Solus deus hære dem facere potest non homo* DWARKADAS DAMODAR *v* DWARKADAS SHAMJI (1915) I L R 40 Bom 341

SETTLEMENT COURT

———— order of relating to attached lands—

See DISPUTE CONCERNING LAND I L R 37 Calc 331

SETTLEMENT OFFICER

———— enquiry by—

See JUDICIAL PROCEEDING I L R 37 Calc 52

———— order of—

See HIGH COURT JURISDICTION OF I L R 40 Calc 477

See SECOND APPEAL I L R 43 Calc 603

———— power of—

See BENGAL TENANCY ACT (VIII OF 1885) s 102 I L R 43 Calc 547

SETTLEMENT OF ACCOUNTS

See MINOR I L R 43 Mad 429

SETTLEMENT OF RENT

See RECORD OF RIGHT I L R 47 Calc 1006

SETTLEMENT REPORTS

See ITMAM I L R 47 Calc 979

SETTLEMENT OF REVENUE

———— *Temporary Settlement —Effect on permanent interest—Entry in settlement records effect of* Certain lands were held under the Government under a temporary settlement during the currency of which the holders granted a permanent sub lea e to the plaintiffs who before the expiration of the lease granted by Government granted a permanent lease to one of the grantors Ever since then the sub lessee and his succes or in interest were in o cupation of the land the settlement being from time to time renewed by Government in favour of the original settlement holders or their representatives but in the course of the la t settlement the under tenures were not mentioned in the se tlement records *Held* (in a suit for rent by the plaintiffs) that the mere omis ion of the settlement authorities to make an entry in the settlement records in re pect of the tenures and under tenures cannot affect the rights of the parties and the effect of the re settlement by the Govern

SETTLEMENT OF REVENUE—*contd*

ment with the original settlement holders was to keep alive the contractual obligation of the sub ordinate holders among themselves The rights and obligations of the parties were mutual the plaintiffs being bound to make good the title of the d fendants as soon as by virtue of the resettlement they were placed in a position to con tinue the lease in favour of the defendants and the defendants being under an obligation to continue as tenants under the plaintiffs on the basis of the lease and to pay rent accordingly MOHENDRA NATH BISWAS *v* SHYAM LAL BANERJEE (1912)
18 C W N 997

SETTLEMENT PROCEEDINGS

See WAJIB UL ARZ I L R 45 Calc 793

SEWER PIPE

See BOMBAY CITY MUNICIPAL ACT (BOM ACT III of 1888) ss 305 AND 3 (w) (x) AND (y) I L R 43 Bom 122

SHAFA

———— right of—

See MAHOMEDAN LAW—PRE EMPTION I L R 41 Calc 943

SHAFFEI MAHOMEDANS

See WAKF I L R 37 Bom 417

SHAFI I KHALIT

See PRE EMPTION 4 Pat L J 420

SHAH JOG HUNDI

See HUNDI SHAH JOG I L R 39 Bom 513

See NEGOTIABLE INSTRUMENTS ACT 1881 s 118 I L R 1 Lah 429

SHARE

———— suit by a Mahom dan for a di tri-itive share of estate of an int state—

See LIMITATION ACT 1908 SCH I, ARTS 123 AND 144 I L R 45 Bom 519

SHARE CAPITAL

See PROVIDENT INSURANCE I L R 42 Calc 300

SHARE CERTIFICATES

See SHARES I L R 46 Calc 331 342

SHAREHOLDER

See COMPANIES ACT 1882—

Ss 23 45 61 I L R 36 Bom 557

S 45 58 I L R 42 Bom 595

See COMPANY I L R 42 Bom 264

See COSTS I L R 39 Bom 383

See PREFERENCE SHAREHOLDERS

———— petition by—

See COMPANY I L R 39 Bom 16

SHARE OF ESTATE

See SALE FOR ARREARS OF REVENUE I L R 41 Calc 1092

SHARES

See EXCESS PROFITS DUTY ACT 25 C W N 8,5

See IMPERFECT GIFT I L R 48 Calc 9?6

See PRESIDENCY BANKS ACT (XI OF 1876) s 23 I L R 45 Bom 138

———— allotment of—

See COMPANY I L R 36 All 412

———— pledge of—

See ADMINISTRATION I L R 45 Calc 6?0

See COMPANY I L R 42 Bom 159

———— purchaser of at a Court Sale—

See COMPANIES ACT (VII OF 1913) s 38 I L R 41 Bom ?6

———— registration of—

See COMPANIES ACT (VII OF 1913) s 38 I L R 41 All 619

———— sale of—

See COMPANY I L R 36 All 365

See DAMAGES I L R 43 Calc 493

1 ———— *Transfer by a pe on in possessi n—Judicial po se ion—Po se sion for a particular purpose—Contract Act (IX of 1872) s 108—Bonâ fide purchaser for value—Share certificat with blank transfer deeds whether negoti able—Usage* The defendant Bank bought jute hares for one of their constituents which con isted of the share certificate and a blank tran fer deed signed by the registered holder which were made over by the officer in charge of their Safe Custody Department to the *Head Clerk* of that Department in usual course The clerk fraudulently di po ed of them to Sham Das Sil who again sold them to other persons The plaintiff firm bought them from the defendant firm of Baijnath Champalall Both the plaintiff firm and the defendant firm were *bonâ fide* purchasers for value *Held* that the Head Clerk was not in posse sion of the shares within the meaning of s 108 of the Contract Act and that the plaintiffs a quired no title in them *Held* also that the share certificates with blank transfer deeds signed by the registered holder were not negotiable instruments ROOP CHAND JANKIDAS *v* THE NATIONAL BANK OF INDIA LD (1918)
I L R 46 Calc 342
22 C W N 1042

2 ———— *Transfer by a person in possession—Contract Act (IX of 1872) s 108—Obtaining possession by fraud—Tran fer to a bonâ fide purchaser for value—Negotiability by custom—Share certificate with blank transfers whether negotiable—Negotiability by estoppel — Goods meaning of—Remedy of the bonâ fide purchaser for value—Costs* Share certificates accompanied by transfer deeds endorsed in blank by the registered holder are not negotiable Before an instrument can be considered negotiable it must be in a form which renders it capable of being sued on by the holder of it *pro tempore* in his own name and it must be by the custom of trade transferable like cash by delivery The right principle to adopt with reference to such blank transfers duly signed by the registered holder of the shares is to hold that each prior holder confers upon the *bonâ fide* holder for value of the certificate for the time bein

SHARES—*contd*

an authority to fill in the name of the transferee and is estopped from denying such authority and to this extent and in this manner but no further he is estopped from denying the title of such holder for the time being The plaintiff firm claimed to be the owners of 50 jute shares which they purchased from the defendant *L* on the 7th May 1917 and got their names registered in the books of the Company At the time of the sale the plaintiff obtained possession of the certificate for the said shares and a blank transfer deed signed by the registered holder The defendant *L* bought the said shares from one *U* who fradulently obtained possession of them from the defendant *S* who was the owner of the said shares It was not clear what was the nature of the transaction between the defendants *L* and *U* The purchase by the plaintiff was *bona fide* and for value *Held* that the plaintiff did not acquire any title to the said shares and were entitled to the value they paid for them from the defendant *L* with interest HAZARI MAL SHOHANLAL *v* SATIS CHANDRA GHOSH (1918)

I L R 46 Calc 331
22 C W N 1036

SHAWLS MEANING OF

———— *Railway administration liability of parcel—Railways Act (IX of 1890) s 75 and Sch II (m)—Value of contents of parcel if to be declared—Alwan—Damage suit or—Costs* The term shawls in Sch III cl (*m*) of the Railways Act refers to Indian Shawls of special value and cannot be taken to apply to articles of inferior value such as *alwans* SARAT CHANDRA BOSE *v* SECRETARY OF STATE FOR INDIA (1912)

I L R 39 Calc 1029

SHEBAIT

See EXECUTION OF DECREE
I L R 39 Calc 298
I L R 42 Calc 440

See HINDU LAW—ENDOWMENT

See HINDU LAW—SHEBAIT

See LAND ACQUISITION
I L R 39 Calc 33

See LIMITATION I L R 42 Calc 244

See PARTIES I L R 46 Calc 877

See SHEBAIT

———— appointment of—

See RELIGIOUS TRUST
I L R 40 Calc 251

———— If may be permitted to reside in house provided for idol—

24 C W N 1026

———— power of—

See HINDU LAW—ENDOWMENT
I L R 38 Calc 526

———— power of to grant permanent lease

See HINDU LAW—ENDOWMENT
I L R 40 Mad 709

———— Removal of—

See RELIGIOUS ENDOWMENT
I L R 48 Calc 1019

———— title of—

See PROVINCIAL SMALL CAUSE COURTS ACT s. 23 15 C W N 666

SHEBAIT—*contd*

1 ———— *Suit on security bond executed in favour of shebait of idol if maintainable by succeeding shebait—Limitation Act (IX of 187) Art 132* The Plaintiff as *shebait* sued the Defendant who was tehsildar of the debutter estate for accounts on a security bond executed by the Defendant in favour of the former *shebait* *Held* that the contract entered into between the Defendant and the former *shebait* did not terminate on the death of the latter but could be sued upon by the present *shebait* DASARATHI CHATTERJI *v* ASIT MOHAN GHOSH MAULIK 24 C W N 879

2 ———— *Res judicata—Successor of a shebait when bound by a decree passed against the shebait—Limitation Act (XV of 1877) Sch II Art 124—Hereditary office of a shebait—Adverse possession of the office* The widow of a *shebait* of a certain temple who succeeded her deceased husband in that office mortgaged some land as also her interest in the temple income to one *J* who obtained a decree on his mortgage on the 24th of September 1880 In execution thereof he put up the temple income for sale purchased it himself and obtained delivery of possession in 1892 The widow and the next reversioner then brought a suit to set aside the sale on the ground that the property sold was not saleable That suit was withdrawn with liberty to bring a fresh suit The widow alone then brought another suit which was dismissed on the ground that it was barred by s 244 of the Code of Civil Procedure (Act XIV of 1882) She having died the reversioner brought a suit against the said *J* on the 3rd of January 1910 for a declaration that he was entitled to the temple income inasmuch as it was not saleable On objections taken by the defendant that the suit in so far as it related to the temple income was barred by the rule of *res judicata* and by limitation *Held* that inasmuch as there was no collusion or dishonesty about the former suits and as in one of them the plaintiff himself was a party the decree passed in the suit against the *shebait* (widow) would bind her successor (the plaintiff) and that therefore the present suit was barred by the rule of *res judicata* *Held*, further that Art 124 of Sch II of the Limitation Act applied to the case and that as the suit was brought more than twelve years after the date when the defendant obtained possession of the hereditary office by receipt of the temple income it was barred by limitation JHARULA DAS *v* JALANDHAR THAKUR (1912) I L R 39 Calc 887

3 ———— *Alienation power of—Dedicated property acquisition of—Land Acquisition Act (I of 1894) s 31 cl (2)—Compensation money withdrawal of* The position of a *shebait* is analogous to that of the manager of an infant He is entitled to possess and to manage the dedicated property but he has no power of alienation in the general character of his rights S 31 cl (2) of the Land Acquisition Act applies to a *shebait* since he is not competent to alienate the land. *Kamini Debi v Promotho Nath Mookerjee 13 C L J 597* followed RAMPRASANNA NANDI CHOWDHURI *v* SECRETARY OF STATE FOR INDIA (1913)

I L R 40 Calc 895

4 ———— *Lease by a previous shebait in excess of his authority suit for cancellation of by succeeding shebait—New cause of action if accrues to each succeeding shebait—Adverse possession when commences and if interrupted by*

SHEBAIT—*contd*

death of original shebait—Limitation The effect of a lease granted by a *shebait* in excess of his authority is not to give each succeeding *shebait* a new cause of action for setting aside the alienation and adverse posse sion commences from the date of the original disposition of the property and is not interrupted by the death of the original *shebait* and the succession of the new *shebait* Each succeed ing *shebait* does not get a new start for the purpose of limitation *Damodar* v *Lakhan L R 37 I A 147 I L R 37 Calc 885* followed Where the plaintiff as *shebait* of a Thakur to which office he succeeded in 1903 sued for declaration of title to land for recovery of possession and for cancella tion of a *putni* lease granted on the 9th September 1848 by a previous *shebait* who died in 18.. on the ground that the alienation was without legal neces sity and in no way beneficial to the endowment and therefore not binding upon the endowed property in his hand *Held* that the suit was barred by limitation the title to annul the *putni* was ex tinguished in 1867 at the latest No substantial distinction in principle can be recognised between a *putni* and a sale MADHU SUDAN MANDAL v RADHIKA PRASANNO DAS (1912)

17 C W N 873

5 ———— **Purchasing debutter property at Court sale in the benami of his son for adequate price**—*If can keep his pur chase—Fiduciary relationship purchase by person standing in valid if full disclosure made to* cestui que *trust—Secret purchase in another s name invalid* The grounds for removing a *sheba t* from his office may not be identical with those upon which a trustee would be removed in England The close intermingling of duties and personal interest which together make up the office of *shebait* may well prevent the closeness of the analogy but as part of the office it is indisput able that there are duties which must be per formed that the estate does need to be safe guarded and kept in proper custody and if it be found that a man in the exercise of his duties has put himself in a position in which the Court thinks that the obligation of his office can no longer be faithfully discharged that is sufficient ground for his removal A trustee who is not a trustee for sale may acquire from beneficiaries who are *sui juris* an estate in which they are interested but he can only do this if he has made the fullest disclosure to them of all the relevant and material facts within his knowledge affect ing or that might affect the value and condition of the estate and the parties are at arm s length the *cestui que* trust knowing that he is dealing with the trustee Otherwise the purchase is bad and it is bad because any person who occu pies a fiduciary relationship may liable to acquire information about the trust estate which he is not permitted to use for his own benefit RAJA PEARY MOHON MUKHERJI v MONOHAR MUKHERJI

26 C W N 133

6 ———— **Rights of a shebait of an idol to impose restrictions on the powers of subsequent shebaits**—*Acceptance of benefits conferred by a gift by the sh ba t—Effect of such acceptance on the restrictions imposed by the gift* A Hindu governed by the Dayabhaga School established certain family deities but imposed no condition as to their location His son acquired a piece of land and erected thereon a separate Thakurbari for one of the deities By a declaration of trust he declared that he his heirs executors representatives and admin istrators should for ever hold the land to and for the use of the deity that the Thakur should be located and worshipped in the premises and that the Thakur should not on any account be remov ed therefrom unless and until a similar or better Thakurbari was built The grandsons of the founder separated and the palas of worship were divided One of the said grandsons not having got any part of the family house removed else where and built himself a separate residence, where he wanted to remove and worship the Thakur during his turn of worship but was pre vented by his co sharers on the strength of the above declaration *Held* that the founder of the idols having imposed no condition as to their location it was not open to any subsequent *shebait* to impose restrictions which would better those who subsequently as heirs of the founder became *shebaits* The said grandson is there fore entitled to remove the Thakur from the Thakurbari of his own house during his term of worship PROMOTHO NATH MULLICK v PRADY UMNA KUMAR MULLICK **26 C W N 909**

SHEBAITI RIGHTS

See RELIGIOUS ENDOWMENT

3 Pat L J 307

SHEIKH ANSARIS TRIBE OF

See CUSTOM **I L R 39 Calc 418**

SHERIFF'S RIGHT TO POUNDAGE

See POUNDAGE **I L R 37 Calc 649**

———— *Sheriff's Poundage when payable—Whether it is payable when claim is paid up upon compromise after an attachment before judgment—High Court Rules Ch XXXVI r 77—28 Eli Ch 4— Levy meaning of* A filed a suit against B for about 8½ lacs and subsequently applied for attachment before judgment of certain moneys belonging to B lying with the Bank of Bengal and got an order for interim attachment which was effected by the Sheriff Thereafter a settlement was arrived at and the order *nisi* was discharged and the the *interim* attachment was by consent with drawn each party paying his own costs The present suit was filed by the Sheriff of Calcutta claiming Rs 21 000 as poundage due to him as Sheriff of Calcutta by reason of the interim attach ment before judgment under the High Court Rules Ch XXXVI *Held* that the Sheriff was not entitled to any poundage under the said rule A claim to poundage by a Sheriff must be under the express terms of a Statute Rule or Order He has no common law right to reward for executing a writ A D PICHHARD v R B JANAKI NATH ROY **26 C W N 613**

SHETSANADI LANDS

———— *Rules framed under Act XI of 1852 (Bombay)—Government continuing the shetsanadi lands to the family of the shetsanadi who is discharged by Government without any fault on his part—Continuance on condition of paying full survey assessment on the lands—Subsequent resump tion of the lands by Government* On the death in 1865 of the then *shetsanadi* one B Government

SHETSANADI LANDS—*cond*

appointed one Y as the new *shetsanadi* but under *the rules framed under Bombay Act XI of 1852* Government continued the *shetsanadi* lands to the family of *B* on condition of their paying full survey assessment on the lands The remuneration of Y was made payable out of the extra assessment recovered in 1905 Government resumed the lands and handed them over to Y for his services *Held* that both the order passed in 1865 and the action taken under the rule framed under Bombay Act XI of 1852 had in law the effect of converting the land from a *Shetsanadi vatan* into a *rayatwari* holding and investing the holder of the land with the rights of an ordinary occupant entitled to it so long as he paid the survey assessment *Held* also that the proceedings of 1905 were on the supposition that what was done in 1865 on *B*s death had the effect of continuing the lands in dispute as one reserved for *shetsanadi* service but that was not its effect and the proceedings in question were *ultra vires* YELLAPPA *v* MARLINGAPPA (1910) I L R 34 Bom 560

SHIAS

See MAHOMEDAN LAW—GIFT
I L R 36 All 289

See MAHOMEDAN LAW—WAQF
I L R 36 All. 431

See MAHOMADAN LAW—GUARDIAN
I L R 36 All 466

SHIP

See ARREST OF SHIP
I L R 42 Calc 85

See CONFISCATION I L R 42 Calc 334

See PRIZE COURT I L R 44 Bom 61

SHIPOWNER

———— liability of—

See CHARTER PARTY
I L R 41 Bom 119

SHIPPING

See ARREST OF SHIP

See CONFISCATION

See MARINE INSURANCE

See MERCHANT SEAMAN ACT (I OF 1859) s 83 CL (*4*) I L R 39 Bom 558

See PRIZE

See SALE OF GOODS
I L R 45 Calc 28

See CONTRACT I L R 41 Calc 670

SHIPPING DOCUMENTS

See C I F CONTRACTS
I L R 42 Bom 473

SHIPPING ORDERS

See CONTRACT ACT (IX OF 18 2) ss 56 65 I L R 40 Bom 529

SHIVARPANA

See CIVIL PROCEDURE CODE 188 s 539
I L R 36 Bom 29

SHORT DELIVERY

See CARRIERS I L R 39 Calc 311

See RAILWAYS ACT s 140
14 C W N 883

SHROTRIEMDAR

See MADRAS ESTATES LAND ACT (I OF 1908) s 8 EXCEP
I L R 38 Mad 843

SHUDRAS

SEE HINDU LAW—SUDRAS

See HINDU LAW—INHERITANCE
I L R 34 Bom 321, 553

See HINDU LAW—LEGITIMACY

———— Adoption by widow though unchaste valid in Bombay—

See HINDU LAW I L R 45 Bom 459

———— Succession of illegitimate daughter to her mother in the absence of any nearer heir—

See HINDU LAW I L R 45 Bom 557

SICCA RUPEES

See SUIT FOR RENT
I L R 46 Calc 347

SIGNATURE

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 59 I L R 41 Bom 384

———— genuineness of—

See SPECIFIC PERFORMANCE
I L R 38 Calc 805

SIKKIM

———— Court of the Political Agent of—

See POLITICAL AGENT SIKKIM
I L R 38 Calc 859
15 C W N 992

SIMANADARS

———— *Chaukidari Chakaran Land Act (Beng VI of 1870) s 1 whether applicable—Bengal District Gazetteer reference to by High Court* The High Court is entitled to use the Bengal District Gazetteer as a book of reference The Chaukidari Chakaran Land Act applies to *simanadars* as the Gazetteer for Bankura shows that in thana Indas (where the lands in suit are situate) the *simanadars* perform those duties which are described in s 1 of the Act LALU DOMF *v* BEJOY CHAND MAHATAP (1915)
I L R 43 Calc 227

SIMILARITY OF NAMES

See TRADE NAME I L R 40 Calc 570

SIMPLE INTEREST

See RECEIPT I L R 42 Calc 546

SIMPLE MORTGAGE

See ADVERSE POSSESSION
I L R 39 Mad. 811
I L R 44 Calc 425

SIMULTANEOUS ADOPTION

See HINDU LAW—ADOPTION
I L. R 38 Calc 694
I L. R 39 Calc 582

SINGLE JUDGE

See HIGH COURTS ACT (24 & 25 VICT c 104) ss 2 9 AND 13
I L. R 39 Bom 604

———— judgment of—

See LETTERS PATENT APPEAL.
I L. R 43 Calc. 90

SINGLE JUDGE—*contd*

———— order by—

See APPEAL I L R 42 Calc 735

I L R 44 Calc 804

———— revision by—

See SANCTION FOR PROSECUTION

I L R 44 Calc 816

———— ruling of—

See REGISTRATION ACT 1908 s 17

I L R 1 Lah 25

SIR LAND

See AGRA TENANCY ACT (II OF 1901)—

Ss 19 AND 20 I L R 32 All. 383

S 164 I L R 38 All. 223

See GROVE LAND I L R 42 All. 483

———— mortgage of—

See CENTRAL PROVINCES TENANCY ACT (XI OF 1898) s 45 SUB SS *(1)* *(6)*

L R 45 I A 179

See ESTOPPEL I L R 48 Calc 591

See MORTGAGE I L R 33 All 434

———— *Mortgage by proprietor having such land and sale in execution of mortgage decree* —A person whose proprietary rights in land comprised Sir land mortgaged his entire interest therein including the right in the Sir land In the decree for sale instead of including the cultivating rights in Sir should compri e the property with all actual and reputed rights as detailed in the mortgage *Held* that in the face of the decree it was not open to the mortgagor to urge that the rights of the mortgagee to sell the Sir lands were taken away by the decree GULAB SINGH v DIWAN BAHADUR BALLABH DAS

25 C W N 939

SISTER

See BURMESE LAW—INHERITANCE

I L R 41 Calc 887

See HINDU LAW—SUCCESSION

I L R 39 Calc 319

———— Succession to self acquired property—

See CUSTOM (SUCCESSION)

I L R 1 Lah 433

I L R 2 Lah 98

———— Succession of Muhammadan Rajput Jullundur —

See CUSTOM (SUCCESSION)

I L R 1 Lah 1

———— Whether an heir—

See HINDU LAW (SUCCESSION)

I L R I Lah 588 608

SISTER'S SON

See HINDU LAW—SUCCESSION

I L R 39 Calc 319

SLANDER

See DEFAMATION

SLANG TERMS

See MISDIRECTION I L R 45 Calc 557

SLAUGHTERING FEES

See MADRAS DISTRICT MUNICIPALITIES ACT 1884 s 191

I L R 38 Mad. 113

SLAVERY BOND

See BOND I L R 42 Calc. 412

SMALL CAUSE CASE

See APPEAL I L R 40 Calc. 537

SMALL CAUSE COURT

See CIVIL AND REVENUE COURTS

I L R 40 All 51

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 24 I L R 38 Mad. 95

See COMPENSATION I L R 44 Calc. 87

See GENERAL CLAUSES ACT 1897 s 3 (25) I L R 35 All. 155

See PROVINCIAL SMALL CAUSE COURTS ACT 1887

See VATAN I L R 37 Bom. 100

———— appeal from order of—

See CRIMINAL PROCEDURE CODE, 1898 s 195 4 Pat L J 609

———— Decree of—amendment—after revision to High Court rejected—

See AMENDMENT OF DECREE

I L R. 1 Lah 310

———— Error by—

See HIGH COURT JURISDICTION OF

I L R 39 Calc 4 3

———— jurisdiction of—

See BHAGDAR 23 C W N 614

———— new trial—

See PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882) s 38

I L R 42 Bom 80

———— Suit by Zamindar to recover part of price of trees sold by tenant—

See PROVINCIAL SMALL CAUSES COURT ACT 1887 SCH II ART 13

I L R 42 All 448

———— suit not cognizable by—

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XVI r 9)

I L R 35 Bom. 09

1 ———— *Suit by mortgagor against mortgagee for meene profits* A suit by a mortgagor against the mortgagee for me ne profits for the period during which he held wrongful possession of the property is maintainable in a Small Cause Court Art 31 of Sch II of the Provincial Small Cause Courts Act is no bar to su h suit being instituted in a Small Cause Court SAHARI DUTT v SHEIKH AINUDDY (1910) 14 C W N 1001

2 ———— *Provincial Small Cause Court if may d cide title—Procedure—Mesne profits if recoverable when plaintiff out of possession—What must be proved—Petty case pecuniary value not an unfailing test* In a Small Cau e Court suit the Judge is no doubt competent to decide the question of title upon which the claim depends but if he does so it is incumbent on him to decide the question correctly and according to law The maxim *de minimis non curat lex* should not be applied to Small Cause Court suits for damages in respect of immoveable property for the importance of the case to the parties is not to be measured by the pecuniary limit of their claim. *Pama*

SMALL CAUSE COURT—*contd*

City v Pamjit I L R 21 Bom 250 referred to ELAHI BUKSH MANDAL v RAM NARAYAN GHOSE (1911) 16 C W N 288

8 ——————— *Jurisdiction of to try suit for specific sum of money involving possible examination of account —Civil Procedure Code (Act V of 1908) rr 6 7 O XLVI—Circumstances necessitating action under* The plaintiff sued to recover from the defendant a certain aggregate amount made up by sums due on account of salary and house rent as also money borrowed by the defendant The plaint stated that if the correctness of the amounts was questioned the amount due may be determined on examination of the accounts The suit was filed in the Court of the Munsif who returned the plaint for presentation to the Court of Small Causes where on being presented the plaint was returned on the ground that Court had no jurisdiction. The plaint on being again presented before the Munsif was returned a second time *Held* that a suit for the recovery of a specific sum of money does not assume the character of a suit for accounts merely because in the determination of the question in controversy accounts may have to be examined and the present was not a suit for accounts and was cognizable by the Court of Small Causes That the Small Cause Court Judge instead of returning the plaint should have taken action under r 6 or r 7 O XLVI and submitted the record to the High Court with a statement of his reasons for the doubt as to the nature of the suit KSHETRA NATH BANERJI v KALIDASI DASI (1916) 21 C W N 784

SMALL CAUSE COURT DECREE

See CIVIL PROCEDURE CODE 1908 s 151 I L R 34 Bom 135

See FRAUD I L R 43 Calc 298

See PRESIDENCY SMALL CAUSE COURTS ACT 1882—

S 43 I L R 45 Bom 1048

S 48 I L R 47 Bom 972

See PROVINCIAL SMALL CAUSE COURTS ACT 188 s 17

I L R 4? All 438

See SECOND APPEAL I L R 45 Bom 223

SMALL CAUSE COURT SUIT

See CIVIL PROCEDURE CODE 1908—

S 24 I L R 39 All 214

I L R 40 All 525

S 115 I L R 39 All 101

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887)—

SCH II ART 8 I L R 41 Bom 367

SCH II ART 131 I L R 40 All 142

Ss 23 AND 27 I L R 38 Bom 190

S 25 I L R 41 All 42

——————— *Dismissal for default— Application for restoration of suit—Review—Civil Procedure Code (Act V of 1908) O IX rr 4 9 O XLVII r 1—Provincial Small Cause Courts Act (IX of 1887) s 17* Where a Small Cause Court suit is dismissed for the plaintiff s default in the presence of the defendant and an application made under O IX rr 4 and 9 for the restoration of that suit is also dismissed for the plaintiff s default in the presence of the defendant s pleader and where again an application is made under O IX r 9 for the rehearing of the case and another application for treating it as an application for review *Held* that an application under O IX r 9 lay O XLVII r 1 applied to all orders of the Court which may be reviewed under certain circumstances *Held* further that the provisions of s 17 of the Provincial Small Cause Courts Act did not apply to miscellaneous applications *Deljan Nichha Bibee v Hemant Kumar Ray 19 C W N 758* followed BIPIN BEHARI SHAHA v ABDUL BARIK (1916) I L R 44 Calc 950

SOCIETY

See PROFIT A PRENDRE 2 Pat L J 323

SOHAG GRANT

See BABUANA GRANT

See HINDU LAW—CUSTOM

SOLDIER

——— decree against a—

See ARMY ACT (44 & 45 VIC c 58) ss 145 190 I L R 43 Bom 368

SOLEHNAMA

See LEASE I L R 37 Calc 803

——— construction of—

See LIMITATION I L R 46 Calc 870

SOLICITOR

——— duty of—

See GIFT I L R 39 Calc 933

——————— *Professional misconduct—Proceeding to strike off from Rolls—Contempt of Court pursuing remedy in Criminal Court when Supreme Court refused civil remedy having disbelieved information if amounts to Forgery striking out names of witnesses names by solicitor after informing responsible officer—Intent to defraud if any—Bad faith—Right to be heard on matters relating to professional misconduct* Where a plaintiff who has been refused a warrant for the detention of the defendant by a Civil Court straightway starts a criminal process on the same subject matter and by means of allegations to which the Civil Court attached no credit obtains his warrant from a different Court almost as a matter of course he undoubtedly runs several risks of a serious character He is not however restricted by law to a single form of remedy He may pursue all the legal remedies appropriate to his grievance and his conduct does not necessarily involve any punishable contempt of the Civil Court whatever may be its other consequences Where in such a case the arrest by warrant of the Criminal Court was obtained without getting the necessary *fiat* of Government and it was executed but the prisoner was then discharged on the ground that the warrant was in excess of the Magistrate s jurisdiction and it appeared that the Magistrate was not misled into issuing the warrant by any concealment or deceit on the part of the applicant but that it might have been due to the Magistrate s own in

SOLICITOR—*contd*

advertence and there was no evidence to show that the applicant did not believe in the justice of his claim and did not so instruct the solicitor who acted for him in the matter *Held* that the conduct of the solicitor though it might from other points of view be shown to be open to strong animadversion could not in the absence of proof that the proceedings were tainted by his fraud be held to constitute contempt of Court nor did it show bad faith on the part of the solicitor Where two persons on being served with subpœnas taken out by the solicitor on behalf of certain accused persons stated that they knew nothing of the case and thereupon the solicitor took back the subpœnas and mentioned to a responsible Court officer that he wanted the names of witnesses to be substituted and on his making no objection struck out their names and substituted those of two other persons in their place *Held* that there being no thing to show that the intent of the solicitor in so doing was to defraud the facts did not establish the charge of forgery brought against him who at most had committed an irregularity and for which a pecuniary penalty of £20 imposed on him was an adequate punishment That an order striking the solicitor s name from off the Rolls on account of the said two alleged offences of contempt and forgery could not in the circumstances be maintained References in the order to the solicitor s conduct in other professional matters when no such matters were specified in the information before the Court and upon which the solicitor had not been heard could not be relied on against him *In the matter of* TAYLOR

16 C W N 386

SOLICITOR'S LIEN FOR COSTS

See COSTS

I L R 43 Calc 673
I L R 46 Calc 1070

———— *Practice—Dissolution of partnership—Assets in hands of receiver—Judgment creditor—Charging order—Solicitor s lien for costs* The rule at common law that a solicitor is entitled to a lien for his costs on property recovered or preserved by his exertions has always been followed by this Court and where there are assets of a partnership in the hands of a receiver appointed in a partnership suit the solicitors engaged in that suit are entitled to ask for a charge on those assets in priority to the creditors of the partnership *Rida* v *Thorne [1902] 2 Ch 344* followed Where a plaintiff has obtained a decree against a partnership firm the available assets of which are in the hands of a receiver appointed in a previous partnership suit his proper course is not to issue execution against those assets but to ask the Court for a charging order and to undertake to deal with the charge according to the order of the Court *Kewney* v *Attrill 34 Ch D 345* followed A HAJI ISMAIL AND CO v RAHIABAI (1909)

I L R 34 Bom 484

———— *Charge of Solicitor—Inspection of documents—Administration suit* The right to be exercised by a Solicitor claiming a lien largely depends upon the circumstances under which he had ceased to act for his client the test being whether the Solicitor has discharged himself or has been discharged by the client The obligation on the Solicitor to give inspection of and to produce documents in his possession over which he has a lien in an administration action is confined to those cases where they are essential to the determination of those questions which arise in the normal administration proceedings when the estate is being actually administered *Boughton* v *Boughton 23 Ch D 169* and *In re Capital Fire Insurance Association 24 Ch D 408* considered AISHABIBI v AHMED BIN ESSA (1910)

I L R 35 Bom 352

SOLVENT COMPANY—

See COMPANY (IN LIQUIDATION)

SON

I L R 1 Lah 368

See HINDU LAW—ADOPTION

I L R 42 Bom 547

———— after born—Effect of—

See HINDU LAW I L R 1 Lah 1?8

See LIMITATION ACT 1908 s 6

I L R 1 Lah 558

———— birth of subsequent to the execution of the will—

See HINDU LAW—WILL.

I L R 38 Mad 369

———— death of, before the testator—

See HINDU LAW—WILL.

I L R 38 Mad 369

———— liability of—

See HINDU LAW—DEBT

I L R 39 Calc 862

See HINDU LAW—JOINT FAMILY

See HINDU LAW—SURETY

I L R 39 Calc 843

See MALABAR LAW

I L R 38 Mad 527

See MORTGAGE I L R 40 Calc 342

———— Locus standi of in deceased father s insolvency proceedings—

See INSOLVENCY I L R 48 Calc 87

———— of a concubine (status of)—

See MAHOMEDAN LAW—LEGITIMACY

I L R 46 Calc 259

———— Succession by—to office and property of granthi Golden Temple, Amritsar—

See CUSTOM (RELIGIOUS INSTITUTIONS)

I L R 1 Lah 511 540

SONTHAL PARGANAS

See PRADHAN 5 Pat L J 656

See SONTHAL PARGANAS ACT

1 ———— *High Court Jurisdiction of—Suits exceeding Rs 1 000 in value—Sonthal Parganas Civil Rules 1905 r 29—Sonthal Parganas Act (XXXVII of 1855) ss 1 cl ( ) and 2—Sonthal Parganas Settlement Regulations (III of 1872) s 27—Sonthal Parganas Justice Regulation (V of 1893) s 5—Civil Procedure Code (Act V of 1908) s 115—The Charter Act (24 & 25 Vic c 104) s 15* In a suit in which the matter in dispute exceeds Rs 1 000 the High Court is not debarred by anything in the local Acts and Regulations of the Sonthal Parganas from revising the proceedings of the Subordinate Judge who is subject to the jurisdiction of the High Court under the general powers of superintendence over the subordinate Courts as contained in the Charter and an order

SONTHAL PARGANAS—*contd*

by the Subordinate Judge adjourning a mortgage sale pending an enquiry directed to be made by the Deputy Commissioner may be revised by the High Court. The High Court however cannot interfere with an order of the Deputy Commissioner directing an enquiry or with an enquiry by the Sub-divisional Officer. *Dungaram Marwary* v *Rajkishore Deo I L R 18 Calc 133* followed *Tej Ram* v *Harshukh I L R 1 All 101* referred to SARDHARI SAH v HUKUM CHAND SAH (1914)

I L R 41 Calc 876

2 ———— *Mortgage of land in not completely settled—Suit in Civil Court at Bhagalpur on mortgage if lies—Limits of Civil Court s Jurisdiction—Exclusive jurisdiction of special officers appointed by Lieutenant Governor—Stipulation in bond that suit might be instituted at Bhagalpur— Court having jurisdiction in Sonthal Parganas if includes Civil Courts at Bhagalpur—Sonthal Parganas Regulation III of 1872 (read with Act XXXVII of 1855 and Act X of 1857) ss —5 6—Interest—usury rules enforceable by all Courts Sonthal Parganas Justice Regulation (V of 1893) s 9—Civil Procedure Codes (Act VIII of 1859 Act XXIII of 1861 Act X of 1877 Act XIV of 1882) how far applicable in Sonthal Parganas—Civil Courts Acts (Act VI of 1871 and Act XII of 1887) how far apply in Sonthal Parganas— Scheduled Districts Act (XII of 1874) if applied to Sonthal Parganas—Jurisdiction objection to taken at a late stage when entertainable* Held that on 20th June 1904 the date on which the present suit was instituted in the Subordinate Judge s Court at Bhagalpur to enforce a mortgage of properties two thirds of which was in the Sonthal Parganas no suit could lie in any Court established under the Civil Courts Act of 1871 or 1887 in regard to any land or interest in or arising out of any land or for the rents or profits of any land but such suits must have been brought under s 5 of Sonthal Parganas Regulation of 1872 before the Settlement Officers or Courts of officers appointed by the Lieutenant Governor of Bengal under s 2 of the Sonthal Parganas Act 1855 and the Sonthal Parganas Justice Regulation of 1893 Part . so long as the land had not been settled and the settlement declared by a notification in the *Calcutta Gazette* to have been completed and concluded That as it appeared that portions only of the mortgaged land had been settled and notification made prior to the institution of the suit of the completion of the settlement in respect of such portions only the suit came within s 5 of the Sonthal Parganas Regulation of 1872 and the Subordinate Judge of Bhagalpur had no jurisdiction to entertain it The provision in s 6 of that Regulation which places all contractual stipulation as to compound interest in a position of non enforcibility and limits statutably the total interest which can be decreed on any loan or debt is not one of procedure but of substance and applies to all Courts having jurisdiction in the Sonthal Parganas and acting under and by virtue of such jurisdiction All Courts having jurisdiction in the Sonthal Parganas in s 6 do not refer only to Courts locally situated in the Sonthal Parganas and dealing with matter purely local A stipulation in the mortgage bond that the mortgagees might enforce it in the Court at Bhagalpur was inoperative as the parties could not by consent give the Court jurisdiction thereby nullifying the express prohibition of s 5 of the Regulation of 1872 The Civil Procedure Codes of 1861 1877 and 1882 applied to suits cognizable in the ordinary Civil Courts and these since the enactment of s 9 of Reg V of 1893 were suits of which the value exceeded Rs 1 000 and which were not excluded from their cognizance by amongst others the provisions of s 5 of the Regulation of 1872 *Quære* Whether the Civil Procedure Code was intended by the Notification of 19th August 1867 to apply to Courts held by officers appointed by the Lieutenant Governor of Bengal in those suits in which they were not required to try and determine the case according to the several laws and regulations prevailing in Bengal *Semble* The true interpretation of cl (1) of the Act XXXVII of 1855 (before its operation was modified by subsequent enactments and notifications) was that even suits on which the matter in dispute exceeded Rs 1 000 in value were to be tried by the special officers appointed by the Lieutenant Governor but in trying and determining them they were to observe the general laws and regulations obtaining in Bengal *Sorbojit Roy* v *Ganesh Prosad Missir*, *I L R 10 Calc 761* doubted MAHA PRASAD SINGH v RAMANI MOHAN SINGH (1914)

L R 41 I A 197
I L R 42 Calc 116
18 C W N 994

SONTHAL PARGANAS ACT (XXXVII OF 1855)

See SPECIFIC RELIEF ACT 1877
2 Pat L J 379

———— s 1—

See JURISDICTION I L R 41 Calc 915

See SONTHAL PARGANAS
I L R 41 Calc 876

———— s 2—

See JURISDICTION I L R 42 Calc 116

SONTHAL PARGANAS JUSTICE REGULATION (V OF 1893)

———— part 2 s 10—

See JURISDICTION I L R 42 Calc 116

SONTHAL PARGANAS SETTLEMENT REGULATION (III OF 1872)

See JURISDICTION I L R 41 Calc 915

See SPECIFIC RELIEF ACT 1877
2 Pat L J 379

See SONTHAL PARGANAS
I L R 41 Calc 876

———— ss 5 6—

See JURISDICTION I L R 42 Calc 116

———— s 6—

See EXECUTION OF DECREE
4 Pat L J 49

———— ss 10 11—*Sonthal Parganas Settlement Rules No 27—Succession to jote held by Hindu goala—Local Custom if applies to Hindu immigrants—Point incidentally decided in settlement proceeding if res judicata* A finding of the Settlement Officer in a proceeding under the Sonthal Parganas Regulation III of 1872 which was not necessary for the purpose of the proceeding and was arrived at only incidentally does not operate as *res judicata* R 27 of the Sonthal Parganas Settlement Rules under which resident relatives who have taken part in the management of the family *jote* are to be given preference as heirs is only applicable to

SONTHAL PARGANAS SETTLEMENT REGULATION (III OF 1872)—*contd*

———— ss 10 11—*contd*

suits before Settlement Officers The Rule was intended to meet the peculiar customs of the Sonthals and aborigines in the locality and does not apply to persons governed by the Hindu Law who have settled in the Sonthal Parganas BASKI MAHRIK *v* SUPHAL MANJHI (1913) 18 C W N 333

———— ss 11 14, 25 25A—

1 ———— *Record of rights effect of—Suit challenging record maintainability of—Special limitation—Limitation Act (IX of 1908) s 29 how far affects Regulation III of 1872—Minors how affected by the Regulation* The plaintiffs some of whom were minors sued the defendants for partition of lands held in common but not as joint family property In the record of rights prepared under Reg III of 1872 the defendants had been recorded as proprietor and *mokarraridar* in respect of the lands The suit was brought after three years from the date of the publication of the record. *Held,* that the policy of Regulation III of 1872 was to have a complete record of rights and interests in land in the Sonthal Parganas and to exclude the jurisdiction of Civil Courts except in certain matters provided for in the Regulation That the suit so far as it regarded the proprietary rights in the land was barred by limitation under s 25A of the Regulation That the Limitation Act is applicable to the Sonthal Parganas but s 29 of Act IX of 1908 saves all provisions of local laws as to limitation and does not therefore affect the three years rule under s 25A of the Regulation That the Regulation does not make any exception in favour of minors and the minority provisions of the general Limitation Act has reference to the periods of limitation prescribed in that Act That the notice provided by s 14 is to the people of the village irrespective of age or intelligence and as the law makes the record of rights conclusive proof of the rights and interests therein recorded the defendants could not be called upon to prove the service of the required notices JANUKI PERSAD JHA *v* BABU LAL JHA (1914) 19 C W N 499

2 ———— *Effect of the Regulation on the jurisdiction of Civil Courts—Elements necessary for suit to come within s 25A—Sikmi ghatwali khorposh grant share in of a right of a zamindar or other proprietor* The plaintiff brought a suit for declaration of his title to a share in a certain mauza in the Sonthal Parganas which formed the subject of a sikmi ghatwali *khorposh* grant and for registration of his name in the settlement records in respect thereof It appeared that rent was payable to the ghatwals and no land revenue was payable direct to the Government in respect of the land which was not free from Government revenue *Held* that the effect of ss 11 14 and 25 of Reg III of 1872 was that the jurisdiction of the Civil Courts was absolutely excluded except in cases specially provided for in s 25A That in order that the plaintiff's case should fall within the provisions of s 25A it was essential for the plaintiff to show that he was a zamindar or other proprietor and the interest in land like that claimed by the plaintiff did not come within the description of a right of a zamindar or other proprietor That the only remedy the plaintiff had was to apply to the Government under s 25 of the Regulation to direct the revision of the record of rights NEMO DEO *v* PARBATI KUMARI (1914) 19 C W N 549

SONTHAL PARGANAS SETTLEMENT REGULATION (III OF 1872)—*concld*

———— ss 11 14—

———— ss 11 25 25A—*Entry in record of rights operating as decree—Claim not expressly negatived by Settlement Court if open to investigation in Civil Court—Entry in record set up as plea in bar—What must be proved for entry to operate as res judicata—Proof that entry obtained by fraud.* Where in a suit for rent instituted by the plaintiff in part as zemindar and in part as *mokuraridar,* the defendants objected to the recovery of the rent alleged to be due to the plaintiff as *mokuraridar* on the ground that in the record of rights prepared and finally published under the Sonthal Parganas Regulation III of 1872 the defendants were recorded as *putnidars* only *Held* that under s 11 of the Regulation the entry operated as a decree of a Civil Court That it was not open to the plaintiff to urge that as there was no express decision of the Settlement Court upon the question of the *dar mokurari* status of the defendants the matter was open for investigation in a Civil suit inasmuch as it must be held that there was such a decision by implication *Held* however that it was for the defendant who pleaded the entry as a bar to establish the circumstances in which the decree was made and to prove conclusively that the decree does operate as *res judicata* That the defendants must prove that in the preparation and final publication of the record of rights the requirements of the statute had been fulfilled and it was open to the plaintiff to urge and prove that the entry which was to operate as a decree was obtained by fraud. *Ram Narain Singh v Ram Runjan Chuckerbutty I L R 13 Calc 245 Nadiar Chand Singh v Chandra Sikhar Sadhu I L R 15 Calc 765 Rajib v Lakhan I L R 27 Calc 11 Nistarini v Nundalal I L R 30 Calc 369* relied on MOZAFFER ALI *v* KALI PROSAD SAHA (1913) 18 C W N 271

———— s 27—

See SONTHAL PARGANAS I L R 41 Calc 876

SOVEREIGN PRINCE

———— suit against—

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 86 I L R 38 Mad 635

SOVEREIGN RIGHTS

See ACT OF STATE I L R 39 Calc 615

See ASSESSMENT I L R 43 Calc 973

SPECIAL APPEAL

See SECOND APPEAL

———— *Civil Judge of Vinchur—Appeal to High Court—Regulation IV of 1827 s 99—Regulation XIII of 1830 s 5—Civil Procedure Code (Act V of 1908) ss 4 and 100* A special appeal on the grounds mentioned in s 100 of the Civil Procedure Code (Act V of 1908) lies to the High Court from the decision of the Civil Judge at Vinchur RAMCHANDRA ANANDRAO *v* PANDU (1913) I L R 38 Bom 340

———— *Second Appeal in cases under Madras Rent Recovery Act (VIII of 1865) s 69—Civil Procedure Code (Act VIII of 1859) s 3 9—*

SPECIAL APPEAL—*contd*

Civil Procedure Code (Act XIV of 1882) s 584—Concurrent findings of fact—High Court ignoring concurrent findings and deciding contrary to them on second Appeal Although 69 of the Madras Rent Recovery Act (VIII of 1865) only provides for a regular appeal (on law and fact) and there is no further appeal to the High Court from the decision of the District Judge on appeal from the Collector given by the terms of the Act itself yet under s. 372 of Act VIII of 1859 which was the Civil Procedure Code in force when Madras Act VIII of 1865 was passed and which regulated the procedure of the Civil Courts in India outside the Presidency towns a special appeal lay to the Sudder Court from all decisions passed in regular appeal by the Courts subordinate to the Sudder Court and when the District Court was substituted for the Zillah Court and the High Court for the Sudder Court a *special appeal lay from the District Court* to the High Court The terms of the latter Civil Procedure Code (Act XIV of 1882) which was the Code in force when the suits out of which the present appeals are were instituted are clear on the point that on appeal lies from the order of the District Judge to the High Court unless that right is taken away by express legislation or some express provision of law And a second or special appeal to the High Court in cases arising under Madras Act VIII of 1865 has been held to lie in *Veerasamy v Manager Pittapur Estate I L R 26 Mad 518* The practice has been ever since the passing of the Act for such appeals to be preferred to the High Court and their Lordships would not be disposed to interfere with such a long standing practice even if they thought there was an implied rule against second appeals lying from the decisions of the District Judge with respect to adjudications under the Act by the Collector S 584 of the Code of Civil Procedure 1882 distinctly prohibits second appeals on questions of fact and confines the competency of the High Court to deal with law and procedure Where therefore in a suit by landlord under s 9 of the Madras Act VIII of 1865 to enforce acceptance of a patta by his tenants and the sole question was whether on the evidence an arrangement which had been previously come to between the parties was permanent and the Collector and the District Judge concurrently found in the defendant s favour that it was permanent but the High Court on second appeal ignored that finding and held that the landlord was entitled to revert to a system of rates which had existed prior to such arrangement *Held* that the High Court had acted in inadvertence of s 584 of the Code and had thereby assumed a jurisdiction which it did not possess and its decision was set aside and the case remitted to India *Durga Choudhurani v Jewahir Singh Choudhuri I L R 18 Calc 23 s c L R 17 I A 122* followed PAVI VEERARAGHAVULU *v.* VENKATA NARASINHA NAIDU BAHADUR (1911) I L R 37 Mad 443

———— *Second Appeal in suit under Bengal Tenancy Act (VIII of 1885) ss 106 109 A(3)—Civil Procedure Code (Act XIV of 1882) s 584—High Court entertaining second appeals where no ground existed within s 584—Revising evidence and deciding contrary to decision of Special Judge on facts—Disturbing findings of facts—Questions of law and fact* S 109A (3) of the Bengal Tenancy Act makes applicable to an appeal to the High Court from the decision of a Special Judge the provisions of Chapter XLII of the Code of Civil Procedure 1882 and the right of appeal is therefore limited by the provisions regulating the right of appeal to the High Court from a subordinate Court contained in s 584 of that Code the power as to the regulation of rents being dependent and consequent upon the alteration of the judgment on specified ground and only such grounds are permissible Where therefore it was found that such an appeal to the High Court was not within any of the grounds in s 584 but that nevertheless the High Court had entertained the appeal reversed the decree of the Special Judge on questions of fact making suggestions of prejudice and unreasonable assumptions on his part for which there was no justification and so revising the evidence with *which it was not competent to deal* *Held* that the High Court had exceeded its jurisdiction by exercising functions completely circumscribed by the provisions of a statute passed for the express purpose of securing some measure of finality in cases where the balance of evidence verbal and documentary arose for decision and its decree and judgment so made were set aside Questions of law and of fact are sometimes difficult to disentangle The proper legal effect of a proved fact is essentially a question of law so also is the question of admissibility of evidence and the question of whether any evidence has been offered on one side or the other but the question whether the fact has been proved when evidence for and against has been properly admitted is necessarily a pure question of fact NAFAR CHANDRA PAL CHOWDHURY *v* SHUKUR SHEIT (1918) I L R 46 Calc 189

SPECIAL BENCH

———— power of—

See PARDON I L R 37 Calc 845

SPECIAL CITATION

See LETTER OF ADMINISTRATION I L R 47 Calc 838

SPECIAL CONSTABLES

———— *Dispute regarding ferry —Proceeding for security to keep the peace drawn up against one party—Appointment of members thereof as special constables—Refusal to act as such—Legality of appointment and of prosecution for such refusal—Police Act (V of 1861) ss 17 19* The only legitimate object of appointing special constables under s 17 of the Police Act (V of 1861) is to strengthen the ordinary police force by the addition of suitable persons When the appointments are not made with such an object a prosecution under s 19 of the Act for refusal to act as such will not be permitted When the members of one party to a ferry dispute were appointed as special constables and the circumstances showed that it was never really intended to utilize them as police officers, the High Court quashed the order of the District Magistrate directing their prosecution under s 19 of the Act and the issue of warrants against them LARDIT SINGH *v* EMPEROR (1915) I L R 43 Calc 277

SPECIAL COURT

——————*When excludes jurisdiction of ordinary Courts* Before the jurisdiction of the ordinary Courts of the country can be excluded by a Special Court there must be clear words in the statute excluding such jurisdiction SASHI BHUSAN HAZRA v SHEIKH ESHARAR ALI NAZIR (1915) 19 C W N 636

SPECIAL DAMAGE

See LIMITATION I L R 40 Calc 898
See TORT I L R 33 All 237

SPECIAL JUDGE

———— decision of—

See SECOND APPEAL I L R 46 Calc 189

———— order of—

See APPEAL I L R 45 Calc 638

SPECIAL LEAVE TO APPEAL

See PRIVY COUNCIL PRACTICE OF I L R 41 Calc 568

SPECIAL PROCEDURE

See BAIL I L R 37 Calc 439

SPECIAL TRIBUNAL

See MADRAS CITY MUNICIPAL ACT (*III* OF 1904) s 287 I L R 38 Mad 41

See RECORDS POWER TO CALL FOR I L R 43 Calc 239

SPECIFIC AREA

See LEASE I L R 37 Calc 293

SPECIFIC MOVEABLE PROPERTY

——————*Specific Relief Act (I of 1877) s 11—Civil Procedure Code (Act V of 1908) O XXI r 31—Pleadings—Suit against a carrier—Non delivery of goods—Compensation—Limitation Act (IX of 1908) Arts 31 49 and 115—Maxim generalia specialibus non derogant applications of* In order to entitle a plaintiff to obtain delivery of specific moveable property by suit and to enforce the decree so obtained by the stringent methods provided in O XXI r 31 of the Code of Civil Procedure it is necessary that he should allege and prove facts which entitle him to compel the delivery of specific moveable under the provisions of s 11 of the Specific Relief Act Where in a suit against a carrier the plaint asked for the recovery of one plank of wood that was not delivered to the consignee and also for Rs 21 12 0 being the loss of interest but contained no allegation that the defendant was in possession of the plank in question and it was obvious from the correspondence that he was not in possession of the same *Held* that in so far as the suit could be regarded as a suit for the return of the specific plank the case did not come within s 11 of the Specific Relief Act and the suit must be dismissed that if the suit was regarded as one for compensation for failure to deliver the plank in breach of the contract under the bill of lading it was governed by Art 31 and not by Art 49 or 115 of the Limitation Act By the amendment in 1899 of Art 31 of the Limitation Act the Legislature clearly indicated its intention that the *Article* should apply to a claim against a carrier for compensation for non delivery of goods irrespective of the question whether the suit was laid in contract or in tort Art 49 is inapplicable to such a case even if it were applicable its operation would be excluded by the special Art 31 as amended on the principle *generalia specialibus non derogant* *The British India Steam Navigation Co v Hajee Mahomed Esack & Co I L R 3 Mad 107* *Danmull v British India Steam Navigation Co I L R 12 Calc 477* and *Great Indian Peninsula Railway Co v Raisett Chandmull I L R 19 Bom 165* referred to VENKATASUBBA RAO v THE ASIATIC STEAM NAVIGATION CO CALCUTTA (1915) I L R 39 Mad 1

SPECIFIC PERFORMANCE

See AGREEMENT TO LEASE I L R 47 Calc 485

See BENGAL, AGRA AND ASSAM CIVIL COURT ACT 1887 s 18 4 Pat L J 447

See CHOTA NAGPUR ENCUMBERED ESTATE ACT 1876 s 17 4 Pat L J 580

See CHOWKIDARI CHAKARAN LANDS. I L R 37 Calc 57
I L R 46 Calc. 173

See CIVIL PROCEDURE CODE (ACT V OF 1908) O II r 2 I L R 38 Mad 698

See CONTRACT I L R 46 Calc 771
I L R 45 Bom 1170

See CONTRACT ACT 1872 s 55 I L R 40 Bom 289

See GUARDIAN AND MINOR I L R 38 All 433

See HINDU LAW (JOINT FAMILY) 2 Pat L J 513

See JURISDICTION I L R 48 Calc 882

See LEASE I L R 39 Calc 663

See REGISTRATION ACT 1908 ss 17 AND 49 I L R 45 Bom. 8

See SPECIFIC RELIEF ACT 1877 s 30 I L R 34 All. 43

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 54 I L R 41 Bom 438

———— agreement whether complete and enforceable—

See REGISTRATION ACT 1908 ss 17 AND 49 I L R 45 Bom 8

———— of contract to sell—

See COURT FEES ACT (VII OF 1870) s. 7 CLS (i) AND (x) I L R 38 All. 290

———— partition and possession suit for—

See CIVIL PROCEDURE CODE (ACT V OF 1908) O I r 3 I L R 40 Mad 365

———— suit for—

See EXPECTANCIES I L R 39 Mad 554

See HINDU LAW—ALIENATION I L. R 38 Mad. 1187

See SPECIFIC RELIEF ACT (I OF 1877) s 27 I L R 38 All 184

SPECIFIC PERFORMANCE—*contd*

———— **unstamped agreement for sale partly performed**—

See CONTRACT I L R 45 Bom 1170

1 ———— **Agreement to lease**—*Specific performance suit for—Registration if necessary—Indian Registration Act (III of 1877) ss 3 17 (d) and 49—Transfer of Property Act (IV of 1882) s 54—Present demise—Interest in land* Unless an agreement to lease certain premises operate as present demise it does not of itself create any interest in or charge on the property agreed to be demised and can therefore be given in evidence for the purpose of enforcing specific performance of it without its having been registered under the provisions of the Indian Registration Act *Purmananddas* v *Dharsey* *I L R 10 Bom 101* not followed *Konduri Srinivasa* v *Gottumukkala Venkatanaja 17 Mad L J 218* followed An unregistered agreement to lease provided for the grant of lease for a period of five years commencing from the day following the day on which the agreement was entered into and also provided that the proposed lessee would get a proper *kabuliyat* granted to him to be registered at his own cost *Held* that on the day the agreement was come to there was no present demise and therefore the agreement could be adduced in evidence for the enforcement of specific performance thereof SATYENDRA NATH BOSE *v* ANIL CHANDRA CHOSE (1908) 14 C W N 65

2 ———— **Sale of immoveable property**—*Marketable title to the satisfaction of the purchaser s solicitors* When a vendor of immoveable property desires to enforce a contract for sale with a condition that the title adduced should be to the satisfaction of the purchaser s solicitors he must prove either that the solicitors did approve of the title or that there was such a title tendered as made it unreasonable to approve of it *Clack* v *Wood 9 Q B D 276* followed TREACHER & CO *v* MAHOMEDALLY ADAMJI PEERBHOY (1910) I L R 35 Bom 110

3 ———— **Denial of execution of agreement by defendant**—*Conflicting evidence as to genuineness of signature—Consideration as to which story best agrees with admitted facts—defendant in pecuniary difficulties—Plaintiff in a position to dominate his will —Bargain onerous but not unconscionable—Absence of fraud or misrepresentation by plaintiff—Discretion in granting or refusing specific performance* In a suit to enforce specific performance of an agreement dated 4th April 1906 for the sale of land in which the defendant (appellant) denied that he eversigned the agreement the evidnce on that point was conflicting though otherwise there was much unanimity on the general facts The two lower Courts (of the Chief Court of Lower Burma) differed the Original Court holding that the defendant s signature was a forgery and the Appellate Court reversing that decision and making a decree for specific performance *Held* by the Judicial Committee that the proper course was to examine the admitted facts and circumstances as furnishing the safest guide to a correct conclusion On this test their Lordships were of opinion that the plaintiff's (respondents) account of the transaction best fitted in with the admitted facts and that the defence was untrue The defendant when he acquired the land in 1901 was admittedly in pecuniary difficulties and had bought it with money raised by mortgaging it In 1906 his mortgagee was pressing for payment and another creditor had taken out execution The arrangement he was obliged to make with the plaintiff was therefore necessarily of a somewhat onerous nature *Held* that in the absence of any evidence of fraud or misrepresentation on the part of the plaintiff which induced the defendant to enter into the contract or that the plaintiff under the circumstances took an improper advantage of his position or the difficulties of the defendant and having regard to the character of the agreement which in their opinion though onerous was not unconscionable their Lordships saw no reason in the exercise of their discretion for refusing to grant specific performance The decree of the Appellate Court was therefore upheld DAVIS *v* MAUNG SHWE GOH (1911) I L R 38 Calc 805

4 ———— **Minor**—*Right to specific performance of contract entered into on his behalf by his guardian and manager of his estate—Contract for purchase of immoveable property and sale of it to minor—Power of guardian and manager—Want of mutuality* In a suit for specific performance by a minor of an agreement for the purchase and sale to him of certain immoveable property entered into by the manager of the minor s estate and his guardian on his behalf *Held* by the Judicial Committee that it was not within the competence either of the manager of the minor s estate or of the guardian of the minor to bind the minor or the minor s estate by a contract for the purchase of immoveable property that as the minor was not bound by the contract there was no mutuality and that consequently the minor could not obtain specific performance of the contract. MIR SARWARJAN *v* FAKHRUDDIN MAHOMED CHOWDHURY (1911) I L R 39 Calc 232

5 ———— **Contract executed in exercise of power given by will**—*Will found false—Enforcement against executant as heir—Delay in suing not amounting to waiver or acquiescence if bar to relief* The widow of the deceased owner jointly with another who as executor had obtained probate of a will alleged to have been left by the deceased executed an agreement for sale of land the widow purporting thereby to exercise a power given by the will to assent to conveyances executed by the executor The probate subsequently having been revoked *Held* that the contract was specifically enforceable against the widow to the extent of her interest *Horrocks* v *Rigby 9 Ch D 180* relied on Delay which did not amount to waiver abandonment or acquiescence and in no way altered the position of the defendant did not disentitle the plaintiff to sue for specific performance *Kissen Gopal Sadaney* v *Kali Prosonno Seit I L R 33 Calc 633* followed *Mohun Lal* v *Chotay Lal I L R 10 Calc 1061* referred to In the special circumstances of the case specific performance of the contract was refused KEDAR NATH SAMANTA *v* MANU BIBI (1911) 16 C W N 247

6 ———— **Agreement to renew a lease**—*When specifically enforceable against a subsequent lessee for value—Duty of subsequent lessee to enquire of terms of previous lease—Specific Relief Act (I of 1877) s 27* An agreement to renew a lease under certain conditions on the determination of the term of the lease can be specifically enforced against a subsequent lessee for value who has omitted to make an enquiry of the tenant

SPECIFIC PERFORMANCE—*contd*

in possession about the terms of the lease under which he was holding it The occupation of property by a tenant ordinarily affects one who would take a transfer of that property with notice of that tenant s rights and if he chooses to make no enquiry of the tenant he cannot claim to be a transferee without notice BABURAM BAG v MADHAB CHANDRA POLLAY (1913)

I L R 40 Calc 565

7 ———— Purchase with notice of prior contract—*Specific Relief Act (I of 1877) s 22 sub s (2)—Compensation for money spent on improvements refused to subsequent purchaser with notice of prior contract—Transfer of Property Act (IV of 1882) s 55 sub s (1) cl (b)* On the 22nd April 1910 the first defendant entered into an agreement with the plaintiff to transfer to him a certain house and received Rs 510 as earnest money the transaction to be completed within 3 months The first defendant also undertook to satisfy the purchaser that she had a valid saleable interest in the property by showing the will of her mother and other papers relating to the property On 15th July 1910 plaintiff called upon the first defendant to send him the title deeds etc and on the 21st July (i e the day previous to the latest day) plaintiff notified the first defendant that he was ready with the purchase money A draft will and some of the title deeds only were produced On the 30th August 1910 the second defendant (who had notice of this prior contract) purchased the property in suit from the first defendant in the name of his wife the third defendant The Civil Courts were closed from the 2nd October to 3rd November On the 5th November 1910 plaintiff commenced this action for specific performance after the second defendant had spent nearly Rs 900 on repairs *Held* that the plaintiff was entitled to have the contract specifically enforced not only against that vendor but also against the transferee who was not a *bonâ fide* purchaser for value without notice *Held* also that there was no precedent for a delay of one month in the institution of a suit being sufficient to justify a refusal of relief by way of specific performance *Clowbrook v Richardson 23 W R (Eng) 51* approved *Held* also that sub s (2) of s 22 of the Specific Relief Act clearly contemplated a case in which the vendor had entered into a contract *without* full knowledge of the circumstances But where the hardship had been brought upon the subsequent purchaser by himself the Court would not consider that as a circumstance in favour of the refusal of specific performance *Kandarpa Nath Ghosh v Jogendra Nath Ghosh 12 C L J 391* approved *Held* also that the defendant had not established any right to be reimbursed for the improvement made on the property *Clare Hall v Harding 6 Hare 273 Monro v Taylor 8 Hare 51* referred to *Held* also that a copy of a compromise petition between the parties to probate proceedings cannot be accepted in lieu of a certified copy of the will (the contract being to show the will to the purchaser) *Oxford v Provand L R 2 P C 135 Lamare v Dixon L R 6 H L 414* distinguished HARADHAN DEBNATH v BHAGABATI DASI (1914)

I L R 41 Calc 852

8 ———— Fraud—Effect of—*Specific performance suit for declaration that certain proceedings in Court held at plaintiff's instance were fictitious and of no effect—Circumstances disentitling plaintiff to protection in Court of equity—Circumstances entitling fraudulent confederate to retain property transferred to him in order to effect a fraud—Civil Procedure Code (Act XII of 1882) s 317 if applies where suit fictitious—Agreement by fictitious decree holder purchaser to restore land—Suit if for specific performance—Limitation* The plaintiff as tenant held some lands under one *K* who in 1894 unsuccessfully sued to eject him as a trespasser In this litigation the plaintiff was assisted by one *J* in whose favour he executed a fictitious conveyance in 1898 In 1899 finding that *J* was unfaithful plaintiff induced *K* to institute a fictitious suit for rent which was decreed on the 7th November 1899 *K* took out execution of this decree and at the sale which followed purchased the holding on the 19th March 1900 According to plaintiff s allegation *K* had agreed to execute a release of the holding in his favour and although possession was formally delivered to *K* on 5th June 1900 *Plaintiff* continued in occupation of the land In November 1906 *K* with the help of the Police took away the crops raised by the plaintiff and on the 15th March 1907 plaintiff brought a suit for declaration that the entire proceedings in the rent suit of 1899 were fictitious and also for confirmation of his possession of the land *Held* that the suit was not one for specific performance of a contract and was not barred by limitation That the case fell within the principle of the decision of the High Court in *Jadu Nath Poddar v Rup Lal Poddar I L R 33 Calc 967* and of the Judicial Committee in *Petherpermal Chetty v Muniandy Servai I L R* [illegible] *Cal 551* namely that to enable a fraudulent confederate to retain property transferred to him in order to effect a fraud the contemplated fraud must be effected when and when alone does the fraudulent grantor or giver lose the right to claim the aid of the law to recover the property he has parted with and the plaintiff was not disentitled to protection in a Court of equity That s 317 of the Civil Procedure Code of 1882 did not apply to the present case S 317 Civil Procedure Code contemplates a real sale in execution of a real decree in a real suit ATHIL PRODHAN v MANMATHA NATH KAR (1915) **18 C W N 1231**

9 ———— Agreement to sell decree and *rights appertaining thereto and to transfer it* [illegible] *defendant—Vendor and Purchaser—Decree becoming barred by limitation before assignment—Obligation to keep decree on vendor—Civil Procedure Code (Act XIV of 1882) s 232—Transfer of decree* The plaintiffs (respondents) brought a suit for specific performance of an agreement made between them and the defendant (appellant) by which the latter contracted to purchase a mortgage decree and all rights appertaining thereto which decree was to be duly transferred to the defendant which by reason of s 232 of the Civil Procedure Code 1882 could only be done by an assignment in writing The decree however before a signment became barred by limitation and he refused to take it *Held* (reversing the decision of the Appellate High Court) that what the plaintiffs had agreed to assign to the defendant was a decree capable of execution that until assignment there was an obligation on the plaintiffs as vendors to keep the decree alive and that therefore when the decree became barred by limitation the plaintiffs were asking for specific performance by the defendant of an agreement which they were themselves unable to perform [illegible]

SPECIFIC PERFORMANCE—*contd*

could be granted. *Waterhouse v. ... Palmer ... v. L. and N. W. Railway Co. L. R. 16 Eq. 433* ; Lord Selborne referred to. JATINDRA NATH BASU v. LEYER DEVI DEBI (1916)

I. L. R. 43 Calc. 990

10. ———— Contract to lend or borrow money—*Suit for balance of money ... Damages—Provincial Small Cause ... Act (IX of 1887), Sch. II, cls. 1, 16 ... Code (Act V of 1908), s. 113, O. XLI ...* A suit for specific performance of a contract to lend or borrow money is not maintainable. ... *The South African Territories v. Wallington* [1898] *A. C. 309* followed. Nor would a suit to recover the balance of the mortgage money on a suit for the rectification of the instrument be cognizable by a Court of Small Causes (Vide cls. 15 and 16, Sch. II Provincial Small Cause Courts Act, 1887). But a suit for damages for breach of contract is cognizable by a Court of Small Causes if the amount is within its pecuniary jurisdiction. SHEIKH GALIM v. SADARJAN BIBI (1915)

I. L. R. 43 Calc. 59

11. ———— Contract modified—*Specific performance of a contract of sale—S. (6), Specific Relief Act (I of 1877)—Contract varied—Vendors asked to take out letters of administration and leave to sell—Effect of variation—Contingent contract—Order for sale—Title of purchasers under order of Court—Whether such purchasers are affected with notice of previous agreement—Dealings with purdanashin ladies—Independent legal advice—Costs—Discretion of the Appeal Court in modifying order for costs made by the Court of first instance.* Two widows defendants Nos. 1 and 2 entered into an agreement on the 23rd January 1910 for sale of certain properties for legal necessity with the plaintiffs at Rs. 8,000 per cottah. The agreement contained the following covenant on the part of the vendors:—"We shall at our own expenses do everything which your attorney shall consider necessary for rectifying and clearing the title deeds." The idea of applying for Letters of Administration was not present in the mind of any of the parties at the time of the agreement. Subsequently in order to obviate any objection of the reversioner on the score of legal necessity the plaintiffs asked the widows to apply for Letters of Administration with leave to sell to the plaintiffs. The widows obtained Letters of Administration and one of them actually obtained leave to sell to the plaintiffs. Subsequently the widows applied and obtained leave for sale to the defendants Nos. 3, 4 and 5 (described as the Nandi defendants) who offered a higher price and the property was conveyed to them. The Nandi defendants had notice of the agreement for sale to the plaintiffs at the time when they took the conveyance. In a suit by the plaintiffs for specific performance of the agreement of sale against all the defendants and in the alternative for damages against defendants Nos. 1 and 2 for breach of contract: *Held*, that the contract as varied by mutual consent became a contingent one and as the contingency had not happened (i.e., leave of the Court had not been obtained in their favour) the plaintiffs were not entitled to claim performance of the contract. *Narain Pattro v. Aukhoy Narain Manna, I. L. R. 12 Calc. 152* and *Sarbesh Chandra v. Khettra Lal*

... *Hatch ... v. ... Lord Selborne ... and ... Lamb ... Jatindra ...* ... *Ladies ... ... Dakshina ...*

I. L. R. ... Calc. ...

12. ———— Agreement to reduce terms into writing—Contract ... completed ... writing ... *Held* ... a contract ... to purchase certain immoveable property was ... to buy the property at a certain price and at ... to certain terms and conditions ... them and paid earnest money at the time of the contract ... sought to be proved partly by evidence in writing and partly by oral evidence and it appeared that the parties contemplated a formal written agreement to be approved and afterwards executed embodying the special terms and conditions already supposed to have been agreed upon and the usual terms and conditions of sale and purchase and it appeared that there were a number of terms and conditions admittedly not agreed to or discussed between the parties which were afterwards embodied in a draft agreement prepared by the vendor's solicitor and submitted for the approval of the purchaser and which draft agreement the purchaser did not approve: *Held*, that there was no completed contract between the parties capable of being specifically enforced. *Per* JENKINS, *C. J.*—It being expressly pleaded in the plaint that it was a matter of actual agreement and not merely the expression of a desire that the terms should be embodied in a written agreement there was in the absence of such a formal contract in writing no concluded contract between the parties. That where the terms of a contract are sought to be proved by oral evidence the provision for a prospective written agreement cannot be treated as negligible the more so where the supersession is of an oral by a written agreement and not merely of one writing by another. That even in the case of a supersession of a written document by a more formal writing the circumstance that the parties do intend to make a subsequent agreement has been held to be strong evidence that they did not intend the previous negotiation to amount to an agreement. That even if the main terms be substantially agreed upon and to that extent the purchaser may have considered that there was a contract and have used language appropriate to that position nevertheless where it appears that the prospective written agreement contemplated embodying the terms agreed upon or supposed to have been agreed upon together with other terms and conditions described as "usual terms and conditions" the contract cannot be specifically enforced for uncertainty. That the mere payment of earnest money did not preclude the purchaser from pleading that there was no concluded contract. *Per* WOODROFFE, *J.*—The Court will not enforce specific performance of a contract the terms of which are uncertain. The question whether a ... is a

SPECIFIC PERFORMANCE—*contd*

question of fact which arises on the documents and oral evidence tendered in support of it An Appeal Court is not bound to accept the first Court's appreciation of the facts of the case Both the facts and law are open to the Court of Appeal. But appellant should satisfy the Appeal Court that the judgment appealed against is erroneous The mere reference to a formal agreement will not prevent a binding bargain The fact that the parties refer to the preparation of an agreement by which the terms agreed upon are to be put into more formal shape does not prevent the existence of a binding contract The payment of earnest money is itself evidence of a concluded contract *Per* MOOKERJEE J—It is well settled that the fact that the parties intended to embody the terms of the contract in a formal written agreement is strong evidence that the negotiations prior to the drawing of such writing are merely preliminary and not intended or understood to be binding If it is definitely expressed and understood that there is to be no contract until the formal writing is executed there is plainly no binding agreement formed until this provision is complied with It is also true that if all terms of the agreement have not been settled and it is understood that these unsettled terms are to be determined by the formal contract there is no binding obligation until the writing is executed But if the oral agreement or written memorandum is complete in itself and embodies all the terms to be inserted in the intended formal writing a binding obligation is fixed on the parties unless it is understood and intended that such contract shall not become operative until reduced to writing The question is merely one of intention. If the written draft is viewed by the parties merely as a convenient memorial of record of their previous contract its absence does not affect the binding force of the contract if however it is viewed as the consummation of the negotiations there is no contract until the written draft is finally signed. To determine which view is entertained in any particular case several circumstances may be helpful as for example whether the contract is of that class which are usually found to be in writing whether it is of such a nature as to need a formal writing for its full expression, whether it has few or many details whether the amount involved is large or small whether it is a common or usual contract whether the negotiation it if indicates that a written draft is contemplated as a final conclusion of the negotiation. If a written draft is proposed suggested or referred to during the negotiations it is some evidence that the parties intended it to be the final closing of the contract The Court should refuse specific performance where there is substantial variance between the pleading and proof The draft agreement containing terms which were never settled before between the parties the legitimate inference to be drawn is that the parties intended the written draft to be the consummation of their negotiations which were to be treated as concluded only upon the final execution of the written agreement Where many terms still remained undetermined it is a sure index that the contract has not yet been concluded. Where there is ambiguity in any of the conditions of sale in restriction of the rights of the purchaser the condition should be construed more strictly against the vendor HIRAM *v* M L GUBBAY (1915) 20 C W N 66

SPECIFIC PERFORMANCE—*contd*

13 ———————— Unregistered agreement to mortgage on which an advance has been paid—*Whether enforceable*—*Swamibhogam whether case or mortgage* The plaintiff sued for specific performance of an agreement in writing but not registered by which the first defendant agreed *inter alia* to execute a deed of swamibhogam in respect of the suit lands to be enjoyed by the plaintiff for twenty years for a consideration of Rs 5 000 which could however be repaid at defendants option after eight years from its date The plaintiff having advanced about Rs 4 000 and not having obtained possession or a mortgage-deed sued for specific performance The first defendant pleaded that the agreement was one to execute a lease and as such required registration and not being registered could not form the basis of a suit for specific performance he further contended that even if the agreement were one to execute a mortgage no suit for specific performance to enforce an agreement to grant a mortgage was sustainable *Held* that the agreement was one to grant a mortgage and as such did not require registration and that a Court will not specifically enforce an agreement to lend or borrow money whether on security or not but where money has been advanced either wholly or in part if the debtor is prepared to pay off the advance at once the Court will not decree specific performance but if the borrower is not prepared to pay off the advance the Court should decree specific performance *South African Territories v Wallington* [1898] A C 309 referred to. *Ashton v Corrigan* L R 13 Eq 76 and *Fermor v Hodges* L R 16 Eq 18 followed. MEENAKSHISUNDARA MUDALIAR *v* RATHNA AMI PILLAI (1918) I L R 41 Mad. 959

14 ———————— Oral agreement to grant a lease—*Time for payment of premium left open*—*Whether delay a bar in the suit*—*Time of the commencement of the lease not specified*—*Whether the agreement is complete*—*Indian Evidence Act (I of 1872) s 92 whether a bar to proof of the time of the commencement of the lease*—*Transfer of Property Act (IV of 1882) s 110* The plaintiffs brought a suit for specific performance of an agreement to grant a permanent lease made orally on the 30th December 1908 The period within which the premium was payable was left open. The sum of Rs. 400 was paid on the day following the agreement but though subsequently the plaintiff tendered the balance the defendant declined to execute the lease It was contended that the agreement was not complete as the time of the commencement of the lease was not specified and that delay in the payment of the premium was a bar to the suit *Held* that in view of s. 110 of the Transfer of Property Act the agreement was complete although the time of the commencement of the lease was not specified. *Held* that although delay on the part of a plaintiff in the performance of his part of the contract would be a bar to his claim for specific performance provided that time was originally of the essence of the contract or had been made so by subsequent notice or that the delay had been so great as to be evidence of abandonment of the contract the present case was not covered by either of the first two alternatives nor had the delay been so great as to be evidence of abandonment of the contract The plaintiffs were entitled to succeed on proof that they indicated their willingness to perform the condition precedent with a

SPECIFIC PERFORMANCE—*contd*

reasonable time Where there is an oral agreement to grant a lease s 92 of the Indian Evidence Act does not stand in the way of proof that there has been an agreement by implication or inferable from the circumstances as to the time of the commencement of the lease The Statute of Frauds has no application to this country KAILASH CHANDRA BHOWMIK v BEJOY KANTO LAHIRI (1915) 23 C W N 190

15 ———— **Agreement to sell in favour of a member (since deceased) of a joint Hindu family personally**—*Death of plaintiff—Application by widow to be substituted for her deceased husband—Legal representative* A deceased Hindu's wife (in the absence of male heirs) represents him in a suit for specific performance of a personal contract made with him notwithstanding the fact that the deceased was a member of a joint Hindu family JAI KALI v BALDEO SINGH (1919)
I L R 41 All 515

16 ————**Claim for possession**—In a suit for specific performance of a contract for the sale of land it is open to the plaintiff to join with his prayer for specific performance a claim for delivery of possession unless the contract expressly disentitles him to such relief The cause of action for delivery of possession may arise both upon the contract and the completed conveyance If the plaintiff in such a suit omitted to ask for delivery of possession a subsequent suit to obtain delivery of possession might be barred under the provisions of O II r 2 of the Code of Civil Procedure 1908 But the Court will decree a claim for a conveyance only in cases where it embodies the substantial part of the agreement and where the Court can direct its execution without regard to the question whether or not its provisions can be specifically enforced. DEONANDAN PRASAD SINGH v JANKI SINGH 5 Pat L J 314

17 ———— **Unregistered Sale deed whether can be regarded as an agreement to sell**—*Suit by vendee for specific performance whether maintainable* Where a sale deed purporting to be a conveyance of some lands was executed and delivered to the vendee but was not registered and the omission was not due to act of God or fraud on the part of the executant it is not open to the vendee to treat the unregistered document as an agreement to sell and to use for specific performance of such agreement *Venkatasami* v *Kristayya (1893) I L R 16 Mad 311* followed *Surendra Nath Nag Chowdhury* v *Gopal Chunder Ghosh (1910) 12 C L J 464* dissented from THAYARAMMAL v LAKSHMIAMMAL (1920)
I L R 43 Mad 822

18 ———— **Agreement by which defendant has benefited** It was not defence to a suit for specific performance of an agreement under which the defendant took benefit to say that the plaintiff had failed to perform an undertaking given by him in reference to the agreement RANI HAMANTO KUMARI v THE MIDNAPUR ZEMINDARY Co 24 C W N 177

19 ———— **Unregistered "bainapatra" for grant of lease**—*Registration Act* An unregistered bainapatra for grant of a patni lease acknowledged receipt of part of the consideration money and contained a promise to grant a patni lease again from the date of the bainapatra and to Exchange pattah and Kabuliyat before the 30th Aghran *Held* that the bainapatra did not affect a present demise and should be regarded as an agreement creating a right to obtain a *patni* lease on the performance of certain conditions on or before the 30th Aghran The document was not an agreement to lease and therefore did not require registration and so was admissible in evidence HARINATH BANDOPADHYAYA v PROMOTHO NATH ROY CHOWDHURY 25 C W N 551

20 ———— **of agreement to grant a lease** Specific performance of an agreement to grant a lease cannot be decreed unless that agreement either expressly or impliedly fixes the date from which the terms is to run SRIMATI GIRIBALLA DASI v KALIDAS BHUNJA
25 C W N 320

SPECIFIC RELIEF ACT (I OF 1877)

See INCOME TAX ACT (VII OF 1918) s 51 I L R 44 Mad 718

See NUISANCE I L R 40 Bom 401

———— *Applicability of to Sonthal Pargana* The Sonthal Parganas Settlement Regulation 1872 read with the Sonthal Parganas Act 1855 merely means that in suits exceeding Rs 1 000 in value those laws will apply to the Sonthal Parganas which are *proprio vigore* in force in the whole of India The Specific Relief Act 1877 is not *proprio vigore* in force in the whole of India and therefore it does not apply to the Scheduled Districts by virtue of s 2 of the Sonthal Parganas Regulation 1872 Declaratory reliefs cannot be granted in a suit instituted in a Court in the Sonthal Parganas KUMAR SATYA NIRANJAN CHAKRAVARTY v DWARKA NATH SADHU 2 Pat L J 379

————*Suit to recover possession of land previously dealt with under s 145 Criminal Procedure Code* Per RICHARDSON J — When a Magistrate's order is attacked in a collateral proceeding as *ultra vires* it should be shown to have been without jurisdiction in the strict sense of the term and not in the loose sense in which that term is sometimes used in proceedings for the revision of orders under s. 145 Criminal Procedure Code under the High Court's powers of superintendence under s 15 of the Charter Act (now s 107 of the Government of India Act of 1915) When an enquiry has been properly entered upon it is not every error which makes the result invalid. Before want of jurisdiction can be established in such a case a vice must be clearly established which infects the whole proceeding EAF MAHAMED SHAHA v HEYAT MAHAMED SAHA (1917) 22 C W N 342

———— s 2—

See COURT FEE I L R 39 Calc 704

———— s 3—

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 40
I L R 40 Bom. 498

———— ss 3 illus (g) 12 27—

See TRANSFER OF PROPERTY ACT s 54
I L R 41 Bom 438

———— ss 8 9—*Suit for ejectment based on title—Court not competent in such a suit to grant a decree on the basis merely of previous*
Where a plaintiff sues fo
title and fails to establish his t

SPECIFIC RELIEF ACT (I OF 1877)—*contd*

———ss 8 9—*contd*

granted a decree for possession under the first paragraph of s 9 of the Specific Relief Act. *Ram Harakh Rai* v *Sheodihal Joti I L R 15 All 384* and *Mousi* v *Kashia All Weekly Notes (1897) 145* overruled *Ramasami Chetti* v *Paraman Chetti I L R 25 Mad 448* followed *Wajid Ali* v *Ram Saran All Weekly Notes (1884) 39* and *Chuthan Rai* v *Sheo Ghulam Rai All Weekly Notes (1889) 89* referred to LACHMAN *v* SHAMBHU NARAIN (1910) I L R 33 All 174

——— s 9—

See CIVIL PROCEDURE CODE—

s 11 I L R 39 All 717
O XLI R 23 2 Pat L J 61

See POSSESSORY SUIT

I L R 45 Calc 519

1 ——— Decree against landlord for khas possession—*Ouster of tenants in execution—Tenant s remedy—Civil Procedure Code (Act XIV of 1882) s 332* Where in execution of a decree for *khas* possession obtained against the landlord the plaintiffs who were tenants were dispossessed *Held* that the plaintiffs were not dispossessed otherwise than in due course of law within the meaning of s 9 of the Specific Relief Act KAMINI SUNDARI DASSYA *v* SABED SHEIKH (1909) 14 C W N 403

2 ———*Possessory suits dismissed—Application by plaintiff for revision rejected* When the plaintiff s suit under s 9 of the Specific Relief Act 1877 was dismissed the High Court declined to interfere in revision upon the ground that it was open to the plaintiff to take another remedy and bring a regular suit on title *Jwala* v *Ganga Prasad I L R 30 All 331* followed RAM KISHEN DAS *v* JAI KISHEN DAS (1911)

I L R 33 All 647

3 ———*Tenants dispossession of if dispossession of landlord—Physical possession if must be proved* Tenants settled by the plaintiff being dispossessed by the defendant relinquished the land to the plaintiff *Held* that the plaintiff was in the circumstances entitled to sue under s 9 Specific Relief Act *Bindubashini* v *Jahnavi 13 C W N 303 Jagannatha* v *Rama I L R 28 Mad 238* relied on *Tarini Mohun* v *Gunga Prasad I L R 14 Calc 649 Sonatan Shome* v *Sheikh Helim 6 C W N 616* distinguished NOBIN DAS *v* KAILASH CHANDRA DEY (1910) 15 C W N 294

4 ———*Dispossession in execution of decree obtained against third party if in due course of law* Where the *burgadars* of a tenant were dispossessed from their land in execution of a decree against the tenant to which the *burgadars* were not parties and which was obtained upon a false admission by the tenant himself *Held* that the dispossession was in due course of law within the meaning of s 9 of the Specific Relief Act HARAN CHANDRA PAL *v* MADAN MOHAN BANIKHYA (1911) 15 C W N 956

5 ———*Dispossession—Ouster of tenant if dispossession of landlord* The ouster of a tenant is an ouster of the landlord for which the landlord can sue under s 9 of the Specific Relief Act *Bindubashini Chaudhurani* v *Jahnavi 13 C W N 303 Bindubashini Chaudhurani* v *Jankobi Chaudhurani 1z C W N 307n Janoki Nath Roy* v *Dinamoni Chaudhurani 13 C W N 305 Shyama Churn* v *Mahomed Ali 13 C W N 835 Nabin Chunder Das* v *Koylash Chunder Das 12 C L J 483* followed *Sonaton Shome* v *Sheikh Helim 6 C W N 616* not followed AKHIL CHANDRA DEY *v* AKHIL CHANDRA BISWAS (1911) 15 C W N 715

6 ———*Thicca tenant ejectment of—Civil Procedure Code (Act V of 1908) s 115—Jurisdiction—Error of law* Where in a suit brought within 6 months from the date of dispossession under s 9 of the Specific Relief Act to recover lands from which the plaintiff was dispossessed by the end 1318 *B S* the Munsif found that the plaintiff was in possession of the lands for the year 1318 *B S*, as *thicca* tenant or tenant at will but holding that the said *thicca* right ceased after 1318 dismissed the plaintiff's suit *Held* that the tenant was entitled to a decree for possession of those lands *Held* also that the Munsif's decision was a refusal to exercise jurisdiction vested in him and the High Court could interfere under s 115 of the Civil Procedure Code RAMDOYAL SHAMANTA *v* UPENDRANATH SHAMANTA (1913) 17 C W N 501

7 ———*Decree stayed pending suit for confirmation of possession—Onus as in suit for ejectment* Where a decree in a suit under s 9 of the Specific Relief Act is stayed pending a suit by the defendant for declaration of his title and confirmation of possession *Held* that the plaintiff in the latter suit must affirmatively prove his right to present possession MONOHAR PAL *v* ANANTA MOYEE DASSEE (1913) 17 C W N 802

8 ———*Possessory title—Suit for recovery of possession—Plaintiff in actual possession without title ousted by defendants having no title at all* *Held* that the purchasers of a house and site in a village who had actually held possession for some years but who had otherwise no title were entitled to succeed in a suit for recovery of possession as against persons who had in fact ousted them but could show no title at all to the possession of the house or site *Wali Ahmad Khan* v *Ajudhia Kundu I L R 13 All 537* and *Lachhman* v *Shambhu Narain I L R 33 All 174* referred to UMRAO SINGH *v* RAMJI DAS (1913) I L R 36 All 51

9 ———*Adhiar status of—If tenant or labourer—Possession as Adhiar if protected under s 9—Civil Procedure Code (Act V of 1908) s 115* Very largely an adhiar was a tenant and in the absence of proof that an adhiar in that part of the country was a labourer the decision of the lower Court protecting his possession under s 9 of the Specific Relief Act was not one which the High Court would revise under s 115 of the Civil Procedure Code DINA NATH DAS BAIRAGI *v* RAM SUNDAR BARMAN (1915) 19 C W N 1205

10 ———*Possession of excludes joint possession—Suit by co sharer* The words of s 9 of the Specific Relief Act refer to exclusive possession and the Court in a suit under that section has no jurisdiction to grant joint possession to the plaintiff No order under this section can be made in favour of the plaintiff who claims an undivided share in the property from

SPECIFIC RELIEF ACT (I OF 1877)—*contd*

——— s. 9—*contd*

which he and his co sharers have been ousted HARI NAMA DASS v SHEIKH NAJU (1912) 19 C W N 120

11 ——— *Joint ownership —Co-owner dispossessed by other co owners if may sue* Where a co owner in physical possession of property jointly with other co owners is dispossessed by the latter he can institute a suit for recovery under s 9 of the Specific Relief Act *Hari Narain Das v Elemjan Bibi 19 C L J 117 s c 19 C W N 190* distinguished ATIMAN BIBI v SHEIKH REASUT (1915) 19 C W N 1117

12 ——— *Suit for recovery of possession of immovable property—Construction of plaint—Suit framed as a suit on title but also referring to s 9 of the Specific Relief Act 1877—Practice* In a suit for recovery of possession of immovable property from which the plaintiff alleged that his sub tenants had been ejected by the defendants the plaintiff claimed (i) a declaration of his title to and possession of the land in suit (ii) damages for dispossession and (iii) costs In the body of the plaint it was mentioned that the suit was under s 9 of the Specific Relief Act 1877 and therefore the full Court fees had not been paid At the hearing the plaint was amended by striking out the claim for a declaration of title but the claim for damages was retained *Held* on a construction of the plaint that the suit was in substance a suit for possession based on title and should have been tried as such notwithstanding the reference in the plaint to s 9 of the Specific Relief Act *Nasir Ahmed v Abid Ali 8 A L J 910* referred to NARAIN DAS v HET SINGH (1918) I L R 40 All 637

13 ——— *Suit if lies after property attached under Criminal Procedure Code (Act V of 1898) s 146* Where following upon the dispossession by defendant of the plaintiff an order for attachment was made under s 146 Criminal Procedure Code in a proceeding in respect of the same property under s 145 Criminal Procedure Code *Held* that the plaintiff after this has no right to relief under s 9 of the Specific Relief Act AZIMUDDIN AHMED v ALAUDDIN BHUNJA (1917) 22 C W N 931

14 ——— *Possessory suit—Decree given for land and crops thereon—Crops removed before execution—Subsequent suit for price of crops—Defendants not competent to raise question of plaintiff's title to the land* The plaintiff brought a suit under s 9 of the Specific Relief Act for the possession of certain land with crops standing thereon and obtained a decree Before however he could obtain possession of the land the defendants cut and removed the crops The plaintiff then brought the present suit for recovery of the value of the crops The defendants denied his title to the land *Held* that the defendants could not by cutting and removing the crops annul the effect of the possessory decree and have the question of the plaintiff s title to the land decided in that suit MUNNA SINGH v ATSAN SINGH (1918) I L R 41 All 108

——— ss 9 42—**Temple lands possession of**—*Trustee of temple—Wrongful dismissal and dispossession by co trustees—Suit for declaration invalidity of dismissal and injunction—Consequential relief—No claim to recover possession—Suit so framed not maintainable—Landlord—Possession by receipt of rent—Dispossession—Interest capable of delivery and possession* When A the trustee of a temple who had been ousted from possession by his co trustees sued for a declaration that his dismissal from the trusteeship was invalid and for an injunction restraining his co trustees and the temple committee from interfering with the exercise of his rights as trustee there being no prayer for consequential relief in the nature of possession against his co trustees *Held* that the suit was not maintainable That the suit is brought by a trustee is no answer to the objection That possession should have been sued for and not a mere declaration An injunction is a discretionary relief and cannot be claimed by a plaintiff out of possession when he does not ask for possession against defendants who are actually in possession *Kunj Bihari v Keshavlal Hiralal I L R 28 Bom 567* dissented from *Jagadindra Nath Roy v Hemanta Kumari Debi I L R 32 Calc 129* referred to *Held* further that notwithstanding the lands belonging to the temple were in the physical possession of tenants yet the plaintiff s right to receive rents was capable of possession which if disturbed entitled him to bring a suit for possession under s 9 Specific Relief Act *Jagannatha Charry v Rama Rayer I L R 28 Mad 238* followed *Abdul Kadir v Mahomed I L R 15 Mad 15* followed *Narayana v Shankunni I L R 15 Mad 255* followed RATHNASABA PATHI PILLAI v RAMASAMI AIYAR (1910) I L R 33 Mad 452

——— s 11—

See SPECIFIC MOVABLE PROPERTY I L R 39 Mad 1

——— s 12—

See TRANSFER OF PROPERTY ACT s 54 I L R 41 Bom 438

——— *Suit for delivery of cattle —Specific performance of the contract or compensation—Alternative reliefs—Non maintainability of the suit—Art 15 second schedule Provincial Small Cause Courts Act (IX of 1887)—Substantial justice—S 25 Provincial Small Cause Courts Act* The mortgagors entered into a contract with their mortgagees whereby in consideration of the latter making an endorsement on the back of the mortgage bond crediting Rs 215 to the mortgagor s account the mortgagor agreed to deliver to the mortgagees certain heads of cattle The mortgagees performed their part of the contract and then sued the mortgagors in the Small Cause Court for delivery of the cattle promised and in the alternative for damages The Court having dismissed the suit as being a suit for specific performance of a contract and thus beyond its competence as a Small Cause Court *Held* that under s 12 of the Specific Relief Act no suit for specific performance would lie as unless there was something remarkable about the cattle it was obvious that adequate compensation for the breach of the contract could be given in money Substantial justice was done by the High Court in the exercise of the powers under s 25 Provincial Small Cause Courts Act by directing that the plaint be amended by striking out the clause demanding specific performance and the suit dealt with solely as a suit for damages occasioned by a breach of the contract BHARAT MAHTO v NIS — (1915) C W N 1020

SPECIFIC RELIEF ACT (I OF 1877)—*contd*

——— s 12—*contd*

———*Mortgage decree satisfied by judgment debtor—subsequent attachment of decree —Objection by another party to the attachment—Objection rejected—Suit by objector for a declaration judgment-debtor was his benamidar and that the attachment was invalid—Code of Civil Procedure (Act V of 1908) O XXI rr 58 and 63* The judgment debtor satisfied a mortgage decree which had been obtained against him Subsequently in a money suit against the same judgment debtor, another party attached the decree before judgment The present plaintiff thereupon objected to the attachment under O XXI r 58 of the Code of Civil Procedure 1908 The objection was disallowed and the objector instituted the present suit for a declaration that the judgment debtor was his *benamidar* and that he was the real beneficiary entitled to the money deposited in Court He also prayed for a declaration that the attachment was invalid *Held* that the suit did not offend against the terms of s 42 of the Specific Relief Act, 1877 and the mere fact that the plaintiff did not ask for recovery of the money was no bar to his obtaining the relief sought Subsequent to the attachment above referred to the decree was also attached by another party in execution of a money decree against the same judgment debtor That party was made defendant in the present suit *Held* that no claim with regard to this second attachment having been filed under r 58 the present suit under r 63 was not maintainable against the second attaching decree holder HARI LAL SAHU *v* THE RANCHI MINISTERIAL OFFICERS URBAN CO OPERATIVE CREDIT SOCIETY 3 Pat L J 182

——— ss 14 to 17—**Contract entered into by person on his behalf and on behalf of minors** —*Form of decree in suit for specific performance of such contract when contract found not to be binding on minors* Where a contract of sale entered into by a person on his own behalf and on behalf of minors is found not binding on the minors no decree for specific performance can be passed against the interest of such minors in the properties Ss 14 to 16 of the Specific Relief Act do not enable such contract to be separated as regards the adult person who entered into the contract and s 17 of the Act precludes the passing of a decree against the share of such party alone or a decree for the whole against such person The purchaser in such a case will be entitled on offering to pay the whole purchase money to a decree directing the adult party to convey all his interest in the properties PORAKA SUBBARAMI REDDY *v* VADLAMUDI SESHACHALAM CHETTY (1909) I L R 33 Mad 359

——— s 15—

See HINDU LAW—ALIENATION

I L R 38 Mad 1187

———*Contract by managing member of joint Hindu family under circumstances not binding on the other members—Right to specific performance—Hindu Law* Where the managing member of a joint Hindu family consisting of himself and his sons some of whom were majors entered into a contract to sell family lands to the plaintiff under such circumstances that the contract was held not binding on the sons *Held* in a suit for specific performance against both the father and the sons composing the joint family that under s 15 of the Specific Relief Act the plaintiff was not entitled to a decree even as against the father S 15 applies to a case where a member of an undivided family agrees to sell part of the joint property in which he has only a share and the circumstance that an undivided father has an interest in every portion of the undivided property does not take the case out of the operation of the section *Kosuri Ramaraju* v *Ivalury Ramalingam* I L R 26 Mad 74 and *Srinivasa Reddi* v *Sivarama Reddi* I L R 32 Mad 320 not followed *Poraka Subbarami Reddi* v *Vadlamudi Seshachalam Chetty* I L R 33 Mad 359 *Govinda Naicken* v *Apathsahaya Iyer* Mad H C R and *Barrett* v *Ring* 2 Sm & Giff 43 *ec* 65 L R 291 referred to NAGIAH *v* VENKATARAMA SASTRULU (1912)

I L R 37 Mad. 357

——— ss 15 and 17—

———*Sale by managing member—Sale of family property not for necessity—Suit for specific performance—Specific performance of entire contract whether can be granted—Option of purchaser for specific performance as regards share of vendor on date of contract on payment of full consideration—Such share to be specified in decree* The managing member of a joint Hindu family who for purposes not binding upon the other co parceners and without their concurrence agrees to convey a specific item of joint family property cannot perform his contract in its entirety and the case falls within the provisions of s 15 of the Specific Relief Act The purchaser in such a case cannot enforce specific performance of the entire contract But Courts will grant specific performance by a conveyance of the share which the vendor had in the property at the date of the contract if the purchaser elects to pay the entire consideration and the share should be specified in the decree *Kosuri Ramaraju* v *Ivalury Ramalingam (1903)* I L R 26 Mad 74 and *Srinivasa Reddi* v *Sivarama Reddi (1909)* I L R 32 Mad 320 dissented from *Porala Subbarami Reddi* v *Vadlamudi Seshachalam Chetty (1910)* I L R 33 Mad 359 and *Nagiah* v *Venkatarama Sastrulu (1914)* I L R 37 Mad 357 approved. BALUSWAMI AIYAR *v* LAKSHMANA AIYAR (1921) I L R 44 Mad (F B) 605

———*Contract by one co owner to sell property belonging to him in common with another—Not enforceable—Delay effect of* Where one of two divided brothers of a Hindu family agreed to sell immovable property held by them in common and a suit was brought for specific performance of the contract by compelling the vendor to execute a deed of sale in respect of the whole of the property agreed to be sold *Held* that no specific performance could be granted as the execution of a sale deed by the defendant would be ineffectual in respect of the moiety not belonging to him the Court would not lend its sanction to a transaction devoid of legal effect and improper in itself as calculated to throw a cloud on the title of a third person which would give him a cause of action for a declaratory suit *Poraka Subbarami Reddy* v *Vadlamudi Sesha chalam Chetty* I L R 33 Mad 359 referred to *Kosuri Ramaraju* v *Ivalury Ramalingam* I L R 26 Mad 74 *Srinivasa Reddi* v *Sivarama Reddi* I L R 32 Mad 320 and *Barrett* v *Ring* 2 Sm

SPECIFIC RELIEF ACT (I OF 1877)—*contd*

——— ss. 15 and 17—*contd*

L C 43 sc 65 L P 294 distinguished S 17 of the Specific Relief Act prohibits the Court from directing specific performance of a part of a contract except in accordance with the preceding sections Even in a case falling within s 15 the relief by way of a decree for part performance is discretionary and will not be granted where there has been great delay and a consequent change of circumstances GOVINDA NAICKEN v APATHSAHAYA IYER (1912)
I L R 37 Mad 403

——— s 18—

See CIVIL PROCEDURE CODE 1882 s 325A I L R 36 Bom 510

——— 21—

See ARBITRATION I L R 46 Calc 1041

See COMPROMISE DECREE 14 C W N 451

——— *Arbitration—Reference to arbitration pleaded in bar of suit—Effect of reference having become unenforceable before suit* *Held* that an agreement to refer to arbitration which has not been acted upon and which has become from lapse of time unenforceable cannot be set up as a bar to a suit respecting matters which had been included in the agreement *Alma Rai v Sheobaran Rai All Weekly Notes (1887) 58 Tahal v Bishe har I L R 8 All 57* and *Adhibai v Cursandas Nathu I L R 11 Bom 199* RAM KUMAR SINGH v JAG MOHAN SINGH (1910)
I L R 33 All 315

——— *Partners agreement amongst to refer disputes to arbitration—Withdrawal of one without cause from arbitration—Suit to recover a share in debt realised by the other partner if lies* Where a person has agreed with another that all matters in controversy between them should be referred to arbitration it is not open to that person to resile from the agreement unless for good and sufficient cause A dispute between partners whose business has come to an end regarding the division of assets can only be finally settled in a proper suit for dissolution of partnership and for adjustment of accounts and it is not proper that each of the parties should proceed by separate suits in order to recover from the other any sums due to the partnership business which he alone may have realised. Where on the termination of a partnership business the partners agreed to refer all matters in dispute between them relating to the partnership to arbitration and then one of the partners withdrew from the arbitration without sufficient cause and instituted a suit in the Small Cause Court to recover a half share of a partnership debt realised by the other partner *Held* that the debt in suit being one of the matters which the plaintiff had contracted to refer to arbitration s 21 Specific Relief Act was a bar to the continuance of the suit That the suit was not maintainable at all RAM CHANDRA PAL v KRISHNA LAL PAL (1912) 17 C W N 351

——— *Agreement to arbitrate—Suit when demand and refusal not proved if by itself a refusal to arbitrate—Implied refusal* Where two days after concluding an agreement to refer their disputes to arbitration one of the parties instituted a suit and it was urged in defence that the suit was barred by s 21 of the Specific Relief Act but there was no allegation in the written statement that the plaintiff refused to perform the contract to refer to arbitration nor was any evidence given to prove such a refusal *Held per* FLETCHER J —That the filing of the suit was not a refusal within the meaning of s 21 of the Specific Relief Act *Per* SHAMSUL HUDA J —Neither demand nor refusal need be express and both may be implied That the institution of the suit in circumstances which showed that plaintiff was determined not to go to arbitration amounted to a refusal to perform the contract to arbitrate DINABANDHU JANA v DURGA PRASAD JANA (1918) 22 C W N 362

——— s 21 (b) 54

See TRUST I L R 41 Calc 19

——— s 22—

See SPECIFIC PERFORMANCE I L R 41 Calc 852

——— *Contract for sale of land in lieu of hushing up of departmental enquiry against a public servant if enforceable—Court of equity jurisdiction of to refuse specific performance of contract not invalid or void under the Indian Contract Act* In a suit for specific performance of a contract for sale of land it appeared that in consequence of a charge being laid at the instance of the plaintiffs against one of the defendants who was the record keeper of the Court of the District Judge a departmental enquiry into the matter by a Subordinate Judge was ordered and while this was in progress the two defendants who were father and son were approached by the plaintiffs who promised to hush up the said enquiry if the defendants would execute a conveyance in their favour in respect of certain land and the result was the contract in suit *Held* that the contract was one of which specific performance ought not to be ordered That there may be cases which cannot be brought within the four corners of any of the provisions of the Indian Contract Act as to the invalidity or voidability of agreements but in which nevertheless a Court of equity may properly refuse to exercise its jurisdiction under the Specific Relief Act GOBINDA CHANDRA CHACKERBUTTY v NANDA KUMAR DAS (1914) 18 C W N 689

——— *Specific performance suit for—Sale not completed in time through vendor s non performance of essential term within time assigned—Vendor if may sell property to another after expiry of time—Delay—Hardship brought on by vendor—Subsequent purchaser with notice making improvement if entitled to compensation* Where a vendor agreed to satisfy the purchaser within a specified time that she had a valid saleable interest in the property by showing a copy of the order of the Collector about the registration of her name in respect of the property the will of her mother and other papers relating thereto but neither the will (which had been filed in Court for probate) nor a certified copy thereof was shown but the vendor produced a compromise petition between the parties to the probate proceeding *Held* in the circumstances of the case that it was impossible to hold that the production of the will was a non-essential term of the agreement and non-completion of the sale was not due to the default of the purchaser who had refused

SPECIFIC RELIEF ACT (I OF 1877)—*contd*

——— s 22—*contd*

accept the compromise petition in lieu of the will or a certified copy thereof Where property which had been agreed to be sold to plaintiff was sold to defendant on 30th August the conveyance being registered on the following day and the plaintiff sued for specific performance on the 5th November on the re opening of the Civil Courts which was closed for the Puja holidays from 2nd October to 3rd November *Held*, there was not such a delay in instituting the suit as would justify the Court in refusing specific performance Specific performance will be refused against a vendor on the ground of hardship as contemplated in s 22 (?) of the Specific Relief Act where the vendor has entered into the contract without full knowledge of the circumstances Where a transferee of property buys with notice of a prior agreement to sell it to another and makes improvements in the property without inquiry of the latter *Held* that in a suit by the latter for specific performance he was not entitled to be reimbursed for the costs of the improvements HARADHONE DEBNATH v BHAGABATI DASI (1914) 19 C W N 89

——— s 23—

See CONTRACT I L R 42 Bom 344
I L R 38 Mad 753

——— s 24—

See SPECIFIC PERFORMANCE.
I L R 43 Calc 990

——— s 27—

See CIVIL PROCEDURE CODE (ACT V OF 1908) O I R 3
I L R 40 Mad 365

See HINDU LAW JOINT FAMILY PROPERTY
I L R 44 Bom 967

See SPECIFIC PERFORMANCE
I L R 40 Calc 565

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 54 I L R 39 Mad 462

———*Sale by unregistered deed—Subsequent sale by registered deed—Suit by first vendee for registration of deed and for declaration that the subsequent transaction was void* The first defendant sold the property in suit to the plaintiff by an unregistered sale deed and subsequently sold the same property to the second defendant by a registered sale deed plaintiff sued both the defendants The reliefs claimed were (i) that the first defendant should be directed to register the first sale deed and (ii) that the transaction between the first and second defendants should be declared null and void and possession of the property given to the plaintiff During the pendency of the suit the plaintiff and the first defendant entered into a compromise as a result of which a fresh deed of sale was executed by the first defendant in favour of the plaintiff and registered The suit was contested by the second defendant and was eventually dismissed by the lower Courts *Held* that the suit as framed was a suit for specific performance of the contract *Held* further that the first sale to the plaintiff was a transaction affecting property and that therefore the unregistered sale deed was not admissible in evidence MADHUR SAH v THAG SAH 1 Pat L J 455

———*Transferee for value from lessor with constructive notice of agreement for renewal*

SPECIFIC RELIEF ACT (I OF 1877)—*contd*

——— s 27—*contd*

in favour of lessee—Constructive notice—Possession of tenant notice of covenants—Specific performance Occupation of property by a tenant ordinarily affects one who would take a transfer of that property with notice of that tenant s rights and if he chooses to make no enquiry of the tenant he cannot claim to be transferee without notice Where on 11 7 06 during the currency of a *jalkar* lease for seven years executed by the owners in favour of the defendants on 2 3 1901 the plaintiffs took a settlement of the *jalkar* from the lessor for a term of seven years from 1 5 08 on payment of a sum of Rs 600 and on the expiry of the defendants term sued them for recovery of possession of the *jalkar* *Held* that an agreement for renewal of their lease upon certain condition made between the defendants and their lessors on 1 5 01 was specifically enforceable by them against the plaintiffs who claimed title under the lessors and were affected with notice of the agreement of 1 5 01 That plaintiffs could not consequently recover BADURAM BAG v MOHADEB CHANDRA PALLAY (1913) 18 C W N 341

———*Sale—Suit for specific performance of a contract to sell defendants being vendees under a registered sale deed—Priority—Registration Act (XVI of 1908) s 50* The owners of a village which had already been sold at an auction sale in execution of a decree agreed to sell it to the plaintiff provided that the auction sale should be set aside The auction sale was set aside but subsequently the village was sold by means of a registered sale deed to a third party *Held* on a suit by the plaintiff for specific performance of the contract to sell to him that the defendants vendees registered sale deed did not take priority over the contract in his favour and that it lay on the defendants to rebut the evidence given by the plaintiff to the effect that the defendants at the time of their purchase were aware of the existence of the contract in favour of the plaintiff NAUBAT RAI v DHAUNKAL SINGH (1916) I L R 38 All 184

——— s 29—*Agreement of sale—Specific performance—Alternative relief—Civil Procedure Code (Act V of 1908) O VII r 7* Where in an agreement of sale it was stipulated that if the transaction fell through for default of the vendors (defendants) the vendee (plaintiff) would be free to enforce specific performance at law and would be entitled to be credited with interest on his deposit from the date on which it was made but if it fell through owing to the vendees default then the latter would be entitled to the refund of the bare deposit without interest and the vendors would be at liberty to dispose of the property in any other way they might choose and the Court below refused a decree for specific performance and gave a decree for the refund of the deposit with interest though the plaintiff (vendee) did not ask for any such alternative relief *Held* that the Court below was in the main right as it did not necessarily follow from the dismissal of a suit for specific performance that an order for the refund of any part payment of the purchase money should also be denied *Ibrahimbhai* v *Fletcher I L R 21 Bom 827 Alokeshi Dassi* v *Hara Chand Dass I L R 24 Calc 897 Amma Bibi* v *Udit Narain Misra I L R 31 All 68 Howe* v *Smith 27 Ch D 89* referred to The vendee could notwith

SPECIFIC RELIEF ACT (I OF 1877)—*contd*

——— s. 29—*contd*

standing that his suit for specific performance has been di missed and no matter on what ground it failed have brought a suit for the recovery of his deposit *Parangodan Nair v Perumtodula Illot Chata I L R 27 Mad 380* referred to *Held* further that the Subordinate Judge was right in refusing to relegate the parties to fresh litigation as there could have been but one result of another suit on the contract *Howe v Smith 27 Ch D 89* referred to RAGHU NATH SAHAI v CHANDRA PRATAP SINGH (1912) 17 C W N 100

——— s 30—*Specific performance—Award—Suit to recover money payable under an award—Limitation Act (IX of 1908) Sch I Arts 113 116 120—Limitation* By the terms of an award it was provided *inter alia* that the defendants should pay to the plaintiff the sum of Rs 3 0 on or before the 27th of June 1904 and in default of such payment the plaintiff could recover from the defendants Rs 3 0 with interest at 12 per cent per annum *Held* that a suit to recover on default of payment by the stipulated date the sum abovenamed with interest was not a suit for specific performance of a contract and as such governed by Art 113 of the First Schedule to the Indian Limitation Act 1908 but was governed by either Art 116 or Art 120 *Sukho Bibi v Ram Sukh Das I L R 5 All 263 Raghubar Dyal v Madan Mohan Lal I L R 16 All 3 Sheo Narain v Beni Madho I L R 23 All 285 Sornavalli Ammal v Muthayya Sastrigal I L R 23 Mad 593 Talewar Singh v Bahori Singh I L R 26 All 497* and *Bhajahari Saha Banikya v Behary Lal Basak I L R 33 Calc 881* KULDIP DUBE v MAHAUL DUBE (1911) I L R 34 All 43

——— s 31—

See EVIDENCE ACT 1872 s 92
I L R 39 Mad 792

——— In order to justify rectification of a contract or other instrument in writing there must be proof of a common intention different from the expressed intention and a common mistaken supposition that the intention was rightly expressed in the instrument It matters not by whom the actual error was made Notice to a purchaser by his title papers in a transaction will not be notice to him in an independent subsequent transaction in which the instruments containing the recitals are not necessary to his title BIPIN KRISHNA ROY v PRIYA BRATA BOSE 26 C W N 36

——— ss 34 and 41—*Minors mortgage in favour of—Whether minor entitled to compensation—Contract Act (IX of 1872) ss 41 and 47—Suit for sale of raiyati holding maintainability of*—Res judicata—Dictum *in previous suit effect of* A mortgage executed in favour of a minor who has advanced the whole of the loan to secure which the mortgage was executed is not void and can be enforced against the mortgagor But even assuming it to be void s 41 of the Specific Relief Act 1877 could be applied so as to grant compensation to the minor *Held* in a suit on a mortgage of a *raiyati* holding in Manbhum that the plaintiff was entitled to a mortgage decree and that the lower Courts were wrong in holding that the provisions of the Chota Nagpur Tenancy Act 1908 which was not extended to Manbhum until 1909 operated before that date to prevent the plaintiff

SPECIFIC RELIEF ACT (I OF 1877)—*contd*

——— ss 34 and 41—*contd*

from obtaining anything but a money decree *D* the mortgagee s agent received from the mortgagor the interest due on the bond for 1912 and refused to deliver to the mortgagee either the bond or the interest received by him The plaintiff thereupon instituted a suit against *D* and the mortgagee claiming from *D* the interest received by him and delivery of the bond with an alternative prayer that if it should be found that *D* and the mortgagor were colluding then the whole amount covered by the bond should be adjudged to the plaintiffs The first Court passed a money decree against both defendants In an appeal by *D* the High Court dealt only with the first part of the plaintiff s claim and made a decree for the delivery up of the bond by *D* and payment by him of the interest received With reference to the alternative claim the High Court observed that after obtaining po session of the bond it would be open to the plaintiffs to proceed against the mortgagor for enforcing their security but in the judgment there wa a *dictum* to the effect that as the plaintiffs were minors the mortgage would be void In a subsequent suit on the bond by the plaintiffs the mortgagor pleaded that the *dictum* of the High Court operated as *res judicata* *Held* that the *dictum* did not operate as *res judicata* MATHAB KOERI v BAIKUNTHA KARMAKER
4 Pat L J 682

——— s 35—

See LESSOR AND LESSEE
I L R 42 Mad 243

——— s 38—

See BHAGDARI AND NARWADARI TENURES ACT (BOM V OF 1862) s 3
I L R 39 Bom 358

——— s 39—

See COMPROMISE 1 Pat L J 48

———*Court fees—Suit for avoidance of registered deed of gift—Court fees Act (VII of 1870) 7 (4) (c)—Consequential relief* In a suit for avoidance of a regi tered deed of gift the Court is bound if the suit is decided in plaintiff s favour to send a copy of its decree to the officer in whose office the instrument has been registered The forwarding of the decree is a con equential relief upon which the plaintiff must pay an *ad valorem* court fee MUSSAMMAT NOOWOOGAR OJAIN v SHIDHAR JHA 3 P L J 194

———*Evidence Act (I of 18 ?) s 5?—Civil Procedure Code (Act V of 1908) s 100 O XI r 6—Suit to set aside a sale-deed—Specific allegations of coercion made in the plaint—Allegations disbelieved—Different kind of coercion held probable on other circumstances and doubts—Finding not sec ndum allegata et probata—Substantial error in procedure—Ground for setting aside what might otherwise be a conclusion of fact* Plaintiff sued the defendant to set a ide a sale-deed on the gro nd of coercion of a particular kind under s 39 of the Specific Relief Act (I of 1877) Both the lower Courts disbelieved the allegations of coercion made in the plaint but granted relief to the plaintiff on the ground that on a consideration of other circumstances the plaintiff must have been deceitfully decoyed into going quietly and privately to the defendant s *mardap* (open shed) and there through fear of possible violence made to sign the document On second appeal by the defendant

SPECIFIC RELIEF ACT (I OF 1877)—*contd*

——— s 39—*contd*

Held reversing the decree and dismissing the suit that a suspicion of some kind or other undefined coercion was not sufficient to support the plea of coercion the plea being not *secundum allegata et probata* *Motee Lall Opudhiya* v *Juggurnath Gurg* 5 B L R 25 *Eshenchun der Singh* v *Shamachurn Bhutto* 11 Moo I A 7 and *Balaji* v *Gangadhar* I L R 32 Bom 255 referred to *Per* HAYWARD J —Where fraud or coercion are alleged detailed particulars must be given in the pleadings and parties must be strictly confined to that state of facts Where particulars of coercion alleged are wholly rejected and evidence disbelieved and a vague and different kind of coercion is held to have been probable on other circumstances and doubts there is a substantial error in procedure resulting in a finding not *secundum allegata et probata* and not sustainable in law *Per* BEAMAN J —A plaintiff who comes to Court alleging fraud or coercion in respect of which the law requires him to give particulars and he being disbelieved upon every material one of them cannot be given relief When a finding is absolutely unsupported by any evidence at all that is a ground for setting aside what might otherwise be a conclusion of fact When the Court has found a case required to be made by the plaintiff not proved and has found another case unsupported in its most essential point by any evidence at all proved and so substituted the latter for the former, there is a substantial error in procedure under s 100 of the Civil Procedure Code (Act V of 1908) PURUSHOTAM DAJI v PANDURANG CHINTAMAN (1914) I L R 39 Bom 149

———*Conveyance executed by accused in consideration of complainant withdrawing prosecution for non compoundable offence—Suit to set aside such sale deed if lies—Parties in pari delicto if entitled to declaratory relief—Court s discretion under s 39* The rule of law in England with regard to illegal contracts is that a Court of Law will not aid persons in enforcing the performance of an illegal contract or assist them to recover back property which they have given away under such an illegal contract when the persons and parties to the contract are themselves *pari delicto* in procuring this illegality The Courts of equity in England have always refused to afford equitable relief in enforcing a contract void in law or restoring property which is based on an illegal contract where the illegality is apparent on the face of the document itself The principle on which Courts of law and equity have refused to restore property given away under an illegal agreement is equally applicable when the relief prayed for is by way of a declaration after the party seeking such relief has secured to himself the benefit of the agreement S 39 of the Specific Relief Act in allowing relief to be granted in a proper and fit case even when a contract out of which the right springs is void leaves it entirely in the discretion of the Court to exercise the jurisdiction so conferred upon it Where *L B s* agent having purchased property *B* alleged that it was purchased by *L* as *B's* trustee whilst *L* claimed to have purchased it in his own right and the dispute culminated in civil actions brought by the parties against each other and in *B* instituting criminal proceedings against *L* under ss 408 477 of the Indian Penal Code but at the instance of arbitrators appointed by mutual consent the disputes were settled and *B* withdrew the criminal and other proceedings against *L* and in consideration thereof *L* *inter alia* executed a sale deed of the property purchased by him *Held* in a suit by *L* to have the conveyance declared void and the sale set aside and cancelled that the whole of the contract was illegal as it was not possible to sever the legal from the illegal part That there being no evidence that there was any undue influence fraud or duress or that the plaintiff took a more innocent part in the illegal compromise than the defendant the Court would not grant relief under s 39 of the Specific Relief Act BINDESHARI PRASAD v LEKHRAJ SAHU (1916) 20 C W N 780

———*Mortgage-deed executed and registered—Suit by mortgagor for cancellation on the sole ground of non payment of consideration—Suit whether maintainable—Contract and executed conveyance distinction between—Mortgage whether void or voidable* Where a mortgage-deed has been executed and registered a suit by the mortgagor for the cancellation of the deed on the mere ground that the consideration for the mortgage has not been paid is not maintainable When the matter has passed from the stage of contract to that of an executed conveyance mere non payment of consideration will not render the transaction void or voidable within the terms of s 39 of the Specific Relief Act *Basalingappa* v *Virupanappa* 5 Bom L R 39 and *Rashik Lal* v *Ram Narain* I L R 34 All ° ° referred to ABDUL HASHIM SAHIB v KHADIR BATCHA SAHIB (1918) I L R 42 Mad. 20

———ss 39 40 45—*Suit for declaration that an endorsement on a document was fraudulently obtained—Consequential relief not asked for* *Held* that a suit for the cancellation of an endorsement fraudulently obtained on a mortgage deed is maintainable inasmuch as it is a suit of the nature indicated by s 39 of the Specific Relief Act The endorsement fraudulently obtained is by itself a document and is similar to the several parts of a document indicated in s 40 of the said Act To such a suit s 42 of the Act does not apply RAM CHANDAR v GANGA SARAN (1916) I L R 39 All. 103

——— ss 39 42—

See CIVIL PROCEDURE CODE 1908 O XLI r 2. I L R 34 All. 140

——— s 41—

See s 34 4 Pat L J 682

———*Minor—Representation made as major—Estoppel—Sale-deed suit to set aside—Restoration of consideration money* The plaintiff sued to obtain a declaration that the sale-deed passed by her to her deceased husband's brother was not valid as having been executed during her minority and to recover possession of the property The defendant contended that the plaintiff was estopped because she represented herself as being a major when she must have known that she was a minor On these pleadings questions having arisen (1) whether the plaintiff was estopped on account of the representation made by her and (2) whether under s 41 of the Specific Relief Act 1877 the Court should have directed the

SPECIFIC RELIEF ACT (I OF 1877)—*contd*

——— s. 41—*contd*

plaintiff to restore the consideration money *Held* that the plaintiff was not estopped there being evidence that the defendant was not deceived by what she told him inasmuch as he had made enquiries about plaintiff s age from the plaintiff s father and from other sources and beyond that was himself the brother of her deceased husband and therefore a fair presumption arose that he must have known what the plaintiff s age was (2) that there was no equity in favour of the defendant to direct the plaintiff to restore the consideration money GURUSHIDDSWAMI v PARAWA (1919)
I L R 44 Bom 175

——— s 42—

See s 12 **3 Pat L J 182**

See CIVIL PROCEDURE CODE (1908) s 9
I L R 37 All. 313
1 Pat L J 381

O II r 2 **I L R 38 Mad 1162**

O XLI r 22 **I L R 34 All 140**

See COURT FEE **I L R 39 Calc 704**
I L R 40 Calc 245
I L R 44 Calc 352

See DECLARATORY DECREE SUIT FOR
I L R 43 Calc 694
I L R 45 Calc 510

See ELECTION **I L R 41 Calc 384**

See HINDU LAW—ADOPTION
2 Pat L J 481

See HINDU LAW—INHERITANCE
I L R 43 Mad 4

See HINDU LAW—WIDOW
I L R 41 All 492

See MADRAS VILLAGE COURT ACT (I OF 1889) s 24 **I L R 39 Mad 808**

See MINOR **I L R 35 All. 487**

See MUNICIPAL LAW
L R 43 I A 243

See PENAL ASSESSMENT
I L R 37 Mad. 298

See PROFIT A PRENDRE
2 Pat L J 323

See SPECIFIC RELIEF ACT

See USUFRUCTUARY MORTGAGE
3 Pat L J 71

——— Brother of a lunatic suing in respect of property purchased with income of lunatic s property—

See ADMISSION **I L R 1 Lah 137**

——— Illustration (e)—

See DECLARATORY DECREE
I L R 45 Calc 510

1 ———*Mahomedan Law—Waqf—Right of Mahomedans entitled to use such property to sue for a declaration that property is waqf* The plaintiffs Mahomedan residents in the city of Kanauj sued for a declaration that a certain idgah and the land adjoining it situated in a village in pargana Kanauj was waqf property *Held* that as Mahomedans who had a right to use the idgah they were entitled to sue and that no special permission was required to enable them to do so *Zafaryab Ali v Bakhtawar Singh I L R 5 All 497* and *Jawahra v Akbar Husain I L R 7 All 178* followed *Wajid Ali Shah v Dianatullah Beg I L R 8 All 31* distinguished MUHAMMAD ALAM v AKBAR HUSAIN (1910)
I L R 32 All 631

2 ———*Civil Procedure Code (Act VIII of 1859) s 15—15 and 16 Vic c 86 s 50—Suit by plaintiff for mere declaration that the minor defendant was not his son—Investigation of claim without delay* A Talukdar plaintiff brought a suit for a declaration that defendant 2 a minor was not his son and that he was not born to the plaintiff's wife defendant 1 and for an injunction restraining defendant 1 from proclaiming to the world that defendant 2 was plaintiff s son and from claiming maintenance for him as such son The defendants contended that the suit was not maintainable under the provisions of the Specific Relief Act (I of 1877) and that it was premature *Held* that the suit was maintainable it being within the provisions of s 42 of the Specific Relief Act (I of 1877) *Held* further that in the interests of justice it was of the highest importance that such claims should be investigated and decided without unnecessary delay and when the controversy had once been brought to trial the decision should ordinarily follow the usual course *Pool v Ewing Ir Rep 1 Ch 434* distinguished BAI SHRI VAKTUBA v THAKORE AGARSINGHJI RAISINGHJI (1910) **I L R 34 Bom 676**

3 ———*Rent decrees obtained by defendant against plaintiff s tenants if amounts to dispossession—Throwing cloud on title—Declaratory suit proper remedy* Where the plaintiff sued for declaration of title to certain lands alleging that the same were in possession of his tenant but that the defendant had thrown a cloud of his title by recovering rent decrees against some of the tenants *Held* that the plaintiff could not in this suit ask for any further relief than a mere declaration of title and was proceeding in the right manner in suing for declaration of the title only *Loke Nath Surma v Keshab Ram Doss I L R 13 Calc 147* *Chinnammal v Varadrajulu I L R 15 Mad 307* *Nirmal Chandra v Mahomed Siddik I L R 26 Calc 11* relied on SATISH CHANDRA BHUTTACHARYA v SATYA CHURAN MAJUMDAR (1910) **14 C W N [illegible]**

4 ———*Suit for declaration of abstract right—Cause of action—Act VII of 1889 (Succession Certificate Act* [illegible] Hindu widow applied for a suc [illegible] enable her to collect the debts [illegible] band consisting mainly of a [illegible] fixed deposit with a bank [illegible] raised by the next reversi [illegible] enabling the applicant only [illegible] cruing due from time to ti [illegible] applicant then brought a [illegible] she was entitled to th [illegible] that the suit was maintainabl [illegible] her power to get in th [illegible] at the instance of the [illegible] SINGH v RAM KUAR (19[illegible]) I L [illegible]

5 ———[illegible] will be given In [illegible]

SPECIFIC RELIEF ACT (I OF 1877)—*contd*

——— s 42—*contd*

maintainable by reason of the proviso to s 42 of the Specific Relief Act (I of 1877) it must be shown that the defendant was in pos e sion and that as against him the plaintiff could have obtained an order for delivery of pos ession MALAIYYA PILLAI v PERUMAL PILLAI (1913) I L R 36 Mad 62

6 ——————*Hindu Inc—Reversioner—Suit for declaration of title—Cause of action—Will made by Hindu widow in possession—Limitation* D a separated Hindu and his son A died in 1891 on the same day the father dying first His son S M died a week later leaving his mother H and his grandmother M The property was then recorded in the names of M and H but M got posse sion and in 1908 executed a will in favour of her daughter S The reversioners of D brought a suit in 1908 for a declaration that the will would have no effect on their reversionary right S set up her right to the property ignoring that of H *Held* that even during the lifetime of H the plaintiffs were entitled to institute a suit for a declaration only under the provisions of s 42 Specific Relief Act *Held* further that the suit was not barred by limitation Mutation of names in M s favour was more or les an equivocal act and might pos ibly have given a cause of action but when in 1908 M specifically declared that the heir to the property was S and S herself as erted her title the plaintiffs a quired a cau e of action sufficient to entitle them to sue SHEORAJI v LAMIAS PANDE (1911) I L R 33 All 430

7 ——————*Declaratory decree when should be made and when refused—Consequential relief injunction* S 42 of the Specific Act does not sanction every form of declaration but only declaration that the plaintiff is entitled to any legal character or to any right as to any property Courts in this country should see that plaints which pray for declaratory decrees only conform to the terms of s 42 Specific Relief Act An injunction is a consequential relief The limit imposed by s 42 of the Specific Relief Act is on decrees which are merely declaratory and does not expressly extend to decrees in which relief is administered and declarations are embodied as introductory to that relief For such declarations legislative sanction is not required as they rest on long established practice But for all that the Court should be circumspect and even chary as to the declarations it makes It is ordinarily enough that relief should be granted without the declaration DEOKALI KOER v KEDAR NATH (1912) I L R 39 Calc 704 16 C W N 838

8 ——————*Fabrication of authority to adopt by widow does not justify suit by reversioner for declaring the authority not genuine* The mere fabrication of an authority to adopt by the widow will not entitle the reversioner to claim a declaration under s 42 of the Specific Relief Act that the authority is not genuine SREEPADA VENKATARAMANNA v SREEPADA RAMALAKSHMAMMA (1912) I L R 35 Mad 592

9 ——————*Joint Hindu family—Widow alleged to be in possession of part of the joint property under a family agreement—Suit for declaration of rights of other members of the family* Under a deed of compromise the name of the widow of a member of a joint Hindu family was

SPECIFIC RELIEF ACT (I OF 1877)—*contd*

——— s 42—*contd*

entered in the place of that of her hu band and she was put in po es ion of the property that stood in his name On an application being made for partition of one of the vill ges the widow also applied for partition of the share which stood in her name The plaintiffs objected on the ground that she was not entitled to partition and they were referred to the Civil Court to have their rights established They then sued for a declaration that the deceased died while living jointly with them else that the widow was not in po e sion as the heir of the decea ed and that she was not entitled to obtain partition S 42 of the Specific Relief Act was et up in defence *Held* that in a much a the po e sion of the defendant was clearly admitted and the real dispute between the parties was one of the nature of the po ession of the widow 42 of the Specific Relief Act did not bar a uit for declaration of title RAM MANORATH SINGH v DILRAJI KUNWAR (1913) I L R 36 All 196

10 ——————*Suit for declaration of title—Waste land—Plaintiff out of pos es ion* *Held* that the fact that land was waste land and therefore of no immediate practical u e was no bar to the application of s 42 of the Specific Relief Act where the plaintiff being admittedly out of po ession, claimed only a declaration of his title *Ramanuja v Devarayalo* I L R 8 Mad 361 distinguished ISHWARI SINGH v NARAIN DAT (1914) I L R 36 All. 312

11 ——————*Assignee from tenant if may sue landlord for recognition of his tenant rights and declaration of incidents of tenancy—Landlord and tenant* The Court has power to pa s a declaratory decree in a suit by an a signee of a lease against the le or to have it declared that the lea e is a permanent heritable and tran ferable one that the rent was fixed in perpetuity and that the le sor was bound to recogni e the plaintiff as tenant of the leasehold The law laid down in earlier rulings to the contrary has been modified by s 42 of the Specific Relief Act MONMOHAN GHOSH v EQUITABLE COAL COMPANY LD (1913) 18 C W N 596

12 ——————*Declaratory suit under if maintainable where property not in possession of defendants and plaintiff cannot ask for ejectment* Where the property is not in po session of the defendants and the plaintiff cannot a k for ejectment as again t them a declaratory suit is maintainable under s 42 of the Specific Relief Act *Subramaniya v Paramaswaran* I L R 11 Mad 116 and *Malaiyya v Perumal* 21 Mad L J 1022 followed PARESWAR MONDAL v PROVABATI DEBI (1914) 19 C W N 313

13 ——————*Suit for declaration of title—Property involved in pos ession of Court of Wards for person entitled thereto—Parties to suit* On the death of a *mahant* the right of succes ion to whose *math* was disputed the Court of Wards took possession of the *math* and declined to hand it over until some one should establish his right to the *mahantship* *Held* in a suit for a declaration of his title to the *mahantship* brought by a claimant thereto (i) that the Court of Wards was not a neces ary party and (ii) that this did not offend against the provisions of s 42 of the Specific Relief Act *Goswami Ranchor*

SPECIFIC RELIEF ACT (I OF 1877)—*contd*

——— s 42—*contd*

Lala v Sri Chidhari I L R 20 All 130 distinguished JAGANNATH CIR v TIPOLNA NAND (1914) I L R 37 All 185

14 ——— *Declaration suit for—Legal character or right to property meaning of—Rights under a contract declaration as to if maintainable—S 42 not exhaustive—Ordinary rule—Exception—Kuri subscriber to —Assignee from subscriber—Right of if continue pay rent—Suit for declaration by if maintainable* S 42 of the Specific Relief Act does not contemplate a suit for a declaration that a valid personal contract subsists between the plaintiff and the defendant as it is not a suit for a declaration of title to a legal character or a right to property S 42 of the Specific Relief Act is not intended to be exhaustive as regards the circumstances under which declaratory suits can be maintained *Robert Fischer v The Secretary of State for India* I L R 22 Mad 270 referred to *Kristaya v Kasipati* I L R 9 Mad 55 referred to But a declaratory relief will not be given in respect of rights arising out of a contract which would affect only the pecuniary relationship between the parties to the contract unless there are exceptional circumstances in a case to take it out of the ordinary rule Where the plaintiff who was the purchaser of the rights of the second defendant who was a subscriber to a half ticket in a kuri started by the first defendant as its proprietor sued the latter for a declaration that he was not a defaulter and was entitled to continue to pay the subscriptions to the kuri *Held* that the suit for declaration was not maintainable RAMAKRISHNA v NARAYANA (1914) I L R 39 Mad 80

15 ——— *Right to play music in public street—Whether the declaration of right can be claimed as a right—Civil Court* The plaintiffs trustees of a Hindu temple brought a suit for a declaration under s 42 of the Specific Relief Act 1877 that they were entitled to play music while going in procession past a Mahomedan mosque situated in a public street *Held* that the plaintiffs were not entitled to have the right to play music in a public street claimed and declared as a right *Per* HEATON J —The right to use a street as a thoroughfare is a right which a Court might properly declare but the right to pass along a street playing music is not a right which the Courts ought to recognise in that sense VENKATESH APPASHET v ABDUL KADIR (1918) I L R 42 Bom 438

16 ——— *Declaratory decree—Trespasser in possession of property to which a Hindu widow was entitled—Execution of will by trespasser—Suit by reversionary heirs for declaration of their rights and to set aside will* On the death of the widow of a separated Hindu in possession as such widow of her husband s property the daughter of one of her sons who had both predeceased the husband took possession of the property to the exclusion of her two daughters While so in possession of the property the son s daughter executed a will bequeathing the property as if it were her own *Held* on suit by persons alleging themselves to be the reversionary heirs for a declaration that the son s daughter had acquired no adverse or proprietary right to the property and had no right to make a will in respect thereof that no such declaration could be granted *Umrao Kunwar v Badri* I L R 37 All 4 and *Jaipal Kunwar v Indar Bahadur Singh* I L R 26 All 1938 referred to GANGA v KANHAI LAL (1918) I L R 41 All 154

17 ——— *Hindu Law—Suit by a Hindu for a declaration that a will alleged to have been executed by another member of the family giving his widow power to adopt is forged—Maintainability of* A member of a Hindu family can maintain a suit under s 42 of the Specific Relief Act for a declaration that a will alleged to have been executed by another member of the family giving his widow power to adopt is a forgery *Bobba Padmanabhudu v Bobba Buchamma* 35 M L J 144 followed *Sreepadam Venkataramanna v Sreepadam Ramalakshmamma* I L R 35 Mad 592 not followed SURAYYA v ANNAPURNAMMA (1919) I L R 42 Mad 699

18 ——— *Suit by a reversioner of Hindu for a declaration that another is not reversioner maintainability of—Order striking out defendant as party under O I r 10 (2) Civil Procedure Code and dismissing suit—Appeal from order maintainability of* Though under s 42 of the Specific Relief Act a Court can in its discretion grant relief by way of declaration it is a settled rule of practice not to grant such relief where the only question for decision is which of two persons (plaintiff or defendant) is the nearest reversioner or whether the defendant is a reversioner at all to the estate of a deceased Hindu *Saudagar Singh v Pardip Narayan Singh* I L R 45 Calc 510 referred to An order in a suit striking out from the array of parties a defendant as an unnecessary party and dismissing the suit against him is in effect a decree and is appealable as such RAMA RAO v THE RAJA OF PITTAPUR (1918) I L R 42 Mad. 219

19 ——— *Person entitled to a legal character divorced wife if —Mother if can sue for declaration of legitimacy of child* The plaintiff sued her late husband for a declaration under s 42 Specific Relief Act for a declaration as to her marriage and the legitimacy of four children The lower Court found that the plaintiff had been divorced some 20 years ago and refused the declaration about marriage but decreed it as to the legitimacy of the eldest of the children who it was found was born shortly after the divorce *Held* that the plaintiff who ceased to have the legal character of a wife 20 years ago was not entitled to ask the Court to make a declaration as to her marriage for there was no legal character in having been a wife and then divorced That the decree of the lower Court as to the legitimacy of one of the children could not stand for the mother of a child cannot be said to have a legal character as to whether her child who is not a party to the suit is or is not legitimate LATIFAN MEAN v MOORTI JANONA (1918) 23 C W N 171

20 ——— *Trespasser suit for declaration by* The essence of s 42 of the Specific Relief Act 1877 is a title vesting in the plaintiff No suit will lie at the instance of a trespasser for a declaration that he is a trespasser SESS LAL SINGH v HALDHAR NARAYAN 1 Pat L J 95

SPECIFIC RELIEF ACT (I OF 1877)—*contd*

——— s 42—*contd*

21 ———Where through clumsy blundering the plaintiffs who have *asked for a decree for pre emption prayed only for* a declaration of their right to pre empt the suit as so framed was not maintainable under s 42 of the Act but the lower Court was right in permitting the plaint in the suit to be amended although a *fresh suit on the same cause of action would at* the time have been passed by limitation the plaintiff s object having undoubtedly been to pre empt the land so that the cause of action was one and the same whether they sued for possession or not CHARAN DAS v AMIR KHAN (1920 P C)
25 C W N 289

22 ———*Suit for declaration of right to a certain share of joint family property maintainability of* A joint Hindu family of which the parties to the suit were members owned undivided shares in several villages in which there were many co sharers not connected with the family The plaintiffs severed themselves from the joint family and a dispute arose as to the extent *of their share in the family property Held* that under the circumstances the plaintiffs were entitled to a declaration as to the extent of their share in the family property the provisions of s 42 of the Specific Relief Act notwithstanding ASMAN SINGH v TULSI SINGH 2 Pat L J 221

23 ———*Temple property —Permanent lease—Invalidity of lease—Suit for declaration by worshippers—Maintainability of suit* Worshippers of a temple can maintain a suit for a declaration that a permanent lease of temple property granted to the defendants in possession is invalid VEERAMACHANENI RAMASWAMY v SOMA PITCHAYYA (1920) I L R 43 Mad 410

24 ——— *Suit for declaration of title to property after it was attached under s 146 Criminal Procedure Code (Act V of 1898)—Effect of Magistrate s attachment on the question of possession—Limitation Act (IX of 1908) s 23 and Arts 120 and 142 period of limitation applicable to the case* Plaintiff was dispossessed from some lands by the defendant in April 1904 and in June 1904 the lands were attached under s 146 Cr P Code owing to disputes between the parties Plaintiff brought the present suit for recovery of possession in May 1916 The lower Courts held that plaintiff had title but that the suit was barred by limitation *Held* that the suit though framed as a suit for possession cannot be treated as such because the possession was not with the defendant but with the Magistrate who wasnot and could not be a party to the suit The article therefore applicable to the suit was Art 120 of the Limitation Act and not Art 142 The position of the Magistrate was that of a stake holder and during the continuance of the attachment the property was in legal custody which must be held to be for the benefit of the true owner i e the plaintiff And the possession of the Magistrate being in law the possession of the true owner the defendant s possession was determned upon the Magistrate s taking possession under the attachment in other words the plaintiff must be taken to have been restored to possession constructively on the date of the attachment He therefore got a fresh starting point for purposes of limitation and the case can be treated as one of continuing wrong within the meaning of s 23 of the Limitation Act The suit was therefore not barred by limitation LANNA LAL BISWAS v PANCHU RUI DAS
26 C W N 432

SPECIFIC RELIEF ACT (I OF 1877)—*contd*

——— s 42—*concld*

25 ———*Held* that although the words legal character in s 42 *of the Specific Relief Act have been held to be* wide enough to include the right of franchise and also a right of being elected as a Municipal Commissioner it was doubtful whether regard being had to the form of the suit and the declarations *asked for in this case the case came within the* words of the section CHAIRMAN MUNICIPALITY OF KORTRUNG v BISSESWAR GHOSE
26 C W N 91

26 ———*Declaratory suit by a mortgagee for declaration of the right of mortgagor* *I* died leaving a widow and two sons and a will by which he appointed his widow as his executrix The two sons mortgaged the property to *S* and the widow the executrix sold the property under mortgage to *P* *S brought a suit for construction of G's will* and for a declaration that the rights of the sons had not been affected by the will and that the widow had no right of property *Held* that the plaintiff must first of all establish his right as mortgagee and until that is done he has no cause of action for maintaining a suit for a declaration of the title of his mortgagors The plaintiff should not at the appellate stage be allowed to amend the plaint to *raise the question* of his right as mortgagee as that would involve taking of fresh evidence and a *trial de novo* SRISH CHANDRA CHATTERJEE v SM GOLAP MONI DASI 25 C W N 552

——— ss 42 and 54—

See MAHABRAHMANS I L R 43 All 159

——— s 43—

See CIVIL PROCEDURE CODE 1908 s 11
I L R 44 Mad 778

——— s 45—

See DESIGN I L R 45 Calc 606

See LAND ACQUISITION
I L R 48 Calc 916

See MUNICIPAL CORPORATION
I L R 40 Calc 836

See MUNICIPAL ELECTION
I L R 39 Calc 593 754
I L R 45 Calc 950
I L R 46 Calc 119

See UNIVERSITY LECTURESHIP
I L R 41 Calc 518

——— High Court s power of interference—

See EXCESS PROFITS DUTY ACT (X OF 1919)—

ss 3 15 SCH I
I L R 45 Bom 1064

ss 6 (1) (a) AND *(b)* SCH II CL I
I L R 45 Bom 831

1 ———*General principle underlying interference by High Court—Municipal election petition—Jurisdiction and discretion of*

SPECIFIC RELIEF ACT (I OF 1877)—*contd*

——— s. 45—*contd*

Chief Judge of Small Causes Court—City of Bombay Municipal Act (Bom Act III of 1888 as amended by Bom Act V of 1905) s 33 and 34 A Municipal election petition having been lodged with the Chief Judge of the Small Causes Court the latter unseated two of the successful candidates and found cause of objection against the candidate in whose favour were recorded the next highest number of valid votes after those returned as elected He declined to inquire further into the claims of any other candidate or to declare any other candidate elected as on his interpretation of s 33 (2) of the Bombay Municipal Act (Bom Act III of 1888 as amended by Bom Act V of 1905) he was not able to do so The two highest of the other unsuccessful candidates thereupon obtained rules against the Chief Judge under s 45 of the Specific Relief Act (I of 1877) to show cause why he should not proceed to declare them elected under s 33 (2) above mentioned *Held* that the case fell within the general principle referred to in *Ex parte Milner (1851) 15 Jur 1037* that where an inferior tribunal improperly refused to enter upon a complaint a mandamus would issue S 33 having been held to empower the Chief Judge to set aside the election of any number of candidates returned as elected there was nothing repugnant in construing the section as empowering the Chief Judge to fill up any number of vacancies so created from the list of unsuccessful candidates subject to the provisions of the section It was clearly incumbent on the Chief Judge to deal with the question of filling up both the vacancies He should accordingly proceed to place the unsuccessful candidates in order of valid votes The two with the highest number of valid votes against whom no cause of objection was found should be declared to be deemed to be elected If only one qualified or none qualified proceedings for filling the vacancy or vacancies would have to be taken under s 34 An application under s 33 (1) should name the persons whose election is objected to *In the matter of the* SPECIFIC RELIEF ACT and *In the matter of* SARAFALLY MAMOOJI AND JAFFER JUSUB (1910)

I L R 34 Bom 659

2 ———————Where the Magistrate had refused to furnish such copies to a party the High Court under s 45 of the Specific Relief Act ordered the records of the case to be brought up to High Court and kept with the Registrar and allowed liberty to the party to take copies BENI MADHUB BANERJEE v SAILENDRA NATH MUKERJEE (1911) 15 C W N 770

3 ——————— *University of Madras—Senate and the Syndicate respective powers of—Regulation 64 of the Madras University Regulations providing for protests to Government when* ultra vires—*Refusal of Syndicate to send protest to Government—Application for an order against Syndicate—Syndicate a public officer protestor an injured person and by law a law for the time being within s 45— Other specific and adequate remedy in s 45 meaning of—Substance and not form of protest and resolution to be looked at* In granting an application for an order under s 45 of the Specific Relief Act filed by a Fellow of the Madras University against the Syndicate thereof for the purpose of compelling the Syndicate to forward to the Government a protest of his under Regulation 64 of the University Regulations against a resolution of the Senate *Held* under the Madras University Act of 1857 and the Indian Universities Act of 1904 that the Senate of the Madras University is the legislative and the Syndicate the executive government of the University The scheme of the Acts is that general rules (called regulations) framed as to matters within the competence of the University are to be made by the Senate in some cases with the sanction of the Government and that the Syndicate's powers are purely executive and limited to the application of those rules to the facts and exigencies of particular cases as they arise No sanction of Government is required for the Syndicate's application of the general rules made by the Senate and the Syndicate is entitled to make its own standing orders and subject to the Regulations of the University to regulate its business without the sanction of the Senate The Syndicate can bring forward regulations for adoption by the Senate Such being the relative powers of these two bodies a power given to the University by s 3 of the Universities Act VIII of 1904 to appoint University Professors and Lecturers and a specific power given by s 25 of the Act to the Senate of the University to make regulation subject to the sanction of the Government for the appointment and duties of the University Professors and Lecturers are exercisable only by the Senate and not by the Syndicate Such a power cannot be included within the administrative or ministerial powers of the Syndicate which it is competent to exercise without the approval of the Senate A regulation or a proposal brought forward by the Syndicate in respect of such a matter for the approval of the Senate becomes on adoption by the Senate a regulation or a resolution of the Senate itself and as such liable to be submitted for the approval of the Government Being entitled to make regulations consistent with the Act the Senate has power to make a regulation providing for a protest to Government by a Fellow of the University against any resolution of the Senate in such a matter and if under such a regulation the Syndicate is liable eventually to submit the protest for the consideration and orders of the Government the Syndicate has no power or discretion to refuse to send the protest and the person protesting is on any such refusal entitled to obtain from the High Court an order in the nature of a mandamus compelling the Syndicate to submit the protest to the Government *Held* further that the Syndicate of the Madras University is a statutory body of persons holding a public office within the meaning of s 45 of the Specific Relief Act though no emoluments are attached to that office Where a statute appoints a body of persons to carry out purposes of public benefit the persons constituting such a body *ipso facto* become holders of a public office The person protesting is entitled to the relief sought for as an injured person within the meaning of s 45 (a) even though there may be others equally entitled to protest in the same matter The regulation of the Senate providing for the protest being made under the powers given by the statute has the force of law and it is a law for the time being within s 45 (b) A regulation of the Senate providing for protests to Government in respect of all its resolutions will be *ultra vires* in respect of those which do not under the Act require the sanction for the Government

SPECIFIC RELIEF ACT (I OF 1877)—*contd*

——— s 45—*concld*

What in fact and substance is a resolution of the Senate amounting to a regulation passed after due notice must be deemed to be so however differently it may have been described A document which in form and substance is a protest against a resolution is none the less a protest because it contains arguments against the validity of certain incidental matters leading to the passing of the resolution The word resolution in Regulation 24 means only regulation *Per* KUMARASWAMI SASTRIYAR *J*—The proper course in applying for a mandamus against a statutory body is to take proceedings against the body as such in its official designation and not against each of the individuals composing the body The fact that an applicant for a mandamus has other remedies is no bar to its issue unless they amount to other specific and adequate remedy which means equally convenient speedy beneficial and effectual remedy

Other specific and adequate remedy in s. 45 (d) relate to a *remedium juris* and not a remedy by the act of party *In re* G A NATESA AND K B RAMANATHAN (1916) I L R 40 Mad 125

——— ss 45 46—

See MANDAMUS I L R 38 Calc 553

See PLEADERSHIP EXAMINATION I L R 40 Calc 588

——— The petitioner having obtained a decree in the Court of the Subordinate Judge of Shahabad for recovery of possession against an infant whose estate was with the Court of Wards applied pending defendant s appeal to the High Court for an order under s 45 of the Specific Relief Act calling upon the Members of the Board to release the estate *Held* that the failure to implead the infant whose interest would be affected was fatal to the application In the matter of KESHO PROSAD SINGH 15 C W N 503

——— ss 52 to 56—

See INJUNCTION I L R 47 Calc 733

——— s 54—

See GAYAWAL 2 Pat L J 705

See MAHA BRAHMANS I L R 43 All 159

See TRUST I L R 41 Calc 19

——— ss 54 to 57 (Chap X)—

See FOOTINGS I L P 38 Calc 687

——— ss 54 56 (e)—

See INJUNCTION I L R 37 Calc 731

——— s 55—*Injunction—Suit by Muhammadans to prevent the Hindu defendants from interfering with the calling of the* azan *at a mosque by blowing conches etc —Nuisance explained* In a village occupied by about 600 Hindus and a little over 100 Muhammadans there are 2 mosques one just outside the *abadi* unconnected with the present case and one inside the *abadi* erected about 200 years ago This had fallen out of repair and was repaired within recent years and was then used as a school and for other semi religious purposes but more recently was used for prayers The Hindus objected to the calling out of the *azan* and when it was called out and at the time of subsequent prayer the Hindus blew conches beat drums and created noises and disturbances The Muhammadans then brought the present suit for an injunction to restrain the Hindus from interfering with the calling out of the *azan* and praying in the mosque It was found as a fact that the object of the defendants in blowing conches was to stop the calling of the *azan* *Held* that the Muhammadans had an inherent right to call out the *azan* from the mosque *Held* also that the noises made by the defendants collectively and continuously at the time of calling out the *azan* for the sole purpose of frustrating the object of the call constituted a nuisance and it was no answer to the suit that the little noise made by each of the defendants personally did not amount to a nuisance *Lambton* v *Mellish (3 Ch 163)* referred to also Kerr on Injunction p 156 and 213 *Held* further that plaintiffs were entitled to the injunction prayed for because the nuisance caused by the defendants was not a reasonable exercise of their rights and was an infringement of the rule of give and take live and let live *Broder* v *Saillard (2 Ch D 692)* and *Christie* v *Davey (L R 1 Ch 316)* referred to JAWAND SINGH v MUHAMMAD DIN I L R 1 Lah 140

——— s 56 (E)—

See INJUNCTION I L R 37 Calc 731

——— s 56 Ill (1)—*Suit for injunction, if lies against trespasser* A plaintiff who is out of possession should not be allowed to sue the defendant who is alleged to be in possession as a trespasser for an injunction He ought to sue for recovery of the land JAHAR LAL BANDURI v NANDA LAL CHAUDHURI (1913) 18 C W N 545

SPECULATIVE PURCHASER

See CERTIFICATE OF SALE I L R 37 Calc 107

SPES SUCCESSIONIS

See HINDU LAW—WIDOW I L R 38 Bom 224

——— transfer of—

See KHOJAS I L R 38 Bom 449

SPIRITUAL WELFARE

See HINDU LAW—ALIENATION I L R 43 Calc 574

SPIRITUOUS AND FERMENTED LIQUORS

See EXCISEABLE ARTICLES I L R 39 Calc 1053

SPY OR DETECTIVE

See ACCOMPLICE I L R 33 Calc 96

SRADH

——— offerings to the dead at—

See HINDU LAW—GIFT 14 C W N 1005

STABLES

See NUISANCE I L R 40 Bom 401

STAKEHOLDER

———*Deposit of money—Valid assignment by depositor to his creditor—Neglect of the creditor to recover—Creditor chargeable with the amount* Where money deposited with a

STAKEHOLDER—contd

stakeholder was validly assigned by the depositor to his creditor in satisfaction of his debt and the creditor being able to recover the amount so assigned neglected to do so he was chargeable with the amount. GANPATRAO BALKRISHNA BHIDE v THE MAHARAJA MADHAVRAO SINDE (1910)
I L R 35 Bom 1

STAMP

See BUNDELKHAND ALIENATION ACT (II OF 1903) 1
I L R 38 All 351

See CIVIL PROCEDURE CODE (ACT V OF 1908) —

s 9 I L R 40 Bom 541

s 107 149 O VII R 11 CL (c)
I L R 38 Bom 41

See EVIDENCE I L R 38 All 494

See STAMP ACT (II OF 1899)—

———— Agreement of sale executed on an unstamped paper—Secondary evidence not permissible

See CONTRACT I L R 45 Bom 1170

———— on a promissory note executed in Hyderabad—

See PROMISSORY NOTE
I L R 42 Bom 522

STAMP ACT (II OF 1899)

———— s 2 (5) — *Attestation what is—A document written by person other than executant if attested by the writer who did not sign as attesting witness* The attestation referred to in s 2 sub s (5) cl (6) of the Indian Stamp Act means attestation on the face of the instrument BIDHU RANJAN MAJUMDAR v MANGAN SARKAR
26 C W N 585

———— s 2 (5) arts 15 and 40 *of Schedule I Court Fees Act (IV of 1870) Schedule II art 6—Security bond by receiver binding himself and his properties—Proper stamp—Whether liable under Stamp Act and Court Fees Act* A security bond in favour of a Court executed by a receiver binding himself and his properties for the due discharge of his duties must be stamped both under the Court Fees Act and under art 40 of Schedule I of the Stamp Act *Kulwanta v Mahabir Prasad (1889) I L R 11 All 16 (F B)* and Referred Case No 19 of 1911 followed AMIRTHAMMAL v RAMALINGA GOUNDAN (1920)
I L R 43 Mad (F B) 363

———— s 2 cl (5) (b) s 35 (a)—*Shahajogi hundi insufficiently stamped admissibility in evidence—Payment of penalty* The plaintiff sued for recovery of money due on five instruments described as hundis The documents bore an impressed stamp of 4 annas each were each of them attested by a witness and the money secured thereby was made payable to the respectable holder *Held* that the documents in question were neither bills of exchange nor promissory notes but bonds within the meaning of s 2 cl (5) (b) of the Indian Stamp Act and were admissible in evidence on payment of duty and penalty under s 35 (a) of the Indian Stamp Act KESHARI CHAND SURANA v ASHARAM MAHATO (1915) 19 C W N 1323

STAMP ACT (II OF 1899)—contd

———— s 2 (10) Sch I Art 5 cl (c)—

See HIRE PURCHASE AGREEMENT
I L R 44 Calc 72

———— s 2 (14) Sch I Art 5— *Instrument —Entry in register as to hiring certain machinery attested by thumb marks of hirers—Memorandum of agreement —Stamp* In a book kept by the owner of certain machinery for the manufacture of sugar which purported to be a register of sums payable with respect to the letting out of wooden machines (*charkhi*) and rollers for pressing sugar cane and iron pans for boiling sugarcane juice was an entry to the following effect— Harkesh son of Kunwar and two others residents of mauza Salempur hired a sugarcane pressing machine in consideration of a rent of Rs 15 from the plaintiff through his *karinda* (named) that they would pay the hire in *Chait* and in default would pay interest at 2 per cent per mensem Below this entry were the thumbmarks of the persons who hired the machine *Held* that this entry amounted to an instrument as defined in s 2 sub s (14) of the Indian Stamp Act 1899 and was a memorandum of agreement within the terms of article 5 (b) of the first schedule to that Act *Mulchand Lala v Kashibullav Biswas I L R 35 Calc 111* referred to MUTASADDI LAL v HARKESH (1913)
I L R 36 All 11

———— s 2 (15) Sch I Art 45— *Final decree effecting partition what is* To make an order chargeable with stamp duty under s 2 (15) of the Stamp Act of 1899 it must effect an actual division of the property An order declaring the rights of the parties and directing further proceedings for the ascertainment of the specific shares is not such an order Courts ought not to pass *interim* orders and direct proceedings in execution for the ascertainment of the specific shares The final order should be passed after the specific shares have been ascertained A decree reciting a *razinamah* made by consent of parties allotting specific properties to the several parties and directing other parties to deliver possession is chargeable with stamp duty under Art 45 of Sch I as a final order effecting partition within s 2 (15) Being made by consent of parties it is also an instrument whereby co owners have agreed to divide property in severalty and falls within the first part of s 2 (15) THIRUVENGADATHAMIAH v MUNGIAH (1911)
I L R 35 Mad 26

———— *Stamp—Partition—Final order for effecting a partition* *Held* that the words final order in s 2 cl (15) and Article 45 (c) of sch I to the Indian Stamp Act 1899 referred to the final order of the lowest Court of original jurisdiction empowered to give an order for effecting a partition at the time it is passed STAMP REFERENCE BY BOARD OF REVENUE (1914) I L R 36 All 137

———— s 2 (16)—

See s 25 I L R 41 Mad 466

———— s 2 (17) and Arts 40 and 64—*Mortgage deed—Hypothecation letter of accompanying a bill of exchange* Where a document ran as follows — The executant being desirous of carrying on her deceased husband s business of which she is now the owner declares a trust in favour of the Bank of Madras in respect of machinery plant fixture and furniture and stock in trade in con

STAMP ACT (II OF 1899)—*contd*

——— s 2 (17) and Arts 40 and 64—*contd*

sideration of advances of money to be made by the Bank from time to time not exceeding in all Rs 4 50 000 for the purpose of financing the business All such advances carry interest at the rate of 6 per cent per annum. The trustee has got full power to use employ sell or exchange or otherwise deal with the trust property in the ordinary course of business but should make good the property that may be sold with other goods of a similar nature and value any goods so substituted shall be included in the security The trustee may retain in his hands the sum of Rs 20 000 annually in trust to pay and apply the same in payment of sums advanced by the Bank *Held* that the document created a trust in express language in respect of the machinery etc in or upon the business premises of the firm and that the object of the instrument was to give the Bank some rights by way of security and it was a mortgage deed for the purpose of the Stamp Act Reference under Stamp Act s 46 *I L R 11 Mad 216* referred to *Semble* The document is not a letter of hypothecation within the meaning of the exemption in art 40 *Obiter* A fiscal enactment should be construed strictly and in favour of the subject THE SECRETARY TO THE COMMISSIONER OF SALT ABKARI AND SEPARATE REVENUE REVENUE BOARD MADRAS v MRS ORR (1913) I L R 38 Mad 646

——— ss 2 (21) 60 Sch I Art 48 (g)—*Stamp—Power of attorney—Document authorising holder to appear and do all acts necessary for execution of decree* *Held* that a document purporting to authorize the person in whose favour it was executed who was not a certificated mukhtar or pleader to appear and do all acts necessary for the execution of a decree of a foreign court which had been transferred to a court in the United Provinces for execution required to be stamped as a power of attorney with a one rupee stamp and not as a vakalatnamah or mukhtarnamah PARMANAND v SAT PRASAD (1911) I L R 33 All 487

——— ss 2 (23)—32 63 *Sirkhat—Memorandum of account—Receipt—Several items of over Rs 20 each—Each item to be stamped* *Held* that a memorandum of account between debtor and creditor which was left in the possession of the debtor and consisted of items entered from time to time of money advanced and repaid was a document which required a separate receipt stamp in respect of each item of over Rs 20 EMPEROR v TULSHI RAM (1913) I L R 35 All 290

——— s 2 (23) Sch I Art 53

See STAMP DUTY

I L R 37 Calc 629 634

——— s 2 (24) Sch I Art 7—*Instrument declaring trust—Fund composed of two parts—Absence of previous disposition in one part—Settlement—Disposition for charity of the other part—Appointment—Stamp duty* An instrument was prepared for the purpose of declaring trusts of certain funds devoted to charity The funds amounted to about Rs 3 00 000 and came to the hands of the trustees from two sources About Rs 1 00 000 was the result of appeals to various persons and the rest was provided by the executors of the will of one *A H* The instrument declaring the trusts was engrossed on a stamp paper of Rs 15 and a question having arisen as to whether the instrument was properly stamped *Held* that so far as the fund of Rs 1 00 000 was concerned there being no previous disposition in writing of any part of it though some of the contributions were accompanied by letters from the donors expressing their wishes with respect to the funds contributed the instrument was a settlement according to the definition in s 2 (24) of the Indian Stamp Act (II of 1899) and was chargeable with duty on Rs 1 03 200 at the rate of 8 annas per cent *Held* also that so far as the fund of Rs 2 00 000 was concerned the provisions of the will of *A H* amounted to a disposition for a charitable purpose and the instrument was an appointment chargeable with a duty of Rs 15 under Sch I Art 7 of the Indian Stamp Act (II of 1899) *In re* ABDULLA HAJI DAWOOD BOWLA ORPHANAGE (1911) I L R 35 Bom 444

——— s 3—

See BUNDELKHAND ALIENATION OF LAND ACT (II OF 1903) s 17

I L R 38 All 351

——— s 4—

1 ——— *Stamp—Settlement of family property effected by two deeds one modifying the other—Full duty paid on the first* Two brothers having come to an agreement as to the settlement of their joint property embodied this agreement in a deed which was duly stamped according to the value of the property dealt with thereby Subsequently the parties to this deed executed a second deed of settlement which modified provisions of the first in a certain direction but dealt with no property which was not covered by that deed Both deeds were contingent on the happening of events which at the time of the execution of the second deed were still future events *Held* that the transaction effected by two deeds fell within the purview of s 4 of the Indian Stamp Act 1899 and the full duty having been paid on the first deed the second required a stamp of one rupee only STAMP REFERENCE BY THE BOARD OF REVENUE (1914) I L R 37 All 159

2 ——— *Stamp—Settlement—Gift of property made by one deed—Agreement to secure expenses of donor entered into by another* Two brothers executed deeds each in favour of the other One was a deed of gift of all the property of the executant and it was stamped to its full value The other was a deed coming within no known category but it provided for the expenses during the life time of the executant of the deed of gift and hypothecated certain property to secure the payment thereof only a portion of the property thus hypothecated however was included in the deed of gift The second document bore a stamp of Rs 10 *Held* that the two documents were part of the same transaction and amounted to a settlement within the meaning of s 4 of the Stamp Act and the stamp duty paid was sufficient STAMP REFERENCE BY THE BOARD OF REVENUE (1915) I L R 37 All 264

——— s 5—

——— *Stamp-duty—Lease—Multifarious document—One lease with several parties concurring to it—Stamp Act (II of 1899),*

STAMP ACT (II OF 1899)—*contd*

——— s. 5—*contd*

ss 5 25 (3) 35 57 (1) The concurrence of several parties to one and the same lease does not make it a multifarious document within the meaning of s 5 of the Stamp Act The stamp-duty on such a lease is the same as on a conveyance for a consideration equal to the amount or value of the fine or premium for which the lease is granted *In re* PARASEA COLLIERIES LTD (1910)

I L R 37 Calc 629

——— *Sale—Mortgage for due performance of covenants—Distinct matters meaning of—Stamp payable* A sale deed in which the vendor mortgages lands not included in the sale as security for the due performance of his covenants need not be stamped both as a sale and a mortgage *Govindan Nambidiri* v *Moidin (1918) I L R 41 Mad 469 (F B)* overruled SECRETARY TO THE COMMISSIONER OF SALT ABKARI AND SEPARATE REVENUE MADRAS (REFERRING OFFICER) (1920) I L R 43 Mad (F B) 365

——— ss 5 6 36 Sch I Arts 5 43—

See STAMP DUTY I L R 39 Calc 669

——— s 12 Sch I Arts 1 5—*Stamp—Acknowledgment of a debt— Sarkhat —Stipulation for payment of interest—Agreement—Cancellation of adhesive stamp* In support of a claim to recover money lent with interest an acknowledgment or *sarkhat* was produced which was in the following terms — *Sarkhat* executed in favour of Sheoraj Ram Teli by Mahadeo Pam borrowed Rs 200 interest rate Re 1 8 0 per cent per mensem date Baisakh Sudi 1st Samwat 1971 At the top of the document was affixed a one anna stamp on which there was only one horizontal line drawn across it *Held* that the *sarkhat* was not merely an acknowledgment of a debt but contained a stipulation to pay interest within the meaning of art 1 of the first schedule to the Indian Stamp Act 1899 and therefore required to be stamped as an agreement under art 5 (c) of the same schedule *Udit Upadhya* v *Bhawani Din I L R 27 All 84* and *Dulmha Kunwar* v *Mahadeo Prasad I L R 28 All 436* distinguished *Laxumibai* v *Ganesh Raghunath I L R 5 Bom 373* and *Mulchand Lala* v *Kashibullav Biswas I L R 35 Calc 111* referred to *Held* also that a stamp may be effectually cancelled by merely drawing a line across it S 12 of the Act does not mean that it is necessary to cancel a stamp in such a manner as to make it physically impossible for any dishonest person to make hereafter a fraudulent use of the stamp *Mohammad Amir Mirza Beg* v *Babu Kedar Nath 15 Oudh Cases 58* referred to MAHADEO KORI v SHEORAJ RAM TELI (1918) I L R 41 All. 169

——— s 25—*Marupat—Counterpart of lease—Document giving a charge on improvements for arrears of rent—Stamp duty whether payable both as counterpart and as mortgage* Where a tenant executed a *marupat* in favour of a landlord agreeing therein that the arrears of rent if any should be a charge on the improvements that might be made by him *Held* that a *marupat* is the counterpart of a lease or a deed executed by a tenant promising to pay a certain rent and that the document in question must be stamped both as a counterpart and as a mortgage GOVINDAN NAMBUDIRI v MOIDIN (1917) I L R 41 Mad 469

STAMP ACT (II OF 1899)—*contd*

——— s 25—*contd*

——— ss 26 and 35—*Mining lease—claim for royalty in excess of amount covered by stamp maintainability of* The provisions of s 26 of the Stamp Act 1899 are governed by s 35 and therefore a lessee under a mining lease is entitled upon payment of the penalty under the latter section to recover the royalty provided for in the lease even though the amount claimed is in excess of the amount covered by the stamp used in the lease KUMAR BRAJ MOHAN SINGH v LACHMI NARAIN AGARWALA 5 Pat L J 660

——— ss 27 64 (a)—*Execution of document—Not containing statement of facts affecting duty—Stamp* Certain property was sold for Rs 20 000 to one *R* who paid Rs 1 000 in cash and agreed to give the vendors credit for Rs 19 000 to be drawn against as required Shortly afterwards the parties agreed to rescind the contract and *R* resold the property to his vendors giving them a conveyance in which the consideration was stated to be Rs 1 000 in cash no mention being made of the extinction of his liability to pay the remaining Rs 19 000 *Held* on these facts that *R* had committed an offence within the purview of s 64 (a) of the Indian Stamp Act 1899 EMPEROR v RAMESHAR DAS (1910) I L R 32 All 171

——— s 28 (3)—

See STAMP DUTY I L R 37 Calc 629

——— s 33 (1)—*Impounding of document insufficiently stamped—Conditions necessary for the application of section—Suit for money on hatchitta produced in Court in bound volume containing other hatchittas—Jurisdiction of Court to impound those other hatchittas* In a suit for recovery of money on a *hatchitta* the plaintiff filed along with the plaint the *hatchitta* which was in a bound volume which contained a large number of *hatchittas* executed by other persons in favour of the plaintiffs The *hatchitta* on which the suit was brought being found to be insufficiently stamped the Munsif examined the other *hatchittas* and impounded them under s 33 of the Stamp Act finding them to be insufficiently stamped *Held* that under s 33 the Munsif had no jurisdiction to impound the *hatchittas* other than the one which formed the basis of the suit Before action can be taken under sub s 1 of s 33 it must be established that the instrument in question was produced or came before the officer mentioned therein in the performance of his functions and having regard to the stage at which the Munsif took action it could not be said that the *hatchittas* were produced or came before the Munsif in the performance of his functions SASHI MOHAN SHAHA v KUMUD KUMAR BISWAS (1916) 21 C W N 246

——— s 35—

See s 5 I L R 37 Calc 629

See s 26 5 Pat L J 660

——— *Civil Procedure Code (Act V of 1908) O XXI r 91—Contract Act (IX of 1872) s 18 cl (3)—Court sale—Discovery that the judgment debtor had no saleable interest—Failure of consideration—Suit by auction-purchaser for possession or return of purchase money—Relations of the judgment-creditor and auction-purchaser—Suit not cognizable by Small Causes Court—Unstamped document regarded as non-existent*

STAMP ACT (II OF 1899)—*contd*

——— s 35—*contd*

A Court sale purchaser having discovered that the judgment debtors had no saleable interest in the property sold brought a suit against the judgment creditor for recovery of possession of the property or in the alternative return of the purchase money on the footing of total failure of consideration A question having arisen as to whether the suit was maintainable *Held* that the suit was maintainable inasmuch as under the Civil Procedure Code (Act V of 1908) there was an implied warranty of some saleable interest when the right title and interest of the judgment debtor was put up for sale and the purchaser s right based on such implied warranty to a return under certain conditions of the purchase money which had been received by the judgment creditor was recognized The relations of the parties namely the judgment creditor and the Court sale purchaser were also in the nature of contract *Held* further that such a suit though the subject matter was less than Rs 500 was not cognizable by a Court of Small Causes there being a prayer for possession of immoveable property An unstamped document being inadmissible in evidence must be taken as non existent RUSTOMJI ARDESHIR IRANI v VINAYAK GANGADHAR BHAT (1910) I L R 35 Bom 29

——— ss 35 36—Sch I Art 40 Exemp (2)—*Bill of exchange written on several pieces of stamp paper if properly stamped—Hypothecation letter of not stamped but registered if admissible in evidence—Power of Appellate Court to question admissibility on the ground of insufficiency of stamp—Document not duly stamped improperly registered if to be therefore rejected—Registration Act (XVI of 1908) s 87* A document which was in fact a bill of exchange though it was loosely described as a *hundi* was properly stamped under r 6 of the Rules of the Governor General in Council when a portion of it appeared to have been written on each of three sheets of stamp paper of the aggregate value required by law Where a registering officer having examined a document presented to him for registration came rightly or wrongly to the conclusion that being a letter of hypothecation accompanying a bill of exchange it was exempt from duty under Art 40 Exemp (2) of Sch I of the Stamp Act and accordingly certified on the bill of exchange that it was properly stamped and registered the letter of hypothecation without requiring any further duty to be paid in respect of it *Held* that an improper registration in view of s 87 of the Registration Act could not possibly affect the validity of the document That the Court of first instance having admitted the letter of hypothecation in evidence the High Court was precluded from taking exception to it on the ground of its having been insufficiently stamped by s 36 of the Stamp Act That it did not lie in the mouth of the representatives of the executant of the letter who was responsible for the proper stamping of the document to plead in a suit to enforce it that the contract was not binding upon him because he had succeeded in defrauding the Revenue authorities SARADA NATH BHATTACHARJEE v GOVINDA CHANDRA DAS (1919) 23 C W N 534

——— s 36—

See SUCCESSION ACT (X OF 1865) s 190 I L R 38 Bom 618

STAMP ACT (II OF 1899)—*contd*

——— s 36—*contd*

See STAMP DUTY I L R 39 Calc 669

——— *Unstamped acknowledgment accepted as evidence by trial Court if may be rejected on appeal* A statement to the effect as follows Rs 2 115—balance due followed by the date and the debtor s signature is an acknowledgment and should be stamped as such But under s 36 of the Stamp Act if such a statement though unstamped has been admitted in evidence by the Court of first instance it cannot be rejected by the Appellate Court SITARAM v RAMA PROSAD RAM (1913) 18 C W N 697

——— ss 40 57—*Instrument certified by Collector to have been duly stamped—Reference by Chief Controlling Revenue Authority to High Court questioning correctness of Collector s decision—Jurisdiction* *Held* that if a Collector has taken action under s 40 sub s (1) (b) of the Indian Stamp Act 1899 and having received the deficient duty and the penalty imposed has certified under sub s (1) (a) that the instrument before him is duly stamped the effect of sub s (3) is that the jurisdiction of the Chief Controlling Revenue Authority to refer to the High Court under s 57 of the Act the question whether such instrument is in fact sufficiently stamped or not is ousted *Reference under Stamp Act s 57 I L R 25 Mad 752* followed STAMP REFERENCE BY BOARD OF REVENUE (1917) I L R 40 All 128

——— s 52—*Partition decree—Court fee stamp erroneously used for non judicial—Valuation of decree by filing of non judicial stamp on appeal—Civil Procedure Code (Act V of 1908) s 151* The plaintiff in a suit for partition by mistake filed a Court fee instead of a non judicial stamp in order that a decree might be drawn up thereon in accordance with Art 45 of Sch I of the Stamp Act and the mistake was not discovered till after some of the defendants had preferred an appeal against the decree so drawn up and others had filed cross objections when the plaintiff having applied for execution of the decree the Subordinate Judge dismissed the application holding that there was no valid decree capable of execution *Held* on plaintiff s application in the appeal that the High Court could in the exercise of its powers under s 151 of the Civil Procedure Code direct the plaintiff to file a non judicial stamp of the requisite value in the appeal so as to validate the decree with retrospective effect from the date when it was drawn up *Chhayemannessa Bibi v Basirar Rahaman I L R 37 Calc 399 s c 11 C L J 254* referred to The High Court in such a case cannot direct the refund by the revenue authorities of the value of the Court fee stamp thus erroneously used S 5 of the Indian Stamp Act does not cover a case in which Court fee stamp has been erroneously used where non judicial stamp ought to have been used under the provisions of the Act *Reference under s 57 of Act II of 1899 I L R 23 All 213* referred to SHAIKH RAFIUDDIN v LATIF AHMAD (1910) 14 C W N 1101

——— s 57—

I L R 37 Calc 699

See s 5

See s 40 I L R 40 All 182

——— *Reference under Art 5 Sch I—Agreement or memorandum of agreement meaning of—Proposal or offer in writing—Parol*

STAMP ACT (II OF 1899)—*contd*

———— s. 57—*contd*

acceptance—Whether proposal or offer in writing requires to be stamped—Advance of loan on written declaration by a party as to his property—Entry in register of the declaration—Whether stamp necessary Where it appeared on the evidence as to course of business of a bank that the bank advanced loans on promissory notes payable on demand or otherwise but before advancing money it required the borrower to make a declaration in the confidential register in the form thereto annexed as to the property in his possession and to sign the same — *Held* that the entry of the declaration in the register was not an agreement or a memorandum of an agreement which required to be stamped under Art 5 of the sch I of the Indian Stamp Act (II of 1899) Assuming that on the signing of the declaration there was a proposal or an offer a written proposal or a written offer does not become subject to stamp duty by reason of subsequent acceptance which is not in writing *Carlill v The Carbolic Smoke Ball Company* [189] 2 *Q B 484 Chaplin v Clarke 4 Ex Rep 403* and *Clay v Crofts 9 L J C L 361* followed *Quære* Whether the entry in the register amounted to a proposal or offer in writing SECRETARY TO THE COMMISSIONER OF SALT ABKARI AND SEPARATE REVENUE *v* THE SOUTH INDIAN BANK LD TINNEVELLY (1913)

I L R 38 Mad 349

————*Reference by Board of Revenue—Document to which reference relates not in existence* *Held* that ss 56 and 57 of the Indian Stamp Act empower the High Court to decide questions relating to instrument already in existence and which have been made the subject of action by the Collector acting under ss 31 40 and 41 of the Act They do not empower the Court to give an opinion upon a deed which may or may not come into existence hereafter STAMP REFERENCE BY THE BOARD OF REVENUE (1914)

I L R 37 All 125

———— s 59—*Undivided brothers—Instruments whereby co owners divide property in severalty—Release—Partition—Stamp* Instruments whereby co owners of any property divide or agree to divide it in severalty are instruments of partition One of three undivided brothers agreed to take from eldest brother the manager of the family as his share in the family property moveable and immoveable a certain cash and bonds for debts due to the family and passed to the eldest brother a document in the form of a release Subsequently one of the two brothers passed to the eldest brother a document in the form of a release whereby he and the eldest brother divided the remaining family property by the latter handing over to the former securities for money A question having arisen as to whether for the purpose of stamp duty the said two documents were to be treated as releases or instruments of partition *Held* that the documents were instruments of partition *In re* GOVIND PANDURANG KAMAT (1910)

I L R 35 Bom 75

———— s 59 Sch I Art 35 cl (a) sub cl. (iii)—*Lease—Lessee agreeing to pay annual rent plus Government assessment—Whether rent include assessment for purposes of stamp duty* A piece of land was leased for five years whereby the lessee agreed to pay to the lessor Rs 100 as rent

STAMP ACT (II OF 1899)—*contd*

———— s 59 Sch I Art. 35 cl (a) Sub-cl (iii)—*contd*

plus Rs 16 8 0 on account of Government assessment The question being referred whether the stamp duty should be levied on Rs 100 or Rs 116 8 0 the total amount of rent and Government assessment *Held* that the Government assessment did not form part of the profit and therefore the stamp duty was leviable only on Rs 100 the annual rent under Sch I Art 35 cl (*a*) sub cl (iii) of Stamp Act GANGARAM NARAYANDAS TELI *In re* (1915)

I L R 39 Bom 434

———— s 60—

See s 2 I L R 33 All 467

———— In order to determine whether a document is attested by a witness within the meaning of the Stamp Act it is permissible to look only at the document itself Other evidence can not be referred to MD SADIK *v* AMIYA NATH DUTT

2 Pat L J 686

———— s 61 (1) Sch I Arts 15 35 (a) (1)—

See STAMP DUTY I L R 46 Calc 804

———— s 62 (b) (c)—*Proposal for loan in prescribed form of Bank and approval thereof by Manager if constitutes an agreement which should bear eight annas stamp—Intent to defraud Government* A certain local Bank received an application for a loan of Rs 50 in its prescribed form This application contained in the usual column of the form a sort of guarantee of payment by person other than the applicant recommending the granting of the loan on a bond and the Manager of the Bank approved the proposal or the loan and recommended it at a certain rate of interest as to which the Applicant and the guarantor were silent Both the Manager and the Secretary of the Bank were prosecuted and the Manager was convicted under s 62 (*b*) and the Secretary under s 68 (*c*) of the Stamp Act *Held* that the statements in the proposal made by the Applicant himself and by the Manager did not represent a completed agreement more particularly with regard to the rate of interest At most they represented merely negotiations intended to lead up to the execution of a bond and the payment thereon of the amount of the loan and the conviction of the Manager under s 62 (*b*) of the Stamp Act could not be maintained That the conviction of the Secretary under s 68 (*c*) was also not sustainable as no intention to defraud Government was made out RAJESHWAR BAGCHI *v* KING EMPEROR (1917)

21 C W N 758

———— *Stamp—Award—Unstamped award signed by parties to submission—Party signing otherwise than as a witness* Where certain parties to an arbitration, who had signed the submission to arbitration, also signed the award not as witnesses but under the heading signature of the heirs and the award was not stamped *Held* that such parties did not fall within the purview of s 62 cl (1) (*b*) of the Indian Stamp Act 1899 as persons executing or signing otherwise than as witnesses EMPEROR *v* BRIJ PAL SARAN (1910)

I L R 32 All.

STAMP ACT (II OF 1899)—*contd*

——— ss 62 and 63—

See s 2 (23) I L R 35 All 290

——— s 62, Sch I Art 5—*Stamp—Petition to Court intimating compromise of suit—Agreement* The parties to a suit came to terms out of Court and presented a joint petition to the Court stating the terms of compromise arrived at and asking that a consent decree might be given in accordance therewith *Held* that such petition was to be stamped merely as a petition to the Court and did not require to be engrossed on a general stamp EMPEROR *v* RAM SARAN LAL (1917) I L R 40 All 19

——— s 62 (b) and Sch I Art 35—*Agreement to lease—no rent reserved—whether stamp necessary* An agreement for a lease where by no rent is reserved and no premium is paid or money advanced is not included in the schedule to the Stamp Act 1899 and does not require a stamp SUNDER KUER *v* KING EMPEROR 1 Pat L J 366

——— s 64—

See s 27 I L R 32 All 171

——— ss 64 (c) 68—

See STAMP DUTY I L R 44 Calc 321

——— s 65—*Receipt—Money remitted by postal money order and receipt signed on post office form—Further receipt not exigible from payee* Where money is remitted by postal money order and the payee has signed the receipt in duplicate on the post office form he cannot legally be compelled to give a further receipt to the payer and his refusal to do so will not render him liable under s 65 of the Indian Stamp Act 1899 EMPEROR *v* BALMAKAUND (1911) I L R 34 All 192

——— Sch I Art 1—

See ACKNOWLEDGMENT I L R 39 Calc 789

——— Sch I Arts 1 and 5—

See s 12 I L R 41 All 169

——— Sch I Art 5—

See s 57 I L R 38 Mad 349

See s 62 I L R 40 All 19

See HIRE PURCHASE AGREEMENT I L R 44 Calc 72

———*Agreement to hire with option of purchase stamp duty on* An instrument was executed between the Linotype and Machinery Ltd and the Windsor Press whereby a machine was hired by the latter for a period on condition that the hirer would pay a fixed amount on execution of the deed and another fixed amount by equal monthly instalment with interest and that on payment of the full sum with interest the machine would become the property of the hirer but that until such payment was made the machinery would continue to be on hire *Held* (on a reference by the Board of Revenue under s 57 of the Stamp Act) that the document in question was an agreement within the meaning of Art 5 cl (c) of Sch I to the Indian Stamp Act and was therefore liable to a stamp duty of eight annas *In the matter of* LINOTYPE AND MACHINERY LTD (1916) 20 C W N 1252

STAMP ACT (II OF 1899)—*contd*

——— Sch I Arts 5 and 43

See STAMP DUTY I L R 39 Calc 669

———*Submission to arbitration stamp upon* Where certain contract notes in addition to the intimation by the broker of the purchase or sale of the goods contained submissions in writing by the buyer and seller to refer disputes to arbitration signed by the broker as the authorised agent of the parties and, being stamped with a one anna stamp according to a practice recognised by the Court for a long series of years, was held by the Trial Judge to be inadmissible in evidence on the ground that the submission to arbitration was chargeable with an eight anna stamp under Sch I Art 3 of the Indian Stamp Act as an agreement not otherwise provided for the Court of Appeal held that the Court was not prepared to question the practice on the materials before it and that the submission should be treated as duly stamped *In the matter of s 11 sub s (2) of the Indian Arbitration Act of 1866* and *In the matter of a Reference to Arbitration* BAIJNATH *v* AHMED MUSAJI SALEJI (1912) 17 C W N 395

——— Sch I Art 7—

See S 2 (24) I L R 35 Bom 444

——— Sch I Art 15

See CIVIL PROCEDURE CODE (ACT XIV OF 1882) s 269 I L R 37 Mad 17

See STAMP DUTY I L R 46 Calc 804

———Sch 1 Art 22, *Registration Act (III of 1877) s 17 cl (e)—Trusts Act (II of 1882) 5—Composition deed —Compounding of debts ave—Transfer of immoveable property—Registration not necessary* With the consent of creditors to the extent of Rs 1 22 000 out of the total number of creditors claiming Rs 1 61 800 of the family firm represented by one *B* the latter executed a deed making over all the specified assets of the family to certain nominated trustees The creditors coming in (by a particular day) under the deed agreed that after all the goods and the properties had been made over to the trustees no other claim whatever with regard to the amounts due to them should remain outstanding against *B* and the minor members of the family but the whole claim should be understood to be written off against them and *B* and the minors were to make use of the deed as a release passed on their behalf The deed also provided that the trustees were to manage the properties for the benefit of the creditors interested and the monies realized from time to time were to be distributed among such creditors in proportion to their claims The properties comprised in the deed moveable as well as immoveable were transferred to the trustees in due course The deed was unregistered Subsequently in a suit brought by the trustees to recover possession of a house comprised in the deed a question having arisen whether the deed was a composition deed *Held* that the definition of the term composition deed as given in Art 22 Sch I of the Stamp Act (II of 1899) meant the same thing as the term composition deed in s 17 of the Registration Act (III of 1877) that the term so defined covered three classes of instruments (i) An assignment for the benefit of creditors (ii) an agreement whereby payment of a composition or dividend was secured to the creditors and (iii) an inspectorship deed for

STAMP ACT (II OF 1899)—*contd*

——— Sch I, Art 22—*contd*

the purpose of working the debtor s business for the benefit of his creditors that the inclusion of the term composition deed in s 17 of the Registration Act (III of 1877) showed that it was intended to apply to a transfer of immoveable property and not to a mere agreement to take fractional payment of money in settlement of claim that the text of a composition deed was that there ought to be a compounding of debts due and that such a deed fell under cl (e) of s 17 of the Registration Act (III of 1877) and did not require registration under that Act nor under the provisions of s of the Trusts Act (II of 1882) *Held* accordingly that the deed in question was a composition deed within the meaning of s 17 cl 2 of the Registration Act (III of 1877) and did not require registration CHANDRASHANKAR *v* BAI MAGAN (1914)

I L R 38 Bom 576

——— Sch I, Art 35—

See s 59 I L R 39 Bom 434

See s 6 1 Pat L J 366

See STAMP DUTY I L R 46 Calc 804

——— *Amalduatal whether it requires stamp—Conviction under s 62 (b) if maintainable—Schedule of Stamp Act if exhaustive* The schedule attached to the Stamp Act must be treated as exhaustive An agreement for a lease whereby no rent is reserved and no premium paid or money advanced is not included in the schedule and does not require a stamp *Held* on a construction of *amaldustal* which was for a term of seven years but wherein no rent was fixed that the document did not require stamp and so the conviction of executant of the document under s 62 (b) of the Stamp Act was set aside SUNDER KUER *v* KING EMPEROR (1916)

20 C W N 923

——— Sch. I Art 40—

See s 2 (17) I L R 38 Mad 646

See s 55 23 C W N 534

——— Sch I Art 45—

See 2 (15) I L R 36 All 137
I L R 35 Mad 26

——— Sch I Art 48—

See POWER OF ATTORNEY
I L R 38 Mad 134

See s 2 (21) I L R 33 All 487

——— Sch I Art 53—

See STAMP DUTY
I L R 37 Calc 629 634

——— Sch I Art 55—*Stamp—Release Partition deed* Two persons each of whom claimed the sole right to the property of a deceased relation arrived at a compromise of their respective claims and gave effect thereto by means of two deeds of even date by which deeds each relinquished in favour of the other his (or her) claim to a portion of the estate of the deceased *Held* that these deeds were releases a ses able to stamp duty under Art 55 of the first schedule to the Indian Stamp Act 1899 *Eknath S Gownde* v *Jagannath S Gownde I L R 9 Bom 417* and *Reference under Stamp Act s 46 I L R 18 Mad 233* referred to *Reference under Stamp Act s 46 I L R 12 Mad 198* distinguished JIBAN KUNWAR *v* GOBIND DAS (1915)

I L R 38 All. 56

STAMP DUTY

See ACKNOWLEDGMENT
I L R 39 Calc 789

See ARBITRATION I L R 40 Calc 219

See HIRE PURCHASE AGREEMENT
I L R 44 Calc 72

See POWER OF ATTORNEY
I L R 33 All 487

See STAMP ACT 1899

See STAMP ACT (II OF 1899) s 62 (1) (b)
I L R 32 All 198

——— on a pauper plaint—

See CIVIL PROCEDURE CODE (1908) O XXXIII RR 10 11
I L R 38 All 469

1 ——— Acknowledgment—*Money received by servant of a firm and handed over to fellow servant—Consideration—Acknowledgment of receipt by fellow servant of a sum larger than Rs 20 if liable to stamp duty—Stamp Act (II of 1899) s 2 (23) Sch I Art 53* Where a sum exceeding Rs 20 was received by an assistant in a mercantile firm from the cashier of the firm as advance made on the firm s behalf and to be expended on the firm s behalf and previous to disbursement of the sum in question a pay order was made out by the Accounts Department of the firm and was sent to the cashier who had paid the sum to the assistant and the assistant at the same time acknowledged receipt by signing his name or initials on the pay order *Held* that the acknowledgment did not require a receipt stamp by reason of the assistant s signature on the pay order *Attorney General* v *Carlton Bank [1899] 2 Q B 158* distinguished *In re* BURN & Co (1910) I L R 37 Calc 634

2 ——— Lease—*Multifarious Document—One lease with several parties concurring to it—Stamp Act (II of 1899) ss 5 28 (3) 35 57 (1)* The concurrence of several parties to one and the same lease does not make it a multifarious document with the meaning of s 5 of the Stamp Act The stamp duty on such a lease is the same as on a conveyance for a consideration equal to the amount or value of the fine or premium for which the lease is granted *In re* PARASEA COLLIERIES LTD (1910) I L R 37 Calc 629

3 ——— Bought and sold notes—*Stamp Act (II of 1899) ss 5 6 and 36 Sch I Arts 5 and 43—Arbitration—Admission by arbitrators of document not duly stamped effect of—Bengal Chamber of Commerce arbitration by—Rules relating to—Umpire omission to nominate effect of—Disclosure of names of arbitrators if contemplated by the rules—Reference provision for appearance of parties on* A contract for or relating to the sale of goods comprised in bought and sold note which contain a provision to refer disputes to arbitration is chargeable with a stamp duty of two annas on each broker s note under Art 43 of the Stamp Act and not with a duty of eight annas as an agreement *Kyd* v *Mahomed I L R 15 Mad 150* followed If a document which is not duly stamped were admitted in evidence by arbitrators on a reference the provisions of s 36 of the Stamp Act would prevent such admission being called into question at any stage of the same suit or proceeding except as provided in s 61 and an application to file the award of the arbitrators would be a stage

STAMP DUTY—*cont'd*

of the same proceeding The arbitration rules of the Bengal Chamber of Commerce grammatically speaking require an umpire to be nominated before the arbitrators enter upon the reference but the omission to so nominate an umpire would not be a ground for setting aside or varying the award having regard to the provisions of rule XI (o) The arbitration rules of the Bengal Chamber of Commerce (rule X) contemplate that the names of the arbitrators shall not be disclosed to the parties *Chooni Lall v Madhoram I L R 36 Calc 388 13 C W N 294* and *Hurlwary Mull v Ahmed Musaji Seliji 13 C W N 63* dissented from Rule XI (g) provides that the parties shall not without the express permission of the arbitrators be entitled to appear The parties have no right to appear or even to ask for such permission BOMBAY COMPANY LTD v THE NATIONAL JUTE MILLS Co LTD (1912) **I L R 39 Calc 669**

4 ———— Offences regarding—*Mere fact of putting a stamp not of proper value whether an offence —Stamp Act (II of 1899) ss 64 cl (c) 65—Intention to defraud* In construing cl (c) of s 64 of the Indian Stamp Act the words any other act must be taken to mean an act of a like nature to those which are specified in cls (a) and (b) and the mere fact that a person puts a stamp on a document which he knows to be not of proper value would not come within cl (c) of s 64 unless there is an intention to defraud the Government *Queen Empress v Somasundaram Chetti I L R 23 Mad 155* referred to CHHAKMAL CHOPRA v EMPEROR (1916) **I L R 44 Calc 321**

5 ———— Lease—*Monthly tenancy—Stamp Act (II of 1899) s 61 (1) and Sch I Arts 15 35 (a) (1)* By a letter the defendant agreed to pay Rs 60 per month as rent of certain premises and to pay the said rent at Rs 2 per day to the plaintiff *Held* that the tenancy was a monthly tenancy and came within Art 35 cl (a) sub cl (1) of the first Schedule of the Indian Stamp Act and the proper stamp duty was the same duty as for a bond referred to in Art 15 viz eight annas AMOLIA v IBRAHIM ISHAK *In re* (1919) **I L R 46 Calc 804**

STANDARD OF PROOF

See CONTEMPT OF COURT **I L R 45 Calc 169**
See LIMITATION **I L R 40 Calc 898**

———— *Civil and criminal trials—Presumption—English rules* On the question of the standard of proof there is but one rule of evidence which in India applies to both civil and criminal trials and that is contained in the definition of proved and disproved in s 3 of the Evidence Act The test in each case is would a prudent man after considering the matters before him (which vary with each case) deem the fact in issue proved or disproved? The Court can never be bound by any rule but that which coming from itself dictates a conscientious and prudent exercise of its judgment There is a presumption against crime and misconduct and the more heinous and improbable a crime is the greater is the force of the evidence required to overcome such presumption The English rule in these matters does not as such apply in India *Jarat Kumari Dassi v Bissessur Dutt I L R 39 Calc 245* explained WESTON AND OTHERS v PEARY MOHAN DASS (1912) **I L R 40 Calc 898**

STANDARD RENT

———— Additional charge for supplying light—

See RENT (WAR RESTRICTION No 2) ACT (BOM ACT VII OF 1918) s 7 (1) **I L R 45 Bom 188**

STANDING COMMITTEE

See MADRAS CITY MUNICIPAL ACT (III OF 1904) **I L R 38 Mad 41**

STANI

See LIMITATION ACT (IX OF 1908) SCH I ART 124 **I L R 41 Mad 4**

———— Karnavan becoming a—

See MALABAR TARWAD **I L R 39 Mad 918**

STAPLE FOOD PRICE OF

———— how ascertained—

See LANDLORD AND TENANT **I L R 37 Calc 742**

STARE DECISIS

———— Principle of —

See BOMBAY LAND REVENUE CODE 1879 s 216 **I L R 45 Bom 1060**

See OCCUPANCY HOLDING **I L R 48 Calc 184** **24 C W N 818**

STATEMENT

———— from a complainant not a confession—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 164 *I L R 39 Mad 9 7*

STATEMENT IN WRITING BY ACCUSED

———— admissibility of—

See CONFESSION **I L R 37 Calc 775**

STATEMENT ON INFORMATION AND BELIEF

See CONTEMPT OF COURT **I L R 41 Calc 173**

See POLICE DIARIES AND REPORTS

STATUS OF TENANT

See BENGAL TENANCY ACT ss 5 103B **I L R 45 Calc 805**

STATUTE LAW IN ENGLAND

———— apportionment under—

See LESSOR AND LESSEE **I L R 38 Mad 86**

STATUTES

———— *II Geo IV and I Will IV c 68*—

See COMMON CARRIERS **I L R 38 Calc 28** **15 C W N 226**

———— 5 & 6 Geo V cap LXI—

———— s 107—

See CIVIL PROCEDURE CODE (1908) s 115 *I L R 39 All 254*

See LEGAL PRACTITIONERS ACT (XVIII OF 1879) s 36 **I L R 40 All 153**

STATUTES—*contd*

——— 11 & 12 Vict c 21—

See INDIAN INSOLVENCY ACT

——— 21 & 22 Vict c 106 ss 39 40 41 42

See EXECUTION OF DECREE
I L R 38 Calc 754
15 C W N 475

——— 24 & 25 Vict c 104—

See LAND ACQUISITION ACT 11
I L R 38 Calc 230
15 C W N 87

——— *Power of Crown to appoint a sixth Puisne Judge—Criminal Procedure Code s 41—Appeal from acquittal—Procedure* Held on a construction of ss 1 and 2 of Letters Patent of the High Court for the North Western Provinces that it was competent to the Crown to appoint by means of its Letters Patent a sixth Puisne Judge to the said High Court *Held* also following the decision of *Queen Empress v Prag Dat I L R 20 All 459* that in the Code of Criminal Procedure there is no apparent distinction between the right of appeal against an acquittal and the right of appeal against a conviction *Queen Empress v Robinson I L R 16 All 212* referred to EMPEROR v GHURE (1914) I L R 36 All 168

——— 44 & 45 Vict c LVIII s 136—

See CIVIL PROCEDURE CODE 1908 s 60
I L R 33 All 529

——— 58 & 59 Vict c V s 4—

See CIVIL PROCEDURE CODE 1908 s 60 I L R 33 All 529

STATUTE CONSTRUCTION OF

See BOMBAY CITY MUNICIPAL ACT (BOMBAY ACT III OF 1888) s 505
I L R 34 Bom 593

See CIVIL PROCEDURE CODE 1908 48
I L R 32 All 499

See CIVIL PROCEDURE CODE (ACT V OF 1908 O XXI R 93
I L R 40 Mad 1009

See CONSTRUCTION OF STATUTES

See INTERPRETATION OF STATUTES

See LIMITATION ACT 1908 ART 134
I L R 36 Bom 146

See MADRAS HEREDITARY VILLAGE OFFICES ACT (III OF 1895)
I L R 37 Mad 548

See SALE
I L R 43 Calc 790

——— Contradictory Sections—

See BENGAL TENANCY ACT s 18
25 C W N 9

——— Represents previous Statute—

See BENGAL TENANCY ACT ss 52
25 C W N 230

1 ——— *Not declaratory but amending—No retrospective operation* Statutes which are properly of a declaratory character have a retrospective effect But the nature of the statute must be determined from its provisions and the mere fact that the expression " it is declared " has been used is by no means conclusive as to the true character of the legislation JOTI RAM KHAN v JONAKI NATH GHOSE (1914)
20 C W N 258

2 ——— *Bombay Land Revenue Code (Bom Act V of 1879) s 48* The Bombay Land Revenue Code (Bom Act V of 1879) is a taxing enactment and must be construed strictly in favour of the subject SECRETARY OF STATE v LALDAS (1909) I L R 34 Bom 239

3 ——— *Civil Procedure Code (Act XIV of 1882) s 257A—Civil Procedure Code (Act V of 1908) repealing s 257A—Effect of the repeal on s 13 cl (c) of the Dekkhan Agriculturists Relief Act (XVII of 1879)* S 13 cl (c) of the Dekkhan Agriculturists Relief Act (XVII of 1879) not having been expressly repealed is not affected by the repeal of s 257A of the Civil Procedure Code 1882 by the Civil Procedure Code of 1908 TRIMBAK KASHIRAM v ABAJI (1911)
I L R 35 Bom 307

4 ——— *Statute—Construction* Where a statute creates a right not existing at common law and prescribes a particular remedy for its enforcement then that remedy alone must be followed CHUNILAL VIRCHAND v AHMEDABAD MUNICIPALITY (1911)
I L R 36 Bom 47

5 ——— Where a later Act of Legislature does not purport or affect to supersede an earlier Act the Court will endeavour to read the two enactments together and to avoid conflict if possible RANGACHARYA v DASACHARYA (1912) I L R 37 Bom 231

6 ——— *Change in language if necessarily imports a change of law* A change in the wording of a section of an enactment does not necessarily involve a change in the law SECRETARY OF STATE FOR INDIA v PURNENDU NARAIN ROY (1912) 17 C W N 1151

7 ——— The express words of an Indian Statute are not to be overridden by reference to equitable principles which may have been adopted in the English Courts *Kurri Veerareddi v Kurri Bapireddi I L R 29 Mad 336* followed TIMANGOWDA v BENEPGOWDA (1915) I L R 39 Bom 472

8 ——— Whether a statute codifies or amends the law if its provisions are expressed in clear and unambiguous terms resort should not be had to the pre existing law although such reference may be useful and legitimate where the provisions are of doubtful import or are couched in language which had previsouly acquired a technical meaning NILMANI KAR v RAJA SATI PROSAD GARGA BAHADUR 6 Pat L J 230

STATUTORY OBLIGATION

See MADRAS LOCAL BOARD ACT 1884
S 95 I L R 42 Mad 331

——— breach of—

See CONTRIBUTORY NEGLIGENCE.
I L R 34 Bom 427
I L R 37 Bom 575

STATUTORY PRESUMPTION

See OCCUPANCY HOLDING
I L R 46 Calc 160

STATUTORY RIGHT

See BENGAL TENANCY
I L R 48 Calc 473

STAY OF CRIMINAL PROCEEDINGS

——— *Stay of criminal proceedings pending appeal in matter out of which they arise—Application for succession certificate—Allegations false—Enquiry under s 476, Criminal Procedure Code (Act V of 1898)—Order for prosecution under ss 193 and 209 Indian Penal Code (Act XLV of 1860)—Appeal pending in High Court—Stay of criminal proceedings* In the course of a proceeding upon an application for revocation of the grant of a succession certificate the District Judge found that *D* the applicant for the certificate was not as he alleged related to the deceased in any way and ordered his prosecution under ss 193 and 209 Indian Penal Code *D* then filed an appeal to the High Court and asked for stay of criminal proceedings pending the hearing of the appeal *Held* that to make a declaration in the rule for stay of proceedings as to the correctness or otherwise of the order of the District Judge would be to prejudge an issue which is likely to come before the Bench who will hear the appeal The proceedings against the appellant under ss 193 and 209 Indian Penal Code were stayed pending the hearing of the appeal DEBI MAHTO v KING EMPEROR (1916) 20 C W N 1116

STAY OF EXECUTION

See APPEAL I L R 41 Calc 160

See ARBITRATION ACT s 2
I L R 45 Bom 1

See CIVIL PROCEDURE CODE 1908 s 47
O XLI r 5

See CHOTA NAGPUR TENANCY ACT 1908
s 215 4 Pat L J 371

See COMPANIES ACT (VII OF 1913) s 207
I L R 38 All 407

See COURT FEES ACT 1870 s 12
4 Pat L J 417

See EXECUTION

See EXECUTION OF DECREE
I L R 38 Calc 754
I L R 35 All 119

See HIGH COURT JURISDICTION OF
I L R 40 Calc 955

See PRIVY COUNCIL PRACTICE OF
I L R 42 Calc 739

——— Order not appealable

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 47 I L R 45 Bom 241

——— Pending appeal—

See CIVIL PROCEDURE CODE 1908
O XLI r 5
I L R 2 Lah 61

See PRIVY COUNCIL PRACTICE OF
I L R 38 Calc 335

——— Refused by single Judge whether open to appeal under Letters Patent —

See LETTERS PATENT APPEAL
I L R 1 Lah 348

——— *Code of Civil Procedure (Act V of 1908) O XLV r 14— Court —Appeal to Privy Council from Decree of High Court—Stay of execution pending disposal of appeal whether Subordinate Court may grant* A Subordinate Court has no power to stay the execution of a decree passed by the High Court pending the disposal of an appeal to the Privy Council The Court referred to in the first paragraph of O XLV, r 13 of the Code of Civil Procedure 1908 is the High Court RAM BAHADUR v THAKUR SRI SRI RADHA KRISHEN CHANDERJI 3 Pat L J 40

——— *Practice—High Court, Original Side—Judge sitting in Chambers— Court which passed the decree —Delay—Civil Procedure Code (Act V of 1908) O XLI r 5* An application for stay of execution on the Original Side of the High Court pending an intended appeal must ordinarily be made to the Judge who tried the case and must be made without unreasonable delay CHATURBHUJ CHANDANMULL v BASDEO DAS DAGA (1921) I L R 48 Calc 796

STAY OF PROCEEDINGS

See ARBITRATION
I L R 47 Calc 611 and 1070

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XXIII r 3 *Sch* II cls 1 16 I L R 38 Bom 687

See RECEIVER SUIT AGAINST
15 C W N 54

See STAY OF SUIT
I L R 43 Calc 144

——— against an insolvent—

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909) s 18 (3)
I L R 41 Bom 312

——— appeal of preliminary decree—

See CIVIL PROCEDURE CODE 1908—
O XLV r 13 I L R 42 All 170

STAY OF SUIT

See ARBITRATION I L R 47 Calc 849

See CIVIL PROCEDURE CODE 1908—

See HIGH COURTS ACT (24 AND 25 VICT c 104) ss 2 9 AND 13
I L R 39 Bom 604

See STAY OF PROCEEDINGS

——— Reference to arbitration—Arbitrator unwilling to act—

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XVII r 3 *Sch* II *cls* 18 AND 22 I L R 45 Bom 1181

——— "Submission" by three persons to refer—Suit filed by one—

See ARBITRATION ACT (IX OF 1899) ss 2 5 8 9 15 AND 19
I L R 45 Bom 1

——— *Jurisdiction—Civil Procedure Code (Act V of 1908) s 10—Stay of proceedings in one of two suits in respect of same subject matter in different Courts* *A* who carried on business at Karachi and employed *B* as his commission agent at Calcutta instituted on 16th February 1915 in the Court of the Judicial Commissioner of Sind at Karachi a suit against *B*, for an account and the recovery of whatever sum should be found due on the taking of such account On

STAY OF SUIT—*contd*

10th March 1915 *B* instituted in the High Court at Calcutta the present suit against *A* for the recovery of Rs 26 665 or in the alternative an account. Thereupon *A* applied to have the present suit stayed pending the determination for his suit in the Karachi Court :—*Held* that the only question that required consideration was whether the Karachi Court has juri diction to grant the reliefs claimed The plaint in the Karachi suit sets out allegations that clearly give juri diction to that Court to try the case The present suit mu t therefore be stayed till the determination of the suit at Karachi PADAMSEE NARAINJEE *v* LAKHAMSEE RAISEE (1915)
I L R 43 Calc 144

STEAMSHIP COMPANY
See CARRIERS I L R 40 Calc 716
See RAILWAY COMPANY
I L R 47 Calc 6

STEP BROTHER
See HINDU LAW—SUCCESSION
I L R 37 Calc 863

STEP IN AID OF EXECUTION
See CIVIL PROCEDURE CODE 1882 s 245
14 C W N 481
See EXECUTION OF DECREE
4 Pat L J 35
See LIMITATION ACT 1877 SCH II ART 179 I L R 34 Bom 68
14 C W N 486
See LIMITATION ACT (IX OF 1908)—
s 19 SCH I ART 182 CL. 5
I L R 38 Bom 47
SCH I ART 179 I L R 38 Mad 695
SCH I ART 182

——— *Proof of service of affidavit—Code of Civil Procedure (Act V of 1908) O XXI r 21* The filing of an affidavit in proof of service of a notice of attachment under O XXI r 21 of the Code of Civil Procedure 1908 is a step in aid of execution THAKUR SINGH *v* SHEO BHAJAN SINGH 4 Pat L J 521

STEP IN THE PROCEEDINGS
See ARBITRATION I L R 47 Calc 611

STEP MOTHER
See HINDU LAW—SUCCESSION
I L R 37 Calc 214
I L R 37 Mad 286

STEP SISTER S SON
See HINDU LAW—SUCCESSION
16 C W N 1094

STILL HEAD DUTY
See ADMINISTRATION
I L R 45 Calc 653

STIPEND
See DEKKHAN AGRICULTURISTS RELIEF ACT s 2 I L R 36 Bom 199

STOCK EXCHANGE

——— *Member—Expulsion validity of—Interference by the Court* The rules applicable to ca es of expul ion of a member of the Stock Exchange are based on the principle that the committee empowered to expel a member must make a fair enquiry into the truth of the alleged fact after giving notice to the member concerned that his conduct is about to be enquired into and giving him an opportunity of stating his ca e to them *Labouchere v Earl of Wharncliffe 13 Ch D 346 Russell v Russell 14 Ch D 471 Dawkins v Antrobus 17 Ch D 615* and *Cassel v Inglis [1916] 2 Ch 211* referred to In order to determine whether a tribunal in the exercise of *quasi* judicial powers has given a decision which cannot be succe fully challenged the Court has to investigate whether they have ob erved the rules of natural justice and al o the particular statutory or oth r rule if any prescribed for their guidance *Andrews v Mitchell [1905] A C 78* referred to The rules of natural justice demand that a man is not to be removed from office or member hip or otherwi e dealt with to his dis advantage without having a fair and sufficient notice of what is alleged against him and an opportunity of making his defence and that the deci ion whatever it is must be arrived at in good faith with a view to the common interest of the society or institution concerned If these conditions are atisfied a Court of Justice will not interfere with the decision A broker and member of the Calcutta Stock Exchange Associa tion failed to deliver certain shares within a specified time to the purchaser thereof The Com mittee of the As ociation to whom the conduct of the broker was reported decided after hearing both partie at a meeting held for the purpose of dealing with the ca e that the broker should deliver to the purcha ers the shares within a period of time specified by the committee Upon the broker failing to deliver the said shares the committee to whom the matter was again reported further decided that the membership of the broker had cea ed and he was warned not to enter the rooms of the As ociation —*Held* that the action of the committee could not be impugned on the ground that the committee really made a new contract between the parties and that the broker was expelled from the A ociation not becau e of his failure to carry out the original contract but becau e of his failure to carry out the order of the committee MAHOMED KALIMUDDIN *v* A B STEWART (1920) I L R 47 Calc 623

STOLEN PROPERTY
See CRIMINAL PROCEDURE CODE s 520
I L R 35 Bom 253
See SEARCH WITHOUT WARRANT
I L R 38 Calc 304

STOPPAGE IN TRANSIT
See CONTRACT I L R 46 Calc 831
See CONTRACT ACT (IX OF 1872)—
ss 4 61 103 I L R 28 Bom 255
s 103 I L R 40 Bom 630

——— *Ultimate destination of goods—Duration of transit—Pledgee of bill of lading —Measure of damages—Sale of Goods Act (56 and 57 Vic c 71) ss 45 and 47* The plaintiff a Bom bay firm imported hardware goods from M & Co of Manche ter for sale on commi ion the busine s being carried on and financed in the following

STOPPAGE IN TRANSIT—contd

manner M & Co on shipping the goods handed over the complete shipping documents to *B* and received from him an advance of 65 per cent of the invoice price *B* then handed over the shipping documents to the National Bank of India in England and himself received a similar advance by drawing on a credit opened with the Bank by the plaintiffs The Bank then forwarded the shipping documents to India where they were handed over to the plaintiffs in exchange for a trust receipt the plaintiffs becoming responsible to the Bank for any short fall in the advances made to *B* On 12th February 1907 M & Co contracted to purchase from L & Co 250 boxes of tin plates delivery to be F O B Newport in four or five weeks after date On 26th February M & Co wrote to L & Co enclosing instructions and marks for shipment of the 250 boxes to Bombay and on 2nd March requested them to forward the goods to W & Co at Newport in time for shipment in S S Clan Macleod for Bombay On 21st March L & Co enclosed to M & Co an invoice for 200 boxes and on 27th March another invoice for the remaining 50 boxes the material part of the invoice in each case being No claim concerning these goods can be recognized unless made within fifteen days from delivery to Messrs W & Co Newport for shipment on your account The 250 boxes were put on board the steamer by W & Co as the agents of L & Co but in obtaining a bill of lading for 500 boxes (including the 250 in question) W & Co acted as the agents of M & Co The steamer left Newport on 4th April Following the usual course of business as above described M & Co handed over to *B* the shipping documents relating to the 500 boxes and obtained an advance of £255 o 2 (being 65 per cent of the invoice value) *B* on the 6th April obtained a similar advance from the Bank On the same day M & Co suspended payment and on 9th April L & Co as unpaid vendors of 250 boxes notified the steamship owners the first defendants to stop these goods in transit The S S Clan Macleod arrived in Bombay on 13th May and the bill of lading which had been duly handed over by the Bank to the plaintiff on 29th April was in due course presented by the latter They were informed however of the stop put on the 250 boxes and were offered a delivery order for the remaining 250 alone This they declined refusing to accept anything but the full payment of the advance or the full amount of the goods On 29th June the plaintiffs repaid the Bank the amount of the advance and the trust receipt of 29th April was duly cancelled On the plaintiffs subsequently suing the steamship owners and their agents for damages *Held* that the transit did not cease at Newport and L & Co were entitled to stop the goods after they had started for Bombay *Ex parte Golding Davis & Co 13 Ch D 628* followed *Held* further that the plaintiffs were after 29th June —on which date they had fulfilled their obligations to the Bank —pledgees for value of the bill of lading if indeed they did not occupy that position from 29th April being transferees of the Bank s rights in respect of the advance as against the defendants *Held* further that the plaintiffs were entitled to join both defendants in the suit The utmost benefit which the defendants were entitled to obtain from the position of L & Co as sureties [sc to the plaintiffs for the advance made by the latter to M & Co] was the right to the security of the 250 boxes which they were willing

STOPPAGE IN TRANSIT—concld

from the outset should be received by the plaintiffs The plaintiffs by refusing to take delivery of the 250 boxes had omitted to do an act which their duty to the surety required them to do and to the extent to which that omission had resulted in loss the surety was discharged *In re West in thus 5 B & Ad 817* discussed BAPUJI SORABJI v THE CLAN LINE STEAMERS LIMITED (1910)
I L R 34 Bom 640

STRAITS SETTLEMENTS BANKRUPTCY ORDINANCE

See BANKRUPTCY I L R 40 Mad 581

STRAITS SETTLEMENTS ORDINANCE (III OF 1893)

See EVIDENCE L R 43 I A 256

STRAITS SETTLEMENTS ORDINANCE (VI OF 1896)

———— ss 17 22—

See LIMITATION L R 43 I A 113

STRAITS SETTLEMENTS ORDINANCE (XXXI OF 1907)

———— ss 133 136—

See LIMITATION L R 43 I A 113

STRANGER

———— purchase by—

See COURT SALE I L R 36 Mad 194

See PATNI SALE I L R 47 Calc 337

STREET

See BOMBAY MUNICIPAL ACT—
I L R 36 Bom 405
ss. 296 297 I L R 42 Bom 462
ss 297 301 I L R 43 Bom 181

See HIGHWAY

See LAND ACQUISITION
I L R 47 Calc 500 604

———— right of municipality to—

See MUNICIPAL COUNCIL
I L R 38 Mad 6

———— vesting of—

See MUNICIPALITY I L R 44 Calc. 669

STRIDHAN

See DAUGHTERS I L R 34 Bom 510

See HINDU LAW—HUSBAND AND WIFE
I. L R 38 Mad. 1036

See HINDU LAW—INHERITANCE
I. L R 34 All. 234
I L R 36 Mad. 116

See HINDU LAW—STRIDHAN

See HINDU LAW—SUCCESSION
I. L R 34 Bom 385.
15 C. W N 383 1036
I L R 37 Calc 863
I L R 38 Calc 493
I L R 39 Calc 319

———— non-technical—

See HINDU LAW—STRIDHAN
I L. R. 41 Bom. 618

TRIDHAN—*contd*

———————— *Widow—Succession—*
ch at On the failure of her husband s heirs the Stridhan of a widow would go to her blood relations in preference to the Crown GANPAT RAMA *v* SECRETARY OF STATE FOR INDIA (19°0)
I L R 45 Bom 1106

———————— Preferential heir—Husband s younger brother or son adopted by father after mother s death and after marrying a second wife GUNAMANI DASI *v* DEVI PROSANNA ROY (1919) 23 C W N 1038

TRUCTURE (TEMPORARY)

See EASEMENT I L R 37 Mad 527

TUDENT

———— disqualified for cheating at examination—

See UNIVERSITY ACT 1904
I L R 2 Lah 197

SUB-DIVISIONAL MAGISTRATE

———— powers of—

See CRIMINAL PROCEDURE CODE ss 106 AND 32 I L R 37 All 230

———— subordination of—

See MAGISTRATE JURISDICTION OF
I L R 39 Calc 1041

SUB LEASE

See BUSTEE LAND I L R 41 Calc 164

See NOTICE TO QUIT
I L R 46 Calc 766

———— by a fazendar—

See FAZENDARI TENURE
I L R 39 Bom 316

———————— *Permanent lease by a raiyat not holding at a fixed rate—Ejectment—Estoppel—Bengal Tenancy Act (VIII of 1885) ss 49 (b) 85* Where a lease purporting to be of a permanent character is granted on the face of the document by a *raiyat* (not being a *raiyat* holding at fixed rate) to an under *raiyat* the lease is not operative as a permanent lease between the *raiyat* and the under *raiyat* Such a lease is terminable in the manner provided by s 49 (*b*) of the Bengal Tenancy Act Where a lease purporting to be of permanent character is granted by a person who on the face of the document professes to have a higher status than that of a *raiyat* (for example that of a tenure holder or a *raiyat* holding at a fixed rate) the grantee when his title as a permanent lessee is challenged by his grantor may invoke the aid of the doctrine of estoppel and plead that the grantor cannot be permitted to prove the falsity of the recitals in the document (on the faith of which he took the lease) so as to enable him to derogate from his grant *Bamandas Bhattacharjee* v *Nilmadhab Saha I L R 44 Calc 741* referred to CHANDRA KANTA NATH *v* AMJAD ALI HAJI (1920)
I L R 48 Calc 783

SUBMISSION

See ARBITRATION
I L R 47 Calc 1020

See ARBITRATION ACT 1899
s 4 I L R 42 All 525

See CIVIL PROCEDURE CODE 1908, SCH II

SUBMISSION—*contd*

———— by three persons to refer dispute to three arbitrators—

See ARBITRATION ACT (IX OF 1899) ss 2 , 8 9 15 AND 19
I L R 45 Bom 1

SUB MORTGAGE

See AGRA TENANCY ACT (II OF 1901) s 20
I L R 35 All 405

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 90 I L R 34 All 63

———— by sureties—

See MORTGAGE I L R 45 Calc 702

———— suit by Sub mortgagee—

See MORTGAGE I L R 47 Calc 770

———————— *Sub mortgage by deposit by mortgagee of mortgage deed —Discharge of mortgage by mortgagor—Indemnity deed of by mortgagee to mortgagor—Preliminary decree on sub mortgage appealed to Privy Council—Appeal dismissed for non prosecution—Application for order absolute when barred—Limitation Act (XV of 1877) Sch II Art 179—Payment of decree more than three years after if covered by deed of indemnity* The mortgagee of certain properties after having created an equitable sub mortgage by depositing the mortgage deeds with a firm S K C accepted payment of his mortgage dues and by a deed dated 23rd April 1894 released the mortgaged properties from all claims under the mortgage and covenanted to indemnify the mortgagor from all losses damages actions claim etc in respect of the mortgage deeds or any money owing or due thereunder or otherwise howsoever or for any act done by him the mortgagee in respect of the mortgage deeds The firm of S K C recovered a preliminary mortgage decree *inter alia* against the mortgagor on their sub mortgage on 26th August 1905 against which the mortgagor appealed to the Privy Council But before the appeal was ready for hearing the mortgagor on 2nd February 1910 made payments to an assignee of the decree who having acknowledged satisfaction the appeal to the Privy Council was not further prosecuted and the appeal was dismissed for want of prosecution on 16th April 1910 The mortgagor on 9th September 1912 sued the mortgagee to recover the amount paid to the assignee of the decree on the basis of the deed of indemnity *Held* that the decree of °6th August 1905 became unenforceable under Art 179 of Sch II of the Limitation Act of 1877 by proceedings commenced after 26th August 1908 and time did not run either from the date when the appeal to the Privy Council was dismissed for default or from the expiry of the six months given for redemption in the decree of 26th August 1905 but from 26th August 1905 the date of the decree That the payment of the decree on °nd February 1910 was voluntary in the sense that the mortgagor could not have been compelled by any proceeding founded upon the decree to make the payment That in view of the wide terms of the deed of indemnity the fact that the payment was voluntary did not preclude the mortgagor from demanding payment from the mortgagee of the amount which they paid to the decree holder in order to rid the property of the incumbrance which had

SUB MORTGAGE—*contd*

been created by the mortgages depositing the title deeds with the firm of S K C SACHINDRA NATH ROY *v* MAHARAJ BAHADUR SINGH (P C) 26 C W N 858

SUBSEQUENTLY ACQUIRED PROPERTY

See UNDISCHARGED BANKRUPT I L R 47 Calc 861

SUB-TENANCY

———— annulment of—

See NOTICE TO QUIT I L R 46 Calc 766

SUB TENANT

———— claim by—

See POSSESSION I L R 47 Calc 907

SUBORDINATE COURT

See LEGAL PRACTITIONERS ACT (XVIII OF 1879) s. 14 I L R 39 Mad. 1045

———— jurisdiction of—

See CONTRACT ACT (IX OF 1872) ss 69 AND 70 I L R 39 Mad. 795

SUBORDINATE JUDGE

See MADRAS CIVIL COURTS ACT (III OF OF 1873) s 17 I L R. 38 Mad 531

See SANCTION FOR PROSECUTION I L R 39 Calc 774

———— jurisdiction of—

See WAKF I L R 43 Calc 467

SUBORDINATE OFFICERS

———— acts of how far binding on Government—

See MADRAS IRRIGATION CESS ACT (VII OF 1865) s 1 I L R 38 Mad 997

SUBROGATION

See COMMON CARRIER LIABILITIES OF I L. R 38 Calc 28

See CONTRACT ACT (IX OF 1872) s 70 I L R 40 Bom 646

See LIMITATION ACT (IX OF 1908) SCH I ART 120 I L R 45 Bom 597

See MORTGAGE—REDEMPTION I L R 36 Mad 426

See MORTGAGE—SUBROGATION

See TRANSFER OF PROPERTY ACT s 82 15 C W N 261

———— *Prior mortgage—Fraudulent suppression of by vendor* If *A* purchases a property subject to three successive charges *X* *Y* and *Z* with full knowledge of their existence and retains a portion of the purchase money in his hands with a view to satisfy the mortgages *Y* and *Z* but subsequently discharges the security *Z* he cannot on satisfaction of the morgage *X* use it as a shield against the mortgage *Y* *Biseswar Prasad v Lala Sarnam Singh 6 C L J 134* and *Ham v Vogel 69 Missouri 529* followed But where the purchaser found on enquiry that there were only two subsisting charges *Y* and *Z* to be satisfied but discovered after his purchase that there was a prior charge *X* which was falsely described as satisfied in the mortgage instrument of *Y* (in a suit upon bond *X*) *Held* that from whatever point of view the case may be considered the purchaser was entitled to priority in respect of the payment made by him to satisfy the first mortgage *X* *Mohesh Lal v Mohant Bawan Das I L R 9 Calc 961 L R 10 I A 62*, followed *Held* also that the purchaser was not entitled to priority on the basis of the payment made by him to satisfy the second mortgage *Y* HAR SHYAM CHOWDHURI *v* SHYAM LAL SAHU (1915) I L R 43 Calc. 69

SUBSEQUENT MORTGAGE

See MORTGAGE I L R 38 Calc 63

SUBSEQUENT PROSECUTION AFTER ACQUITTAL

See ACQUITTAL I L R 37 Calc 604

SUB-SOIL RIGHTS

See LEASE CONSTRUCTION OF I L. R 45 Calc 87

SUBSTANTIAL LOSS

See SALE FOR ARREARS OF REVENUE I L R 37 Calc 407

SUBSTANTIAL QUESTION OF LAW

See CIVIL PROCEDURE CODE 1908—

s 109 I L R 42 All. 1 6

s 110 I. L R 43 All 513

SUBSTITUTED SERVICE

See SUMMONS SERVICE OF I L R 43 Calc. 437

———— *Civil Procedure Code (Act V of 1908) O V r 17 O IX r 13 —Exparte decree—Original Court jurisdiction of to set aside decree—Original while an appeal is pending—an ex parte decree meaning of—Limitation Acts (XV of 1877) Sch II Art 164 and Act IX of 1908 Sch I Art 64—Knowledge of the decree* The term "residence" is not identical with "ownership" In O V rr 9 and 17 of the Code of Civil Procedure 1908 it means the place where a person eat drinks and leeps or where his family or servants eat drink and sleep Under O V r 17 a substituted service can be justified only when it is shown that proper efforts were made to find the defendant Where a defendant was not found in his ancestral family house and there was no one present upon whom a summons could be served (in fact he was working in a different district and living there for some years) a substituted service by affixing a copy of the summons at the outer door of the family house was not justified under the law An Original Court can entertain an application to set aside an *ex parte* decree though an appeal by the contesting defendants is pending in the Appellate Court *Sarat Chandra Dhal v Damodar Manna 12 C W N 885* followed The period of limitation under *Art 164* of Sch I of the Limitation Act (IX *of* 1908) runs from the date when the defendant has knowledge of the particular decree which is sought to be set aside KUMUD NATH ROY CHOWDHURY *v* JOTINDRA NATH CHOWDHURY (1911) I L R 38 Calc 394

SUBSTITUTION

See COURT FEE STAMPS
I L R 47 Calc 71

See PARTIES I L R 45 Calc 862

See APPEAL TO PRIVY COUNCIL
I L R 38 Mad 403

See CIVIL PROCEDURE CODE 1908 O XXI r. 16 6 Pat L J 358

O XXII r. 4 I L R 39 All 551

See SPECIFIC PERFORMANCE
5 Pat L J 314

———— **Of Parties**—*Execution of decree—Claim against deceased debtor decreed against alleged adopted son represented by deceased's widow as guardian—Adoption set aside before execution—Execution if may be had against widow* A who had a claim against B on B's death sued C an infant alleged to be the adopted son of B B's widow D being appointed guardian *ad litem* of C and obtained a decree Before execution was taken out it was declared in a separate suit that C had not been validly adopted A then applied for substitution of D in the place of C and for execution against D *Held* that D was not bound by the decree and it was not competent to execute the decree against D ASHI BHUSAN DASI *v* PELARAM MONDOL (1913) 18 C W N 173

———— *Patna High Court Rules Chapter VI r 5—partition suit against benamidar—appeal against preliminary decree whether beneficiaries entitled to prefer* An *ex parte* preliminary decree having been obtained in a partition suit the defendant during the proceedings taken by the plaintiff to obtain a final decree filed a petition stating that he was only a *benamidar* for certain beneficial owners The names of the alleged beneficial owners were substituted for the name of the *benamidar* and the latter presented a memorandum of appeal against the preliminary decree The plaintiff objected on the ground that the alleged beneficiaries were not parties to the decree and that the *benamidar* was not a trustee within the meaning of Chapter VI r 5 of the Patna High Court Rules *Held* that the *benamidar* had not been sued in his capacity of trustee within the meaning of r 5 and that therefore the alleged beneficial owners were not entitled to prefer the appeal GOBIND RAM *v* BADRI NARAIN 5 Pat L J 256

———— **Of heirs**—*Application for after preliminary decree in mortgage suit made after 6 months of mortgagor's death—Civil Procedure Code (Act V of 1908) Or XXII r 4 death of sole Defendant after passing of preliminary decree in a mortgage suit—Application for Substitution of heirs—Appeal from order dismissing application for substitution made after 6 months of the Defendant's death whether to be treated as an appeal from an order or from a decree—Second appeal if lies—Or XXII r 12 application for substitution after the passing of the preliminary decree if belongs to the category of proceedings in execution of a decree* L obtained a preliminary decree in a mortgage suit against T and applied subsequently more than six months after the death of T for order absolute and for substitution of the heirs of T which having been refused an appeal was preferred The appeal was dismissed and a second appeal was preferred to the High Court *Held* that the appeal to the lower Appellate Court was not an appeal from an order The order against which the appeal was preferred was an order rejecting the application to make the mortgage decree absolute That order had the effect of finally dismissing the mortgage suit and was a decree and hence a second appeal lay to the High Court *Held further* that the suit had abated as the application for bringing the heirs of the deceased defendant on the record had not been made within six months from the date of his death *Mohar Bibi v Yakub Ali 11 C W N 156 (1906)* and *Nizamuddin v Zohra Bibi Sen I L R 40 All 213 (1918)* referred to An application following on a preliminary decree for sale is not an application for execution Until the final decree is passed the proceedings following the preliminary decree in a mortgage suit must be looked on as a proceeding in a pending suit *Amlook Chand Parreck v Sarat Chunder Mukerji I L R 38 Calc 913 (1911)* and *Munna Lal Parreck v Sarat Chunder Mukherjee I L R 42 Calc 6 s c 19 C W N 561 (P C) (1914)* followed BHUTNATH JANA *v* TARA CHAND JANA 25 C W N 595

———— **Of Property**—*Right of purchaser in court auction to substituted properties—Transfer of Property Act (IV of 1882) ss 2 (d) 8 36 44 and 52—Contract to the contrary in s 36 of the Transfer of Property Act* After a decree for sale on a mortgage the mortgagor who was in possession gave a lease of his properties to the first defendant for one year from July 1907 till July 1908 with a covenant for payment of the rent on 10th January 1908 In ignorance of this lease and the reservation of a rent the mortgage properties and the crops were brought to sale in November 1907 and plaintiff purchased the land together with the crops thereon and the sale was confirmed in December 1907 The crops were harvested in January 1908 by the lessee In a suit by the purchaser for the rent of the whole year from the mortgagor and his lessee *Held* (*a*) that the purchase of the right title and interest of the mortgagor to the lands and of the standing crops thereon entitled the purchaser to receive the whole rent reserved which was the thing substituted by the mortgagor for the crop (*b*) that ss 8 and 36 of the Transfer of Property Act (IV of 1882) were inapplicable as the purchase was in Court auction (*c*) that a stipulation to pay rent of a year's lease at particular date is a contract to the contrary within the meaning of s 36 of the Transfer of Property Act (IV of 1882) which enacts that the right to rent as between the transferor and the transferee ordinarily accrues from day to day and (*d*) that the creation of a lease for one year after a suit and decree on mortgage is not affected by the doctrine of *lis pendens* enunciated in s 52 of the Transfer of Property Act (IV of 1882) as such a lease is an ordinary incident of the beneficial enjoyment of a mortgagor allowed to remain in possession SUBBARAJU *v* SEETHARAMARAJU (1914) I L R 39 Mad 283

SUCCESSION

See AGRA TENANCY ACT (II OF 1901)—
I L R 32 All 314
I L R 34 All 419 658
I L R 37 All 65
I L R 36 All 197 325
I L R 41 All 669

——— *Memons—Hindus converted to Mahomedanism—Hindu Law of Succession retained—Migration to Mombasa—Change of custom—Onus of proof—Evidence* Memons are a sect of Mahomedans who were converted from Hinduism some four centuries ago but retained their Hindu Law of Succession and are throughout India governed by that law save where a local custom to the contrary is proved Where however Memons migrate from India and settle among Mahomedans the presumption that they have adopted the Mahomedan custom of succession should be much more readily made The analogy in the latter case is rather a proof of a change of domicile than a change of custom A Memon whose father some fifty years before the suit had migrated from India and settled with his family among Mahomedans at Mombasa lived at that place and died there intestate *Held* upon evidence as to the practice among Memons at Mombasa and applying the above principle that the succession to the estate of the deceased Memon was governed by Mahomedan and not by Hindu Law ABDURAHIM HAJI ISMAIL MITHU *v* HALIMABAI L R 43 I A 35

——— *Succession— Indian Succession Act (X of 1865) sec 331—Probate and Administration Act (V of 1881) sec 2—The Special Marriage Act (III of 1872) sec 10 Brahmo—A Hindu by becoming a Brahmo whether necessarily ceases to be a Hindu—A declaration under Act III of 1872 whether amounts to*

SUCCESSION—contd

an abjuration of Hinduism for all purposes—Different sections of the Brahmo Community—Practice A Hindu by becoming a Brahmo does not necessarily cease to be a Hindu Something further than the mere becoming a Brahmo is necessary for a man to cut himself off from Hinduism A declaration under the Special Marriage Act 187 cannot be taken as an abjuration for all purposes of Hinduism but is merely a statement for the purposes of the Act itself In re the goods of JANENDRA NATH ROY
26 C W N 800

SUCCESSION ACT (X OF 1865)

See WILL I. L. R 35 All 211

——— *Legacy given if a specified uncertain event shall happen no time being mentioned in the will for occurrence of that event—Construction of wills made in India by natives of India* A testator made certain legacies in his will in favour of his son N and directed that in the event of N dying after the death of the testator without marrying or if married without lineal heir his share should revert equally to his surviving sisters or their heirs. The testator died and N claimed to be entitled to the legacies absolutely *Held* that the restriction sought to be placed on N s inheritance by the said provision of the will was nugatory and that N took an absolute interest in all property bequeathed to him under the will In constructing a will made in India by a native of India it must be kept in mind that such a will cannot be construed by reference to cases on wills contained in the English Law Reports *Norendra Nath Sircar* v *Kamal basini Dassi I L R 23 Calc 563 L R 23 I A 18 26* referred to NOWROJI PUDUMJI (SIRDAR) v PUTLIBAI (1912) I L R 37 Bom 644

——— s 2—*Indian Succession Act (X of 1865) ss 2 331—Hindu meaning of—Hindu convert to Christianity the law applicable to estate of on apostacy—Pleadings— Adverse possession not set up in plaint if may be relied on* Where a Hindu was converted to Christianity and died as a Christian the law applicable to his estate is that laid down by the Indian Succession Act Under s 2 the Act is of universal application and a party who claims to be exempt from its operation must show that he is specifically exempted *Dagree* v *Pacotti I L R 19 Bom 783 De Sou a* v *Secretary of State 12 B L R 423* followed To come under the exception in s 331 it is not enough to show that the deceased was born a Hindu but that at the date when the question in issue arises he professes any faith of Brahminical religion or of the religion of the Puranas *Degree* v *Pacotti I L R 19 Bom 783 Jogendra Chandra Bose* v *Bhaguan Coomar 1 Punjab Law Report 251 Bhaguan Koer* v *J C Bos I L R 31 Calc 11 Abraham* v *Abraham 9 Moo I A 199 In re Vathiar 7 Mad H C R 121 Ponnusami* v *Dorasami I L R 2 Mad 209 Administrator General* v *Anandachari I L R 9 Mad 466 Tellis* v *Saldanha I L R 10 Mad 69 Bai Baiji* v *Bai Santok I L R 20 Bom 53 Hastings* v *Gonsalves I L R 23 Bom 539* referred to *Francis Ghosal* v *Gabri Ghosal I L R 31 Bom 25 Edith Mukerji* v *George Alfred 52 P R 1907* distinguished NEPEN BALA DEBI v SITI KANTA BANERJEE (1910) 15 C W N 158

——— ss 2 and 331—*Hindu convert to Christianity—Law governing succession—Absence of power to elect—Pardanishin—Undue influence*

SUCCESSION ACT (X OF 1865)—contd

Succession to the estate of a Hindu convert to Christianity who dies a Christian and intestate is governed by the Indian Succession Act (X of 1865) Since the passing of that Act a person on ceasing to be a Hindu cannot elect to continue to be governed by Hindu Law in Matters of succession *Abraham* v *Abraham 9 Moo I A 195* distinguished Deed executed by a *parda nishin lady* relinquishing substantially without consideration her right of succession to a share in the estate of a deceased person in favour of one who or whose representative had submitted the prepared document to her and obtained her signature held to be invalid In such circumstances the *onus* on those relying on the deed is to prove by the strongest and most satisfactory evidence that the transaction was a real and *bona fide* one and fully understood by the executant *Sajjad Husain* v *Wazir Ali Khan I L R 34 All 455 L R 39 I A 156* applied Judgment of the High Court reversed KAMAWATI v DIGBIJAI SINGH I L R 43 All 525

——— s 3—

See HINDU LAW—WILL—
I L R 2 Lah 175

See WILL I L R 38 Calc 327

——— ss 7 9 10—*Domicile—Domicile of origin—Domicile of choice—Domicile of origin acquired from parents at birth—Domicile of choice acquired from residence and intention that residence should be permanent—Change of residence per se for an indefinite period does not effect domicile of choice—Domicile of choice discarded by intention to abandon accompanied by actual abandonment—Declarations of a party abandoning domicil how far relevant—Domicile of origin reviving proprio vigore on abandonment of domicile of choice—Onus of proof* One L P a Native Christian was born in Goa of parents domiciled in Goa in Portuguese Territory In 1858 at the age of fourteen he came out to Bombay and lived there uninterruptedly with the exception of brief visits to Goa till his death in June 1915 when he was seventy one years old In 1871 he married his first wife the mother of the defendants Nos 1 to 3 and on her death in 1901 married the plaintiff in 1903 During the whole of his mature life in Bombay he carried on a flourishing coach building business providing himself with a house near his factory From his conduct and declarations from time to time it appeared that he had settled in Bombay meaning it to be his fixed habitation It also appeared that sometime after 1913 and shortly before his death he formed an intention of returning to Goa and end his days there On the 26th July 1909 he made a will in Bombay whereby he gave a legacy of R 7 a month to the plaintiff if she chose to live separate from the defendant No 1 a legacy of R 500 to the defendant No 3 and the coach building factory to the defendant No 4 the minor son of defendant No 1 He appointed defendant No 1 the sole executor and residuary legatee The entire moveable property belonging to him in his own right was valued by the plaintiff for R 71 000 and by the defendant No 1 for Rs 19 000 The plaintiff disputed the will of her husband and contended that the deceased had Portuguese domicile at the time of his marriage with her in 1903 as well as at his death and that under the Portuguese law she was entitled to a moiety of the estate left by the deceased. The defendant No 3 who supported the plaintiff contended that in 1871 when the deceased

SUCCESSION ACT (X OF 1865)—*contd*

———— ss 7 9 10—*contd*

married his mother the deceased had a Portuguese domicile and that he too became entitled to a share in the estate of the deceased under the Portuguese law *Held* (i) that at any time between 1865 when the deceased had attained majority and 1913 the deceased had acquired a domicile of choice in Bombay in substitution for the domicile of his origin in Goa (ii) that in spite of the intention of the deceased to return to the domicile of his origin the domicile of choice continued in law to exist at his death as the intention was not accompanied by the actual abandonment of the domicile of choice (iii) that the making of the will and all other matters governed by the Indian law of succession must be determined as though the deceased had all along from the year 1865 to the time of his death been a British subject domiciled in Bombay (iv) that the claim put forward by the plaintiff or the defendant No 3 was not maintainable as the devolution of the estate of the deceased was not governed by the law of Portugal The domicile of origin is that which a person acquires at his birth from his parents and follows the domicile of his parents It is not necessarily in itself local that is to say merely the place of birth The domicile of origin once ascertained in law clings and adheres to the person until he chooses to divest himself of it by substituting a domicile of choice for the domicile of origin The domicile of choice is acquired by a combination of fact with intention The fact is residence and the intention is that the residence should be permanent The domicile of choice can be discarded as easily as it can be acquired by a fact and an intention namely the fact of abandoning the residence accompanied by the intention that that abandonment shall be final and that upon any such mere abandonment of one domicile of choice without the acquisition of another the domicile of origin revives *proprio vigore* and without the need of any further act or intention on the part of the person. The law leans very strongly in favour of the retention of the domicile of origin. Where there are no declarations of intention either way the Courts would be slow to infer from the mere fact of residence however protracted that residence may be the intention requisite to complete the substitution of domicile of choice for that of origin The onus being upon the person alleging that a man has acquired a domicile of choice he must prove to the Court that that man had that intention A man having acquired a domicile of choice may after many years decide to abandon his domicile of choice and again accept his domicile of origin But if with that intention clear in his mind he should fail actually to abandon his domicile of choice and die before thus far giving effect to his intention the result would be that the domicile of choice would persist and the distribution of his estate would be governed by it The law of domicile in the Courts of England from the case of *Bruce v Bruce 2 Bos & P 229* footnote to that of *Huntly v Gaskell [1906] A C 56* considered SANTOS *v* PINTO (1916) I L R 41 Bom 687

———— ss 46 48 50—

See PROBATE I L R 39 Calc 249

———— s 50—

———— *Will signed by some other person in the presence and by the direction of the testator* Probate granted of a will signed by some other person than the testator in his presence and by his direction *Per* MACLEOD C J — It does not matter whether there are other words written by that person so long as those words do not destroy the effect of the signature so as to make it appear that the name of the person signing is not to be taken as a signature intended to give effect to the writing as a will. THERESA *v* FRANCIS MISQUITA (1920)

I L R 45 Bom 9?9

———— *Attestation of must be as to same fact e g execution or acknowledgment—Execution—Guiding the hand of executant in fixing mark* It is not necessary that each of the attesting witnesses to a will should prove the same facts One witness who saw the testator sign the will and another before whom the execution of the will was only acknowledged by the testator may both be good attesting witnesses to the same will Where on the evidence it appeared that a will had been drawn up in accordance with the wishes of the testatrix as expressed during her lifetime before reliable witnesses that it was read over to her when she was in possession of her senses and then being asked by one S whether he would sign the will for her nodded her assent whereupon S guided her finger to make the mark and then put down the testatrix s name under the mark by his own pen *Held* that the will was executed by the testatrix as required by s 50 of the Succession Act That as the execution of the will was complete the moment the mark was made S became an attesting witness when he wrote his own name after the testatrix s MUKTANATH ROY CHOWDHURY *v* JITENDRA NATH ROY CHOWDHURY 19 C W N 1295 (1915)

———— *Execution of will what is proper—Attestation—Indian mode of signature—Presence of the witnesses at the same time and—Presence of identical state of things if necessary attestation of identical state of things if necessary* S 50 of the Indian Succession Act differing from s 9 of the English Act expressly provides that it is not necessary for both attesting witnesses to be present at the same time The English system of executing the document at the foot does not usually obtain amongst Indians Their custom is to execute the document at the top Ordinarily the signature of the executant appears at the top right hand corner and when he executes the document himself and not by an attorney he is accustomed to write by my own pen. Where in a will written on four sheets of papers the signature of the executant appeared at the top left hand corner of the first page as being made by his own pen but his signature only on the next two pages and his signature with date on the last page and the signatures of all four attesting witnesses appeared alongside the signature of the executant on the first page and on each of the other three pages appeared the signatures of two of these four persons *Held* that the operative signature was the one on the first page and as on the evidence it appeared that at least two of the witnesses whose names appeared on that page subscribed their names *animo attestandi* the will was properly executed as required by s. 50 of the Succession Act Where the testator after having executed

SUCCESSION ACT (X OF 1865)—*contd*

——— s 50—*contd*

the will in the presence of one attesting witness took it successively to the houses of two other attesting witnesses who on his acknowledgment of his signature attested the document *Held* that there was valid attestation by all three witnesses within s 50 of the Succession Act SABITRI THAKURIAN v F A SAVI (1915)

19 C W N 1297

——— *Will of a mark man—Mark not affixed by the testator or himself but by another not a due execution—Absence of two attesting witnesses besides the person affixing the mark not a due attestation* Where with a view to execute a will the testator who was a mark man touched the pen and gave it to another who affixed to the will a mark and wrote against it the testator s name and added beneath it his own name as the person who affixed the mark and the will did not contain attestations of two *other* persons besides that of the person so affixing the mark *Held* that the will was invalid as not complying with the provisions of s 50 of the Indian Succession Act As a *marked* will it was invalid as the mark was not affixed by the testator himself as required by the section Considered as a *signed* will as it might be it was equally invalid as the testator s signature was put by another and there were not two *other* attestors besides the one so signing RADHAKRISHNA v SUBRAYA (1916) I L R 40 Mad 550

——— s 57—

See HINDU LAW—WILL

I L R 38 Mad 369

——— *Will revocation of—Tearing* When a testator sent for his will wrote the word cancelled thereon and signed in and according to his attorney s direction tore it partially *Held* that this showed the intention of the testator to revoke the will and the partial tearing constituted a sufficient revocation of the will within the meaning of s 57 of the Indian Succession Act *Elms* v *Elms 1 Sw & Tr 155* distinguished *Bibb* v *Thomas 2 W Bl 1043* referred to JOHUR LAL DEY v DHIRENDRA NATH DEY (1915) 20 C W N 304

——— *ss 62 67 68 69*—

See WILL I L R 40 Bom 1

——— ss 82 187—Will—Bequest to widow how to be construed—S 187 of the Succession Act does not debar a defendant from relying on a will in respect of which no Probate or Letters of Administration have been taken out as he is not seeking to establish a right as executor or legatee In a case to which the Hindu Wills Act applied a testator made a bequest to his widow in the following terms — I give all the remaining properties of every sort which fell to my share to my wife Andalu Therefore the aforesaid Andalu herself should enjoy all the remaining properties —*Held* on the construction of the will that the widow took only a limited estate The operation of the ordinary rule of Hindu Law that a bequest to a wife without words creating an absolute estate conferred only a limited interest was excluded by s 82 of the Succession Act The fact that the donee was a widow the absence of words of inheritance and of words conferring powers of alienation were not sufficient to show that she took only a restricted interest These circumstances however coupled with the recital in the will that she should enjoy the estate indicated the intention of the testator that she should have no powers of alienation CARALAPATHI CHUNNA CUNNIAH v COTA NAMMALWARIAH (1909) I L R 33 Mad 91

SUCCESSION ACT (X OF 1865)—*contd*

——— ss 82 187—*contd*

——— s 84—

See WILL I L R 35 All 211

——— ss 85 98 100 to 102—

See HINDU LAW—WILL—

I L R 38 Calc 188

——— s 91—

See INDIAN SUCCESSION ACT (X OF 1865) s 187 I L R 38 Mad 474

——— ss 98 100 to 102—

See HINDU LAW—WILL—

I L R 38 Calc 188

——— s 99—

See HINDU LAW—WILL

I L R 39 Calc 87

——— s 101—

See HINDU LAW—WILL 23 C W N 826

——— ss 101 102 111 and 126—

See HINDU LAW—WILL

I L R 44 Mad 446

——— ss 101 107—

See WILL I L R 46 Calc 485

——— ss 105 159—

See WILL I L R 40 Calc 192

——— s 107 Part XV—

See HINDU LAW—WILL

I L R 41 Calc 642

——— ss 107 111—

See HINDU LAW—WILL

I L R 43 Calc 432

——— s 111—

See HINDU LAW— STRIDAN

23 C W N 1038

See HINDU LAW—WILL

I L R 2 Lah 175
I L R 40 Calc 274

See WILL I L R 39 Bom 296
I L R 38 Calc 327
I L R 44 Calc 181

——— s 118—

See WILL I L R 40 Calc 192
I L R 45 Bom 1038

——— ss 130 134—

See s 160 24 C W N 592

——— *s 159*—

See WILL I L R 40 Calc 192

——— ss 160 130 134—*Grant of an annual sum payable out of profits of specified property whether annuity—Grant made of part of property allotted to legatee—Interest on arrears of unpaid legacy chargeable against co legatee.* The segregation of any particular property out of which the amount is made payable by the Will is a common but not the only mode of indicating an intention

SUCCESSION ACT (X OF 1865)—*contd*

———— ss 160 130 134—*contd*

to make an annuity perpetual The Will may indicate an intention in other ways that the sum payable is really not an annuity or at any rate is intended to be perpetual. Where the Will made a sum payable to one of the sons of the testator out of the profits of immoveable property allotted to another with a view to equalising their shares *Held*—That the amount was not intended to be an annuity and was not limited to the life of the legatees but formed part of the properties allotted to him and was absolute and perpetual. Where on the death of the legatee the payment of the amount was stopped in a suit by his heirs for recovery of arrears thereof interest at 12 per cent was properly awarded by the Court ss 130 to 134 of the Succession Act which relate to interest on annuities or legacies payable by the executor not applying to the case PANCHU GOPAL MUKERJEE v KALIDAS MUKERJEE
24 C W N 592

———— s 164—

See DOCTRINE OF SATISFACTION
I L R 37 Bom 211

———— s 187—

See s 82 I L R 33 Mad 91

See MAHOMEDAN LAW—WILL.
I L R 37 Calc 839

See WILL I L R 38 Calc 327

1 ———— *Hindu Wills Act (XXI of 1870) ss 2 and 5—Indian Succession Act (X of 1865) s 187—Administrator General's Act (II of 1874) s 36—Will made in Bombay—Property worth less than Rs 1 000—Probate—Administrator General's certificate* A will made in Bombay is subject to the provisions of the Hindu Wills Act (XXI of 1870) and a person claiming as a legatee under the will is not entitled to sue without taking out probate as he would be bound by s 187 of the Indian Succession Act (X of 1865) which is incorporated in the Hindu Wills Act (XXI of 1870) The provision of the Administrator General s Act (II of 1874) is not affected by the incorporation in the Hindu Wills Act (XXI of 1870) of s 187 of the Indian Succession Act (X of 1865) NARAYAN SHRIDHAR v PANDURANG BAPUJI (1910)
I L R 34 Bom 503

2 ———— *Scope of—Establishment without probate of legatee s right—s 91—Legacy vesting of—Executor s assent—Acceptance by legatee necessity of—Disclaimer by legatee.* Where on appeal in a partition suit it was contended by the first defendant that the first plaintiff had no title to sue in ejectment as under a will of her mother which was not proved up to the date of the trial such property vested in the second and third plaintiffs *Held* that s 187 not only affects the establishment of the right to a legacy by legatee himself or some person claiming under him but also debars a person who desires to establish the legatee s right merely as a *jus tertii* for the purpose of his defence The estate vested in a legatee under s 91 of the Act is not full or absolute but it refers only to an interest in the legacy and not the legacy itself Until the executor has given his assent to the legacy the legatee has only an inchoate right to it *Bachman v Bachman I L R 6 All 583* and *Doe v Guy 3 East 120 s c 102 E R 513* followed. A legacy vested in the legatee under s 91 of the Act is divested by his disclaimer The rule of English law that no legacy can vest in the legatee against his will may legitimately be adopted in deciding questions under the Indian law In *re Hoteley Freke v Calarady 32 Ch D 408* referred to LAKSHMAMMA v RATNAMMA (1913)
I L R 38 Mad. 4 4

3 ———— *Conditional order of Judge for grant of Probate—Non issue of Probate owing to non payment of Court fees—Heir of legatee same as legatee—Probate or Letters of Administration alone evidence of right under s 187* A Hindu executing a will in the town of Madras made a bequest in favour of his son. After the death of the father the son died leaving his mother the plaintiff as his heir On the application of the executor (defendant) for a Probate the fiat of the Judge was obtained but there was no actual order for the issue of the Probate and the Probate was not issued owing to the failure of the executor to pay the requisite court fees for the same In a suit by the testator s widow as mother of his deceased son for an order of the Court directing the defendant to apply for probate of the will and for of the estate *Held* (a) for the purposes of s 187 of the Indian Succession Act which governed the case the plaintiff though only an heir of a legatee was in the position of a legatee (b) that the fiat of the Judge for grant of Probate was only conditional and was not equivalent to an actual grant of the Probate within the meaning of 187 (c) that in the absence of a grant of Probate or Letters of Administration which was the only proof of right allowed by the section the plaintiff was debarred from claiming any rights flowing from the will and (d) that the mere production proof and exhibition of the will as an ordinary exhibit in the case were not equivalent to proof of the right by the production of the Probate or the Letters of Administration as required by the section. *Lakshmamma v Ratnamma I L R 38 Mad 474* followed *Mungniram Marwari v Gursahai Nand I L R 17 Calc 347* distinguished ALAMELAMMAL v SURYAPRAKASAROYA MUDALIAR (1915)
I L R 38 Mad. 698

———— s 190

See RECEIVER I L R 37 Calc 754

———— *Letters of administration obtained by plaintiff after suit filed but before hearing and decree—Transfer of Property Act (IV of 1882) s 130—Order to banker to pay money held to the credit of customer effect of when acted on—Stamp Act (II of 1899) s 56—Resulting trust* One W had a deposit of Rs 10 000 in a bank under a deposit receipt which fell due on the 7th of August 1912 W had a grand nephew H to whom he wished to transfer the money meaning that H should have the benefit of the money but not intending that he should be able to make away with the money in W's life time or to draw the interest without making due provision for W's maintenance On the 8th of August 1912 W handed to H his deposit receipt duly endorsed and a letter to the following effect — I hereby state that I have found my Bank Receipt Herewith I am forwarding the same for the interest now due I wish it to be handed over to my nephew I also wish you to hand over the amount of Rs 10 000 which is in fixed deposit to my nephew Walmot Chand

SUCCESSION ACT (X OF 1865)—*contd*

——— s. 190—*contd*

Harrison to his account *H* took the e documents to the bank and a ked for and obtained a new deposit receipt for Rs. 10 000 the balance of Rs. 500 in ca h and Rs 420 in cash by way of interest On the 18th of October 1912 B died On the 5th of August 1913 *G* a grand niece of H fi ed a suit again t *H* as admini tratrix of the estate of W claiming that the sum deposited with the bank in the plaint stated to be Rs. 10 000 formed part of the estate of H and that the plaintiff as admini tratrix of his estate wa entitled to the same At the date of the filing of the suit *G* had not obtained Letters of Administration to H s estate but did obtain them before the hearing of the suit *Held* that the plaint was defective in that it did not show that the plaintiff had obtained Letters of Admini tration and should on that account have been rejected on presentation but that as the plaintiff had obtained Letters of Administration before the hearing and the hearing had been al owed to proceed a decree pa sed in favour of the plaintiff was not contrary to s 190 of the Indian Succession Act *Held* further that where money mentioned in a deposit receipt was immediately payable and the receipt was presented duly endorsed tog ther with an order to pay a given individual that individual became the owner of the money upon payment by the banker or upon his promise to hold the money at the dispo al of the payee that an order on a banker to pay money which he held to the credit of a customer was not an assignment of a debt but an authority to deliver property which if acted on was equiva l nt to d livery by the customer and that the letter of the 8th of August 1912 was such an order and had been acted on an I though had an objection been taken at the h aring before the lower Court it m ght have been rejected for want of a stamp that such an objection could not be taken on app al the letter being on r cord *Held* further that the intention of the donor H to benefit negatived the idea of any r ulting trust in his favour SETHNA v HEMINGWAY (1914) I L R 38 Bom 618

——— ss 190 191 and 239—Act VII of 1901—*Grant of l tters does not vest property of deceased in the administrator as from the date of death—Heirs of intestate Native Christian entitled to deal w th their shares until grant of letters* The effect of s 191 of the Indian Succession Act is not to vest the property of the decea ed in the administrator as from th date of death Subsequent to the passing of Act VII of 1901 which made ss 190 and 239 of the Succession Act inapplicable to Native Chri tians the h irs of intestate Native Christians have the power to deal with their shares in the property of the deceased until the grant of administration and their transactions in respect of such shares will not be made invalid by the subsequent grant The property of the deceased vests in the admini trator only at the time of the grant though for certain purposes the grant may relate back to the death of the deceased ANTONY CRUZ GONZOLVES v MARIS BOOPALRAYAN (1910) I L R 34 Mad 395

——— s 191—

See SETTLEMENT BY A HINDU WOMAN BY TRUSTS I L R 40 Bom 341

——— s 244—*Civil Procedure Code 1908 s 2—Will—Probate—Appl cation for probate dismissed— Decree — Order —Appeal* *Held* that the order of the Di trict Judge granting or refusing probate of a will on an application made under the provisions of s 244 of the Indian Succession Act 1865 is a decree within the meaning of s 2 of the Code of Civil Procedure 1908 and appealable as such *Held* also that the court fee payable on such an appeal is Rs 10 under Art 17 Cl (vi) of the second schedule to the Court Fees Act 1870 *Umrao Chand v Bindraban Chand I L R 17 All 475 Esoof Hasshim Dooply v Fatima Bibi I L R 24 Calc 30* and *Sheikh A im v Chandra Nath Namdas 8 C W N 748* MOUNT STEPHENS v GARNETT ORME (1913) I L R 35 All 448

——— s 250—*Probate and Administration Act (V of 1881) s 81—Will—Probate—Caveator—Intere t posses ed by the caveator* The provisions of s 81 of the Probate and Administration Act 1881 (which corre pond with those of s 250 of the Indian Succe sion Act 1865) enact that the interest which entitles a person to put in a caveat must be an interest in the e tate of the deceased person that is there should be no dispute whatever as to the title of the deceased to the estate but that the person who wi hes to come in as the caveator must show some interest in the e tate derived f om the deceased by inheritance or otherwise *Abhiram Dass v Gopal Dass I L R 17 Calc 48* followed FIROJSHAH BHIKAJI v PESTONJI MERWANJI (1910) I L R 34 Bom 459

——— ss 264B and 339—*Administrator—Directions—District Court cannot but High Court can give d rections* A District Court has no power to give directions to an admini trator in regard to the estate when Letters of Administration have already been granted The power vests in the High C urt by virtue of s 264B of the Indian Success on Act (X of 1865) WINSOR v WINSOR (1919) I L R 44 Bom 662

——— ss 311 312—

See WILL I L R 43 Calc 201

——— s 331—

See s 2 I L R 43 All 525

See SUCCESSION 26 C W N 800

——— s 332—*Aboriginal tribes in Chota Nagpur—Inheritance—Law appl cable—Special notification under s 332 is ued at the appellat stage whether has retrospective effect* Notification dated 2nd May 1913 i sued by the Government of India under s 332 of the Indian Succe sion Act at the appellate stage of a case did not apply where there had already been a decision of a competent court regarding the rights of partie In the case of codified law the ordinary practice of the legislature is to make special provision when it thinks fit to do so for the saving of custom u age and ordinary rights There is no authority that after customary law has been stereotyped in the form of a statute which contains no provision saving custom it is open to a Court to give effect to custom much less to a custom inconsistent with the statute As the Indian Succession Act contains no clause saving custom the Courts are not competent to accept custom as a reason for deviating from the provisions of the Act TUNI ORAIN v LEDA ORAON (1916) 20 C W N 1082
1 Pat. L. J 225

SUCCESSION CERTIFICATE

See LIMITATION ACT (IX OF 1908), SCH I ART 62 I L R 37 All 434

See RECEIVER I L R 37 Calc 754

See SUCCESSION CERTIFICATE ACT (VII OF 1889)

——— assignee suing on an assignment by heir of debt due to deceased—

See SUCCESSION CERTIFICATE ACT 1889 ss 4 AND 6 I L R 42 All 549

——— certificate granted *ex parte* without service of notice on opposite party—

See SUCCESSION CERTIFICATE ACT 1889 s 19 I L R 42 All 512

1 ——— Assignee of deceased s representative whether certificate may be granted to— A succession certificate may be granted to the assignee of the representative of a deceased person RAMCHARITER SAHU v RAM NARAYAN SAHU 2 Pat L J 350

2 ——— Possession of property by Receiver without Succession Certificate—*Succession Certificate Act (VII of 1889) s 4 8 cl (c)—Indian Securities Act (XIII of 1886) s 3 sub s (2) s 6 sub s (1)* In the absence of any provision in the Hindu Wills Act (XXI of 1870) and in the Probate and Administration Act (V of 1881) that no right to the property of an intestate can be established unless administration had been previously granted by a competent Court the Receiver appointed by Court is competent to take possession of the securities and moneys without a certificate under s 4 of the Succession Certificate Act but regard being had to the provisions of the Indian Securities Act 1886 and s 3 sub s (2) s 6 sub s (1) cl (f) and s 8 cl (c) of the Succession Certificate Act (VII of 1889) a Succession Certificate would be needed if a suit was brought to establish a title to such funds by right of inheritance HARIHAR MUKERJI v HARENDRA NATH MUKERJI (1910) I L R 37 Calc 754

3 ——— Mitaksha a Law—Impartible Estate—*Arrears of rent converted to a bond—Debt due to last holder of impartible estate if effects of the deceased in the hands of the successor—Succession Certificate Act (VII of 1889) s 4* Wherein lieu of arrears of rent a bond was given to the holder of an impartible estate *Held* that the debt due is not in the hands of the successor to the estate a part of the effects of the deceased within the meaning of s 4 of the Succession Certificate Act but is in its nature a family debt accruing to him by right of survivorship *Jagmohandas Kilaghai* v *Allu Maria Dushal I L R 19 Bom 338 Beejraj* v *Bhyropersaud I L R 23 Calc 912 Bissen Chand Dudhuria Bahadur* v *Chatrapat Sing 1 C W N 32 Katama Natchier* v *The Rajah of Shivagunga 9 Moo I A 539 2 W R P C 31 Stree Rajah Yanumula Venkayamah* v *Stree Rajah Yanumula Boochia Vankondora 13 Moo I A 333* referred to GUR PERSHAD SINGH v DHANI RAI (1910) I L R 38 Calc 182

4 ——— Debt — *Succession Certificate Act (VII of 1899) s 4— Debt meaning of—Part of debt if certificate can be granted in respect of—Appeal* A certificate under the Succession Certificate Act can be granted in respect of a part only of a debt due to the deceased The word debt is a comprehensive term which should receive a liberal construction. *Re Ghansham Das, (1893) All W N 84* and *Mahomed Abdul Hossain* v *Sarifan 16 C W N 231* approved and followed. *Akbar Khan* v *Bilkisara Begam (1901) All W N 125* considered *Bibee Boodhun* v *Jan Khan 13 W R 265 Muhammed Ali Khan* v *Pattan Bibi I L R 19 All 129 Bismilla Begam* v *Tawassul Husain I L R 32 All 335* and *Ghafur Khan* v *Kalandari Begam I L R 33 All 327* not followed ANNAPURNA DASEE v NALINI MOHAN DAS (1914) I L R 42 Calc 10

5 ——— *Suit dismissed for non production of the certificate—Certificate if may be filed in Appellate Court* *See* MOORALIDHAR ROY CHOWDHURY v MOHINI MOHAN KAR (1915) 19 C W N 794

6 ——— *Certificate refused —Matters to be proved to entitle applicant to a certificate* A Government promissory note payable to one Madho Sahai was assigned by a registered deed by the legal representative of Mahdho Sahai to one Radhika Prasad Upon the assignee applying for a certificate of succession in respect of this note it was refused on this ground that it was not established that the assignor had himself a good and subsisting title to the note *Held* that whether the assignor of the applicant *had a* valid title or not or whether the assignment conveyed any title to the applicant or whether the debt secured by the promissory note was recoverable or not were not matters which *the court had* to determine upon an application for a certificate The only question which the court *had to decide* was whether the applicant was the representative of the person to whom *the debt was alleged to* have been due RADHIKA PRASAD BAPUDI v SECRETARY OF STATE FOR INDIA (1916) I L R 38 All 438

SUCCESSION CERTIFICATE ACT (VII OF 1889)

See SUCCESSION CERTIFICATE

See LIMITATION ACT (IX OF 1908) SCH I ART 182 CL (5) I L R 37 Bom 559

——— *Preference as regards the granting of a certificate—Childless widowed daughter—Sons of a deceased daughter* The parties were governed by the Hindu law of the Dayabhaga School and the question was whether preference was to be given as regards the granting of a certificate for the collection of certain debts due to the father to a widowed childless daughter or to the sons of a deceased daughter *Held* that the latter were to be preferred *According* to the Dayabhaga a widowed childless daughter would be no heir to her father *Sreemutty Bimola* v *Dangoo Kansaree 19 W R C R 189* not followed *Benode Koomaree Dabee* v *Purdhan Gopal Sahee 2 W R C R 176 Radha Kishen Manjee* v *Rajah Ram Mundal 6 W R C R 11* and *Mokunda Lal Chakravarti* v *Monmohini Devi 19 C W N 412* referred to SRIMATI PRAMILA DEVI v CHANDRA SHEKHAR CHATTERJI I L R 43 All 450

SUCCESSION CERTIFICATE ACT (VII OF 1889)—*contd*

——— *Certificate of succession —Joint certificate not illegal if granted with the consent of the grantees* Held that the grant of a joint certificate under the provisions of the Succession Certificate Act 1889 is not illegal provided that the persons to whom such certificate is granted all consent to its being granted in this form RAM RAJ v BRIJ NATH (1913) I L R 35 All 470

——— A Succession certificate can be granted to a minor KRISHNAMA CHARLU v VENKAMMAH

I L R 36 Mad 215

——— *Necessity of a certificate in case of a son belonging to a Mitakshara family—Limitation Act (IX of 1908) sec 22—Addition of Plaintiffs after period of limitation if a sufficient ground for throwing out the suit as barred without any finding as to whether the added Plaintiffs were necessary parties* In the case of a family governed by the Mitakshara law a son can maintain a suit for debts owing to his late father without a succession certificate under Act VII of 1889 A finding that some of the plaintiffs were made parties after the period of son can maintain a suit for debts owing to his limitation is not sufficient to hold the suit barred There may be circumstances in which addition of parties subsequently brought on the record may not be essential and therefore there should be a finding as to whether the added parties are necessary SITAL PROSHAD PODDAR v KAIFUT SHEIKH 26 C W N 488

——— ss 2 4—*Certificate not to be given for collection of part only of a debt—Debt in part irrecoverable—Mahomedan law—Dower* Held that no certificate could be granted to one of the heirs of a Mahomedan lady who had died leaving her dower debt unrealized for collection merely of a part of the dower debt of the deceased *Muhammad Ali Khan* v *Puttan Bibi I L R 19 All 129* and *Bismillah Begam* v *Tawassul Husain I L R 32 All 335* followed *Shitab Dei* v *Deti Prasad I L R 16 All 21* and *Akbar Khan* v *Bilkisara Begum All Weekly Notes (1901) 115* referred to GHAFUR KHAN v KALANDARI BEGAM (1910) I L R 33 All 327

——— s 4—

See SUCCESSION CERTIFICATE

I L R 38 Calc 182
I L R 42 Calc 10

1 ——— When certificate not necessary — *Right to institute suits although no certificate has been obtained* S 4 of the Succession Certificate Act 1889 is no bar to the institution of suits for arrears of rent due to a deceased person although the plaintiff has not obtained a succession certificate and has omitted to file probate papers But in such a suit no decree can be passed until the succession certificate has been obtained or the probate papers filed The Court should give the plaintiff time to do this ALICE THORP v SHEIKH SAMATULLAH

3 Pat L J 160

2 ——— *Act No IX of 1908 (Indian Limitation Act) s 18—Suit against person wrongfully collecting debt due to estate of deceased person—No succession certificate necessary —Fraudulent concealment—Limitation* No succession certificate is necessary where what the plaintiff is claiming is not a debt due to a deceased person but money which having been due to the deceased has been wrongfully appropriated after his death by a third party A mortgage was executed on the 18th of November 1891 in favour of S A and H H died in 1892 and on the 30th of July 1910 S and A brought a suit for sale To this suit they impleaded as defendant H s widow G and an alleged adopted son B They afterwards applied to be made plaintiffs and this was done This suit was dismissed on the 23rd of November 1911 upon the ground that the whole of the mortgage debt had already been paid to S Within three years of the dismissal of that suit G sued S to recover from him one half of the mortgage money paid to him as being the share due to the estate of her husband *Held* that s 18 of the Indian Limitation Act 1908 applied and the suit was within time The defendant had not only concealed from the plaintiff the fact of his having collected the mortgage debt but had brought the suit of 1910 which must have been false to his knowledge to cover his tracks SAHIB RAM v *MUSAMMAT GOVINDI* I L R 43 All 400

3 ——— Muhammadan law—Dower —*Husband and wife both dead—Claim by heir of wife against heir of husband for proportionate share of dower debt due by defendant* No succession certificate is necessary where the suit is by one of the heirs of the wife to recover from one of the heirs of the husband the proportionate share of the wife s dower the liability to pay which had devolved upon the defendant according to her share by inheritance in the property of the husband *Ghafur Khan* v *Kalandari Begam I L R 33 All 327* distinguished SHADI JAN v WARIS ALI

I L R 43 All 498

4 ——— Reversionary heirs — *if may apply for succession on Hindu widow s death —Debts accrued due during widow s life time—Government promissory notes of which certificate had been taken out by the widow—Certificate if necessary* The right of the reversionary heirs of a deceased Hindu to take out succession certificate in respect of debts due to the estate of the deceased is not affected by the interposition of the estate of the widow and the Court cannot reject an application for succession certificate by such heirs merely on the ground of the deceased having died long ago A sum of money awarded in a case under the Land Acquisition Act after the death of the owner and kept in deposit under s 32 of the Act arrears of rent for non agricultural lands belonging to the estate and a Government promissory note standing in the name of the widow as the certificated holder of her husband s estate were all debts for which it was necessary for the reversionary heirs to take out succession certificate *Bancharam Majumdar* v *Adyanath Bhattacharjee 13 C W N 966 s c I L R 36 Calc 936* distinguished ABINAS CHANDRA PAUL v PROBODH CHANDRA PAUL (1911)

15 C W N 1018

5 ——— Deferred Dower—*suit by one of several heirs for a portion of her share—Certificate*

SUCCESSION CERTIFICATE ACT (VII OF 1889)—contd

——— s 4—contd

for a portion, if may be granted—Heir s claims if joint or several—Severence of debt Where one of several heirs of a deceased Mahomedan lady sued her husband for a portion of the share of the deferred dower due by the defendant to the deceased relinquishing the balance *Held* that an application by the plaintiff for succession certificate in respect of the amount claimed by her in the suit was properly granted S 4 of the Succession Certificate Act does not require that the certificate should cover the whole of the debt if the heirs do not [illegible] ce to realise the whole *Ghafur Khan v Kalandari Begum I L R 33 All 327* dissented from In respect of deferred dower each of the heirs of the deceased has a distinct right enforceable by himself though all may jointly sue and it is open to each to relinquish a portion of the claim The defendant husband being moreover one of the heirs the debt assuming it to be joint is severed and a certificate cannot in consequence be granted for the whole debt ABDUL HOSSAIN v SARIFAN (1911) 16 C W N 231

6 ——— Assignment— *Succession certificate—Assignment of debt covered by certificate—Certificate also made over to assignees—Rights of assignees* The widow of a separated Hindu obtained a certificate of succession for the collection of a debt due to her deceased husband She assigned the debt and also handed over the succession certificate to the assignees *Held* that the assignees were competent to sue and get a decree for the debt The widow could undoubtedly assign the debt and it was not necessary even if it were possible for the assignees to obtain cancellation of the certificate granted to the widow and the issue of a fresh certificate in their favour *Karuppasami v Pichu, I L R 15 Mad 419* distinguished *Allahdad Khan v Sant Ram I L R 35 All 74* not followed *Durga Kunwar v Matu Mal I L R 35 All 311* referred to RANG LAL v ANNU LAL (1913) I L R 36 All 21

7 ——— Joint interest— *Application for certificate—Applicant alleging himself to be joint with deceased and entitled to his estate by survivorship* Where an applicant for a succession certificate stated in his application that he was a member of a joint Hindu family with the deceased to whose estate he had succeeded by survivorship *Held* that a succession certificate was unnecessary and the application must fail MATHURA PRASAD v DURGAWATI (1914) I L R 36 All 383

8 ——— Debt part of *certificate in respect of if may be granted—Multiplicity of suits* A certificate under Act VII of 1889 (Succession Certificate Act) can be granted in respect of a portion of a debt The principle of law which prohibits a multiplicity of suits is in no way affected by the grant of certificates in respect of fractional shares of a debt *Bibee Boodhun v Jan Khan 13 W R 265 Muhammad Ali Khan v Puttan Bibi I L R 19 All 129 Bismilla Begam v Tawassul Husain I L R 32 All 335 Ghafur Khan v Kalandari Begam I L R 33 All 327 Akbar Khan v Bilkis ara Begam All W N for 1901 125 In the matter of the petition of Ghansham Das All W N for 1893 81 Mohamed Abdul Hossein v Sarifan 16 C W N 231* referred to ANNAPURNY DASSY v NALINI MOHAN DAS (1914) 18 C W N 836

SUCCESSION CERTIFICATE ACT (VII OF 1889)—contd

——— s 4—concld

9 ——— *Letters of administration—Assignment of debt by holder of letters of administration of debt covered by certificate—Rights of assignee* A decree for possession of certain property and for mesne profits was passed in favour of *A* and his wife The wife died after the date of the decree *A* obtained letters of administration in respect of the estate of his wife and then transferred his own rights under the decree as also those of his wife to *H* *H* applied for execution of the decree The judgment debtors objected *inter alia* that the decree could not be executed without letters of administration or a succession certificate being obtained by transferee *Held* that *H* could execute the decree without taking out fresh letters of administration. *Per* WALSH J A person claiming as assignee of a debt which was due to the estate of a deceased person is not claiming the effect of the deceased' From the date of assignment the debt due to the deceased ceases to be part of the deceaseds effect. The claim contemplated by sub (1) of s 4 of the Succession Certificate Act is a claim made by a person in the capacity of and as personal representative of a deceased person GOSWAMI SRI RAMAN LALJI v HARI DAS (1916) I L R 38 All 414

10 ——— *Preference as regards the granting of a certificate—Childless widowed daughter—Sons of a deceased daughter* *Hindu Law* The parties were governed by the Hindu Law of the Dayabhaga School and the question was to be given as regards the granting of a certificate for the collection of certain debts due to the father to a widowed childless daughter or to the sons of a deceased daughter *Held* that the latter were to be preferred According to the Dayabhaga a widowed childless daughter would be no heir to her father SRIMATI PRAMILA DEVI v CHANDRA SHEKHAR CHATTERJEE I L R 43 All. 450

11 ——— *Certificate not to be granted for collection of part only of a debt—Debt in part irrecoverable or extinguished—Muhammadan Law—Dower* On the death of a Muhammadan lady to whom her dower was due the heirs were her husband her brother and three daughters The brother applied for a succession certificate in respect only of the share of the dower debt to which he was entitled as an heir On the objection being raised by the daughters that a certificate could not be granted for part only of the debt the District Judge finding that a portion of the debt was satisfied by reason of the husband inheriting it as an heir and that the recovery of one of the daughter s shares was time barred gave the applicant a certificate in respect of the remainder *Held* that on the reasoning upon which the Full Bench decision in *Ghafur Khan v Kalandri Begam I L R 33 All 327* was founded it was not competent to the District Judge to grant a certificate except for the whole of the dower debt *Mohamed Abdul Hossain v Sarifan 16 C W N 123* and *Sreemutty Annapurana Dassy v Nalini Mohan Das* dissented from SUGHRA BEGAM v MUHAMMAD MIR KHAN I L R 43 All. 341

SUCCESSION CERTIFICATE ACT (VII OF 1889)—*contd*

——— ss 4 and 6—*Assignment by heir of a debt du to a decea ed person—Suit by assignee to recover de*t*—Certificate nece sary before assignee can obtain a decree* If the heir of the decea ed person to whom at his death money was due assigns the debt to a third person the assignee cannot realize the debt without obtaining a succe sion certificate under Act No VII of 18 9 A debt due to a deceased person does not cea e to be part of the effects of the decea ed by reason of such a sign ment *Goswami Sri Raman Lalji* v *Hari Das I L R 38 All 4*14 not followed *Allah Dad Khan* v *Sant Ram I L R 35 All 74 Pang Lal* v *Annu Lal I L R 36 All 21* and *Radhika Prasad Bapudi* v *The Secretary of State for India in Council I L R 38 All 438* referred to *Karuppasami* v *Pichu I L R 15 Mad 419* and *Mancharam Pranjivan* v *Bai Malali I L R 18 Bom 316* followed GULSHAN ALI v ZAKIR ALI I L R 42 All 549

——— ss 4 7—*Certificate not to be given for collection of part only of a debt—Mahommedan Law—Dower* *Held* that no certificate could be granted to one of the heirs of a Mahommedan lady who had died leaving a dower debt un realized for collection merely of a part of the dower debt of the deceased *Muhammad Ali Khan* v *Puttan Bibi I L R 19 All 129* followed *Akbar Khan* v *Bilkisara Begam All W N (1911) 125* referred to BISMILLA BEGAM v TAWASSUL HUSAIN (1910) I L R 32 All 335

——— ss 4 8 cl (c)—

See SUCCESSION CERTIFICATE— I L R 37 Calc 754

——— ss 4 16—*Succession certificate—Holder of certificate not entitled to transfer his rights thereunder* *Held* that the rights conferred by the grant of a succe sion certificate under the Succession Certificate Act 1889 are personal to the grantee and cannot be assigned ALLAH DAD KHAN v SANT RAM (1912) I L R 35 All 74

——— ss 4 (1) 18—*Assignment of a debt—Certificate obtained by assignor after assignment—Suit by assignee without a certificate in his own name—Decree whether can be passed* An assignee of a debt from a person to whom succession certi ficate was granted subsequent to the assignment is entitled to a decree for the debt without ob taining a succession certificate in his own name *Raman Lalji* v *Hari Das 14 A L J 677* followed *Allah Dad Khan* v *Sant Ram I L R 35 All 74* dissented from ARUNACHELAM v MATHU (1918) I L R 42 Mad 130

——— ss 7 9—*Certificate of succession—Security—Application by widow of separated Hindu* Where under s 9 of the Succession Certificate Act 1889 the requiring of security is optional security should not be taken from the widow of a separated Hindu asking for a certificate to enable her to collect debts due to her husband in the absence of special circumstances rendering the taking of security necessary NARAIN DEI v PARMESHWARI (1917) I L R 40 All 81

——— s 8—

See SPECIFIC RELIEF ACT (I OF 1877) s 42 I L R 32 All. 316

SUCCESSION CERTIFICATE ACT (VII OF 1889)—*contd*

——— 9—

1 ——— *Certificate in favour of Hindu widow to realize interests only—Certificate ultra vires* *Held* that where a certificate was granted to a Hindu widow for collection of debts due to her late husband it was not competent to the Court in lieu of requiring security from the grantee to give a certificate for realization of interests only without disturbing capital *Shib Dei* v *Ajudhia Prasad F A f O No 108 of 1910* decided on the 13th of February 1911 referred to JAI DEI v BANWARI LAL (1913) I L R 35 All 249

2 ——— *Certificate to a minor can be granted—S 9 no bar* A succession certificate can be granted to a minor *Per* CURIAM s 9 of the Succession Certificate Act (VII of 1889) presents no difficulty to the grant in such a case *Kali Coomar Chatterjea* v *Tara Prossunno Mookerjea 5 C L R 51*4 and *Ram Kuar* v *Sardar Singh I L R 20 All 3 2* followed *Ex parte Mahadeo Ganghadhar I L R 28 Bom 344* and *Gulabchand* v *Moti I L R 25 Bom 523* con sidered KRISHNAMA CHARLU v VENKAMMAH (1913) I L R 36 Mad 214

——— ss 9 25 26—*Civil Procedure Code (Act V of 1908) s 96—Succession Certificate—Condition of Security—Appeal* An order granting a succes ion certificate accompanied by a condition that security should be given is appealable An order directing that a certificate should not be granted unless security is furnished is not appeal able *Bai Devkore* v *Lalchand Jivandas I L R 19 Bom 790* explained BAI NANDKORE v SHA MAGANLAL NARAJBHUKHANDAS (1911) I L R 36 Bom 2"2

——— ss 16 and 17—

See PRESIDENCY BANKS ACT (XI OF 1876) s 23 I L R 45 Bom 138

——— ss 16 18—*Certificate of succession—Suit to set aside certificate and decree passed in favour of the holder* A succe sion certificate granted under the provisions of the Succession Certificate Act 1889 is conclusive as against the debtor under s 16 of the Act and it can be revoked by the District Judge only under s 18 of the Act No suit will lie to have a succe sion certificate and a decree obtained by the holder thereof set aside on the mere ground that the certificate was obtained by the use of false evidence RUPAN BIBI v BHAGELU LAL (1914) I L R 36 All 423

——— s 18—

See s 4 I L R 42 Mad 130

——— 18 and 19—*Certificate of succession granted to one creditor for the whole of a debt due to him elf and other — Decree obtained by certificate holder for his share only of the debt—Remedy open to the other creditors in respect of their propor tionate share* Upon the death of a Muhammadan lady her claim for dower devolved upon (1) her husband to the extent of one fourth ( ) her brother to the extent of one fourth and (3) her daughter to the extent of one half The brother applied for a certificate of succession in re pect of the whole of the dower debt and this was granted to him At the time of this application the daughter was a minor and

SUCCESSION CERTIFICATE ACT (VII OF 1889)—*contd*

——— s 18—*contd*

notice of the application was served for her on her father, notwithstanding that he was the person who himself was liable for the payment of the dower debt On obtaining the certificate the brother sued for and obtained a decree for his one quarter share Thereupon the daughter applied to the court asking either that the certificate granted in favour of the brother should be revoked and a fresh certificate made out in her name or in the alternative that her name should be associated with that of the brother in the same certificate to the extent of the half share claimed by her The court rejected this application *in toto* *Held* on appeal from this order (1) that the appeal lay the order being in effect one refusing to grant a certificate to the applicant and (2) that in the circumstances of the case the proper order to pass was one revoking the certificate already granted to the extent of one half and granting a certificate for one half of the dower debt in favour of the applicant *Ghafur Khan* v *Kalandari Begam* *I L R 33 All 327* discussed SHARIF UN NISA BIBI v MASUM ALI I L R 42 All 347

——— ss 18 27—*Certificate granted by specially empowered Subordinate Judge if may be revoked by District Judge otherwise than in appeal—Reg V of 1799 jurisdiction under nature of* The fact that no appeal has been preferred against an order of a Subordinate Judge (who has been invested with the powers of a District Court under the Succession Certificate Act) granting a certificate is no bar to its revocation at any time when the circumstances enumerated in s 18 of the Act are proved The revocation must in such a case be ordinarily made by the Subordinate Judge when he is still exercising that jurisdiction in the district The District Judge has in such circumstances no jurisdiction to make the revocation except where the case having been instituted and being pending before the Subordinate Judge has been withdrawn by the District Judge The jurisdiction of the District Judge under Reg V of 1799 is more administrative than judicial He can act thereunder only when there is no claimant and acting under that Regulation he is bound to respect the order granting a certificate until the same was revoked by a competent authority SUKHIA BEWA v SECRETARY OF STATE FOR INDIA (1914) 19 C W N 551

——— s 19—*Certificate granted* ex parte *without notice having been served on the opposite party—Remedy available to the opposite party—Appeal—Proof of service of notice* The widow of a Hindu applied for a succession certificate for the collection of certain debts due to her deceased husband She named amongst others as a party likely to be interested in the proceedings one Radhe Lal a brother of the deceased Attempts were made to serve notice of the application on Radhe Lal but apparently without success and ultimately the application was heard *ex parte* and a certificate granted to the widow Radhe Lal then appeared and filed an appeal against the grant alleging that he had in fact received no notice of the application and that he had a good objection to the granting of a certificate to the widow inasmuch as the deceased and himself were members of a joint Hindu family *Held*

SUCCESSION CERTIFICATE ACT (VII OF 1889)—*concld*

——— s 19—*concld*

that the appellant was entitled to come to court by way of appeal and was not bound to file an application to revoke the certificate *Held* also that the fact that a registered notice is returned endorsed ' refused ' is not by itself evidence that it was tendered to the person to whom it was addressed BINDO v RADHE LAL I L R 42 All 512

——— ss 19 26—*Munsif invested with functions of District Court—Appeal—Jurisdiction* *Held* that an appeal from an order of a Munsif invested under s 26 of the Succession Certificate Act 1889 with the functions of a District Court lies to the District Judge and cannot be transferred for disposal to any other Court such as the Subordinate Judge or Judge of the Small Cause Court not empowered under s 56 HUPAN BIBI v HINGAN BIBI (1911) I L R 34 All 145

——— ss 25 and 26—

See s 9 I L R 36 Bom 2,2

SUCCESSION (PROPERTY PROTECTION) ACT (XIX OF 1841)

See CURATOR S ACT 1841

See RECEIVER I L R 37 Calc 754

SUCCESSION DUTY

See PROBATE I L R 43 Calc 695

SUCCESSIVE ADOPTION

See HINDU LAW—ADOPTION I L R 39 Calc 562

SUCCESSOR

——— final order by—

See COURT MEANING OF I L R 37 Calc 642

SUDDER DEWANY ADAWLAT

See CONTEMPT OF COURT I L R 41 Calc 1 3

SUDDER NIZAMUT ADAWLAT

See CONTEMPT OF COURT I L R 41 Calc 173

SUDRAS

See HINDU LAW—INHERITANCE I L R 34 Bom 321 553
I L R 40 Calc 545

See YATI I L R 40 Mad 846

——— illegitimate sons of—

See HINDU LAW—INHERITANCE I L R 40 Bom. 369

See HINDU LAW—SUCCESSION I L R 39 Mad. 136
I L R 44 Bom. 185

——— Leva Kunbis of Changdev in the East Khandesh District—

See HINDU LAW—SUCCESSION I L R 44 Bom. 166

SUIT—*contd*

——— for declaration of title—
See SPECIFIC RELIEF ACT (I OF 1877) s 42 I L R 37 All 185

——— for ejectment—
See AGRA TENANCY ACT (II OF 1901) ss 58 177 (c) I L R 38 All 465

——— for money had and received—
See LIMITATION ACT (IX OF 1908) ARTS 29 36 120 I L R 39 All 322
ART 62 I L R 37 All 40 233
I L R 38 All 676
See PROVINCIAL INSOLVENCY ACT (VI OF 1907) s 16 (1) I L R 41 Mad 923

——— for possession and mesne profits—
See LIMITATION ACT 1908 SCH ART 109 I L R 39 All 200

——— for possession of land—
See LIMITATION ACT (IX OF 1908) s 28 ART 47 I L R 38 Mad 432

——— for profits—
See CIVIL PROCEDURE CODE (1908) XXVI RR 9 16 17 18 I L R 39 All 694
See LAMBARDAR AND CO SHARER I L R 41 All 316

——— for redemption of mortgage—
See COURT FEE I L R 39 All 452
See MORTGAGE I L R 38 All 148

——— for refund of purchase money—
See CIVIL PROCEDURE CODE (1908) O XXI RR 92 93 I L R 39 All 114

——— for rent under registered agreement—
See LIMITATION I L R 38 Mad 101

——— for damages for ejectment—
See LANDLORD AND TENANT 25 C W N 930

——— for Malicious prosecution—
See MALICIOUS PROSECUTION

——— for money paid by mistake under coercion —
See CONTRACT ACT 1872 s 72 I L R 43 All 272

——— for money due under an award—
See PROVINCIAL SMALL CAUSES ACT 1887 SCH II ART 24 I L R 42 All 189

——— for profits—
See AGRA TENANCY ACT 1901 s 164 I L R 42 All 414
I L R 43 All 29 177

——— for possession—
See CIVIL PROCEDURE CODE 1908 s 47 I L R 43 All 170

SUIT—*contd*

——— for refund of price on account of short delivery—
See CIVIL PROCEDURE CODE (1908) s 0 I L R 42 All 480

——— for return of moveable property deposited for safe custody—
See LIMITATION ACT 1908 SCH I ART 49 I L R 42 All 45

——— for a sum payable periodically—
See COURT FEES ACT 1870 s 7 (ii) SCH II ART 17 (iii) I L R 42 All 353

——— in forma pauperis—
See PAUPER SUIT I L R 46 Calc 651

——— institution of in wrong Court—
See LIMITATION I L R 47 Calc 300

——— maintainability of—
See CIVIL PROCEDURE CODE (1908) s 9 I L R 37 All 313

——— on a foreign judgment—
See CIVIL PROCEDURE CODE (1908) s 13 I L R 41 All 521

——— on lost bond—
See MORTGAGE I L R 37 All 475

——— place to institute ing—
See CIVIL PROCEDURE CODE (1908) s 20 I L R 39 All 368

——— subject matter of—
See CIVIL PROCEDURE CODE (ACT V OF 1908) O XXXIII RR 1 2 AND 5 I L R 34 Bom 638

——— to enforce payment of money charged upon immoveable property—
See LIMITATION ACT (IX OF 1908) SCH I ART 132 I L R 37 All 400

——— to recover money deposited with Bank—
See LIMITATION ACT (IX OF 1908) SCH I ART 60 I L R 37 All 2?2

——— to recover property bailed—
See LIMITATION ACT (IX OF 1908) SCH I ARTS 49 60 AND 145 I L R 41 All 643

——— to obtain refund of octroi duty—
See U P MUNICIPALITIES ACT 1916 s 306 I L R 42 All 207

——— to recover revenue paid on an order revised on appeal—
See LIMITATION ACT 1908 SCH I ART 61 I L R 42 All 61

——— to enforce an award—
See CIVIL PROCEDURE CODE (1908) ss 89 AND 104 (1) (f) SCH II PARAS 20 AND 21 I L R 43 All 108

SUIT—*contd*

——— to establish right of worship and procession in street—

See Civil Procedure Code 1908 s 9
I L R 44 Bom 410

——— to set aside adoption—

See Adoption I L R 37 Calc 860

——— to set aside decree against minor—

See Minor I L R 38 All 452

——— to set aside a decree on the ground of fraud—

See Civil Procedure Code (1908) s 20 (c) I L R 39 All 607

——— transfer of—

See Civil Procedure Code (1908) s 24
I L R 41 All 381

See Provincial Small Cause Courts Act (IX of 1887) s 17
I L R 38 All 425

——— valuation of—

See Bengal N W P and Assam Civil Courts Act (XII of 1887) s 21
I L R 32 All 222

See Civil Procedure Code 1908)—

O XXI r 63 I L R 38 All 72

r 66 I L R 40 All 505

See Civil Procedure Code 1908 s 115
I L R 39 All 723

——— withdrawal of—

See Civil Procedure Code 1908—

O XXIII r 1 I L R 37 All 326
I L R 42 Bom 155

r 1 s 11o I L R 40 All 612

See Partition I L R 37 All 155

1 ——— *Bengal Tenancy Act (VIII of 1885) ss 30 (b) 37 105 107 109—Whether an application under s 105 of the Act a suit—Withdrawal of an application under that section effect of—Subsequent suit for enhancement of rent under s 30 (b) whether maintainable* An application under s 105 of the Bengal Tenancy Act cannot be regarded as a suit *Upadhya Thakur* v *Persidh Singh I L R 23 Calc 723* referred to Therefore although an application under s 105 of the Bengal Tenancy Act was previously withdrawn without liberty to make a fresh application a subsequent suit for enhancement of rent under s 30 (b) of the Act is maintainable the provisions of either s 37 or 109 of the Act are not applicable to such a case Cheodditti v Tulsi Singh (1917) I L R 40 Calc 428

2 ——— *Limitation—Bengal Tenancy Act (VIII of 1885) ss 104H sub s (2) 184 185—Limitation Act (IX of 1908) ss 29 15 applicability of—Civil Procedure Code (Act V of 1908) s 80* A instituted a suit under s 104H of the Bengal Tenancy Act against the Secretary of State for India in Council on the 10th December 1910 in respect of a village the Record of Rights of which was finally published on the 2nd June 1910 *A* took exception to the latter Prior to the institution of the suit *A* served a notice on the defendant as required by s 80 of the Civil Procedure Code *Held* that the suit was barred by limitation *Held* also that s 15 sub s (2) of the Limitation Act which was made applicable to suits appeals and applications mentioned in Sch III annexed to the Bengal Tenancy Act by virtue of s 185 sub s (2) could not possibly apply to suits instituted under s 104H which were not mentioned in Sch III On a plain reading of the provisions of s 185 of the Bengal Tenancy Act along with s 15 sub s (2) of the Limitation Act the latter could not be applied to extend the period of six months provided for the institution of suits under s 104H of the Bengal Tenancy Act *Radhashyam Kar* v *Dinabandhu Biswas 18 C W N 31 18 C L J 533 Sharoop Dass Mondal* v *Jogessur Roy Chowdhry I L R 26 Calc 564 Dulhin Mathura Das Koer* v *Bansidhar Singh 16 C W N 904 Srinivasa Ayyangar* v *The Secretary of State for India I L R 38 Mad 92* referred to *Dropadi* v *Hira Lal I L R 34 All 496* distinguished Secretary of State for India v Gangadhar Nanda (1917)
I L R 45 Calc 934

SUIT FOR CANCELLATION OF DOCUMENT

——— *Sale deed—Alleged illegality of transaction—Sale by one deed of fixed rate and occupancy holdings* The plaintiff by one and the same sale deed purported to transfer (i) a fixed rate holding and (ii) part of an occupancy holding *Held* that he was not entitled to a decree setting aside the sale deed merely because part of the property covered by it was by law not transferable Bajrangi Lal v Ghura Rai (1916)
I L R 38 All 232

SUIT FOR DECLARATION OF RIGHT

See Highway I L R 43 All 692

SUIT FOR LAND

See Possession

See Suit

See Jurisdiction I L R 42 Calc 942

See Jurisdiction of High Court
I L R 39 Calc 739

——— *for recovery of possession and mesne profits—Litigation prolonged by defendant in prosecution appeal and mesne profits swelling to amount exceeding pecuniary jurisdiction of Original Court and re filing of plaint in another Court—Proceedings in latter Court if continuation of original suit—Limitation* Where a person sues for recovery of possession he can in the same suit recover mesne profits which have accrued before the suit and those accruing pending the litigation The fact that owing to the prosecution of appeal in higher Courts by the Defendant the mesne profits swell up to an amount beyond the limits of the pecuniary jurisdiction of the Court which tried the suit originally thereby necessitating the transfer of the proceedings in the suit to a Court of higher jurisdiction does not amount to an interruption so as to make the subsequent proceeding in the higher Court a different suit Baikuntha Nath Kundu v Mohanando Borat Moduk 24 C W N 342

SUIT FOR PROFIT

See Agra Tenancy Act 1901

s 201 I L R 43 All 697

s 164 I L R 43 All 29 177

SUIT FOR RENT

See Agra Tenancy Act 1901 s 198
I L R 43 All 448

——— *Rent reserved—Company's Sicca rupees ambiguity of expression—Sikka or Sicca Rupee and Company's Rupee meaning and history of and difference between* In a *kabuliyat* dated the 8th July 1850 the annual rent reserved was stated to be Company's *sicca* rupees 96 *Held* that the expression Company's *sicca* rupees mentioned in that document meant rupees in current coin and not *sicca* rupee *Per* Curiam The course of conduct the date of the document the stamp duty and the reference to current coin in the sentence referring to the Stamp Act lead us to the conclusion that in this case the rent annually payable is not the equivalent of 96 *sicca* rupees but is 96 rupees in current coin *Ram Saran Sing* v *Gyan Sing 6 C L J 637 Ram Kheluam Singh* v *Kumar Pai 6 C L J 667 Rameswar Koer* v *Goberdhan Lal 7 C L J 202 Mir Tapurah Hossein* v *Gopi Narayan 7 C L J 251* and *Raja Kamaleswari Pershad Singh* v *Ramhari Singh 19 C L J 348* referred to Maharaj Bahadur Singh v Jadab Chandra Ghose Hazra (1918)
I L R 46 Calc 347

——— *Suit for rent— Claim for abatement of rent on the ground of eviction from a portion of the land by a person not having a title paramount— Eviction by title paramount meaning of—Physical dispossession if necessary to amount to eviction—Suit by stranger against tenant and attornment by latter to former in respect of a portion of the tenure under Court's decree—Onus to prove eviction by title paramount if on landlord* An execution purchaser of some decretal lands obtained delivery of khas possession of the lands through Court and let out a portion thereof to B Subsequently the Government settled with a third party some lands including a portion of the lands let out by the said execution purchaser The Government lessee on the strength of the settlement sued B alone for recovery of the said lands and got a decree which provided that being a *bona fide* tenant *B* should not be ejected but should pay rent to the Government lessee in respect of the lands of which he was in possession Subsequently the aforesaid execution purchaser brought a suit for rent against *B* who claimed proportionate abatement of rent in respect of the said portion *Held* that in order to be entitled to proportionate abatement of rent forcible expulsion is not necessary nor is it necessary that the tenant should actually go out of possession and if upon a claim being made by a person with a title paramount he consents by an attornment to such person to change the title under which he holds or enters into a new arrangement for holding under him this will be equivalent to an eviction and a fresh taking But an eviction whether actual or constructive must be by a party with a title paramount The Government lessee had no doubt obtained a decree against *B* but that was not sufficient to show that he had a title superior to that of the execution purchaser Nor was the onus to prove that the Government lessee had no title shifted on the execution purchaser in consequence of such a decree Banku Behari Ghosh v Madan Mohon Roy
26 C W N 143

SUIT IN FORMA PAUPERIS

See Pauper Suit

SUIT TO SET ASIDE A DECREE

——— *Fraud—Personal service—conduct of Plaintiff* The mere fact that personal service of a summons has not been effected on a defendant will not render the proceedings against him absolutely abortive But where the non service is due to the fraudulent conduct of the plaintiff in the suit and others acting with him and a decree is thereby obtained such decree may be set aside as fraudulent Tika Ram v Daulat Ram
I L R 32 All. 145

——— *Fraud—What constitutes fraud—Transfer of Property Act (IV of 1882) s 90—Application for a decree under s 90 without informing Court of previous refusal to grant such a decree* Certain mortgagees instituted a suit for sale on a mortgage and also asked in their plaint for a personal decree against the mortgagors under s 90 of the Transfer of Property Act 1882 The Court in that suit granted the plaintiffs decree for sale but refused them the decree asked for under s 90 Some years afterwards the plaintiffs again applied for a decree under s 90 Notice of this application was duly served upon all the judgment debtors They did not appear and the Court granted a decree but limited it to the assets of the deceased mortgagor The judgment debtors then filed a suit to have this decree set aside on the ground of fraud the fraud alleged being mainly that the decree holders had not brought to the notice of the Court the fact that they had once before applied for and been refused a decree under s 90 *Held* that the neglect to inform the Court of the fact that there had been a previous attempt at another stage of the litigation to get a personal decree even assuming that the neglect was wilful could not amount to fraud which would entitle the plaintiffs to set aside the decree which was obtained by the defendants under s 90 of the Transfer of Property Act Ram Ratan Lal v Bhuri Begam (1915)
I L R 38 All. 7

SUITS VALUATION ACT (VII OF 1887)—

See Madras Civil Courts Act (III of 1873) ss 12 13
I L R 39 Mad 447

——— s 3—

See Madras Civil Courts Act 1873 s 14
I L R 41 Mad 721

——— s 4—

See Court Fees Act (VII of 1870) Sch II Art 17 I L R 39 Mad. 602

——— s 8—

See Administration Suit
I L R 44 Calc. 890

See Court Fee
I L R 40 Calc 245 615

See Court Fees Act 1870 s. 7
I L R 44 Bom. 331
I L R 45 Bom 567

See Jurisdiction
I L R 38 Mad. 795
15 C W N 523
I L R 34 Bom 267

See Jurisdiction of Civil Courts.

SUITS VALUATION ACT (VII OF 1887)—*contd*

——— s 8—*contd*

See LIMITATION ACT SCH I ART 152 I L R 43 Bom 376

See SECOND APPEAL 15 C W N 454

See VALUATION OF SUIT I L R 43 Bom 507

——— *Court Fees Act (VII of 1870) s 7 sub s V cl (c)—Suits Valuation Act (VII of 1887) s 8—Court fees payable in suit for specific performance of contract of lease* A suit for specific performance of a contract to grant a lease was valued at Rs 1 000 for determining jurisdiction of the Court and at Rs 32 for purpose of payment of Court fees this being the amount of rent annually payable under the contract of tenancy sought to be enforced A second appeal arising out of the suit was filed in the High Court and valued at Rs 32 only On a reference under sec 5 of the Court Fees Act *Held* that the court fees paid were sufficient The value for the payment of Court fees was correctly assessed at Rs 32 under sec 7 of the Court Fees Act and the value for the purpose of jurisdiction was consequently only Rs 32 under sec 8 of the Suits Valuation Act The right construction of sec 8 of the Suits Valuation Act is that the valuation for the purpose of jurisdiction should in the cases mentioned there follow and be the same as valuation for Court fees The procedure to be adopted in cases of this character is to value the suit first for payment of Court fees in accordance with the rule embodied in sec 7 sub sec (V) cl (c) of the Court Fees Act and then to adopt the value so determined for the computation of Court fees as the value for purposes of jurisdiction SAILENDRA NATH MITRA v RAM CHANDRA PAL 25 C W N 768

——— s 11—

See BENGAL AGRA AND ASSAM CIVIL COURTS ACT 1887 4 Pat L J 447

See CIVIL PROCEDURE CODE 1908 s 104 O XLIII R 10 (a) I L R 36 All 58

See RESTITUTION OF CONJUGAL RIGHTS I L R 34 Bom 236

See VALUATION OF SUIT 5 Pat L J 397

SUMMARY CESS

See LIMITATION ACT 1877 SCH II ART 144 I L R 36 Bom 174

SUMMARY DISMISSAL

See CIVIL PROCEDURE CODE 1908 O XLI R 11 I L R 36 Bom 116

SUMMARY EVICTION

See LAND REVENUE CODE (BOM ACT V OF 1879) s 79A I L R 35 Bom 72

SUMMARY JURISDICTION

See COMPANIES ACT (VI OF 1882) s. 72 I L R 35 All. 173

SUMMARY PROCEDURE

See CRIMINAL PROCEDURE ss 200 to 265

——— On negotiable instruments—

See CIVIL PROCEDURE CODE (1908) O XXXVII

See ATTORNEY AND CLIENT I L R 46 Calc 249

SUMMARY PROCEEDINGS

See CONTEMPT OF COURT I L R 41 Calc 173

See PROFESSIONAL MISCONDUCT I L R 41 Calc 113

SUMMARY RELIEF

See COMPANY I L R 47 Calc 901

SUMMARY SETTLEMENT

See INAM LANDS I L R 38 Bom 2 2

See KADIM INAMDAR I L R 42 Bom 112

——— Inam Dharmadaya—Sanads—Bombay—

See BOMBAY REVENUE JURISDICTION ACT (X OF 1876) s. 12 I L R 45 Bom 463

SUMMARY SETTLEMENT ACT (BOM ACT VII OF 1863)

See REGULATION XVI OF 18 I L R 38 Bom 272

——— *Land granted to a mosque—At summary settlement land continued to the mosque on payment of annual quit rent—Alienation of land by mutavali of the mosque—Full assessment cannot be demanded by Government from the alienee* At the time of the summary settlement held in 1879 the land in dispute which had been granted to a mosque was continued on payment to Government of an annual quit rent under the Sanad which ran as follows — By Act VII of 1863 of the Bombay Legislative Council is hereby declared that the said land subject to the payment to Government of an annual quit rent of Rs 17 8 0 seventeen and annas eight only shall be continued for ever by the British Government as the endowment property of the Jumma Masjid without increase of the said quit rent but on the condition that managers thereof shall continue loyal and faithful subjects of the British Government Nearly sixty years before suit the then manager of the mosque alienated (it was assumed that the alienation was unlawful) the land to a stranger From 1912 onwards the Government levied full assessment on the land in the hands of the alienee A suit having been brought to recover the extra assessment so levied *Held* by SHAH and HAYWARD JJ (HEATON J dissenting) that the provisions of the Summary Settlement Act 1863 and the terms of the Sanad pointed to the conclusion that the condition that the land must continue to be the property of the mosque in order that the holder for the time being may have the benefit of the exemption from settlement allowed by the Sanad could not be implied and that the Government did not get any right

SUIT FOR RENT

See AGRA TENANCY ACT 1901, s 198
I L R 43 All 448

———————— *Rent reserved—Company's Sicca rupees ambiguity of expression—Sikka or Sicca Rupee and Company's Rupee, meaning and history of and difference between* In a *kabuliyat* dated the 8th July 1850 the annual rent reserved was stated to be Company's *sicca rupees* 96 *Held* that the expression Company's *sicca* rupees mentioned in that document meant rupees in current coin and not *sicca* rupee *Per* CURIAM The course of conduct the date of the document the stamp duty and the reference to current coin in the sentence referring to the Stamp Act lead us to the conclusion that in this case the rent annually payable is not the equivalent of 96 *sicca* rupees but is 96 rupees in current coin *Ram Saran Sing* v *Gyan Sing* 6 C L J 637 *Ram Kheluam Singh* v *Kumar Rai* 6 C L J 667 *Rameswar Koer* v *Goberdhan Lal* 7 C L J 202 *Mir Tapurah Hossein* v *Gopi Narayan* 7 C L J 251 and *Raja Kamaleswari Pershad Singh* v *Ramhari Singh* 19 C L J 348 referred to MAHARAJ BAHADUR SINGH v JADAB CHANDRA GHOSE HAZRA (1918)
I L R 46 Calc 347

———————— *Suit for rent— Claim for abatement of rent on the ground of eviction from a portion of the land by a person not having a title paramount— Eviction by title paramount meaning of—Physical dispossession if necessary to amount to eviction—Suit by stranger against tenant and attornment by latter to former in respect of a portion of the tenure under Court's decree—Onus to prove eviction by title paramount if on landlord* An execution purchaser of some decretal lands obtained delivery of khas possession of the lands through Court and let out a portion thereof to B Subsequently the Government settled with a third party some lands including a portion of the lands let out by the said execution purchaser The Government lessee on the strength of the settlement sued B alone for recovery of the said lands and got a decree which provided that being a *bona fide* tenant *B* should not be ejected but should pay rent to the Government lessee in respect of the lands of which he was in possession Subsequently the aforesaid execution purchaser brought a suit for rent against *B* who claimed proportionate abatement of rent in respect of the said portion *Held* that in order to be entitled to proportionate abatement of rent forcible expulsion is not necessary nor is it necessary that the tenant should actually go out of possession and if upon a claim being made by a person with a title paramount he consents by an attornment to such person to change the title under which he holds or enters into a new arrangement for holding under him this will be equivalent to an eviction and a fresh taking But an eviction whether actual or constructive must be by a party with a title paramount The Government lessee had no doubt obtained a decree against *B* but that was not sufficient to show that he had a title superior to that of the execution purchaser Nor was the onus to prove that the Government lessee had no title shifted on the execution purchaser in consequence of such a decree BANKU BEHARI GHOSH v MADAN MOHON ROY
26 C W N 143

SUIT IN FORMA PAUPERIS

See PAUPER SUIT

SUIT TO SET ASIDE A DECREE

———————— *Fraud—Personal service—conduct of Plaintiff* The mere fact that personal service of a summons has not been effected on a defendant will not render the proceedings against him absolutely abortive But where the non service is due to the fraudulent conduct of the plaintiff in the suit and others acting with him and a decree is thereby obtained such decree may be set aside as fraudulent TIKA RAM v DAULAT RAM
I L R 32 All. 145

———————— *Fraud—What constitutes fraud—Transfer of Property Act (IV of 1882) s 90—Application for a decree under s 90 without informing Court of previous refusal to grant such a decree* Certain mortgagees instituted a suit for sale on a mortgage and also asked in their plaint for a personal decree against the mortgagors under s 90 of the Transfer of Property Act 1882 The Court in that suit granted the plaintiffs decree for sale but refused them the decree asked for under s 90 Some years afterwards the plaintiffs again applied for a decree under s 90 Notice of this application was duly served upon all the judgment debtors They did not appear and the Court granted a decree but limited it to the assets of the deceased mortgagor The judgment debtors then filed a suit to have this decree set aside on the ground of fraud the fraud alleged being mainly that the decree holders had not brought to the notice of the Court the fact that they had once before applied for and been refused a decree under s 90 *Held* that the neglect to inform the Court of the fact that there had been a previous attempt at another stage of the litigation to get a personal decree even assuming that the neglect was wilful could not amount to fraud which would entitle the plaintiffs to set aside the decree which was obtained by the defendants under s 90 of the Transfer of Property Act RAM RATAN LAL v BHURI BEGAM (1915)
I L R 38 All 7

SUITS VALUATION ACT (VII OF 1887)—

See MADRAS CIVIL COURTS ACT (III OF 1873) ss 12 13
I L R 39 Mad 447

———— s 3—

See MADRAS CIVIL COURTS ACT 1873 s 14
I L R 41 Mad 721

———— s 4—

See COURT FEES ACT (VII OF 1870) SCH II ART 17 I L R 39 Mad 612

———— s 8—

See ADMINISTRATION SUIT
I L R 44 Calc. 890

See COURT FEE
I L R 40 Calc. 245 615

See COURT FEES ACT 1870 s. 7
I L R 44 Bom 331
I L R 45 Bom. 867

See JURISDICTION
I L R 38 Mad. 795
15 C W N 823
I L R. 34 Bom 267

See JURISDICTION OF CIVIL COURTS.

SUITS VALUATION ACT (VII OF 1887)—contd

——— s. 8—contd.

See LIMITATION ACT SCH I ART 152
I L R 43 Bom 376

See SECOND APPEAL 15 C W N 454

See VALUATION OF SUIT
I L R 43 Bom 507

——— *Court Fees Act (VII of 1870) s 7 sub s X cl (c)—Suits Valuation Act (VII of 1887) s 8—Court fees payable in suit for specific performance of contract of lease* A suit for specific performance of a contract to grant a lease was valued at Rs 1 00 for determining jurisdiction of the Court and at Rs 32 for purpose of payment of Court fees this being the amount of rent annually payable under the contract of tenancy sought to be enforced A second appeal arising out of the suit was filed in the High Court and valued at Rs 32 only On a reference under sec 5 of the Court Fees Act *Held* that the court fees paid were sufficient The value for the payment of Court fees was correctly ass ed at Rs 32 under sec 7 of the Court Fees Act and the value for the purpose of jurisdiction was consequently only Rs 32 under sec 8 of the Suits Valuation Act The right construction of sec 8 of the Suits Valuation Act is that the valuation for the purpose of jurisdiction should in the cases mentioned there follow and be the same as valuation for Court fees The procedure to be adopted in cases of this character is to value the suit first for payment of Court fees in accordance with the rule embodied in sec 7 sub sec (X) cl (c) of the Court Fees Act and then to adopt the value so determined for the computation of Court fees as the value for purposes of jurisdiction SAILENDRA NATH MITRA v RAM CHANDRA PAL
25 C W N 768

——— s 11—

See BENGAL AGRA AND ASSAM CIVIL COURTS ACT 1887 4 Pat L J 447

See CIVIL PROCEDURE CODE 1908 s 104 O XLIII R 10 (a)
I L R 36 All 58

See RESTITUTION OF CONJUGAL RIGHTS
I L R 34 Bom 236

See VALUATION OF SUIT
5 Pat L J 397

SUMMARY CESS

See LIMITATION ACT 1877 SCH II ART 144 I L R 36 Bom 174

SUMMARY DISMISSAL

See CIVIL PROCEDURE CODE 1908 O XLI R 11 I L R 36 Bom 116

SUMMARY EVICTION

See LAND REVENUE CODE (BOM ACT V OF 1879) s 79A
I L R 35 Bom 72

SUMMARY JURISDICTION

See COMPANIES ACT (VI OF 1882) s 72
I L R 35 All 173

SUMMARY PROCEDURE

See CRIMINAL PROCEDURE ss 200 to 265

——— On negotiable instruments—

See CIVIL PROCEDURE CODE (1908) O XXXVII

See ATTORNEY AND CLIENT
I L R 46 Calc 249

SUMMARY PROCEEDINGS

See CONTEMPT OF COURT
I L R 41 Calc 173

See PROFESSIONAL MISCONDUCT
I L R 41 Calc 113

SUMMARY RELIEF

See COMPANY I L R 47 Calc 901

SUMMARY SETTLEMENT

See INAM LANDS I L R 38 Bom 272

See KADIM INAMDAR
I L R 42 Bom 112

——— Inam Dharmadaya—Sanads—Bombay—

See BOMBAY REVENUE JURISDICTION ACT (X OF 1876) s 12
I L R 45 Bom 463

SUMMARY SETTLEMENT ACT (BOM ACT VII OF 1863)

See REGULATION XVII OF 18?
I L R 38 Bom 272

——— *Land granted to a mosque—At summary settlement land continued to the mosque on payment of annual quit rent—Alienation of land by mutavalis of the mosque—Full assessment cannot be demanded by Government from the alienee* At the time of the summary settlement held in 1879 the land in dispute which had been granted to a mosque was continued on payment to Government of an annual quit rent under the Sanad which ran as follows — By Act VII of 1863 of the Bombay Legislative Council is hereby declared that the said land subject to the payment to Government of an annual quit rent of Rs 17 8 0 seventeen and annas eight only shall be continued for ever by the British Government as the endowment property of the Jumma Masjid without increase of the said quit rent but on the condition that managers thereof shall continue loyal and faithful subjects of the British Government Nearly sixty years before suit the then manager of the mosque alienated (it was assumed that the alienation was unlawful) the land to a stranger From 1912 onwards the Government levied full assessment on the land in the hands of the alienee A suit having been brought to recover the extra assessment so levied *Held* by SHAH and HAYWARD JJ (HEATON J dissenting) that the provisions of the Summary Settlement Act 1863 and the terms of the Sanad pointed to the conclusion that the condition that the land must continue to be the property of the mosque in order that the holder for the time being may have the benefit of the exemption from settlement allowed by the Sanad could not be implied and that the Government did not get any right

SUMMARY SETTLEMENT ACT (BOM ACT VII OF 1863)—*contd*

under the Sanad to levy the full assessment even when the property ceased to be the endowment property otherwise than by a lawful alienation SHANKARLAL TAPIDAS *v* THE SECRETARY OF STATE FOR INDIA (1918) I L R 43 Bom 583

SUMMARY TRIAL

See WORKMAN'S BREACH OF CONTRACT ACT 1859 s 2 I L R 43 All 281

——— outside British India—

See EUROPEAN BRITISH SUBJECT I L R 39 Mad 942

1 ——— *Recording of evidence in non appealable cases—Destruction by Magistrate of his notes of the evidence—Criminal Procedure Code (Act V of 1898) ss 263 and 355* Ss 263 and 355 of the Criminal Procedure Code must be read together If the Magistrate is unable at the commencement of the trial to determine whether the proper sentence to be passed should be an appealable one or not he must make a memorandum of the substance of the evidence of each witness as his examination proceeds But if he can at this stage determine that the sentence will be in any event non appealable he need not record the evidence If however he actually does so the notes of the evidence form part of the record of the case and cannot be destroyed by him Where the Magistrate had destroyed such record the High Court was unable to form an opinion on the propriety of the conviction and set it aside *Jagdish Prasad Lal* v *Emperor 21 Cr L J 229* approved SATISH CHANDRA MITRA *v* MANMATHA NATH MITRA (1920) I L R 48 Calc 280

2 ——— *Charge if should be drawn up in* Although in a summary trial the Magistrate need not frame a formal charge still he must specify the offence charged in such a way as will give sufficient notice to the accused JHARU SHEIKH *v* KING EMPEROR (1912) 16 C W N 696

3 ——— *Warrant Case—Omission to examine the accused—Charge—Accusation of house breaking by night to commit theft—Finding of different intent—Necessity of charge specifying the same—Criminal Procedure Code (Act V of 1898) ss 263 342* S 263 of the Criminal Procedure Code is governed by s 342 and there must therefore be an examination of the accused in all warrant cases the words if any in cl (g) of the former section not being applicable to such cases Where the case against the accused is one of theft or house breaking to commit theft and the Magistrate finds that it has broken down but that there is another object apparent on the evidence it is his duty to give the accused notice of that by drawing up a charge clearly stating what it is that he is accused of doing MAHAMED HOSSEIN *v* EMPEROR (1914) I L R 41 Calc 743

SUMMONS

See CIVIL PROCEDURE CODE 1908—

O v r 15 I L R 35 All. 556
I L R 33 All. 649

SUMMONS—*contd*

See PENAL CODE (ACT XLV OF 1860) s 173 I L R 40 All. 577

See THIRD PARTY NOTICE. I L R 45 Bom. 111

——— non service of—

See RIGHT OF SUIT I L R 37 Calc 197

——— service of—

See FRAUD I L R 32 All. 145

See PRACTICE I L R 35 Bom. 213

——— to accused to produce document or thing

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 94 I L R 37 Mad. 112

——— *Service of summons—Indian Marine Service—Civil Procedure Code (Act V of 1908) O V rr 15 17 and 27—Ex parte decree—Officer or mechanic in the employ of the Indian Marine* Under the Civil Procedure Code an officer or mechanic in the employ of the Indian Marine is subject to exactly the same rules as any other person as regards service of summons They come within the operation of rules 15 and 17 of O V of the Code of Civil Procedure INTU MEAH MISTRY *v* DARBUKSH BHUIYAN (1914) I L R 42 Calc 67

SUMMONS CASE

——— Magistrate bound to examine accused before convicting him—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 342 I L R 45 Bom 642

——— procedure that of warrant case—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 256 I L R 39 Mad. 503

SUMMONS SERVICE OF

——— *Substituted service—Due and reasonable diligence—Practice—Appeal from order refusing to set aside ex parte decree—Civil Procedure Code (Act V of 1908) O V rr 19 17 O IX r 13—Costs* For substituted service of summons to be effective it is essential that the requirements of the rules of the Code should be strictly observed Knowledge of the institution of the suit derived by the defendant *aliunde* is not sufficient in the absence of proper service of the summons Where the serving officer on three separate occasions went to the place of business of the defendant s firm under the erroneous belief that it was his ordinary place of residence and asked for the defendant and on not finding him posted a copy of the writ of summons on the outer door of the premises *Held* that this was not sufficient service Proper enquiries and real and substantial effort should be made to find out when and where the defendant is likely to be found *Cohen* v *Nursing Dass Auddy I L R 19 Calc 201* followed KASSIM EBRAHIM SALEJI *v* JOHURMULL KHEMKA (1915) I L R 43 Calc. 417

——— Under the Civil Procedure Code an officer or mechanic in the employ

SUMMONS SERVICE OF—*contd*

of the Indian Marine is subject to the same rules as regards service of summon They come within rr 16 and 17 of O V Intu Meath Mistry v Darbur H Bhutan
I L R 42 Calc 67

SUMMONS TO PRODUCE DOCUMENTS

——————— *Books of a firm—Materials on which such order may be made—Complaint and subsequent application for summons and examinations of complainant thereon—Propriety of service—Directions to Magistrate to decide what books were necessary for the purpose of the enquiry—Directions as to mode of inspection—Criminal Procedure Code (Act V of 1898) s 94* Where a complaint was made against a certain person before the Chief Presidency Magistrate who examined the complainant and directed a local investigation and an application was made thereafter by the complainant for summons under s 94 of the Criminal Procedure Code and granted after his further examination thereon —*Held* that there were sufficient materials on which an order under s 94 could properly be made and that it was so made Where in obedience to a previous order of the High Court the Magistrate s head clerk delivered certain books to *M* who gave a receipt for them as the agent of the petitioner but the latter further appointed *Q* without the knowledge of the Magistrate to take them over immediately from *M* —*Held* that the summons under s 94 was properly served on *M* and even if it was not so that the High Court would not order the return of the books to the petitioner but would direct the issue of an amended summons to be served on him The High Court directed the Magistrate to inquire and determine in the presence of the petitioner how many and which of the books were necessary for the purposes of the complaint before him taking into consideration any under taking given by the petitioner for production of the books as required but which he now ordered to be returned The Magistrate was further directed to give definite instructions as to when and where and by which officer the inspection was to be held The inspection was also directed to be made in the presence of the petitioner T R Pratt v Emperor (1920)

I L R 47 Calc 647

SUNDARBANS

See Bengal Tenancy
I L R 48 Calc 473

——————— *Lessee from Government of lands in—Permanent tenure granted by lessee—Condition that rent will not abate in case of diluvion if valid—Onus of proof—Reg III of 1828 s 13* Where tenants took a permanent lease of lands in the Sundarbans stipulating that we shall not object to the payment of rent on the ground of drought inundation death desertion overflow of salt water diluviation by river etc *Held* that it was for the tenants if they impeached this stipulation as being inconsistent with the provisions of s 52 of the Bengal Tenancy Act to establish that the tenure was not situated in a permanently settled area S 13 of Reg III of 1828 does not ignore or invalidate any permanent settlements made by Government before 1828.

SUNDARBANS—*contd*

It also authorises similar settlements subsequentl made by Government It is therefore erroneous to hold that there could not be a permanent tenure in the Sundarbans That the stipulation barred not only a plea of reduction of rent in defence but also a suit for abatement of rent Khettramani Dasi v Jiban Krishna Kundu (1914) 19 C W N 546

SUNNIS

See Mahomedan Law—Divorce
I L R 36 All 458

See Mahomedan Law—Dower
I L R 41 All 562

See Mahomedan Law—Gift
I L R 34 All 478

SUPERFLUOUS MATTER

See Costs I L R 47 Calc 415

SUPERINTENDENCE

See Cross Examination
5 Pat L J 545

See Defence of India Act 1915
3 Pat L J 581

See Dismissal for Default
4 Pat L J 277

See Jurisdiction 4 Pat L J 154

See Receiver 4 Pat L J 20

——————— High Court Powers of—

See Government of India Act 1915 s 107 1 Pat L J 36 465 and 576

——————— Interlocutory order—Interference with—

See Civil Procedure Code 1908 s 32
5 Pat L J 550

SUPERINTENDENT

See Trust I L R 41 Calc 19

SUPERSTITIOUS BELIEF

See Penal Code s 304
25 C W N 676

SUPPLEMENTARY AFFIDAVIT

See Contempt of Court
I L R 41 Calc 173

SUPPORT

——————— right of, for a building—

See Easement I L R 37 Mad. 527

SUPREME COURT

See Contempt of Court
I L R. 41 Calc 173

SURAT DISTRICT

See DESAIGIRI ALLOWANCE
I L. R 45 Bom 948

SURETY

See CIVIL PROCEDURE CODE 1908
ss 55 AND 145 5 Pat L. J 417

O XXXVIII R 5 ss 115 145
I L. R 41 Bom 402

See CONTRACT ACT 1872—

ss 126 140 I L R 42 All. 70

ss to 128 147
See CRIMINAL PROCEDURE CODE (V OF 1898) s 122 14 C W N 709

See EXECUTION OF DECREE
2 Pat L. J 197

See FITNESS OF SURETY GROUNDS OF
I. L. R 44 Calc 737

See HINDU LAW (MITAKSHARA)
3 Pat L. J 396

See MORTGAGE I L. R 45 Calc 702

See PROMISSORY NOTE
I L. R 38 Mad. 680

———— attachment of property —

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 145 O XXXII R. 6
I L. R 41 Mad 40

———— discharge of—

See CONTRACT ACT (IX OF 1872) s 134 137 I L R 39 Bom 52

See EXECUTION OF DECREE
I. L. R 41 Calc 50

———— fitness of—

See CRIMINAL PROCEDURE CODE ss 110 120
25 C W N 140

See SECURITY FOR GOOD BEHAVIOUR.
I. L. R 37 Calc 91 446

———— for insolvent's debt whether "creditor"—

See PROVINCIAL INSOLVENCY ACT (III OF 1907) s 37 I. L. R 40 Mad. 783

———— liability of—

See HINDU LAW—SURETY
I L. R 38 Mad 1120

See CRIMINAL PROCEDURE CODE, 1898 s 514 I. L. R 2 Lah 204

See PRINCIPAL AND SURETY
I. L. R. 44 Calc 978

———— rights of, against principal debtor—

See NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881) ss 30 47 59 74 94
I. L. R. 39 Mad. 965

SURETY—*contd*

———— application to enforce liability against—

See CIVIL PROCEDURE CODE 1908, s 145.
I L. R 44 Bom. 34

———— security for good behaviour—order rejecting sureties—

See CRIMINAL PROCEDURE CODE ss 110 AND 122 I L R 44 Bom. 385

———— Written agreement by surety that he would not claim his legal rights—

See CONTRACT ACT (IX OF 1872) s 133.
I L. R 45 Bom 15

1 ———— Surety to Administration Bond—*Right of surety to apply for cancellation of bond on administration being completed* A surety to an administration bond cannot when the administration is complete and the bond becomes void and ineffective apply to the Court to have the bond vacated and to be discharged from his suretyship There is nothing in the Indian Succession Act or in the Rules of Practice to authorise such an application *In the matter of* ARTHUR GERALD NORTON KNIGHT (1909)
I. L. R 33 Mad. 373

2 ———— Father's liability as surety—*Hindu Law—Whether son is liable to pay debt incurred by father as surety* Under the Hindu Law a son is liable for a debt incurred by his father as a surety *Tukarambhat v Gangaram Mulchand Gujar I L R 23 Bom 454* and *Maharaja of Benares v Ramkumar Misir I L R 6 All 611* referred to RASIK LAL MANDAL v SINGHESWAR RAI (1912) I L. R 39 Calc 843

3 ———— Promissory note executed by agent after settlement of accounts—*Representatives in interests of and surety for deceased agent by principal—Surety if entitled to go behind promissory note and have account taken in his presence—Set off if can be pleaded—Interest when to run from* The plaintiffs sued for the recovery of money due on a promissory note executed by their deceased agent *S* in their favour after settlement of accounts for the sum due to them The defendants who were the brothers of *S* were sued both in their character as representatives in interests of *S* and as sureties for him under a surety bond executed by them in favour of the plaintiffs. The defendants disputed the amount due and claimed as set off the amount payable by the plaintiffs to their brother on account of salary The Court after taking account made a decree in favour of the plaintiff for a smaller sum than that mentioned in the promissory note *Held* that the principle that as between a principal and an agent settled accounts will not be re opened unless fraud or undue influence is established is limited in its application only as between a principal and an agent and as the defendants were sued not only as representatives in interest of the deceased agent but also as sureties they were entitled to go behind the promissory note and to have the accounts examined in their presence The defendants were also competent to plead a set off S 111 of the Civil Procedure Code (Act XIV of 1882) does not take away from parties any right to set off whether legal or equitable which they would have independently of that Code

SURETY—*contd*

and such right exists not only in cases of mutual debts and credits but also when cross demands arise out of the same transaction or are so connected in their nature and circumstances as to make it inequitable that the plaintiff should recover and the defendant should be driven to a cross suit *Held* further that the plaintiffs were entitled to interest by way of damages from the date of the institution of the suit and not merely from the date of the decree of the Court of first instance KALANUND SINGH *v* GIR PROSAD DAS (1913) **17 C W N 1060**

4 ———— **Surety bond for judgment-debtor's appearance in Court**—*Death of judgment debtor before time of appearance—Liability of surety* Where the decree holder applied to enforce the condition of an undertaking given as surety that the judgment debtor would apply in insolvency within a specified time and that he would appear in Court whenever he was required to do so and the judgment debtor died before the time of appearance had arrived *Held* that the decree holder lost his remedy against the surety The event which occurred was not in contemplation of either party and therefore put an end to the obligation that there was under the contract NABIN CHANDRA HAZARI *v* MRITUNJOY BARRIK (1913) **17 C W N 1241**

5 ———— **Fitness—Grounds of rejection of sureties**—*Reasonableness of grounds—Pecuniary fitness—Want of control over principal—Criminal Procedure Code (Act V of 1898) s 122* The grounds on which a Magistrate has power to refuse to accept a security under s 122 of the Criminal Procedure Code must be such as are valid and reasonable in the circumstances of each case as it arises *In re Sooboddhee 22 W R Cr 27* followed *Ram Pershad* v *King Emperor 6 C W N 593* and *Adam Sheikh* v *Emperor I L R 35 Calc 400* commented on *Jalil* v *Emperor 13 C W N 80 Jafar Ali Panjal* v *Emperor I L R 37 Calc 416* referred to Where the Magistrate found that the sureties who were the brothers of a person bound down under s 110 of the Code were pecuniarily fit but that the latter was a notorious dacoit and that there was a consensus of opinion in the neighbourhood that they would not be able to keep him in control *Held* that the ground of their rejection was not unreasonable in the circumstances EMPEROR *v* ASIRADDI MANDAL (1914)

I L R 41 Calc 764

6 ———— **Surety for an administrator of estate if may be discharged or substituted**—*Surety creating charge on his immoveable property release of charge—Surety bond discharge of and substitution—Administration account if may be examined by Court* Letters of Administration were granted to the estate of the deceased *K* a Hindu governed by the Dayabhaga law to *R* one of his first cousins who for purposes of such administration was also appointed guardian of deceased's infant son and *R's* two brothers stood surety for the administrator The estate being a very large one the Court required the sureties to charge their immoveable properties in the surety bond besides making them personally liable The infant having died without issue and intestate his paternal grand mother succeeded to the estate as his heir *R* there upon applied to Court stating that he had tendered an account of the estate as administered by him to the lady and that she had the same examined by her constituted attorneys and that they were satisfied with the account and that the residue of the estate had been made over to her and prayed that the sureties be discharged and the charge on their immoveable property be also discharged The Court ordered that on the lady's constituted attorneys filing a verified certificate together with the account or abstract thereof stating that they had examined and found it correct and on the administrator filing the receipts for the debts paid to the satisfaction of the Registrar the surety bond creating a charge on the immoveable properties of the sureties would be discharged conditional upon the sureties executing a fresh security bond making themselves personally liable for the administration of the estate by the petitioner *Raj Narain Mukerjee* v *Ful Kumari Debi I L R 29 Calc 68* referred to The account of the administrator need not be investigated by the Court there being no procedure or practice for doing so KANAI LAL KHAN *In the goods of* (1913)

18 C W N 320

7 ———— **Rejection of—only on Police report**—*without judicial enquiry into their fitness Inquiry to be held by the Magistrate passing the order for security—Criminal Procedure Code (Act V of 1898) ss 118 122* Sureties tendered by a party bound down under s 118 of the Criminal Procedure Code should not be rejected on a police report as to their fitness but only after a judicial inquiry under s 122 and by the Magistrate who has passed the order for security AKBAR ALI MAHOMED *v* EMPEROR (1914) **I L R 42 Calc 706**

8 ———— **Bail bond**—*Forfeiture on failure of accused to appear—Suit by surety against third person upon promise to indemnify—Contract legality of* A bail bond having been forfeited owing to the failure of the accused to appear the surety sued a third person who had agreed to indemnify the surety for recovery of the amount forfeited *Held* that the contract to indemnify was illegal and could not be enforced PRASANNO KUMAR CHUCKERBUTTY *v* PROKASH CH DUTT (1914) **19 C W N 329**

9 ———— **Duty of Magistrate to enquire into fitness of**—*each surety on evidence taken by him—Delegation of enquiry to the police or others—Rejection of sureties on a police report—Ground of rejection—Want of control—Criminal Procedure Code (Act V of 1898) s 122* Under s 122 of the Criminal Procedure Code a Magistrate must personally hold a separate inquiry as to the fitness of each surety and decide the matter on evidence taken for the purpose and he cannot delegate to a police officer or other person the function entrusted by law to him alone *Suresh Chandra Basu* v *Emperor 3 C L J 575 In re Abdul Khan 10 C W N 1027 Akbar Ali Mahomed* v *Emperor I L R 42 Calc 706* and *Kalu Mirza* v *Emperor I L R 3 Calc 91* followed *Queen Empress* v *Prithi Pal Singh (1898) All W N 154 Emperor* v *Tota I L R 25 All 2? Emperor* v *Ghulam Mustafa I L R 26 All 371 Emperor* v *Balwant I L R 27 All 293 Bhawani Singh* v *King Emperor 12 All L J 1004 King Emperor* v *Parmeshar 1 Cr L J 459 Ramanand Singh* v *King Emperor 8 Cr L J 344 Jai Gobind* v *Emperor 13 Cr L J 760 King Emperor* v *Kaim*

SURETY—*concld*

Khan, (1906) *Punj Rec 18 Imperator* v *Mahro 10 Cr L J 225 Emperor* v *Kamal 10 Cr L J 230 Imperator* v *Allahdino 12 Cr L J 410 Emperor* v *Haji Usman 11 Cr L J 497 Piru Abdulla* v *Emperor 15 Cr L J 378 Muhammad Ibrahim* v *Emperor 16 Cr L J 100* approved Want of sufficient control over the person bound down is not a valid ground for the rejection of a surety *Kalu Mir a* v *Emperor I L R 37 Calc 91 Siva Natha* v *Emperor 16 Bom L R 138 Queen Empress* v *Rahim Baksh I L R 20 All 206* and *Sheikh Zikri* v *Emperor 12 All L J 785* referred to RAYAN KHAN *v* EMPEROR (1916) **I L R 43 Calc 1024**

10(a) ———— Money paid by for non-production of judgment debtor—*if to be credited against decree—Judgment debtor arrested in execution of money decree and released on furnishing security bond—Money paid by surety for non production of judgment debtor whether to be credited against decree* A judgment debtor arrested and imprisoned in execution of a money decree was released on furnishing security for a sum of Rs 500 the surety undertaking to produce the judgment debtor in Court in the event of his not applying to be adjudicated an insolvent within a month The judgment debtor failed to apply for adjudication as an insolvent and the surety to produce him *Held* that the payment of Rs 500 made by the surety was to be credited against the decree and was not to be made available to the decree holder over and above his decretal amount *Koylash Chandra* v *Christo phoridi I L R 15 Calc 171 1887* referred to SURENDRA NATH GHOSE *v* KESHAB LAL GHOSE **25 C W N 36**

10 ———— Grounds of fitness—Pecuniary sufficiency—*Inability of control—Discretionary power of the Court on the facts of each case—Propriety of the order—Criminal Procedure Code (Act V of 1898) s 122* The question as to the fitness of a surety is one of discretion in each case and the High Court has only to consider whether the order of the Magistrate is reasonable and proper in the circumstances of the particular case *Jalil* v *Emperor 13 C W N 80 Jafar Ali Panjalia* v *Emperor I L R 37 Calc 446* and *Emperor* v *Asiruddi Mandal I L R 41 Calc 764* approved *Ram Pershad* v *King Emperor 6 C W N 593 Adam Sheikh* v *Emperor I L R 35 Calc 400* and *Rayan Khan* v *Emperor I L R 43 Calc 1024* not followed ABDUL KARIM *v* EMPEROR (1916) **I L R 44 Calc 737**

SURETY BOND

See DECREE **I L R 36 Bom. 42**

See SURETY

———— forfeiture of—

See CRIMINAL PROCEDURE CODE ss 514 516 **14 C W N 259**

———————— *Executed in favour of Court if prevents alienation of hypothecated property—Surety bond how enforceable—Transfer of Property Act (IV of 188) ss 6, 53—Alienation for consideration by vendor known to be indebted if bad as being in fraud of creditors—Participation in intention necessary* The execution of a security bond in favour of a Court has not the effect of

SURETY BOND—*contd*

avoiding all subsequent alienations The executant of the bond has a right to transfer the properties hypothecated in the surety bond subject to the lien created by him in favour of the Court When property is given in security and the security is sought to be enforced that should be done by bringing a suit under s 67 of the Transfer of Property Act and it makes no difference whether the security bond is in favour of a Court or a party to a suit The mere fact that a purchase of property which has the effect of defrauding or delaying the vendor s creditors was for good consideration is not enough to protect the purchaser It must also be shown that he acted in good faith But the mere fact of the indebtedness of the vendor or knowledge on the part of the purchaser that the sale may defeat or delay the creditors is not sufficient to negative the *bona fides* of the purchaser If there was good consideration and the intention to part with the whole interest is proved and it is not shown that the transfer was a mere cloak for retaining a benefit to the vendor it is valid against the creditors But if the object of the transferor is to defeat or delay his creditors and that object is known to the transferee and he aids and assists in its execution then the transfer is not in good faith KAMINI KUMAR POY *v* HIRA LAL PAL CHOWDHURY (1919) **23 C W N 789**

SURETY FOR GOOD BEHAVIOUR

———————— *Fitness of surety—Pecuniary qualification but not power of control—Grounds of rejection—Criminal Procedure Code (Act V of 1898) s 122* In determining the fitness of a surety under s 122 of the Criminal Procedure Code the first matter to be inquired into is his ability to pay the amount of the bond in case of default by the principal but there may be other matters also to be considered as grounds of objection which must be dealt with in each case as it arises *Where a surety is competent in a pecuniary sense the fact that he is not in a position to exercise control over the person bound down so as to ensure his good behaviour in future is not a sufficient ground for his rejection* *Ram Pershad* v *King Emperor 6 C W N 593 Adam Sheikh* v *Emperor I L R 35 Calc 400* and *Jalil* v *Emperor 13 C W N 80* referred to JAFAR ALI PANJALIA *v* EMPEROR (1910) **I L R 37 Calc 446**

SURVEY SETTLEMENT

See LAND REVENUE CODE (BOM ACT V OF 1879) s 3 CL. (20) AND s 217 **I L R 43 Bom 77**

SURFACE WATER

See PRESCRIPTION **14 C W N 825**

SURPLUS COLLECTIONS

———— suit for—

See MORTGAGE **I L R 33 All. 241**

SURPLUS SALE PROCEEDS

See ARREARS OF REVENUE **I L R 47 Calc 331**

See LIMITATION ACT 1908 s 31 **I L R 44 Mad. 823**

SURPRISE

——— doctrine of—

See RIGHT OF REPLY
I L R 43 Calc 426

SURRENDER

See CENTRAL PROVINCES TENANCY ACT 1898 *s* 35   8 Pat L J 88

See EXTRADITION I L R 47 Calc 37

See HINDU LAW—WIDOW
I L R 48 Calc 100
I L P 39 Mad 1035

See PATATI HOLDINGS
I L R 47 Calc 129

——— *Occupancy tenancy transfer of part of—Subsequent surrender of whole or part of tenancy* An occupancy *raiyat* who has transferred part of his non transferable holding is not competent to surrender to his landlord the portion so transferred either by surrender of that portion alone or by surrender of the whole inclusive *of such portion* SYED MOHSENUDDIN *v* BHAGOBAN CHANDRA SUTRADHAR (1920)
I L R 48 Calc 605

SURRENDER OR ABANDONMENT

——— of holding—

See MADRAS ESTATES LAND ACT (I OF 1908) s 80 ETC
I L R 38 Mad 608

SURVEY ACT

See BENGAL SURVEY ACT

See BOMBAY SURVEY AND SETTLEMENT ACT

See MADRAS SURVEY AND BOUNDARIES ACT

SURVEY MAP

See FOOTINGS I L R 38 Calc 687

See WASTE LANDS ACT
L R 43 I A 303

SURVEY SETTLEMENT

See BOMBAY LAND REVENUE CODE (BOM ACT V OF 1879) ss 3 (11) AND 217
I L R 34 Bom 686

——— Growth of sandalwood trees on occupancy lands subsequent to—

See FOREST ACT (VII OF 1878) s 75 CL (*c*) R
I L R 45 Bom 110

——— right of Inamdar to enhance assessment at end of period of settlement—

See BOMBAY LAND REVENUE ACT 1879 s 217   I L R 44 Bom 110
I L R 45 Bom 61

SURVIVING MEMBER OF COMMITTEE

——— suit by—

See RELIGIOUS ENDOWMENT
I L R 39 Calc 304

SURVIVORSHIP

See CIVIL PROCEDURE CODE O XXXVIII R 5
I L R 38 Bom 105

See HINDU LAW—PARTITION
I L R 37 Calc 703

See MARUMAKATAYAM LAW
I L R 34 Mad 387

SUSPENSE ACCOUNT

See INSOLVENCY I L R 34 Mad 125

SUSPENSION

See LEGAL PRACTITIONER
13 C W N 521

See LEGAL PRACTITIONERS ACT s 14
13 C W N 415
15 C W N 269

——— of Business—

See COMPANY I L R 47 Calc 654

——— of period—

See LIMITATION I L R 48 Calc 65

SUSPENSION OF RENT

See LANDLORD AND TENANT
14 C W N 446

SUSPENDED POLICE OFFICER

See WRONGFUL CONFINEMENT
I L R 47 Calc 818

SUSPICION

See FALSE INFORMATION
I L R 46 Calc 427

SYMBOLICAL POSSESSION

See LIMITATION I L R 36 Bom 373

See POSSESSION I L R 43 Bom 559

See RIOTING I L R 39 Calc 896

——— *Effect as between parties—Presumption of continuance of possession if conclusive* Delivery of symbolical possession is conclusive evidence as between the parties that possession was delivered but is not in the least conclusive evidence that the possession so delivered continued There may be a presumption that such possession would continue until the contrary was proved but that is all Where it was found that the plaintiff to whom symbolical possession was delivered never got actual possession the finding can only mean that the possession delivered did not continue at all so that Art 142 and not Art 144 of the Limitation Act applied to the case Where it appeared that the plaintiff had recovered rent decrees from raiyats within 12 years of the suit and the decrees were not open to question as collusive and fraudulent the plaintiff s possession *of the lands held by the raiyats through them* within the statutory period of limitation was established DEONANDAN PERSAD *v* UDIT NARAIN SINGH (1914)   18 C W N 940

SYNDICATE AND SENATE

——— respective powers of—

See SPECIFIC RELIEF ACT (I OF 1877) s. 45   I L R 40 Mad. 125

T

TACKING OF POSSESSION

——— Adverse possession—

See EVIDENCE ACT 1872 s 107
I L R 37 Mad 440

——— One trespasser cannot tack his wrongful possession to that of another—

See LIMITATION ACT (IX OF 1908) ARTS 142 AND 144 I L R 45 Bom 570

TAGAVI ADVANCE

See DEKKHAN AGRICULTURISTS RELIEF ACT (XVII OF 1879)
I L R 40 Bom 483

TALABI BRAHMOTTAR

See GRANT I L R 44 Calc 585

TALAB-I ISHHAD

See MAHOMEDAN LAW—PRE EMPTION
I L R 41 Bom 636

TALAB I MAWASIBAT

See MAHOMEDAN LAW—PRE EMPTION
I L R 41 Bom 636

See PRE EMPTION I L R 34 All 1

TALAK

See ITMAM I L R 47 Calc 979

See PARTITION I L R 46 Calc 236

See PUTNI REGULATION

——— delegation of—

See MAHOMEDAN LAW—DIVORCE
I L R 46 Calc 141

——— power of—

See MAHOMEDAN LAW—DIVORCE
I L R 46 Calc 141

TALAKNAMA

See MAHOMEDAN LAW—DIVORCE
I L R 44 Bom 44

TALUKDAR

See BOMBAY COURT OF WARDS (BOM ACT VI OF 1888) s 31
I L R 44 Bom 832

See GUJARAT TALUKDARS ACT (BOM ACT VI OF 1888) s 29E
I L R 43 Bom 44

See LAND REVENUE CODE (BOM ACT V OF 1879) ss 144 160
I L R 43 Bom 6

See OUDH ESTATES ACT (I OF 1869)
I L R 33 All 344

ss 8 10 I L R 38 All. 552

ss 8 AND 22 SUB s (*II*)
I L R 32 All 599

See TALUKDARS (GUJARATH) ACT

——— mortgage by—

See BROACH AND KAIRA INCUMBERED ESTATES ACT (XXI OF 1881) s 28
I L R 41 Bom 546

TALUKDAR—*contd*

——— transfer by—

See OUDH ESTATES ACT 1869 ss 2 AND 16 I L R 42 All. 4?2

1 ——— Rights of Talukdar—*Payment by relativ s of taluqdar holding sub proprietary rights on his estates—Rules framed by British Indian Association of Oudh for maintenance of such relatives—Basis of calculation of such payments in second and third generations—Jurisdiction of Rent Court* The question between the parties to this appeal was as to the true construction of certain rules framed in 1867 by the British Indian Association of Oudh and agreed to by the taluqdars making provision *inter alia* for maintenance for the relatives of the latter holding sub proprietary rights on their estates The portion of the rules applicable was as follows —This cla s will remain in possession of what they actually had at annexation rent free during their lifetime but subject to the payment in the second generation of ?5 per cent to the taluqdar and in the third 50 per cent and will not have transferable rights If such persons pay the Government revenue *plus* 10 per cent to the taluqdar they will have heritable rights in addition *Held* (affirming the decision of the Court of the Judicial Commissioner) that the bulk sum on which the percentages were to be calculated was the assumed rental which formed the basis for the ascertainment of the Government revenue payable by the Taluqdar (the Government revenue being half the assumed rental) This construction had the advantage of giving a fixed basis for calculation which was greatly in the interests of the taluqdars with reference to the charges on the property and enabled all parties concerned to understand year after year and to forecast their exact financial po ition Payments of ?5 and 50 per cent respectively on the gross rental demandable in each particular year together with 10 per cent in the sen e of the rules (as contended for by the appellant the taluqdar) besides being made on a varying ba is mi ht exceed not only the Covernment revenue but the entire receipt of rental actually obtained for particular years reducing greatly the rights of the relatives in possession a sub proprictors and rendering precarious their provi ion for maintenance A construction which would bring about such results was not warranted on a sound reading of the terms of the maintenance provisions The additional sum of 10 per cent payable to the taluqdar (at any rate by the third generation) for the provi ion f r maintenance of a heritable character might under the circumstances that the payments to the taluqdar might not be regular and that in any view the taluqdar s responsibility to the Government for the revenue was full and direct whether he received such payments or not be considered as a reasonable commission or insurance and had accordingly been sanctioned in the rules under construction as well as by the rules regarding sub settlement and other subordinate rights of property in Oudh scheduled in Act XXVI of 1866 The Court of Wards who represented the appellant during his minority made on account of maintenance certain payments to the respondent to which the appellant objected The Court of the Judicial Commissioner declined to open up that matter in the present suit holding that it is not within the province of a Rent Court to determine whether the maintenance was or was not payable and their Lordships of the Judicial

TALUKDAR—*contd*

Committee were of opinion that that was a right decision NAWAB ALI KHAN *v* WAHID ALI (1909) I L R 32 All. 92

2 ———— Settlement of Oudh—*Taluqdar settled with on terms as to which no evidence could be given—Second summary settlement—Villages included in taluqdar s estate and not recovered by payment of money due on account of them—Trustee or lien holder—Redemption barred by Act No I of 1869 s 6—Adverse possession* This affair related to certain villages in Oudh which belonged prior to the annexation of that Province to the widow of the predecessor in title of the appellants and were under some arrangement of the exact nature of which there was no evidence included in the estate of the ancestor of the respondent a taluqdar in whose possession they were found at the settlement in 1859 The widow at that time applied as owner for the settlement of the villages Her claim was resisted by the agent of the taluqdar on the ground that he was entitled to possession until sums paid by him on account of the villages were paid off and the settlement was made in accordance with possession the widow being directed by the settlement officer to proceed by separate application to get the villages released by payment of the money due by her but she took no steps to get the property released and when in 1867 she applied for regular settlement of the villages her claim was dismissed on 31st October 1868 on the ground that they were included in the sanad granted by Government to the taluqdar In a suit brought in 1905 by representatives of the widow for possession of a share of the property on the ground that the settlement proceedings in 1859 constituted the taluqdar either a mortgagee or a trustee on behalf of the widow it was admitted that the claim for redemption was barred by s 6 of Act No I of 1869 *Held* (upholding the decision of the Court of the Judicial Commissioner) that there was no warrant for the contention that the correlative obligation that lay on the taluqdar to release the villages on payment of the money due on account of them created a trust or constituted him a trustee for the widow who took no steps to comply with the directions of the settlement officer and allowed the taluqdar to remain in possession and set up a distinctly adverse title in 1867 when she applied for regular settlement *Hasan Jafar* v *Muhammad Askari I L R 26 Calc 879 L R 26 I A 229* distinguished From the date of the dismissal of her application in 1868 possession was adverse to her and the suit not having been brought until 1905 was clearly barred by lapse of time MUHAMMAD BAKAR *v* MUHAMMAD BAKAR ALI KHAN (1910) I L R 33 All 125

3 ———— Will of Talukdar—*Oudh Estates Act (I of 1869)—Sanad executed by taluqdar through the medium of family friends—Whether document was testamentary or non testamentary—Registration of document—Indian Registration Act III of 1877 ss 17 and 49—Instrument affecting immoveable property—Ground not specially taken in argument in courts below—Costs* A taluqdar in 1862 in compliance with the directions issued by the Government made a declaration that I wish to file this application that after my death Umrao Singh the eldest son (*sic*) my estate should continue in my family undivided in accordance with the custom of the *rajgaddi* and that the younger brothers

TALUKDAR—*concld*

shall be entitled to get maintenance from the *gaddinashin* *Held* (affirming the decision of the Courts in India) that it was a valid testamentary deposition by the taluqdar of his estate in favour of his eldest son The same taluqdar having three sons with one of whom he was on bad terms executed in 1884 the following document which he called a sanad —

For Prithipal Singh who is my son I fix Rs 300 annually so that he may maintain himself Besides this whatever I may give I will give equally to the three sons except provisions which they may take from my godown (*kothar*) *The marriage and gauna* expenses of the sons and daughters shall be borne by me After me the three sons are to divide the property moveable and immoveable This has been settled through the mediation of Thakur Jote Singh of Bihat and Thakur Ratan Singh of Rojah *Held* (reversing the decision of the Judicial Commissioner s Court) that it was a non testamentary instrument It was a family arrangement arrived at by the mediation or arbitration of two gentlemen friends of the family and interested in its honour and it was plainly intended to be operative immediately and to be final and irrevocable *Held* also that it required to be registered under s 17 of the Registration Act (III of 1877) in order to make it effective as regards immoveable property and being unregistered was so far void On an objection that it was not open to the appellants to contend that the document was not a will the fact that they had throughout the proceedings in the Courts below taken conflicting views as to the nature of the document was held not to preclude their Lordships from considering and determining the real question in the case and that they were bound to give effect to the real character of the document Neither party had pursued a consistent course in the matter Their Lordships permitted the appellants therefore to raise that contention but in allowing the appeal on that ground they did so without costs to the appellants on this appeal or in the Courts below UMRAO SINGH *v* LACHMAN SINGH (1911) I L R 33 All 344

TALUQA

See HINDU LAW—INHERITANCE I L R 40 All. 470

See OUDH ESTATES ACT 1869 s 14 I L R 43 All. 245

See TALAK

TALUQDARI PROPERTY

See COMPROMISE I L R 47 Calc 932

See OUDH ESTATE ACT 1869 s 14 I L R 43 All 245

———— Incumbrance by Talukdar and his son—

See GUJARAT TALUKDARS ACT (BOM ACT VI OF 1888) s 31 I L R 44 Bom. 832

———— *Primogeniture sanad—Construction— Successors* A *sanad* granted in 1862 to a Muhammadan lady conferred a taluqdari estate in Oudh upon her and her heirs for ever subject to the payment of revenue it provided in the event of your dying intestate or any of

TALUQDARI PROPERTY—*contd*

your successors dying intestate the estate shall descend to the nearest male heir according to the rule of primogeniture but you and all your successors shall have full power to alienate the estate The *sanad* further made it a condition that the grantee should promote the agricultural prosperity of the estate and maintain all subordinate rights and concluded as long as the above obligations are observed by you and your heirs in good faith so long will the British Government maintain you and your heirs as proprietors *Held* that the word successors' in the *sanad* meant those designated parties who would succeed under the *sanad* upon an intestacy and that the estate having passed by demise out of the line of succession designated its further devolution was according to Muhammadan law GHULAM ABBAS KHAN *v* AMAT UL FATIMA I L R 43 All 297

TALUQDARI SETTLEMENT OFFICER

See GUJARAT TALUKDARS ACT (BOM ACT VI OF 1888 AS AMENDED BY BOM ACT II OF 1905) ss 29 29B (*1*) (*2*) (*3*) AND 29F I L R 38 Bom 604

TALUQDARI VILLAGE

——— Power of district Magistrate to appoint inferior village police—

See BOMBAY VILLAGE POLICE ACT VIII OF 1867 s 9 I L R 44 Bom 377

TANK

See ESTOPPEL I L R 39 Calc 439

TANKHAS

——— Tankhas granted by the Maharaja of Burdwan are heritable allowances in the nature of property and therefore assignable LALA MUKTI PROKASH NANDE *v* SRIMATI ISWARI DEI DEBI 24 C W N 938

TARWAD

See MALABAR LAW

I L R 36 Mad 591

I L R 39 Mad 317

——— *Presumption as to ownership of property acquired in the name of junior member of tarwad—Presumption of fact and not of law* No presumption of law can be raised as to whether properties acquired in the name of a junior member of a tarwad belong to him or to his tarwad Any presumption to be raised is one of fact GOVINDA PANIKKER *v* NANI (1913)

I L R 36 Mad 304

TAULIATNAMAH

——— testamentary character of—

See MAHOMEDAN LAW—WAKF

I L R 46 Calc 13

TAX.

See ADEN SETTLEMENT REGULATION (VII OF 1900) s 13 I L R 40 Bom 446

See ASSESSMENT I L R 42 Bom 692

See CANTONMENTS ACT 1880 s 22

I L R 38 Bom 293

TAX—*contd*

See COSTS I L R 39 Bom 383

I L R 40 Bom 583

———, to recover money levied as—

See LIMITATION ACT 1877 SCH II ARTS 2 61 62 120 I L R 32 All 491

TAXATION OF COSTS

See BOMBAY REGULATION II OF 1827 s 52 I L R 37 Bom 303

See COSTS I L R 40 Bom 583

I L R 45 Bom 1234

——— Power of High Court to give direction as to how costs should be taxed—

See BOMBAY REVENUE JURISDICTION ACT (X OF 1876) s 12

I L R 45 Bom 1177

TAXING JUDGE

——— reference by—

See COURT FEES ACT (VII OF 1870) ss 5 AND 7 I L R 33 All 90

TAXING OFFICER

See APPEAL VALUATION OF

I L R 37 Calc 914

See COURT FEES 3 Pat L J 413

See COURT FEES ACT (VII OF 1870) ss 5 AND 12 I L R 32 All 59

TEA

——— *Tea or tea dust whether an article of food or drink Calcutta Municipal Act (Beng III of 1899) s 495* Tea or tea dust is an article of human food or drink within the meaning of s 495 of the Calcutta Municipal Act (Beng III of 1899) *Hinde* v *Allmond* *3 J P 151* explained and distinguished Definition of *food* in the Sale of Food and Drugs Act (38 & 39 Vic c 63) s 2 as amended by 62 & 63 Vic c 51 s 26 adopted CORPORATION OF CALCUTTA *v* PAGLI (1919) *I L R 47 Calc 53*

TEA GARDEN

See INCOME TAX I L R 48 Calc 161

TEISHKHANA *PAPER*

——— *Evidence—Official record—Road-cess returns—Bengal Cess Act (IX of 1880) s 95—Road cess return filed by a co sharer landlord and assessment made on the basis of it—Whether such return is admissible in evidence against the other co sharers* *Teishkhana* paper is a register kept for the information of the Collector but it is in no sense an official record therefore before a *teishkhana* paper could be used in evidence it must be proved that it had been kept in due course by the registered *patwari* *Baijnath Singh* v *Sukhu Mahton I L R 18 Calc 531* and *Samar Dasadh* v *Juggul Kishore Singh I L R 23 Calc 366* distinguished Persons interested to the extent of a one *fourth share* of the superior interest filed a road cess return under the provisions of the Bengal Cess *Act* and they stated therein as they were bound to do under the law the names of the tenants in occupation of specific lands The statement which they made was against their interest No similar return was filed by the

TEISHKHANA PAPER—*contd*

persons who repre ented the remaining three fourths share of the superior interest and the Revenue authorities a se ed the road ce as they were entitled to do upon the return filed by the one fourth shareholders *Held* that the return filed by the one fourth shareholders is admissible in evidence as against the remaining shareholders of the superior interest *Nusseerun* v *Gouree Sunkur Singh* '2 *W R 19*' distinguished S 95 of the Bengal Cess Act (IX of 1880) is not exhau tive It was intended to restrict the opera tion of s 21 of the Evidence Act and a road cess reutrn may be admi sible in evidence as against persons other than the one who has made the return CHALHO SINGH v JHARO SINGH (1911) I L R 39 Calc 995

"TEJI MANDI" TRANSACTIONS

See WAGERING I L R 37 Bom 264

TELEGRAM FROM COUNSEL

See BAIL I L R 38 Calc 293

TEMPLE

See IDOL I L R 36 Bom 135

See OFFERINGS TO A TEMPLE

See RELIGIOUS ENDOWMENTS ACT (XX OF 1863) s 3 I L R 38 Mad 1176

See TEMPLE COMMITTEE

See TRUSTEES OF A TEMPLE

——— dispute concerning—

See OFFERINGS TO DEITY I L R 38 Calc 387

——— Election of Mahant—

See HINDU LAW—ENDOWMENT I L R 37 All 298

——— Manager of —right to remove idol—

See HINDU LAW—RELIGIOUS OFFICE. I L R 44 Bom 466

——— right to worship in and to carry pro cession into street—

See CIVIL PROCEDURE CODE 1908 s 9 I L R 44 Bom 410

——— right to perform festival in a—

See HINDU LAW—CUSTOM I L R 40 Mad 1108

——— right of management of—

See PARTITION I L R 39 All 651

——— Suit by pujaris against guravs to recover offerings made at—

See CIVIL PROCEDURE CODE (ACT V OF 1908) ss 9 AND 92 I L R 45 Bom 683

TEMPLE COMMITTEE

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 92 I L R 40 Mad. 212

See RELIGIOUS ENDOWMENTS ACT (XX OF 1863) s 10 I L R 38 Mad 594

——— powers of—

See RELIGIOUS ENDOWMENTS ACT (XX OF 1863) s 3 I L R 38 Mad 1176
I L R 39 Mad 700

TEMPLE COMMITTEE—*contd*

——— vacancy in—

See RELIGIOUS ENDOWMENTS ACT (XX OF 1863) s 10 I L R 40 Mad 793

TEMPLE PROPERTY

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 92 I L R 42 Bom 742

TEMPORARY INJUNCTION

See CIVIL PROCEDURE CODE 1908 O XXXIX

See INJUNCTION 19 C W N 442

——— *Conditions of grant of temporary injunction—Co owners—Building by co owner—Undue advantage—Persison by High Court—Charter Act (24 & 25 Vict c 104) s 15* Where plaintiffs who were joint owners with defendants in respect of the property in suit sued them for declaration of title thereto and applied for an injunction to restrain the defendants from build ing on the land and the lower Appellate Court set aside the temporary injunction granted by the Court of first instance *Held* that sold occupa tion by one co sharer did not necessarily constitute ouster of the other co owners But a co owner who was with the tacit or express con ent of his co sharer in sole occupation of a portion of joint property was not entitled to change the nature of that po ession or to use the property in a mode different from that in which it had previou ly been used *Durjendra Narain Roy* v *Purnendu Narain Roy 11 C L J 189* followed *Held* further that in granting an *interim* injunction what the Court had to determine was whether there was a fair and sub tantial question to be decided as to what the rights of the parties were *Moran* v *Pute Steam Navigation Co 14 B L R 352* fol lowed The real point was not how these ques tions ought to be decided at the hearing of the cause but whether the nature and difficulty of the questions was such that it was proper that the injunction should be granted until the time for deciding them should arrive *Walker* v *Jones L R 1 P C 50* followed *Held* al o that under circumstances like the e the matter for considera tion at that stage was where did the balance of convenience li was it desirable that the *status quo* should be maintained or was it right that defend ants should be allowed to continue to alter the character of the land *Jones* v *Pacaya Rubber and Produce Company Ld* [1911] *1 K B 455* *Aynsley* v *Glover L R 18 Eq 544* *Currier s Com pany* v *Corbett Drew & Sm 355* *Newson* v *Pender 27 Ch D 4* referred to *Held* further that in a case of this de cription (where a subs tantial portion of the building had been erected after the defendants had become aware of the institution of the suit and of the application for temporary injunction) the Court would if neces sary proceed not only to grant a temporary in junction restraining the further erecti n of the building but al o to direct that the building already erected be taken down *Daniel* v *Fergu son [1891] 2 Ch 2* *Von Joel* v *Hornsey [1895] 2 Ch 774* referred to *Held* that the High Court was competent to interfere under s 15 of the Charter Act (24 & 25 Vict c 104) in view of the conduct of the defendants which amounted to a defiance of the authority of the Court I BAIL v SHAMSHER RAHMAN (1913) I L R. 41 Calc 476

TEMPORARY INJUNCTION—*contd*

2 ——————— *Temporary injunction subsequently dissolved—Order to be obeyed while it lasts—Order binding on party though it prohibits receiving payment from Government and Government authorised to pay by statute—Order operates in personam—Government's duty to ascertain and obey law—Question of construction question for Courts* Where in a suit for dissolution of partnership and accounts a Receiver of the partnership assets was appointed and a temporary injunction was granted restraining the defendants *inter alia* from receiving certain payments from Government and the Government which was no party to the suit made payments to one of the defendants in alleged exercise of power reserved to it by statute and subsequently the injunction was dissolved the plaintiff's case having failed *Held* that an injunction although subsequently discharged because the plaintiff's case failed must be obeyed while it lasts That although the injunction could not bind the Government not to pay or make the Government responsible for that obedience to the law which the Court was entitled to expect the man who received it breach of the order was guilty of a contempt in no way cured by the payment by Government The non existence of any right to bring the Crown into Court such as exists in England by petition of right and in many of the Colonies by the appointment of an officer to sue and be sued on behalf of the Crown does not give the Crown immunity from all law or authorise the interference by the Crown with private rights at its own mere will There is a well established practice in England in certain cases where no petition of right will lie under which the Crown can be sued by the Attorney General *Dyson* v *Attorney General [1911] 1 K B 410* and *Burghes* v *Attorney General [1912] 1 Ch 173* referred to It is the duty of the Crown and of every branch of the Executive to abide by and obey the law If there is any difficulty in ascertaining it the Courts are open to the Crown to sue and it is the duty of the Executive in cases of doubt to ascertain the law in order to obey it not to disregard it The Government in this case having made the payment with notice of the Court's order *Held* that although with regard to the payments made under statutory powers the action of the Executive might be justifiable the question whether any particular sum mentioned in the contract in suit was payable as for labour and supply (so as to be within the Government's power to pay under the statute) was a question of construction and therefore of law for the Courts That the proper course in the present case for the Executive would have been either to apply to the Court to determine the question of construction of the contract and to pay accordingly or to pay the whole amount over to the Receiver and to obtain an order from the Court on the Receiver to pay the sums properly payable according to the true construction of the contract EASTERN TRUST COMPANY v MACKENZIE MANN & Co LD (1915) 20 C W N 457

3 ——————— *When may it be granted —Balance of convenience to be considered—Irreparable injury — Claim of right* Upon an application for *interim* injunction it is sufficient if the plaintiff makes out a *prima facie* case in support of the title asserted by him Where a plaintiff who is out of possession claims possession the Court will not grant injunction against a defendant in possession under a claim of right unless the threatened injury would be irreparable It is only in cases where property which it is essential should be kept in its existing condition during the pendency of the suit is in danger of being wasted damaged or alienated that the Court ought to interfere The plaintiff must show that the interference of the Court is necessary to protect him from irreparable or at least serious injury before the legal right can be established at the trial By the term irreparable injury however it is not meant that there must be no physical possibility of repairing the injury all that is meant is that the injury would be a material one and one not adequately reparable by damages Money compensation may not be an appropriate and adequate remedy in every case of injury relating to immoveable property and the question of irreparable injury depends upon the circumstances of each case *Lowndes* v *Bettle L J 33 Ch 451 Kesho Prasad Singh* v *Srinibash Prasad Singh I L R 38 Calc 491 The Mogul Steamship Co* v *M Gregor Gow & Co 15 Q B D 476 Hilton* v *The Earl of Granville 1 Cr & Ph 283 Baddam* v *Dhunput Singh 1 C W N 429 Krehl* v *Burrell L R 7 Ch D 551 Hemanta Kumar Roy* v *Baranagore Jute Factory Co 19 C W N 442* and *Israil* v *Shamser Rahman I L R 41 Calc 436* referred to BEGG DUNLOP & Co v SATISH CHANDRA CHATTERJEE (1919) I L R 46 Calc 1001

TENANCY

See RENT I L R 41 Calc 347

See SALE I L R 45 Calc 294

——————— determination of—

See LANDLORD AND TENANT I L R 38 Mad. 710

——————— division of—

See LANDLORD AND TENANT 14 C W N 335

——————— From year to year—*Determination of annual tenancy—Notice to quit* Ordinarily unless there is an express agreement for the expiry of a tenancy on a certain day a tenancy from year to year is only determined by a notice to quit SITARAM BHIMAJI v SADHU (1913) I L R 38 Bom 240

——————— *Tenancy created by lease—Right of person not party to contract holding under lease to show that purpose of tenancy was different* *Held per* N R CHATTERJEA J—That although where it is shown by a lease unambiguous in its terms that the land was originally acquired by the tenant for cultivating it by himself or by hired servants or by members of his family the character of the tenancy is not altered by the mere fact that the land was subsequently let out to tenants and although in such a case the land may as between the lessor and the lessee be taken to have been acquired for the purpose as stated in the lease itself it is certainly open to a person who is no party to the contract to show that the real purpose for which the land was acquired by the lessee was other than what was stated in the lease RAJANI KANTHA MUKHERJEE v YUSUF ALI (1916) 21 C W N 188

TENANCY AT WILL

See LANDLORD AND TENANT
I L R 36 Mad 557

——————— *Yearly rent reserved—Lease whether by registered instrument only—Transfer of Property Act (IV of 1882) s 107* Section 107 of the Transfer of Property Act does not lay down that a lease of immoveable property can be made only by a registered instrument but it can be made only by a registered instrument in three cases, viz (i) a lease from year to year (ii) a lease for any term exceeding one year and (iii) a lease reserving a yearly rent The fact that the rent is reserved at so much a year does not conclusively show that the tenancy is from year to year The terms of a tenancy which does not come within s 107 of the Transfer of Property Act can be proved by oral evidence – *Lala Surabh Narain Lal* v *Catherine Sophia 1 C W N 248 Fazel Sheikh* v *Keramuddi Sheikh 6 C W N 966 Sita Nath Pal* v *Kartick Gharmi 8 C W N 434* and *Venkatagiri Zamindar* v *Raghava I L R 9 Mad 142* referred to SARAT CHANDRA DUTT *v* JADAB CHANDRA GOSWAMI (1916)
I L R 44 Calc 214

TENANCY BY SUFFERANCE

See GRANT I L R 37 Calc 674

TENANCY IN COMMON

See JOINT ESTATE
I L R 43 Calc 103

See TENANT IN COMMON

See WILL I L R 43 All 600

——————— A tenant in common is entitled to sue for his share of the property demised when a forfeiture has been incurred under the terms of the lease Forfeiture cannot ordinarily be relieved against in the case of a mining lease SYED AHMAD SAHIB SHUTTARI *v* MAGNESITE SYNDICATE LIMITED I L R 39 Mad 1049

TENANT

See BOMBAY CITY MUNICIPAL ACT ss 379 379A I L R 36 Bom 81

See LIMITATION ACT (IX OF 1908) s 8 SCH I ART 47 I L R 38 Mad 432

See MADRAS ESTATES LAND ACT (I OF 1908) s 8 EXCEP
I L R 38 Mad 843

See MADRAS RENT RECOVERY ACT
I L R 34 Mad 179

See TRANSFER OF PROPERTY ACT 1882 ss 105 to 117

——————— holding over suit to eject—

See JURISDICTION
I L R 38 Mad 795

——————— interested in subject of dispute—

See DISPUTE CONCERNING LAND
I L R 37 Calc 285

——————— liability of—

See DRAINS I L R 38 Calc. 268

TENANT—*contd*

——————— liability of to pay compensation for loss of crops—

See MADRAS ESTATES LAND ACT (MAD ACT I OF 1908) ss 4 27 73 AND 143
I L R 40 Mad 640

——————— right of—

See IRRIGATION CHANNEL
I L R 40 Mad 640

See MALABAR TENANTS IMPROVEMENTS ACT (MADRAS I OF 1900) ss 3 5
I L R 38 Mad 954

——————— status of—

See BENGAL TENANCY ACT 1885 ss 5 103B I L R 45 Calc 805

——————— suit to recover immoveable property from—

See COURT FEES ACT (VII OF 1870) s 7 CL (5) SUB CL (xi) (cc)
I L R 39 Mad 873

——————— Suit for ejectment of non occupancy tenant—

See AGRA TENANCY ACT 1901 ss 19 AND 58 I L R 42 All. 36

——————— surrender by of waste lands—

See MADRAS ESTATES LAND ACT (I OF 1908) s 8 I L R 38 Mad 891

——————— status of—*Consolidation of raiyati holdings if makes it a tenure—Permanency claimed by tenant—Onus to explain variation of rent extent thereof—*Hat *on land of tenancy if raises presumption of permanency—Landlord s abstention from enhancing rent or making land* khas *if ground for inferring permanent grant—Abstention explained—Pucca tenant in 24 Perganas meaning of—Marfatdars rent receipts grant of if recognition of tenant —Transferability—Onus in case of agricultural and homestead lands respectively—Decree for rent plus drainage charges if rent decree—Bengal Tenancy Act (VIII of 1885) s 1 (5) and Bengal Drainage Act (VI B C of 1880) s 42 (a)—Decree holder expressing intention to buy tenure at rent sale at a given price and buying it at said price without fraud if makes sale a private sale—Bengal Tenancy Act (VIII of 1885) s 167—Adverse possession commencing before creation of tenure if incumbrance—Adverse possession commencing after if incumbrance and must be annulled—Incumbrance created by sub tenant if to be annulled—Arrest of adverse possession on rent sale* The mere fact of consolidation of a number of separate raiyati holdings cannot alter the nature of the tenancies and convert them into a tenure unless the landlord and the tenant agreed at the time that the holdings should thenceforth be a tenure It is for the tenant defendant who asks the Court to presume that the tenancy is permanent to explain apparent variations in the rent since the date of the permanent settlement not merely by showing that there was variation in the area but also by showing that the additional rent was assessed at some rates of rent fixed according to the class and quality of the land The existence of *hâts* on lands the subject of a tenancy does not raise any presumption of permanency The mere fact that rent has not been changed for a long time by itself is not sufficient to show that the original contract was

TENANT—*concld*

payment of rent by the tenant at a fixed rent for ever In this case the fact that the landlord did not for a long period make any attempt to enhance the rents of the holdings or turn them *khas* was held to be sufficiently explained by the fact that the yield of the land to the tenant was until recently quite small The word *ticca* tenant as used in relation to the tenancies in dispute though they are situated in the 24 Per ganas means interests which are not permanent Where rent receipts asked for in the name of the purcha er of a holding were expres ly refused by the landlord who granted receipts in the name of the old tenant the purchaser being described merely as *marfatdar* *Held* that there was no recognition of the purchaser as a tenant It is for the tenant defendant who claims his holding of agricultural land to be tran ferable to prove it There is no onus of proving non transfer ability of the tenure upon the landlord In the absence of a custom to the contrary the incident of non transferability is common to tenancies from year to year of homestead lands created before the passing of the Transfer of Pro perty Act s 108 cl (j) of the Act not being applicable to them Where a decree for rent included certain drainage charges it was a rent decree within the meaning of Ch XIV of the Bengal Tenancy Act drainage charges payable under s 42 (a) of the Bengal Drainage Act being money recoverable as rent as defined in s 1 cl (5) of the Bengal Tenancy Act Where before the sale of a holding in execution of a rent decree the judgment debtor being anxious to procure good prices for the holding at the sale approached the decre holder and the latter expressed his intention to bid up to a certain amount and at the sale the property was knocked down to the decree holder for that amount *Held* that in the absence of fraud this circumstance would not deprive the purchaser of the benefit attaching to a ale under the Bengal Tenancy Act or render it a private sale *Quære* Whethe the pur chaser of a *putni* is bound to annul incumbrances created not by the *putnidar* but by the *darputni dar* *Quære* Whether the person who may have acquired a statutory title by adver e po e sion for 12 years against the *putnidar* does not stand in the same po ition as an unrecorded co sharer of the *putnidar* and whether such right does not pa s at the rent sale without the neces sity of annulling it as an incumbrance under s 167 of the Bengal Tenancy Act MANMOTH NATH MITTER *v* ANATH BANDHU PAL (1916)
23 C W N 201

TENANT IN-COMMON

See CIVIL PROCEDURE CODE 1882 ss 13 462 — I L R 36 Bom 53
See HINDU LAW—JOINT FAMILY — I L R 38 Mad 684
See MORTGAGE — I L R 47 Calc 175; I L R 35 Bom 371; L R 46 I A 272
See PARTIES JOINDER OF — I L R 42 Bom 87
See POSSESSION — I L R 37 All 203
See TENANCY IN COMMON

TENANT IN COMMON—*contd*

——— *Hindu Law—Mitak shara—Daughters inheriting property from their father—Shares separate and ab olute.* When the property so inherited is not physically divided it is held by the daughters as tenants in common and not as joint tenants and there is no survivor ship between them. VITHAPPA *v* SAVITRI (1910)
I L R 34 Bom 510

——— *Co lessors—Lease by Mahomedan co heirs—Mining lease—Forfeiture clauses—Lease determined by one lessor—Suit by one tenant in common in ejectment maintainability of—Suit for whole or for share maintainability of—Penal provisions strict construction of—Relief against forfeiture—Covenants in a mining lea e exception to rule—English and American law rules of* A tenant in common is entitled to sue for his share of the property demi ed where a forfeiture has been incurred under the terms of the lea e *Sri Rajah Simhadri Appa Rao v Prattipati Ramayya I L R 29 Mad 29 Korajalu v Narayana 25 Mad L J 315* and *Ebrahim Pir Mahomed v Cursetji Sorabji Desitre I L R 11 Bom 644* followed *Gopal Ram Mohuri v Dhakeswar Pershad Narain Singh I L R 35 Calc 807* di sented from Though the aim of law generally is in favour of giving relief against forfeiture in the ca e of lea e in the ca e of mining leases a provi o for re entry should be strictly construed and forfeiture cannot ordinarily be relieved against Engli h and American law considered *Doe v Church Wardens of Rugely 6 Q B 107* and *Doe d Lyod v Inglely 15 M d W 465 153 E R 953* followed *Balambhat v Vinayak Ganpat Pai I L R 35 Bom 639* referred to SYED AHMAD *v* MAGNESITE SYNDI CATE LTD (1916) I L R 39 Mad 1049

TENDER

See CONTRACT ACT 1872 s 38 — I L R 34 Mad 320
See INTEREST
See JURISDICTION OF CIVIL COURTS — I L R 34 Bom 13; I L R 42 All 420
See MORTGAGE
See TRANSFER OF PROPERTY ACT 1882 — I L R 43 All 95 & 638
s 60 — I L R 33 Mad 100
s 84 — I L R 36 All 139

——— by debtor—
See LIMITATION — I L R 38 Mad 374

——— essentials of a valid—
See MADRAS ESTATES LAND ACT (I OF 1908) ss 54 AND 78 CL (2) — I L R 38 Mad. 609

——— methods of—
See MADRAS ESTATES LAND ACT (I OF 1908) ss 54 AND 78 CL (2) — I L R 38 Mad 609

TENEMENTS

——— severance of—
See EASEMENT — I L R 38 Mad. 149

TENURE

See BOMBAY CITY LAND REVENUE ACT (BOM II OF 1876) ss. 30 35 39 40 — I L R 39 Bom. 664
See JAGIR — I L R 42 Calc 305

TENURE—*contd*

1. ———————— *whether permanent or temporary—Tenancy held by original grantee or his successor in interest for 70 years under four* doul kabuliyats *for terms— Sarasari whether applies to rent only or tenure itself—Fact or law question of—Construction* In a suit by the landlord, under s 106 Bengal Tenancy Act for correction of an entry that the tenancy of the defendants was a permanent tenure for *doul kabuliyats* were relied upon to prove the contract of tenancy bearing dates 1250 1?7 1285 and 1?9? B S All these were for terms of years and they did not contain the words from generation to generation. But the successive settlements were either with the original tenant or his heir the oral evidence being to the effect that the dead man's heir was recognised as having a moral claim to succeed to his rights All the *kabuliyats* bound the tenant to keep the trees intact and restrained him from making transfer of the land the last three adding that he must not partition the land and providing for the landlord's right of re entry in the event of the tenant not entering into a fresh arrangement They also spoke of the tenancy as *sarasari* (temporary) The lower Appellate Court upon these materials held that the tenure was considered by the landlord to be heritable that it was permanent but not transferable and that the rent was liable to enhancement *Held* on second appeal that the question whether the tenure was permanent or not was not merely one of fact That at any rate it depended to a large extent on the construction of the *kabuliyats* the question for instance whether the word *sarasari* referred to the variability of the rent or the nature of the tenancy being one of construction That the tenure was neither permanent nor heritable *Per* WALMSLEY J —The tenant who claims a hereditary right under a document which does not contain the words from generation to generation has a heavy onus to discharge That the temporary character of the tenancy was not limited only to the amount of rent That repeated renewals of an agreement do not change its character and regard should be had to the later rather than the earlier *kabuliyats* and the fact that during a period of 70 years only four *kabuliyats* were passed and the settlement made again and again with the same man or his successor in interest did not alter the nature of the agreement PRODYOT KUMAR TAGORE v SARAT CHANDRA DAS (1917) 21 C W N 809

2 ———————— *Decree for rent of a tenure against the recorded tenants who are some of the several tenants of the tenure effect of—Unrecorded tenant not a party if bound by rent sale* Where a landlord obtained a decree for arrears of rent of a tenure against all the tenants who were the recorded tenants except one who after acquiring title by purchase never got his name registered in the landlord's *sherista* *Held* that the entire tenure and not merely the interest of the recorded tenants passed by the sale in execution of such a decree and it was not open to the unrecorded tenant though he was not a party to the rent suit to sue for a declaration of his right on the ground that his share in the tenure did not pass by the sale PROFULLA KUMAR SEN v SALIMULLA BAHADUR (1918) 23 C W N 590

3 ———————— *Uniform payment of rent for less than 20 years before final publication of record of rights but for an aggregate period of over 20 years—Presumption of permanency if arises under Bengal Tenancy Act (VIII of 1885) ss 35 50 115—Natural presumption—Court when may refuse to enhance rent as inequitable* Where it appeared that a raiyat had been holding land as tenant on payment of a uniform rent for over 20 years before the institution of the suit but that there having been a record of rights in respect of the holding the period during which before the final publication of the record of rights the rent had been so paid fell short of 20 years *Held* that the presumption of fixity of tenure under s 50 of the Bengal Tenancy Act did not arise Where a tenancy appeared to have been created only 40 years ago *Held* that uniform payment of rent during this period did not raise a natural presumption that the tenancy was a permanent one GURU CHARAN NANDI v SARAB ALI (1919) 23 C W N 1041

TENURE HOLDERS

———— liability of—

See REVENUE SALE I L R 37 Calc 559

TERMINATION OF SERVICE

See SCHOOL MASTER I L R 44 Calc 917

TERRITORIAL JURISDICTION

See DIVORCE I L R 40 Calc 215

TESTAMENTARY AND INTESTATE JURISDICTION

See PROBATE I L R 37 Calc 387

TESTAMENTARY CAPACITY

See PROBATE I L R 39 Calc 245

See WILL I L R 47 Calc 1043

TESTATOR

———— capacity of to execute will—

See WILL I L R 38 Calc 355

———— domiciled abroad—

See LIMITATION L R 43 I A 113
20 C W N 833

———— money belonging to but not known to him—

See WILL I L R 38 Mad 109

THAK MAPS

———— Evidentiary value of—

See PUBLIC NAVIGABLE RIVER 24 C W N 639

See REVENUE SALE LAW s. 37 15 C W N ?06

See LAKHERAJ LANDS I L R 45 Calc 574

———————— *Jungle lands possession of presumption as to—Exparte entry in thakbust records without enquiry value of* Certain plots of land were entered in the *thakbust* maps as belonging to a certain Pergunnah in which the plaintiff claimed them to be and no question of the de

THAK MAPS—*contd*

marcation of boundary of these lands was raised in any of the many disputes which arose between the parties during the survey proceedings It was further found that the title to those lands was with the plaintiffs *Held* that having regard to the nature of the property which was jungle land possession must be presumed to have been all along with the plaintiff A mouzah appertaining to Pergunnah Pukhuria had not been separately measured or *thaked* in the course of the survey proceedings On a statement being called for from the person in possession of the mouzah for its non appearance on the *thak* map his agent appeared and stated that the mouzah was wholly covered with jungle that it being situated by the side of Garhgojali which was defendant s property had been measured along with it and that 10 gundas share of Garhgojali should be taken for that mouzah Proceeding on these allegations the Deputy Collector made an entry to that effect A petition made by the defendant s Mukhtear denying the allegations of the plaintiff s agent was rejected as the matter had been disposed of With the help of this disputed entry the Subordinate Judge proceeded to mark off a certain area as belonging to the plaintiff as part of the said mouzah The High Court set aside that decision *Held* that as the decision of the Subordinate Judge was based on the entry made *ex parte* and without enquiry and on an allegation of the zemindar s agent which was immediately contradicted the decision of the High Court was correct JAGADINDRA NATH ROY *v* HEMANTA KUMARI DEBI (1911) 15 C W N 887

——— *Value of as evidence of title and possession* Thak and survey maps may be presumed to have correctly delineated the boundaries of villages and thus to furnish valuable evidence of possession at the time they were made and consequently also of title But such presumption fails where the maps were promptly challenged and found inaccurate MOHENDRA NATH BISWAS *v* SHAMSUNNESSA KHATUN (1914) 19 C W N 1280

——— Thakbust *maps value of as evidence—Condition of land how far affects value of* thak *maps—Map prepared by Government on behalf of private proprietor how proved—What circumstances must be established before using such map against a party—Indian Evidence Act (I of 1872) ss 74 83 90—Applicability to private maps made at the instance of Collector—Ss 12 13—Admissibility to prove ascertion of title* S 90 of the Indian Evidence Act only shows that a document was prepared at the time at which it purports to have been made by the officer whose signature it bears but it does not establish the accuracy of the document The question whether a map is a public document within the meaning of s 74 of the Evidence Act is *primâ facie* a question of fact and the fact that a map was treated as a public document in a previous suit to which the plaintiff was not a party would not make it binding as such on the plaintiff A map prepared at the instance of the Collector when in charge of a private estate is a private document and s 83 of the Evidence Act has an application to such map So before such a map can be used against a party not only must its accuracy be strictly proved but other circumstances which may affect its evidentiary value such as the purpose for which the map was prepared must be duly considered for a map prepared for one purpose cannot be used for a totally different purpose and in considering the value of such maps the Courts must consider how far the boundaries now in dispute had been in contemplation when the map was prepared Such a map unless proved to have been prepared with the assent or at any rate the knowledge of a party is of very little value as evidence against such party and in the absence of signature of the parties on the map the mere recital on the map that other persons had notice of the proceedings would not be conclusive Although the evidentiary value of a *thak* map would be affected by the condition of the lands at the time of the survey the map cannot be ignored merely on a general allegation that the lands were jungle at the time without considering whether it was still capable of being surveyed Possession of jungle lands is *primâ facie* with the person whose title is established PRIYA NATH MAJUMDAR *v* MAHENDRA KUMAR MITRA (1911) 16 C W N 317

——— *Value of as evidence—* Thak *maps of 1852 if to be presumed as unreliable* Thak maps have always been considered by Courts as good evidence and although the value of a *Thak* map depends upon its accuracy there is no presumption that *Thak* maps must be inaccurate Opinion of Captain Hirst in his Notes on the old Revenue Surveys and *Jagadindra Nath Roy v Secretary of State for India I L R 30 Calc 291 L R 30 I A 44 s c 7 C W N 193* referred to KRISHNA KALYANI DASI *v* R BRAUNFELD (1915) 20 C W N 1028

——— *If evidence of conditions at Permanent Settlement—Second appeal—* Chitta *of lands escheated to Government if public document* It cannot be laid down broadly that a *thakbust* map prepared in 1865 is no evidence of the state of things at the Permanent Settlement Where in deciding whether certain lands in dispute were included within one estate or another at the time of the Permanent Settlement the lower Appellate Court relied on the *thakbust* map *Held* that the finding could not be questioned in second appeal A *chitta* prepared by Government of lands which had escheated to it stands on the same footing as a *chitta* prepared in respect of lands in which Government is interested as a proprietor Such a *chitta* is not a public document FAZLUR RAHIM *v* NARENDRA KRISHNA ROY (191-) 17 C W N 151

THAK SURVEY

——— *Decision of Survey authorities arrived at in the presence of parties concerned value of as evidence when acquiesced in by parties and made basis of important transactions—Such decision if estoppel* Where the question whether certain lands were included within a *mahal* was in 1849 in the course of a *Thak* survey determined by the Survey authorities in a proceeding in which opportunity had been given to all parties interested of making their claims raising their objections and producing their evidence *Held* that though the parties were not estopped by the decisions arrived at these were obviously of high authority and when acquiesced in by all the parties interested for a length of time and

THAK SURVEY—contd.

made the basis of important transactions should not be disturbed unless upon the clearst proof that they were erroneous SURJA KANTA ACHARJYA v SARAT CHANDRA ROY CHOWDHURY (1914)
18 C W N 1281

THEATRES

See BYE LAWS I L R 47 Calc 547

THEATRICAL PERFORMANCE.

——— *Keeping open a theatre after prescribed hour—Joint proprietors liability of—Penalty for offence or on offender—Calcutta Municipal Act (Beng III of 1899) s 559 (5*) 561—Bye laws 83 and 85—Validity of bye law 85* Bye law 85 framed under s 559 (5) of the Calcutta Municipal Act (Beng III of 1899) is not *ultra vires* by reason of s 561 thereof and each of the joint proprietors of a theatre is liable to a fine to the extent of Rs 20 for keeping it open after 1 A.M in contravention of bye law 83 *Amrita Lall Bose v Corporation of Calcutta 21 C W N 1009* overruled *Reg v Showdar Ghenar 7 Bom. H C P 59* distinguished *Rex v Clark 2 Cowp 610 Queen v Littlechild L R 6 Q B 293* referred to *Per* MOOKERJEE *J*—As a general principle of criminal law all who participate in the commission of an offence are severally responsible as though the offence had been committed by each of them acting alone consequently each must be separately punished AMRITA LAL BOSE v CORPORATION OF CALCUTTA (1917)
I L R 44 Calc 1025

THEFT

See AGRA TENANCY ACT (II OF 1901) s 124 I L R 38 All. 40

See AUTREFOIS ACQUIT
I L R 45 Calc 727

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) ss 397 123
I L R 37 Bom 178

See CONVICTION 3 Pat L J 354

See LURKING HOUSE TRESPASS
I L R 44 Calc 358

See PENAL CODE ss 378 TO 382

1 ——— *Penal Code s 379 —Theft—Claim of title by the accused—Conviction for theft illegal unless the Court finds the claim to be a pretence* In a case of alleged theft of fish from a tank which the accused claimed to have been in their possession and not in the complainants *Held* that if the accused asserts a claim to the thing alleged to have been stolen by him he should not be convicted unless the Court is in a position to say that the claim is a mere pretence DHIRENDRA MOHAN GOSSAIN v EMPEROR (1909)
14 C W N 408

2 ——— *Penal Code s 379 —Dishonest intention—Retaining passenger s umbrella to make him pay fare* The accused an employee under a Steamer Company whose business it was to check the tickets of passengers asked to see the complainant s tickets but the complainant not having got one the accused took possession of his umbrella as security that he might be compelled to pay his fare *Held* that there being no suggestion that the accused intended either to get any wrongful gain to himself by compelling payment of the fare or to cause any wrongful loss to the complainant who was bound to pay his fare a conviction for theft was wrong MATABDAR SHEIKH v EMPEROR (1910)
14 C W N 936

3 ——— *Theft of fish in irrigation tank—Fish offence of theft of—Dependent upon power of fish to leave the tank* Although the capture of fish in an ordinary irrigation tank will not of itself amount to theft yet if the water in the tank become so low as to permit the fish leaving the tank the offence may be committed *Subba Reddi v Munsoor Ali Saheb I L P 24 Mad 81* explained RE SUBBIAN SERVAI (1913)
I L R 36 Mad 472

4 ——— *Penal Code (Act XLV of 1860) s 379—Custom plea of—Conviction under s 379 unsustainable without the finding that the accused had no right to the subject matter of the theft* Where the accused is charged with theft he cannot be convicted of the offence of theft or of causing wrongful gain or wrongful loss without a clear finding that he had no right to the subject matter of the theft HARENDRA NARAYAN DAS v RAMJAN KHAN (1913) I L R 41 Calc 433

5 ——— *Dishonest intent—Bonâ fide claim of right to property or mere pretence—Proper question for consideration by the Criminal Courts—Criminal trespass—Evidence of complainant s possession illusory—Penal Code (Act XLV of 1860) ss 379 447* The removal of property in the assertion of a *bonâ fide* claim of right though unfounded in law and fact does not constitute theft But a mere colourable pretence to obtain or keep possession of property does not avail as a defence Whether the claim is *bonâ fide* or not must be determined upon all the circumstances of the case and a Court ought not to convict unless it holds that the claim is a mere pretence *Rex v Hall 3 C & P 409 Reg v Wade 11 Cox 549 Rex v Jenner 7 L J M C (O S) 79 Reg v Leppard 4 F & F 51 Nassib Chowdhry v Nannoo Chowdhry 15 W R Cr 47 Runnoo Singh v Kali Churn Misser 16 W R Cr 18 Mahomed Jan v Khadi Sheikh 16 W R Cr 75 Khetter Nath Dut v Indro Jalia 16 W R Cr 78 Empress v Budh Singh I L R 2 All 101 In re Madhab Hari I L R 15 Calc 390n Pandita v Pahimulla Akundo I L R 27 Calc 501 Emperor v Sabalsang 4 Bom L R 936 Algarasami Tevan v Emperor I L R 28 Mad 304 Hari Bhuimali Emperor 9 C W N 974* followed *Held* upon the facts that even if the accused had failed to establish his title and possession to the land it was a case of a *bonâ fide* dispute and that the conviction of theft was bad ARFAN ALI v EMPEROR (1916)
I L R 44 Calc 66

THEKADAR

See OUDH RENT ACT (XXII OF 1886) s 3 (10) AND CH VIIA
I L R 40 All 541

See USUFRUCTUARY MORTGAGE
I L R 40 All. 429

THIRD JUDGE

——— duty of—

See PRINTING PRESS FORFEITURE OF
I L R 38 Calc 202

THIRD PARTY

——— appearance of—

See COSTS I L R 48 Calc 352

——— *Practice—Third party procedure—Directions refusal to give—Discretion* The general principle on which a Court will issue third party directions is —(i) That there must be a clear case of contributions or indemnity from the third party (ii) that all the disputes arising out of a transaction as between the plaintiff and the defendant and between the defendant and a third party can be tried and settled in one suit and (iii) that in cases of contract and sub contract it must appear that the contract between the plaintiff and the defendant has been imported into the contract between the defendant and the third party Under the rules now in force the third party cannot be cited so as to be bound by the trial of one particular question which is identical as between the plaintiff and the defendant and as between the defendant and the third party *Baxter v France (No 2) [1895] 1 Q B 591* followed W & A GRAHAM & Co *v* CHUNILAL HARILAL & Co (1909)
I L R 34 Bom 423

THIRD PARTY NOTICE

See LETTERS PATENT 1865 CL. 15
I L R 45 Bom 428

——— *High Court Rules Original Side Chapter VIII Rules 127 to 133—Defendant claiming to be indemnified by third party—Third party residing out of the Original Jurisdiction of the High Court—Notice served on third party by registered post—Chamber Judge issuing a summons for directions after the issue of third party notice—Summons made absolute and order for directions given—Leave of the Court not obtained—Letters Patent cl 12—Res judicata—Civil Procedure Code (Act V of 1908) s 11 Ex IV—Practice and procedure* In a suit filed by the plaintiffs for recovering money due in respect of certain cotton contracts the defendant pleaded that he was entitled to be indemnified by one K E S against the claim made by the plaintiffs The defendant thereupon obtained an order from the Chamber Judge for the issue of third party notice to be served on K E S by registered post to his address at Peshawar Subsequently a Chamber Summons was issued for an order for third party directions K E S put in an affidavit stating that the High Court had no jurisdiction to try the question between him and the defendant The Chamber Judge made the summons absolute and ordered that the third party should file his written statement and the question of liability of the third party to indemnify the defendant should be tried at the trial of the action but subsequent thereto The third party thereafter put in a written statement contending *inter alia* that the High Court had no jurisdiction as between him and the defendant inasmuch as the whole cause of action had arisen outside its jurisdiction and that if part of the cause of action be held to have arisen within its jurisdiction leave to sue under cl 12 of the Letters Patent had not been obtained The trial Court held that it must be assumed from the order made on the summons for directions that the Chamber Judge decided the point of jurisdiction against the third party and that the question was therefore *res judicata* On merits the Court passed a decree against the third party holding

THIRD PARTY NOTICE—*contd*

that the defendant was entitled to succeed on the contract of indemnity The third party appealed —*Held* reversing the decree of the trial Court (1) that the question of jurisdiction was not *res judicata* inasmuch as the Chamber Judge never in fact decided that the Court had jurisdiction to deal with the third party and that accordingly the question remained to be decided at the hearing of the action (2) that the effect of the order on the summons for directions was that *the third party came into the suit as if* he was an added party defendant and that it was open to him at the trial to raise any issues which an added defendant was entitled to raise one of which being whether leave ought not to have been given under cl 12 of the Letters Patent as he was residing outside the jurisdiction (3) that it could not be assumed that leave under cl 12 of the Letters Patent was given merely because the order for the issue of third party notice directed that the notice should be served by registered post to the *address of the third party* at Peshawar (4) that it must be proved that an application was made to the Judge under cl 12 of the Letters Patent and that if the Judge made the order it should appear clearly on the face of it that he was giving leave under cl 12 of the Letters Patent *Per* MACLEOD *C J* —When a defendant asks the Court to issue a third party notice in a case in which leave has to be obtained under cl 12 of the Letters Patent then an application should be made to the Judge for such leave to be endorsed on the notice in the same way as it is endorsed in a plaint KARIM ELAHI SHETH *v* SHER AHMED (1920)
I L R 45 Bom 24

THREATENING LETTER TO COURT

See UNPROFESSIONAL CONDUCT
I L R 43 Calc 685

THUMB IMPRESSIONS

——— evidentiary value of—

See SECURITY FOR GOOD BEHAVIOUR
I L R 43 Calc 1108

——— *Evidence—Taking of thumb impression out of Court without objection made—Admissibility of such impression in a subsequent trial for giving false evidence—Evidence Act (I of 1872) s 132 and proviso—Penal Code (Act XLV of 1860) s 193* Where a Magistrate believing that the complainant had given false evidence in the course of a trial by denying the fact of a previous conviction had his thumb impression taken out *of Court* for the purpose of identification in a future prosecution under s 193 of the Penal Code and there was nothing to show that the latter had objected to the taking of it *Held* that the thumb impression was admissible in a subsequent trial for giving false evidence and that the proviso to s 132 of the Evidence Act was not applicable inasmuch as (i) the taking of such an impression was not equivalent to asking a question and receiving an answer (ii) no objection was made to the taking of it and (iii) it was not taken in the course of a trial *Queen v Gopal Doss I L R 3 Mad 271* and *Maher Shaikh v Queen Empress I L R 21 Calc 3* referred to TUNOO MIA *v* EMPEROR (1911)
I L R 39 Calc 348

1 ———— Priority of Title—*Mortgagor and Mortgagee—Deposit of Title Deeds—Right to decree for Foreclosure—Equity of Redemption—Sale of right title and interest of Mortgagor at Court sale in execution of decree* This was a case of contested title to two plots of land near Moulmein The title of the plaintiff (appellant) was that by deed of 26th July 1890 (Ex B) the property was mortgaged to a firm who by deed of transfer dated 8th November 1894 (Ex A) assigned the mortgage debt and transferred the security for it to one *A P* and he in October 1895 deposited the title deeds with the plaintiff by way of equitable mortgage In 1901 the plaintiff enforced the mortgage by suit against *A R* and on 31st December of that year obtained a decree for sale in default of payment in pursuance of which the right title and interest of *A R* in the property comprised in the above title deeds were sold by auction and the *plaintiff who bid by leave of the Court became the* purchaser a certificate to that effect under the hand and seal of the Court being endorsed on Ex A The other title was set up by a person who was not one of the original defendants (the mortgagor of 1890) but a person added as a party defendant by consent subsequently to the filing of the suit He stated that after the assignment to *A P* of the

[illegible]

[illegible]

TITLE—*contd*

have been dismissed on his admission CHANDRIKA BAKHSH SINGH *v* INDAR BIKRAM SINGH (1916) I L R 38 All 440

4 ———— Estoppel—Grantor and Grantee —*Bengal Tenancy Act (VIII of 1885) s 85 sub s (1) construction of—Contravention of the section effect of—Estoppel its application* The title of a grantee who can fall back upon prior possession a tenant or otherwise cannot be defeated by mere proof of contravention of s 85 of the Bengal Tenancy Act and as between grantor and grantee the rule of estoppel applies when the elements essential to attract its operation are proved to exist The creation of complete relation of landlord and tenant in law estops the tenant from denying the validity of the title which he has admitted to exist in the landlord The estoppel arises not by reason of some fact agreed or assured to be true but as the legal effect of carrying the contract into execution of the tenant taking possession of the property from the hand of the lessor *Bhagyanta Bewa v Himmat Bidyakar* followed *24 C L J 103* It is no more open to the defendant than to the plaintiff to prove facts contrary to the allegations which formed the basis of the contract after the contract has been carried into execution and the contracting parties have enjoyed benefits thereunder *Madan v Jali 6 C W N 377 Gopal Mondal v Eshun Chund r Banerjee I L R 29 Calc 148 Tamijuddi v Asgar Howladar I L R 36 Calc 256 Janaki nath v Prabhasini 22 C L J 99 Lani v Muhammad 20 C W N 918 Ganesh v Thanda 24 C L J 539* referred to BAMANDAS BHATTACHARJEE *v* NILMAHADAB SAHA (1916) I L R 44 Calc 771

5 ———— Benami purchase—Purchase giving right to get a title but not giving actual title—*Transfer by true owner—Action of father making transfer creating estoppel binding son —Conduct causing change of position in transferee—Onus of proof on person asserting minority of transferor* The plaintiff (respondent) purchased the village of Badam in the zemindari of the late Raja of Deo from *R* a dancing girl the natural daughter of the Raja, who was the father of the defendant (appellant) In 1886 the Raja s estate being heavily involved in debt the provisions of the Chota Nagpur Encumbered Estates Act (VI of 1876 as amended by V of 1884) were extended to Deo by a special Act and a manager was appointed who acting under the powers given him by the Act sold the village by public auction and it was purchased by *K* who it afterwards appeared was a *benamidar* for the Raja who provided the purchase money No conveyance of the village was ever made by the manager to *K* When the management came to an end in 1896 and the estate was restored to the Raja he caused *L* the son of *K* (who had died) to execute a conveyance of Badam in favour of *P* in order to benefit her and *M* her mother *L* merely acting on the command of the Raja *R* being then a minor put in through *M* a petition for registration and mutation of names and the Raja himself assisted her asking that her petition might be granted and her name be inserted on the register and stating that he had no objection whatever to that being done and *R's* name was accordingly entered on the register as proprietor of the village In October 1898 the Raja died and his son being a minor the estate came under the Court of Wards whose manager in 1899 summarily ejected *I* who was in possession and conveyed the village to the surviving widow of the deceased Raja as being *gur* property and descendible from Rani to Rani An application by her for mutation of names was opposed by *R* and rejected The Rani thereupon filed a suit against *K* and the appellant basing her case on the allegation that *K* was *benamidar* for her But the Subordinate Judge held that he was a *benamidar* of the late Raja and dismissed the suit a decision which was affirmed by the District Judge In 1908 *P* executed the conveyance in favour of the plaintiff who brought the present suit against *R* and the appellant for declaration of title and for possession The defence was a denial of *R's* title to convey and a denial of her power to do so as being a minor The Subordinate Judge upheld both defences and dismissed the suit The High Court reversed that decision and gave the plaintiff a decree *Held* (affirming that decision) that the onus of proving *R's* minority was on the appellant and he had not established his assertion *Held* also that the sale by auction though it gave *K* a *right to get a title did not give him an actual title* Both Courts found that *K* had failed to prove he was a true purchaser for value When therefore *L* executed the conveyance in favour of *R* the late Raja was the true owner *K* was a *trustee for him and the trusteeship was all that L* succeeded to The late Raja too was proprietor of the estate of which Badam was a part so that if by renunciation or limitation the right of *K* to get a conveyance became extinct the full right and title were in the late Raja and not only did he cause *I* to execute the conveyance but he actually assisted *R* to get registration of her name as owner By so doing he caused her to change her position for by such registration she became bound to the Government for *all the liabilities* attaching to the registered holders of immovable property If the late Raja had lived and attempted to regain the property that conduct would have estopped him from doing so The appellant was his son and succeeded *by gratuitous title* and he could not therefore do what his father would have been unable to do RAJA OF DEO *v* ABDULLAH (1918) I L R 45 Calc 909

6 ———— *Possession inference from as regards title* Where plaintiff proves that he is in possession for a number of years and has been paying rent to the admitted landlord the legal inference is that the plaintiff is in possession by virtue of a title derived from the landlord although the plaintiff may have failed to prove the specific title on which he bases his claim The plaintiff is entitled in such a case to a decree as against a defendant who has no title to possession ADHAR CHANDRA PAL *v* DIBAKAR BHUYAN (1913) I L R 41 Calc 394

7 ———— *Suit for declaration of title—Benami—Purchase at an execution sale—Assignee of purchaser—Civil Procedure Code (Act V of 1908) ss 66 317* In a suit for declaration of title against a purchaser at an execution sale and his assignee where the sale took place and was confirmed before 1st January 1909 but the sale certificate was issued later *Held* that the suit against the assignee was good and the provision of s 317 of the Civil Procedure Code (Act XIV of 1882) and not of s 66 of the Civil

TITLE—*contd*

Procedure Code (Act V of 1908) would apply *Tamaruddhari v Sundar Lal* 7 C L J 351 *Brojo nath v Jogjeswar* 9 C L J 316 *Dukhada Sundari v Srimanto Joardar* I L R 26 Cal 951 *Theyyare kan v Kochan* I L R 21 Mad 7 *Sita Kunwar v Bhagoli* I L R 21 All 196 referred to In the absence of clear words a statute will not be construed so as to take away a vested right of action acquired before it was passed *Manjhoori v Akel* 17 C L J 316 *Budhu Koer v Hafiz* 15 C L J 2[illegible] *Gopeshwar v Jiban Chandra* I L R 41 Calc 11 5 19 C L J 519 referred to PROLOTHA NATH PAL CHOWDHURI *v* MOHINI MOHAN PAL CHOWDHURI (1920)

I L R 47 Calc. 1108

8 ———————— *for Civil Procedure Code (Act V of 1908)* s 66—*Benami purchase at auction sale—Old Code (Act XIV of 1882)* s 317 —*Statute whether prima facie prospective* On the 4th or 11th August 1903 the property in suit was purchased in the name of defendant No 1 the plaintiff's son at an auction sale held in execution of a money decree The sale was confirmed on the 30th July 1906 and a sale certificate issued to defendant No 1 on the 24th April 1909 In March 1911 defendant No 1 agreed to sell the property to defendant No 2 who commenced a suit for specific performance of the contract on the 9th August 1912 as a result of which defendant No 1 conveyed the property to defendant No 2 in September 1st The plaintiff brought the present suit for declaration of his title to the property Both the Courts held that the suit was barred by s 66 of Civil Procedure Code *Held per* CHEAVES J —If the plaintiff's right of action had accrued prior to the coming into force of the present Code on the 1st January 1909 then having regard to s 6 of the General Clauses Act his right would not have been affected by the wider phraseology of s 66 as compared with s 317 of the old Code A statute is primâ facie prospective and does not interfere with existing rights unless it contains clear words to that effect or unless having regard to its object it necessarily does so But no right of action accrued prior to March 1911 It is one thing to say that legislation unless expressly made retrospective shall not affect an existing vested right be it of suit or of some other right but it is quite another thing to say that the same principle applies to a possible right of suit which may arise in future which is not a vested right *Held per* TEUNON J —If defendant No 2 took with notice of plaintiff's claim the delay made by defendant No. 1 in taking out his sale certificate cannot place defendant No 2 in a better or more advantageous position than he would have occupied under the Code of 1882. PRAMATHA NATH PAL CHOWDHURY *v* SATKAY DAS CHAKRABARTI (1919)

23 C W N 604

9 ———————— *Suit to recover possession of land from one who held [illegible]—Indian Limitation Act (IX of 1908) Sch I art 144 —Dispossession of land adverse possession—Burden of proof* The plaintiff who was the zamindar sued to eject the defendant from certain land within the ambit of the plaintiff's zamindari alleging that the defendant was in possession merely as a licensee The defendant denied that he was a licensee and claimed that he had acquired a title to the land in suit by adverse possession

TITLE—*contd*

The defendant however failed to prove that he had been in adverse possession of the land for more than twelve years *Held* that the plaintiff was entitled to succeed simply on the strength of the primâ facie title as zamindar It was not necessary for him to go further and prove that he had been in actual possession at some period within twelve years previous to the commencement of the suit In cases to which art 144 of the first schedule to the Indian Limitation Act 1908 applies, the defence being a title acquired by adverse possession for more than twelve years it is not necessary for the plaintiff as in cases falling under art 142 to prove that he has been in possession at a period within twelve years from the commencement of the suit it is sufficient if he establishes a primâ facie title and it is then for the defendant to make good his plea of adverse possession *Secretary of State for India v Chelikani Rama Rao* I L R 39 Mad 617 followed. *Inayat Husen v Ali Husen* I L R 20 All 157 dissented from. JAI CHAND BAHADUR *v* GIRWAR SINGH (1919) I L R. 41 All. 669

TITLE DEEDS

See LETTERS PATENT (BOMBAY) I L R 37 Bom 4[illegible]

See MORTGAGE I L R 43 Calc 1052

———— deposit of—

See MORTGAGE I L R 43 Calc 895

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 59 I L R 38 Bom. 3[illegible]

TITLE OF DONEE.

See CONTRACT ACT s 19 I L R 38 Bom 3[illegible]

TITLE PARAMOUNT

———— dispossession by—

See RENT SUIT I L R 43 Cal [illegible]

TODA GIRAS ALLOWANCE.

See PENSIONS ACT 1871 ss. 6 & 11 I L R 34 Bom. 154

TORT

See CONTRIBUTORY NEGLIGENCE I L R 34 Bom. 42[illegible]

See EASEMENT I L R 33 All 519

See TITLE I L R 40 Calc [illegible]

See MARRIAGE CONTRACT OF I L R 39 Bom 6[illegible]

See PRINCIPAL AND AGENT I L R 43 Calc 511

———— conspiracy to break a contract

See DAMAGE I L R 41 Bom. 15[illegible]

1 ———————— Public nuisance—[illegible]—*Special damage*—[illegible] that stopping a highway and thereby rendering it necessary for a person to make a detour is such a special damage as would justify him in instituting a suit for removal of the obstruction and [illegible] *Hart v Bassett* 13 Jones [illegible] Reports [illegible]

TORT—*contd*

v *The Bristol Water Works Company* 1 H & N 369 referred to RAM CHANDRA v JOTI PARSAD (1910) I L R 33 All 287

2 ———— Overflow of water into plaintiff's land—from tank—*Belonging to stranger caused by defendant lowering level of his own land to make it culturable—Plaintiff's right to injunction and damages* Where the defendants with a view to make their land culturable lowered its level with the consequence that water in a tank belonging to a third party passed to that land and subsequently overflowed into lands belonging to the plaintiff *Held* that no right of the plaintiff had been infringed by the act and the plaintiff was not entitled to a mandatory injunction to compel the defendant to raise an embankment in order to prevent this overflow or to damages for harm caused by such overflow *Rylands* v *Fletcher* *L R 3 H L 330* distinguished *Smith* v *Kenrick* *7 C B 515* *Nield* v *London and N W Ry Co* *L R 10 Ex 4* referred to Where the owner of land without wilfulness or negligence uses his land in the ordinary manner though mischief thereby accrues to his neighbour he is not liable for damages but if with a view to use the land in an unusual manner he brings upon the land water which would not naturally have come upon it he will be liable for damages for the escape of the water into the land of his neighbour *Hodgson* v *Mayor etc of York* *28 L T 836* *Chasemore* v *Richards* *7 H L Cas 349* relied on KENARAM AKHULI v SRISTIDHAR CHATTERJEE (1912) 16 C W N 875

3 ———— Negligence of servants of the Public Works Department—*Suit against the Secretary of State for India in Council for damages if maintainable—Stacking of gravel on a military road—Making and maintenance of roads—Governmental or Sovereign function—nature of—Non liability of East India Company and Secretary of State for acts done in exercise of Sovereign powers—Exceptions—English and American Laws* Plaintiff sued the Secretary of State for India in Council for damages in respect of injuries sustained by him in a carriage accident which was alleged to have been due to the negligent stacking of gravel on a road which was stated in the plaint to be a military road maintained by the Public Works Department of the Government The defendant pleaded a general denial of liability *Held* that the plaintiff had in law no cause of action against the Secretary of State for India in Council *Per* WALLIS C J —In respect of acts done by the East India Company in the exercise of its sovereign powers it could not have been made liable for the negligence of its servants in the course of their employment The provision and maintenance of roads especially a military road is one of the functions of Government carried on in the exercise of its sovereign powers and is not an undertaking which might have been carried on by private persons The liability of the Secretary of State for India in Council is similar to that of the East India Company *P & O Co* v *Secretary of State for India* *5 Bom H C R App 1* followed *Secretary of State for India* v *Moment* *40 I A 48* referred to and *Vijaya Raghava* v *Secretary of State for India* *I L R 7 Mad 466* doubted *Per* SESHAGIRI AYYAR J —The analogy of the Crown in England has no application to the Secretary of State for India in Council The principle that the Crown can be sued only for remedies contemplated by the Petition of Right is confined in its operation to the United Kingdom and a general liability for torts is dependent upon the law of the particular dominion wherein the action is instituted Under 21 and 22 Vict cap 106 the Secretary of State for India in Council is under the same liability as the East India Company was subject to The East India Company had two distinctive functions which are even to day exercised by the Government of India namely (i) the exercise of sovereign rights and (ii) the carrying on of transactions which could have been carried on by private individuals or trading corporations In the former case the East India Company was generally exempt from liability The distinction between sovereign power and powers exercisable by private individuals is that in the former case no question of consideration comes in whereas the essence of the latter is that some profit is secured or some special injury is inflicted in the exercise of the individual rights The making and maintenance of roads is a Government or sovereign function English and American Law on subject considered THE SECRETARY OF STATE v COCKCRAFT (1914) I L R 39 Mad 351

4 ———— Defamation—*Suit for damages—Defamatory statement made and published outside British India—Defendant resident in British India—Suit in British India if maintainable—Order of excommunication from caste passed by Raja of Cochin—Communication of to the Karyasta of a Temple in British India—Transmission by Karyasta to Pa tamalai—Publication meaning of—Justification* A Court in British India has jurisdiction to entertain a suit for damages for a personal tort committed by a person beyond the limits of British India if he resides within the local limits of its jurisdiction at the time of the suit This rule is in accordance with the principles of Private International Law recognized in England and the Code of Civil Procedure (Act V of 1908) indicates that the same rule is to be followed by the Courts in British India When the cause of action alleged in a plaint is a personal tort committed outside the local limits of the jurisdiction of the Courts of British India unless the act is wrongful according to the law both of British India and of the place where the act is committed the suit will not be sustainable *The M Moxam (1876) P D 107* *The Halley L R 2 P C 193* *Phillips* v *Eyre* *L R 6 Q B 1* and *Carr* v *Francis Davies & Co* *[1902] A C 176* followed. Publication in regard to libel and slander does not require communication to more persons than one there need not be anything like publication in the common acceptance of the term *King* v *Burdett* *4 B & Ald 95* and *Pullman* v *Hill and Co* *[1891] 1 Q B 524* referred to Where a subordinate officer received from his superior in the course of his official duty a copy of an order alleged to contain defamatory statements regarding the plaintiff and transmitted the same in his turn (as he was bound to do) to his official subordinate *Held* that he was not liable in damages for defamation against the plaintiff as his action was justified in law GOVINDAN NAIR v ACHUTHA MENON (1915) I L R 39 Mad 433

5 ———— Negligence—*Municipalities liability of—Repair of road—Independent contractor—Heaping of gravel on road without*

TORT—*contd*

light—Injury to plaintiff—Damages—Statutory bodies liability of—District Municipalities Act (IV of 1884) ss 172 and 173—Madras Motor Vehicles Act (I of 1907)—Absence of licence effect of The plaintiff sued the Municipality of Vizagapatam to recover compensation for injuries sustained by him owing to the negligent stacking of gravel in a municipal road which was being repaired by a contractor employed by the municipality The defendant pleaded non liability under the general law and also on the ground that it had employed an independent contractor for the repair of the road *Held* that the municipality was liable to pay damages to the plaintiff for the injuries sustained by him *Per* SESHAGIRI AYYAR J —In laying and maintaining a road municipalities in this country are not exercising purely sovereign functions and consequently they are liable for misfeasance *The Secretary of State* v *Cockcraft I L R 39 Mad 351* distinguished The absence of a provision for payment of damages in the District Municipalities Act which directs the application of the Municipal fund in a particular manner does not affect the right of a person against whom a wrong has been committed by the statutory body to recover compensation for such injury The fact that the plaintiff did not obtain a licence under the Madras Motor Vehicles Act at the time of the accident did not disentitle him to damages Although an employer is not *ordinarily* liable for illegality or *neglect* on the part of a contractor employed by him there are certain recognized exceptions to the rule *namely* —(i) Where the employer is aware that the doing of a contract work involved a public danger he ought to see that the contractor so discharges his duty as to avoid such a danger *The Corporation of the Town of Calcutta* v *Anderson I L R 10 Calc 445* referred to (ii) Where statutory bodies are entrusted with the performance of a public duty their liability cannot be shifted to a contractor *Hardaker* v *Idle District Council [1896] 1 Q B 335* referred to *Per* NAPIER J —(i) A statutory body like a municipal council cannot be said to be either the servant or the agent of the Crown unless it is so constituted by the provisions of the Act (ii) With regard to statutory bodies the liability does not depend on their levying tolls or taxes on account of the work undertaken by them (iii) S 173 of the District Municipalities Act does not control the provisions of s 172 of the same Act (iv) Where a statutory authority has power to do something to a road which will make it dangerous while it is being done it is liable for any negligence in the doing of that which has to be done whether the action be that of its own servant or of an independent contractor MUNICIPAL COUNCIL OF VIZAGAPATAM v FOSTER (1917) **I L R 41 Mad. 538**

6 ———— **Trespass**—*Tree overhanging on a land—Right to cut off overhanging branches—Injunction to remove overhanging branches in absence of damage* A person is entitled to cut off the portions of the trees which overhang his land He can obtain an injunction to remove the overhanging portion though he may not be able to prove any damage VISHNU JAGANNATH v VASUDEO RAGHUNATH (1918)

I L R 43 Bom 164

7 ———— **Wrongful assault**—*Master and servant—Liability of a Railway Company for wrongful assault committed by its servants—The Railway Company not liable for acts of the servants which the Company itself is not authorised to do—The Indian Railways Act (IX of 1890) ss 108 121 128 131 132—Arrest of a passenger for pulling the communication chain not authorised by the Indian Railways Act* The plaintiff and his wife were third class passengers in one of the defendant Company's trains The plaintiff's compartment which was intended to hold ten passengers became greatly overcrowded at a particular station to the inconvenience and discomfort of the occupants numbering about twenty five After ineffectual efforts to obtain assistance from the guard and the station master at the station the plaintiff stopped the train by pulling the communication chain being afraid that he would be molested by other passengers in the compartment No step was taken to relieve the overcrowdedness of the compartment and the train was re started When the train had gone some little distance further on its journey the plaintiff again stopped it by pulling the communication chain Thereupon the driver and the guard got down from the train and the driver pulling the plaintiff out of the compartment cuffed and slapped him the guard assisting in the assault The plaintiff was arrested by the driver and the guard at a subsequent station where he was handed over to a station master and after his statement was recorded by the police he was released and was allowed to travel to his destination The plaintiff sued the defendant Company in the sum of Rs 3 000 as damages for the wilful assault committed by the engine driver and the guard The plaintiff complained that the assault was aggravated having taken place in a public place in the presence of his wife and other passengers in the train in consequence whereof he had to suffer a good deal of public humiliation and mental agony *Held* (i) that inasmuch as the assault was an incident of the arrest and the defendant Company had no authority under s 108 of the Indian Railways Act to arrest the plaintiff for pulling the communication chain the defendant Company was not liable for assaults committed by its servants (ii) that the special provision of s 108 of the Indian Railways Act which expressly provided for a particular kind of obstruction could not be controlled by the more general language of the wider ss 121 and 128 of the Act *Poulton* v *London and South Western Railway Co L R 2 Q B 534* followed *Bayley* v *Manchester Sheffield and Lincolnshire Railway Co L R 7 C P 415* and *Goff* v *The Great Northern Railway Co 30 L J Q B 148* distinguished *Parker* v *Edgar [1895] A C 748* referred to The master is liable where the servant acting in a matter which is within the scope of his authority commits is within the course of his employment commits a wrong by exceeding the authority vested in him The act itself which constitutes the wrong may be and usually is in excess of the servant's authority but if in thus transgressing his authority the servant is doing in the master's interests one of the class of acts which the master has employed him to do then the master is liable CURSETJI SHANKAR DAYA SHANKAR v B B AND C I RAILWAY Co (1917) **I L R 43 Bom 183**

7 a ———— **Damage to the property of another caused by the cutting of a bund—** [illegible]

TORT—*contd.*

tion Where there is a natural outlet for a natural stream no one has power for the safety of his own property to divert or to interfere with its flow and if he does so he is ordinarily liable to pay damages to any one who is injured by his act The right of a person to protect his land from extraordinary floods extends to the doing of anything which is reasonably necessary to save his property but he cannot actively adopt such a course as might have the effect of diverting the mischief from his own land to the land of another person which would otherwise have been protected Defendant through fear lest in a season of heavy rainfall the normal outlets to a certain tank on which his land abutted would be insufficient to carry off the surplus water and with the object of saving his own land from possible inundation cut a bund to the maintenance of which the plaintiff had a prescriptive right and thereby caused certain lands belonging to the plaintiff to be flooded and the crops thereon destroyed *Held* that the plaintiff had a good cause of action in damages against the defendant *Whalley v Lancashire and Yorkshire Railway* 13 Q B D 131 and *Ram Lal Singh v Lill Dhary Mahton* I L R 3 Calc 776 referred to SAMIULLAH *v* MAKUND LAL

I L R 43 All 688

8 ——— Defamation—*Bonâ fide suspicion by defendant of poisoning—Communication by defendant to his subordinates for inquiry—Privilege absolute or qualified—Absence of actual malice—Liability of defendant* Where the defendant who was the general manager of the estates of the plaintiff's firm under a *bonâ fide* impression that he had been poisoned at the instigation of the plaintiff expressed his suspicion to two of his subordinates with a view to their making inquiries into the matter *Held* that the communication was privileged and there being no proof of actual malice the defendant was not liable for defamation in a suit for damages for defamation *Toogood v Spyring 1 C M & R 181* followed Statements made to protect the interest of the speaker and statements made to protect a common interest form distinct heads of privilege LESLIE ROGERS *v* HAJEE FAKIR MAHOMED SAIT (1918)

I L R 42 Mad 132

9 ——— Legal Act cannot be—contribution as between joint tort feasors—*False defence whether is a tort* An act which is not legally wrongful cannot be treated as a tort Although the rule of non contribution between joint tort feasors exists in India it ought only to apply in cases where the parties are wrong doers in the sense that they know or ought to have known that they were doing an illegal or wrongful act The only cases in which it will be enforced are those in which liability arises out of a joint wrong or where the equities of the case demand that the plaintiff shall not recover as where the party sued was merely a formal defendant in the previous suit and not personally interested in the suit In appropriate cases the liability may be apportioned in unequal shares There is nothing wrong in a defendant putting the plaintiff to proof of the facts necessary to prove his claim by denying in the written statement the existence of such facts even if such facts are capable of proof to the knowledge of the defendant and the defendant's motive in denying them is malicious There is a right of contribution between joint defendants in respect to the costs awarded against them and paid by one of them in such a case MAHABIR PRASAD *v* DARBHANGI THAKUR 4 Pat L J 486

TORT—*concld*

TOUT

See LEGAL PRACTITIONERS ACT s 36

15 C W N 1000

I L R 40 All 153

TOWN NUISANCES

See MADRAS TOWN NUISANCES ACT 1889

TRADE

See HINDU LAW—JOINT FAMILY

I L R 37 Bom 340

See HINDU LAW—MINOR

I L R 34 Bom 72

——— when carried on so as to be a Nuisance—

See CRIMINAL PROCEDURE CODE 1898 s 133

I L R 1 Lah 163

TRADE LICENSE

See LICENSE I L R 47 Calc 809

TRADE MARK

See COUNTERFEITING TRADE MARK

See INJUNCTION 24 C W N 155

——— meaning of—

See PENAL CODE s 478

19 C W N 957

1 ——— Infringement of Trade mark—*Essentials necessary to maintain action for* It is a settled law that a dealer in or a manufacturer of a particular article who adopts a name for that article whether the name be a purely fancy name or a descriptive name cannot restrain another dealer from using the same name simply upon and the ground that the article so named has acquired a reputation even though it may be that the public have grown accustomed to buy the article in question only relying on the name and without examining the quality of the article For a man to be entitled to restrain another from using a particular name with reference to a commodity he must show that the public have grown to associate that particular name with himself as the manufacturer of or dealer in the article *Barlow v Gobindram I L R 24 Calc 364* referred to MAHOMED ESUF *v* RAJARATNAM PILLAI (1909)

I L R 33 Mad. 402

2 ——— *Infringement of Trade mark—Registration effect of—Vendor's mark—Passing off action—Injunction variation of* An action for the infringement of a trade mark is maintainable even though the plaintiff be not the manufacturer or selector of the goods but merely a vendor of them There is no system of registration of trade marks in India which gives a statutory title In a suit for the infringement of a trade mark the plaintiff claimed the right to be the exclusive user of a flower of a particular design but his evidence was directed to establish that his goods were recognised by the general design of a flower (*phul marka*) —

TORT—*contd*

light—Injury to plaintiff—Damages—Statutory bodies liability of—District Municipalities Act (IV of 1884) ss 172 and 173—Madras Motor Vehicles Act (I of 1907)—Absence of licence effect of The plaintiff sued the Municipality of Vizagapatam to recover compensation for injuries sustained by him owing to the negligent stacking of gravel in a municipal road which was being repaired by a contractor employed by the municipality The defendant pleaded non liability under the general law and also on the ground that it had employed an independent contractor for the repair of the road *Held* that the municipality was liable to pay damages to the plaintiff for the injuries sustained by him *Per* SESHAGIRI AYYAR J —In laying and maintaining a road municipalities in this country are not exercising purely sovereign functions and consequently they are liable for misfeasance *The Secretary of State v Cockcraft I L R 39 Mad 351* distinguished The absence of a provision for payment of damages in the District Municipalities Act which directs the application of the Municipal fund in a particular manner does not affect the right of a person against whom a wrong has been committed by the statutory body to recover compensation for such injury The fact that the plaintiff did not obtain a licence under the Madras Motor Vehicles Act at the time of the accident did not disentitle him to damages Although an employer is not *ordinarily* liable for illegality or neglect on the part of a contractor employed by him there are certain recognized exceptions to the rule namely —(i) Where the employer is aware that the doing of a contract work involved a public danger he ought to see that the contractor so discharges his duty as to avoid such a danger *The Corporation of the Town of Calcutta v Anderson I L R 10 Calc 445* referred to (ii) Where statutory bodies are entrusted with the performance of a public duty their liability cannot be shifted to a contractor *Hardaker v Idle District Council [1896] 1 Q B 33* referred to *Per* NAPIER J —(i) A statutory body like a municipal council cannot be said to be either the servant or the agent of the Crown unless it is so constituted by the provisions of the Act (ii) With regard to statutory bodies the liability does not depend on their levying tolls or taxes on account of the work undertaken by them (iii) S 173 of the District Municipalities Act does not control the provisions of s 172 of the same Act (iv) Where a statutory authority has power to do something to a road which will make it dangerous while it is being done it is liable for any negligence in the doing of that which has to be done whether the action be that of its own servant or of an independent contractor MUNICIPAL COUNCIL OF VIZAGAPATAM *v* FOSTER (1917) **I L R 41 Mad. 538**

6 ———— Trespass—*Trees overhanging one s land—Right to cut off overhanging branches—Injunction to remove overhanging branches in absence of damage* A person is entitled to cut off those portions of the trees which overhang his land He can obtain an injunction to remove the overhanging portion though he may not be able to prove any damage VISHNU JAGANNATH *v* VASUDEO RAGHUNATH (1918)
I L R 43 Bom 164

7 ———— Wrongful assault—*Master and servant—Liability of a Railway Company for wrongful assaults committed by its servants—The Railway Company not liable for acts of the servants which the Company itself is not authorised to do—The Indian Railways Act (IX of 1890) ss 108 121 1 8 131 13 — Arrest of a passenger for pulling the communication chain not authorised by the Indian Railways Act* The plaintiff and his wife were third class passengers in one of the defendant Company s trains The plaintiff s compartment which was intended to hold ten passengers became greatly overcrowded at a particular station to the inconvenience and discomfort of the occupants numbering about twenty five After ineffectual efforts to obtain assistance from the guard and the station master at the station the plaintiff stopped the train by pulling the communication chain being afraid that he would be molested by other passengers in the compartment No step was taken to relieve the overcrowdedness of the compartment and the train was re started When the train had gone some little distance further on its journey the plaintiff again stopped it by pulling the communication chain Thereupon the driver and the guard got down from the train and the driver pulling the plaintiff out of the compartment cuffed and slapped him the guard assisting in the assault The plaintiff was arrested by the driver and the guard at a subsequent station where he was handed over to a station master and after his statement was recorded by the police he was released and allowed to travel to his destination The plaintiff sued the defendant Company in the sum of Rs 3 000 as damages for the wilful assault committed by the engine driver and the guard The plaintiff complained that the assault was aggravated having taken place in a public place in the presence of his wife and other passengers in the train in consequence whereof he had to suffer a good deal of public humiliation and mental agony *Held* (i) that inasmuch as the assault was an incident of the arrest and the defendant Company had no authority under s 108 of the Indian Railways Act to arrest the plaintiff for pulling the communication chain the defendant Company was not liable for assaults committed by its servants (ii) that the special provision of s 108 of the Indian Railways Act which expressly provided for a particular kind of obstruction could not be controlled by the more general language of the wider ss 121 and 128 of the Act *Poulton v London and South Western Railway Co L R 2 Q B 534* followed *Bayley v Manchester Sheffield and Lincolnshire Railway Co L R 7 C P 415* and *Coff v The Great Northern Railway Co 30 L J Q B 148* distinguished *Barker v Edger [1898] A C 748* referred to The master is liable where the servant acting in a matter which is within the scope of his authority commits a wrong by exceeding the authority vested in him The act itself which constitutes the wrong may be and usually is in excess of the servant s authority but if in thus transgressing his authority the servant is doing in the master s interests one of the class of acts which the master has employed him to do then the master is liable GIRJASHANKAR DAYASHANKAR *v* B B AND C I RAILWAY CO (1917) **I L R 43 Bom 103**

7 a ———— Damage to the property of another caused by the cutting of a bund—*in order to save the tort feasor land from inunda-*

TORT—*contd*

tion Where there is a natural outlet for a natural stream no one has power for the safety of his own property to divert or to interfere with its flow and if he does so he is ordinarily liable to pay damages to any one who is injured by his act The right of a person to protect his land from extraordinary floods extends to the doing of anything which is reasonably necessary to save his property but he cannot actively adopt such a course as might have the effect of diverting the mischief from his own land to the land of another person which would otherwise have been protected Defendant through fear lest in a season of heavy rainfall the normal outlets to a certain tank on which his land abutted would be insufficient to carry off the surplus water and with the object of saving his own land from possible inundation cut a bund to the maintenance of which the plaintiff had a prescriptive right and thereby caused certain lands belonging to the plaintiff to be flooded and the crops thereon destroyed *Held* that the plaintiff had a good cause of action in damages against the defendant *Whalley* v *Lancashire and Yorkshire Railway* 13 Q B D 131 and *Ram Lal Singh* v *Lill Dhary Mahton* I L R 3 Calc 776 referred to SAMIULLAH v MAKUND LAL

I L R 43 All 688

8 ———— Defamation—*Bonâ fide suspicion by defendant of poisoning—Communication by defendant to his subordinates for inquiry—Privilege absolute or qualified—Absence of actual malice—Liability of defendant* Where the defendant who was the general manager of the estates of the plaintiff s firm under a *bonâ fide* impression that he had been poisoned at the instigation of the plaintiff expressed his suspicion to two of his subordinates with a view to their making inquiries into the matter *Held* that the communication was privileged and there being no proof of actual malice the defendant was not liable for defamation in a suit for damages for defamation *Toogood* v *Spyring I C M & P 181* followed Statements made to protect the interest of the speaker and statements made to protect a common interest form distinct heads of privilege LESLIE ROGERS v HAJEE FAKIR MAHOMED SAIT (1918)

I L R 42 Mad 132

9 ———— Legal Act cannot be—contribution as between joint tort feasors—*False defence whether is a tort* An act which is not legally wrongful cannot be treated as a tort Although the rule of non contribution between joint tort feasors exists in India it ought only to apply in cases where the parties are wrong doers in the sense that they knew or ought to have known that they were doing an illegal or wrongful act The only cases in which it will be enforced are those in which liability arises out of a joint wrong or where the equities of the case demand that the plaintiff shall not recover as where the party sued was merely a formal defendant in the previous suit and not personally interested in the suit In appropriate cases the liability may be apportioned in unequal shares There is nothing wrong in a defendant putting the plaintiff to proof of the facts necessary to prove his claim by denying in the written statement the existence of such fact even if such facts are capable of proof to the knowledge of the defendant and the defendant s motive in denying them is malicious There is a right of contribution between joint defendants in respect to the costs awarded against them and paid by one of them in such a case MAHABIR PRASAD v DARBHANGI THAKUR 4 Pat L J 486

TOUT

See LEGAL PRACTITIONERS ACT 36
15 C W N 1000
I L R 40 All 153

TOWN NUISANCES

See MADRAS TOWN NUISANCES ACT 1889

TRADE

See HINDU LAW—JOINT FAMILY
I L R 37 Bom 340

See HINDU LAW—MINOR
I L R 34 Bom 72

———— when carried on so as to be a Nuisance—

See CRIMINAL PROCEDURE CODE 1898 s 133
I L R 1 Lah. 163

TRADE LICENSE

See LICENSE I L R 47 Calc 809

TRADE MARK

See COUNTERFEITING TRADE MARK

See INJUNCTION 24 C W N 155

———— meaning of—

See PENAL CODE s 478
19 C W N 857

1 ———— Infringement of Trade mark—*Essentials necessary to maintain action for* It is a settled law that a dealer in or a manufacturer of a particular article who adopts a name for that article whether the name be a purely fancy name or a descriptive name cannot restrain another dealer from using the same name simply upon and the ground that the article so named has acquired a reputation even though it may be that the public have grown accustomed to buy the article in question only relying on the name and without examining the quality of the article For a man to be entitled to restrain another from using a particular name with reference to a commodity he must show that the public have grown to associate that particular name with himself as the manufacturer of or dealer in the article *Barlow* v *Gobindram I L R 24 Calc 364* referred to MAHOMED ESUF v RAJARATNAM PILLAI (1909)

I L R 33 Mad. 402

2 ———— *Infringement of Trade mark—Registration effect of—Vendor's mark—Passing off action—Injunction variation of* An action for the infringement of a trade mark is maintainable even though the plaintiff be not the manufacturer or selector of the goods but merely a vendor of them There is no system of registration of trade marks in India which gives a statutory title In a suit for the infringement of a trade mark the plaintiff claimed the right to be the exclusive user of a flower of a particular design but his evidence was directed to establish that his goods were recognised by the general design of a flower (*phul marka*) —

TRADE MARK—*contd*

Held that in the circumstances of the case an association had been *established between* the plaintiff's particular design and the goods sold thereunder and inasmuch as the *defendant* had adopted the plaintiff's trade mark *for his own purpose* the plaintiff was entitled to an injunction. Although no specific objection was taken on appeal to the form of the injunction ordered *in the Court* of first instance which proceeded *on the erroneous* assumption that *the goods sold by the plaintiff* were prepared by him a variation should be introduced into the terms of the injunction so as to fit with the facts *as actually established*. JAWALA LURAAD *v.* MUNNA LAL SEROWJEE (1909)

I L R 37 Calc 204

3 ———— Assignment—*Trade name—Goodwill—Infringement*. Where a cigarette manufacturer carrying on only one business and being the proprietor of several trade marks which he used indiscriminately purported *to assign* to another cigarette manufacturer all that the *trade mark* name and label known as the Sri Durga trade mark used upon packets of cigarettes sold and known as Sri Durga cigarettes *and the* good will of his business so far as the *same relates thereto* and continued dealing in his cigarettes under the other mark —*Held* that the assignment was void and inoperative. For the assignment of a trade mark to be operative *in law it is not sufficient* that an assignment of *goodwill should* accompany or follow the transfer of the *trade mark* so as literally to comply with the rule that a *trade mark* cannot be transferred in gross but the trade mark must continue to be a *representation of the truth* as warranting the origin of the goods to which it is attached within the limits *of deviation* sanctioned by the usage of trade and commerce. *Leather Cloth Company v. American Leather Cloth Company 11 H L 523 Hall v. Barrows 4 De G J & S 150 Singer Manufacturing Company v. Wilson L R 2 Ch D 434 Singer Manufacturing Company v. Loog L R 8 A C 15 Pinto v. Badman 8 R P C 181* and *Edwards v. Dennis L R Ch D 454* referred to. BRITISH AMERICAN TOBACCO CO LD *v.* MAHBOOB BUKSH (1910)

I L R 38 Calc 110

4 ———— Imitation—Abandonment—*Intention—Defendants improperly representing that their business to be business carried on by plaintiffs—Injunction—Raising of issues—Practice—Procedure*. The plaintiffs had since the year 1887 been importing into and selling in India watches manufactured at the St Imier Factory in Switzerland. These watches bore the name Berna on the dial. In 1907 the plaintiffs complained of the watches *supplied* by the St Imier Factory and began to import watches largely from other manufacturers while they ceased giving orders to the St Imier Factory. In the year 1908 the St Imier Factory was purchased by the defendants and at the time of purchase the defendants asked the plaintiffs whether the defendants could positively count upon the *plaintiffs to* be their regular customers for the *articles* previously taken from the St Imier Factory. The plaintiffs replied that they were willing *in principle* to reserve a part of their orders for the *defendants* but that it would first be necessary *for the latter* to give an idea of what they were going to manufacture and the improvements they were going to make in the quality of the watches. In one of their catalogues printed in 190 the plaintiffs announced — We take this opportunity of *informing our customers* that the name Berna will be changed to Service as soon as our present *stock of these watches* is sold out. The trade *mark will in other respects remain* unaltered. The alteration of the name is done to secure a trade mark which cannot be imitated in India or elsewhere. On the 6th of November 1908 the defendants opened a place of business in Bombay *and issued* a circular dated February 1909 in which on behalf of the defendant Company they referred to the plaintiffs as the defendants agents who had sold 100 000 watches made at the St Imier Factory in past years and proclaimed that Berna Company's watches would no longer be *sold by their former sole agents* importers (meaning the plaintiffs) as the defendants had decided to get rid of any middleship and to deal directly *themselves*. The plaintiffs thereupon filed a suit on the 2nd April 1909 against the defendants to restrain them from using and imitating various *trade symbols alleged to belong to the plaintiffs* and from representing that the defendants business was the business carried on by the plaintiffs. *Held* that the plaintiffs for the last three years both in their dealings with the supplying factory and with their customers evinced very clearly and consistently their intention to abandon the name Berna as a quality mark for their watches and it followed that they could no longer claim any exclusive title to the use of that name either alone or in a trade mark. *Held* further that the plaintiffs were entitled to an injunction restraining the defendants their servants agents travellers and representatives respectively from in any manner representing that the defendant Company had been or were carrying on the business carried on by the plaintiffs or were the successors in business of the plaintiffs. *Per Curiam*.—The importer who by advertising and pushing the sale of goods under a particular mark secures a wide popularity for the mark in relation to the good sold by him is entitled to the protection of the Court for that mark in the country of importation even against the producer of the goods. *Damodar Ratansey v. Hormasji Adarji* (unreported) *Appeal No 94 of 1895* and *Lavergne v. Hooper I L R 8 Mad 149* referred to. The fact that the user of a word or mark always uses it in conjunction with his own name is not conclusive to show that the word or mark cannot be claimed as a trade mark or that the user has waived his rights in it as a trade mark. The question of abandonment is one of intention to be inferred from the facts of the case. *Mouson & Co v. Boehm L R 26 Ch D 398* and *Lavergne v. Hooper I L R 8 Mad 149* followed. The practice of raising a number of issues which do not state the main questions in the suit but only various subsidiary matters of fact upon which there is not agreement between the parties is very embarrassing. Issues should be confined to questions of law arising on the pleadings and such questions of fact as it would be necessary for the judge to frame for decision by the jury in a jury trial at *nisi prius* in England. WEST END WATCH COMPANY *v.* BERNA WATCH COMPANY (1910) I L R 35 Bom 425

5 ———— Using a false trade mark—*Possession of instruments for counterfeiting a trade mark—Selling umbrellas with counterfeit trade*

TRADE MARK—contd

mark—Trade name use of by rival manufacturer—Using a false trade description—Penal Code (Act XLV of 1860) ss 48 485 and 486—Merchandise Marks Act (IV of 1889) ss 6 and 7 A trade mark must be some visible and concrete device or design affixed to goods to indicate that they are the manufacture of the person whose property the trade mark is It must consist of a name impressed in some distinctive way There is a distinction between a trade mark and a trade name *Singer Manufacturing Co v Loog L R 8 A C 15* referred to Where a trade man alleged in his complaint to the Magistrate that his trade mark consisted of a particular device with the name *Butto Kristo Pal* or *Sri Butto Kristo Pal* said to be that of his son but at the trial claimed only the name as the trade mark while one of the partners disclaimed the device except the name and the former s son claimed the name as representing his own trade mark in a separate business and the rest of the prosecution evidence did not establish the possession or use of any specific trade mark *Held* that the complainant had not proved that he had a trade mark for the infringement of which a rival trader using a similar device with the same name could be convicted under ss 482 485 or 486 of the Penal Code and that the case was of a civil nature When a manufacturer has no exclusive right to manufacture a certain article or even articles of a particular brand all that he can claim is that no other manufacturer should so mark such articles as to pass them off as the former s when they are not *Semble* The improper use of a trade name may fall under s 5 of the Merchandise Marks Act (IV of 1889) and be punishable under s 6 or s 7 as a false trade description ANATH NATH DEY v EMPEROR (1912) I L R 40 Calc 281

6 ——————— License Estoppel—*Evidence Act (I of 1872) s 117—Licensee s right to question Licensor s title—Public Policy—Assignment of trade mark denoting merely standard or quality of manufacture—Abandonment of trade mark—Incoming Partner liability of for obligations of firm—Costs* The licensee of a trade mark is estopped as against his licensor from questioning the latter s title to the trade mark The fact that the licensee has repudiated his contract with his licensor cannot give him the right to question the licensor s title for the latter s concurrence is necessary to rescind the contract *Johnstone v Milling 16 Q B D 460* referred to Where jute trade marks bearing the name of the original proprietor of those marks have come by usage of trade to indicate not the skill in selecting jute of the original proprietor so as to make those marks personal to him but merely a certain standard, kind quality or mode of manufacture of goods irrespective of the person in whose hands the business might be the assignment of such marks is not a fraud on the public or against public policy A license for four out of seven trade marks the remaining three having been abandoned is valid *British American Tobacco Co Ld v Mahboob Buksh I L R 38 Calc 110* distinguished As the right to a trade mark might be acquired so it might be abandoned and no length of time is required for acquiring the right or apart from statutory law to constitute an abandonment *Lavergne v Hooper I L R 8 Mad 149* approved An agreement by an incoming partner to make himself liable to creditors of the firm before he joined it may be established by indirect evidence and the Courts lean in favour of such an agreement and are ready to infer it from slight circumstances *Ex parte Jackson 1 Ves Jun 131 Ex parte Peele 6 Ves Jun 602* and *Rolfe and the Bank of Australia v Flower Salting & Co L R 1 P C 27* approved JAGARNATH & CO v CRESSWELL AND OTHERS (1913) I L R 40 Calc 814

7 ——————— Title—Assignment—*Trade mark in selection of natural products as indicating quality—Goodwill—License to use trade marks—Action for royalty—Estoppel—Licensee estopped from questioning validity of license—Evidence Act (I of 1872) s 11—Damages action for* In India the law of trade marks is not governed by statute there being no statutory system of registration Rights and liabilities in connection with trade marks are determined by reference to the principles of the common law of England *British American Tobacco Co Ld v Mahboob Buksh I L R 38 Calc 110* referred to A trade mark cannot be transferred or descend in gross but only together with the goodwill of the business to which it relates A trade mark represents the origin of the goods to which it is attached or their trade association the truth of the representation is essential By usage successors in business may use their predecessors trade marks where the representation still continues to be substantially true A selector of natural products like jute may have a trade mark in connection with such selection as indicating good quality *Major Brothers v Franklin & Son [1908] I K B 712* followed Meaning of good will explained *Inland Revenue Commissioners v Muller & Co s Margarine Ld [1901] A C 217* referred to In a suit for royalty brought by the licensors of certain jute trade marks against the licensees the defence taken was that the plaintiffs had no title to the marks in question and that the license was void —*Held* that by virtue of s 117 of the Evidence Act the licensees were estopped from questioning their licensors title or the validity of the license At any rate s 117 cast on the defendants the burden of proving that the goodwill of the business had not passed to the plaintiffs to support the transfer of the trade marks and the defendants having failed to do so the plaintiffs were entitled to the royalty claimed Claim to damages by the licensors for depreciation in the value of the trade marks due to the default of the licensees refused on the facts of the case The Decision of IMAM J in *Jagarnath & Co v Cresswell I L R 40 Calc 814* affirmed HANNAH v JUGGERNATH & CO (1914) I L R 42 Calc 262

8 ——————— Infringement—*Action for—Advertisement and circular—Cause of action—Jurisdiction of Court where advertisement is published* A trader is not entitled to pass off his goods as goods of another trader by selling them under a name which is likely to deceive purchasers (whether immediately or ultimately) into the belief that they are buying goods of another trader The defendant a resident of Gaya published advertisements and distributed hand bills at Muttra in the Agra Judgeship advertising his medicine known as Asli Sudha Sindhu The plaintiff alleged that Sudha Sindhu was his

TRADE MARK—*contd*

registered trade mark and he brought this suit for an injunction and for damages in the Court of the Subordinate Judge of Muttra *Held* that a trade mark could be infringed by means of advertisement and as the cause of action arose partly at Muttra the courts there had jurisdiction to entertain the suit *Jay v Ladler L R 40 Ch D 649 Bourne v Swan and Edgar Limited L R 1 Ch 211 Frank Reddaway v George Banham [1896] A C 199* referred to KHESHTRA PAL SHARMA v PANCHAM SINGH VARMA (191)

I L R 37 All 446

TRADE-NAME

See INJUNCTION

24 C W N 155

See TRADE MARK I L R 38 Calc 110
I L R 40 Calc 281

———— *Similarity of names of Insurance Companies— Oriental —Word known in business—Intention to deceive—Injury to plaintiff—Injunction—Provident Insurance Society—Provident Insurance Societies Act (V of 191) ss 5 and 6—Indian Life Assurance Companies Act (VI of 1912)—User* On an application by the plaintiff company an old large and well known Insurance Company registered in Bombay and having a branch office in Calcutta for a temporary injunction to restrain the defendant company which was incorporated in Calcutta in November 1912 with a small share capital but with the widest powers of doing life and other insurance business though its present rules limited its life insurance business to the issue of policies for sums not exceeding Rs 500 from using or carrying on business under the name it had adopted — *Held* that inasmuch as the term Oriental had become identified with the plaintiff company an injunction should issue restraining the defendant company from using the term Oriental in its name as such user would be likely to deceive the public and the defendant company would be a source of danger to and would be liable to cause damage to the plaintiff company *Merchant Banking Company of London v Merchants Joint Stock Bank L R 9 Ch D 560 Accident Insurance Company Ld v Accident Disease and General Insurance Corporation Ld 54 L J Ch 104* and *Guardian Fire and Life Assurance Company v Guardian and General Insurance Company Ld 50 L J Ch 253* referred to The circumstance that the field of operation of the defendant company was in the Orient did not entitle it to the use of the term Oriental *Hendricks v Montague L R 17 Ch D 638* followed *Rugby Portland Cement Co Ld v Rugby and Newbold Portland Cement Co Ld 8 R P C 241 (C A 9 R P C 46* distinguished *Semble* An Insurance Company incorporated under the Indian Companies Act is not a Provident Insurance Society within the scope of the Provident Insurance Societies Act of 1912 ORIENTAL GOVERNMENT SECURITY LIFE ASSURANCE CO LD v ORIENTAL ASSURANCE CO LD (1913)

I L R 40 Calc 570

———— *Manufacturers of cloth affixing numbers on pieces sold—Cloth known by the numbers affixed as being of a particular manufacture—Numbers not quality marks—Agents and middlemen ordering out goods by numbers alone — Use of numbers protected when they are particular marks of a manufacturer s goods—Numbers when a trade name—Cases of actual deception not necessary* The plaintiffs were manufacturers of cloth on a large scale at their Mills in Nagpore Central Provinces In the year 1904 they commenced to manufacture a certain quality of black twill and to distinguish this particular cloth from all other cloths of their manufacture stamped on each piece of cloth the No 2051 and immediately below that number stamped each piece with the No 10 which denoted the colour and shade of the cloth There was also on each piece of cloth a scroll woven device of a serpent surrounded by a scroll containing the name of the Empress Mill This twill had acquired a great reputation in the Indian markets and particularly in Sindh the North West Frontier Province and the Punjab where the plaintiffs had got their selling agents at Amritsar Peshawar and Karachi The dealers in these towns and other smaller towns would apply to the selling agents for the plaintiffs cloth and the cloth would be distributed by these dealers to smaller dealers in smaller towns and villages and so on until it ultimately found its way to the consumer In or about July 1913 the defendants began to manufacture black twill cloth and on every piece of such twill put on the No 2051 with the No 10 below in the same position as No 10 stamped on the plaintiff s cloth In addition the defendants annexed a label thereto representing an image of the Sun known as the Sooraj Chap or Sun label and also a white ticket bearing the defendant company s name and other particulars in English Gujrathi and Urdu languages The plaintiffs alleged that by the year 1913 their No 2051 had become identified with their goods and any black twill cloth stamped with the No 2051 would be ordinarily taken by purchasers as being the well known No 2051 cloth of the plaintiffs and would be very likely passed off by rival companies as being the plaintiffs goods The plaintiffs contended that they were entitled solely to the use of the No 2051 on their black twill and the use of that number by the defendant on a similar twill constituted an infringement of their rights The plaintiffs accordingly sought to restrain the defendants by injunction from selling their black twill cloth with the No 2051 stamped on it and for an account of the profits made by the defendants by the sale of their black twill with the No 2051 stamped on it The defendants pleaded that the No 2051 was merely a quality mark descriptive of goods and was so adopted by several dealers in black twill They further relied on the fact that they had taken particular care to distinguish their goods from those of the plaintiffs by using different labels and devices The trial Court decreed the plaintiffs claim for injunction and account On appeal by the defendants *held* (i) that the plaintiffs having established that the particular No 2051 was an invariable indication of the cloth being of their manufacture they were entitled to claim an exclusive right to the user of that number in connection with the black twill which they put on the market *Barlow v Gobindram I L R 24 Calc 364* distinguished *Wotherspoon v Currie L R 5 H L 508* and *Birmingham Vinegar Brewery Company v Powell [1897] A C 710* followed (ii) that it was not necessary for the plaintiffs to prove cases of actual deception if the defendants had put into the hands of middlemen a means whereby ultimate purchasers were likely to be

TRADE NAME—contd

defrauded. *Singer Manufacturing Company v Loog 18 Ch D 395 412* and *Lever v Goodwin 36 Ch D 1* followed MADHAVJI DHARMSEY MANUFACTURING CO v THE CENTRAL INDIA SPINNING WEAVING AND MANUFACTURING CO (1916) I L R 41 Bom 49

TRADE USAGE

See JUTE I L R 44 Calc 98

TRADING LICENSES

———— granted to hostile firms—

See CONTRACT WITH ALIEN ENEMY I L R 41 Bom 390

TRADING WITH THE ENEMY

See BILL OF EXCHANGE I L R 41 Bom 566
I L R 46 Calc 84

See CONTRACT WITH ENEMY

See CONTRACT ACT (IX OF 1872) ss 56 (?) Co I L R 40 Bom 570

See SALE OF GOODS I L R 40 Bom 11

———— *Acts done and directions given before date of the Ordinance relevancy of—Subsequent ratification— Trading meaning of—Directions to an agent to take delivery of goods lying in London and to sell to German firm against payment—Supply of goods to agent and sale by him to German firm— Destined meaning of—Legal and actual destination—Goods shipped to enemy country before the war but taken up by English firm in London —Exportation of goods to accused agent in Italy refused by such firm because of Royal Proclamation —Abetment of supply to or of trading by the agent —Power of Appellate Court to alter conviction of principal offence to one of abetment—Discretion of Court—Commercial Intercourse with Enemies Ordinance (VI of 1914) s 3—Trading with the Enemy Proclamation No 2 cls 5 (7) (9)—Royal Proclamation of 15th October 1914—Criminal Procedure Code (Act V of 1898) s 423* Where a case of mica was shipped by the accused to a German firm before the war but arrived in London after its outbreak and was taken up by an English firm whereupon he wrote before the date of the Ordinance VI of 1914 viz 14th October 1914 to a Bank in London to make over the case to the English firm and also to the latter to take it up and send the same to his agent at Genoa on application by such agent which however the English firm refused to do by reason of the prohibition of the export of mica to Italy by Royal Proclamation and further wrote to the agent to apply to the English firm for the mica and to deliver it to a German purchaser against payment and where after the date of the Ordinance the accused again wrote to his agent informing him of his aforesaid letters and instructions to the Bank and the English firm and directing the agent to apply for the case of mica to the latter and to deliver it to the German purchaser against payment which directions were not in fact carried out on account of the refusal by the English firm to export the mica to Italy —*Held* that as the Ordinance was not retrospective the only acts and directions which the Court could take into consideration to establish the offence of trading with the enemy were such as were done or given after the date of its enactment unless the previous acts and directions were ratified thereby *Quære* Whether mere directions to an agent to apply for goods in the possession of a third person and to deliver the same to an enemy against payment amount to trading within the meaning of the Trading with the Enemy Proclamation No 2 cl 5 ( ) The word destined when used with the term trading in the same sub clause means intended for and not on the way to *Legal* destination must not be confused with *actual* destination The Court must determine whether the goods were actually destined for an enemy and with reference only to acts done and directions given after the date of the Ordinance VI of 1914 If the English firm had really purchased the goods outright they were not in existence so far as any disposition of them by the accused was concerned after the date they were taken up and paid for and could not be destined for an enemy But assuming that the said firm had merely taken over the goods on behalf of the accused and subject to his further instructions a direction to the agent to apply for and deliver them to a German purchaser against payment was insufficient to give the goods an enemy destination in fact as such direction had no operation on receipt thereof by reason of the refusal of the English firm to export the goods to the agent at Genoa *Held* also that as the point was not free from doubt the accused was entitled to the benefit of it It is not a universal rule that in no case can an Appellate Court convict an accused of abetment when he was charged only with the principal offence But it is discretionary with the Appellate Court to allow such fresh charge being tried on appeal The Court refused under the circumstances of the case to alter the conviction to one of abetment of supply to or of trading by the agent Where the agent of the accused sold and delivered some cases of mica and handed over the shipping documents for certain other cases lying in London to a German firm or its agent in Genoa —*Held per* BEACHCROFT AND GREAVES JJ that the accused was guilty of the offence of supplying goods to the enemy within cl 5 (7) of the Trading with the Enemy Ordinance No 2 INDAR CHAND v EMPEROR (1915)
I L R 42 Calc 1094

———— *Attempting to trade with enemy—Commercial Intercourse with Enemies Ordinance (VI of 1914) s 3 Obtaining in ss 5 (7) and 5 (9) of the Royal Proclamation meaning of—Penal statutes generally not retrospective* The accused a trader in Madras dealing in tobacco cabled on 28th July 1914 to one Ruppell, a German residing in Germany for certain bales of tobacco In compliance with this order Ruppell sent to certain agents of the accused at Amsterdam some bales of tobacco about the end of September 1914 and these agents again shipped them on 7th October 1914 to Messrs Lancelot and Dent the agents of the accused in London Having received the same before the 14th October 1914 the London agents reshipped them to the accused who received the same in Madras between the 21st and 26th November 1914 War was declared between England and Germany on 4th August 1914 A Royal Proclamation prohibiting trade with the enemy was made on 9th September 1914 and an Ordinance

TRADING WITH THE ENEMY—*concld*

[Commercial Intercourse with Enemies Ordinance VI of 1914] to the same effect was passed on 11th October 1914 and it came into force on that day On these facts the accused was charged and convicted by a Magistrate of the offence of *trading with the enemy* under s 3 of the Commercial Intercourse with Enemies Ordinance VI of 1914 on the ground that *he obtained in Madras* between 21st and 26th November 1914 goods *from an enemy and from an enemy country* He was also convicted by the Magistrate of the offence of *attempting to trade with the enemy* under the same section writing two letters on 26th November 1914 one to a neutral subject in Holland and another to an enemy in Germany requesting them to secure for him his merchandise in Germany *Held* on the second charge that the accused was guilty of *attempt to trade* even if the goods in the enemy's country became his own before the outbreak of the war or even if there were no goods of his share at the time he wrote the letters *Reg v Ring 61 L J (N S) M C 116* and *Reg v Oppenheimer and Colb cl [1915] 2 K B 755* followed *Held* on the first charge that the conviction could not be sustained as the charge was not proved as laid Per WALLIS C J —The charge of trading is bad for two reasons —(i) the ordering or procuring was before the 14th of October 1914 the date when the Ordinance came into force and (ii) even this procuring was in London by the accused's agents an offence which Courts in India have no jurisdiction to try *Semble* Trading with the enemy is a Common Law offence in England if not in India also The Royal Proclamation and the Ordinance have no retrospective effect The words obtaining goods in their ordinary meaning include procuring or ordering goods as well as taking delivery of them on arrival Per COUTTS TROTTER J —The offence committed if any was one of obtaining goods by way of transmission under the latter part of s 5 (7) of the Royal Proclamation an offence with which the accused was not charged *Semble* Trading with the enemy is a Common Law offence both in England and in India *Obiter* A person may be guilty of illegally obtaining goods twice once through his agents and thereafter by himself It is no defence to the charge of obtaining goods under the Ordinance that some acts constituting the offence took place before the date of the Ordinance *Reg v Griffiths [1891] 2 Q B 145* referred to The charge of trading having failed their Lordships refused in the circumstances of the case to amend the charge into one of obtaining goods by way of transmission under the latter portion of s 5 (7) of the Royal Proclamation HOOPER v KING EMPEROR (1916)

I L R 40 Mad 34

TRADING WITH THE ENEMY PROCLAMATION NO 2

——— cls (7) (9)—

See TRADING WITH THE ENEMY I L R 42 Calc 1094

TRAFFICKING IN OFFICES

See CONTRACT I L R 43 Calc 115

TRANSFER

See CHAUKIDARI CHAKARAN LANDS I L R 45 Calc 765

TRANSFER—*contd*

See DEKKHAN AGRICULTURISTS RELIEF ACT 1879 s 10 A I L R 45 Bom 87

See FRAUDULENT TRANSFER

See HINDU LAW—WIDOW 16 C W N 106

See ITMAM I L R 47 Calc 919

See MAHOMEDAN LAW ENDOWMENTS I L R 47 Calc 866

See OCCUPANCY HOLDING 14 C W N 68

See PRE EMPTION I L R 38 All 361

See TRANSFER OF HOLDING

See TRANSFER OF SHARES

See TRUSTS ACT s 5 I L R 36 Bom 398

——— by father effect of—

See TITLE PROOF OF I L R 45 Calc 909

——— by lessee—

See LESSOR AND LESSEE I L R 37 Calc 683

——— by mortgagee—

See MORTGAGE BY MINOR I L R 38 Mad 1071

——— effect of—

See CHAUKIDARI CHAKARAN LANDS I L R 45 Calc 515

——— fraudulent—

See PROVINCIAL INSOLVENCY ACT 1907 s 36 2 Pat L J 101

See TRANSFER OF PROPERTY ACT 1882 s 53 2 Pat L J 546

——— of application—

See CIVIL PROCEDURE CODE 1908 s 24 I L R 34 Bom 411

See SANCTION FOR PROSECUTION I L R 40 Calc 37

——— of decree—

See EXECUTION OF DECREE 5 Pat L J 639 I L R 37 Calc 574

See HIGH COURT RULES AND ORDERS R 161 I L R 39 Mad 485

See SPECIFIC PERFORMANCE I L R 43 Calc 990

——— of Civil Case—

See CIVIL PROCEDURE CODE, 1908 ss 22 TO 24

——— to High Court—

See APPEAL I L R 47 Calc 1104

——— of Criminal Case—

See CRIMINAL PROCEDURE CODE ss 526 TO 528

See EXTRADITION I L R 46 Calc 31

See JURISDICTION OF HIGH COURT I L R 44 Calc 595

TRANSFER—*contd*

—— of Criminal Case—*contd*

See PENAL CODE 225
I L R 38 All 284

See SANCTION FOR PROSECUTION
I L R 42 Calc 667

See TRANSFER OF MAGISTRATE
I L R 40 Mad 108

—— of goods to creditor—Effect of—

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909) s 57
I L R 39 Mad 250

—— of Magistrate who has written but not delivered judgment—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 367
I L R 40 Mad 108

—— of Management—

See TRUSTEES OF A TEMPLE
I L R 39 Mad 456

—— of Proceedings—

See DIVORCE ACT (IV OF 1869) ss 3 16 37 44 I L R 40 Bom 109

—— *of portion of jote*—

See LANDLORD AND TENANT
I L R 37 Calc 687

—— of shares—

See COMPANY I L R 36 Bom 334

—— of suit—

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887) ss 23 27
I L R 38 Bom 190

—— *of tenants rights*—

See PARTIES 14 C W N 703

—— oral—

See TRANSFER OF PROPERTY ACT (IV OF 1882) ss 118 TO 120 54 AND 55 CL 6 (b) I L R 38 Mad 519

—— to *Bona fide* purchaser—

See SHARES I L R 46 Calc 331

—— to landlord—

See CHAUKIDARI CHAKARAN LANDS
I L R 45 Calc 685

—— Transferee taking possession before execution of agreement—

See AGREEMENT TO TRANSFER
24 C W N 463

—— with consent of reversioner—

See TITLE SUIT FOR DECLARATION OF
I L R 38 All 440

—— *Bona fide* transferee for value without notice of mortgage—

See DEKHAN AGRICULTURISTS RELIEF ACT s 10A I L R 45 Bom 87

1 —— *Transfer of share of a claim in respect of property not in possession if valid* A transfer by a person of a share of his claim with respect to property of which he is not in possession is valid and operative An agreement between the transferor and the transferee that it shall not be competent to the former to confess judgment in favour of the defendant or to enter into compromise or withdraw the claim in respect of the whole or any part of the subject matter of the suit instituted for the recovery of the property is valid and should be given effect to *Lal Achal Ram v Raja Kazim Husain Khan L R 32 I A 113 sc 9 C W N 477* followed In such a suit if the transferor wants to withdraw he may be permitted to do so but the suit may proceed at the instance of the transferee RAMDHAN PURI v GOSSAIN DALMIR PURI (1909) 14 C W N 191

2 —— *Transfer of a suit under s 92 Civil Procedure Code (Act V of 1908) from the Court of a District Judge to that of the Additional District Judge—Authority of Additional District Judge to try such suit—Civil Courts Act (XII of 1887) s 8 sub ( )—Convenience* An Additional District Judge by virtue of the assignment of all the functions of a District Judge under the provisions of sub s (2) of s 8 of Act XII of 1887 is empowered to exercise the same powers as the District Judge in suits under s 92 of the Civil Procedure Code *Semble* Any other Court empowered in that behalf by the Local Government in s 92 of the Code probably refers to Courts such as the Subordinate Judges Courts Transfer of the suit was ordered in this case on the ground of convenience the opposite party being compensated by payment of his costs MOHABOR RAHMAN v HAZI ABDUR RAHIM (1920) I L R 48 Calc 53

3 —— *Notification by Local Government empowering a particular Judge to deal with a part heard case pending in another Court how far legal—Civil Procedure Code (Act V of 1908) s 92—Power of District Judge to transfer a case from his file by virtue of such notification* A notification by the Local Government under s 92 of the Civil Procedure Code (Act V of 1908) directed to a particular Judge and purporting to deal with a particular litigation which was already pending in the Court of the District Judge is *ultra vires* A District Judge therefore has no power to transfer a case brought under s 92 of the Civil Procedure Code which was pending in his Court to the Court of a particular Subordinate Judge who was empowered by Local Government to try it by virtue of such a notification ABDUL KARIM ABU AHMED KHAN v ABDUS SOBHAN CHOWDHRY (1911) I L R 39 Calc 146

4 —— *Appeal—Powers of Court to whom case is transferred for trial—Limitation—Practice* When an appeal has been transferred for trial by a District Judge to a Subordinate Judge the Subordinate Judge has for the purpose of disposing of the appeal under the Bengal North Western Province and Assam Civil Courts Act all the powers which could be exercised by the District Judge Where therefore an appeal was presented to the District Judge after the period of limitation owing to a mistake of law as regards the appealability of the suit and the District Judge admitted the appeal under s 5 of the Limitation Act and transferred the appeal to the Subordinate Judge for disposal the Subordinate Judge has power to consider whether the appeal was competent or barred by limitation

TRANSFER—*contd*

Jhotee Sahoo v Omesh Chunder Sircar I L R .. Calc 1 not followed VISMADEV DAS v SITA NATH ROY (1912) I L R 40 Calc 259

5 ———————— *Application for adjournment to move the High Court for transfer—Criminal case meaning of—Proceedings for security to keep the peace—Criminal Procedure Code (Act V of 1898) ss 107 526 (8)* A proceeding under s 107 of the Criminal Procedure Code is a criminal case and is subject to the application of cl (8) of s 526 WAZID ALI KHAN v EMPEROR (1913) I L R 41 Calc 710

6 ———————— *Transfer by District Judge of particular case to Additional Judge—Civil Courts Act (XII of 1887) ss 8 sub s (2) 22 sub s (2)—Probate and Administration Act (V of 1881) ss 51 53* It is competent to a District Judge to transfer a particular case to an Additional Judge under the provisions of sub s (2) of s 8 of the Civil Courts Act of 1887 RUP KISHORE LAL v NEMAN BIBI (1915) I L R 42 Calc 842

7 ———— *No notice to parties—dismissal for default—application for re hearing—Code of Civil Procedure (Act V of 1908) O XLI r 19 — sufficient cause* Where an order of transfer is made notice should be given to the parties or their representatives On the 16th July the hearing of an appeal pending before the District Judge was postponed until the 21st August On the 9th August the appeal was transferred to the Court of the Subordinate Judge and on the 10th August the Subordinate Judge ordered the case to be put up on the 21st The order of transfer was not communicated to the parties On the 21st neither of the parties appeared before the Subordinate Judge and he dismissed the appeal *Held* that under the circumstances there was sufficient cause for granting re hearing of the appeal RAM SUKHAL PATHAK v MAHARAJA KESHO PRASAD SINGH 3 Pat L J 218

8 ———— Criminal case—*Grounds for—Expression of opinion by Judge in counter-case* The basis of all applications for transfer is that the accused must have a reasonable apprehension that he will not receive a fair trial But a Judge is not incompetent to try a case of rioting merely because he has tried and decided a counter case and expressed an opinion therein AMRIT MONDAL v KING EMPEROR 1 Pat L J 399

TRANSFER DEED

See IMPERFECT GIFT I L R 48 Calc 986

TRANSFER OF APPEAL

———————— When an order of transfer is made notice should be given to the parties or their agent RAM SUKHAL PATHAK v MAHARAJAH KESHO PRASAD SINGH 3 Pat L J 218

TRANSFER OF HOLDING

See CRIMINAL PROCEDURE CODE S 526 I L R 33 All 583

See LANDLORD AND TENANT I L R 40 Calc 870

See PENAL CODE (ACT XLV OF 1860) S 182 I L R 33 All 163

See TRANSFER

TRANSFER OF HOLDING—*contd*

———————— *Gomastha if can bind landlord by recognising transferee of jote a question of fact—Burden of proof of the gomastha s authority if lies on landlord—Transfer of holding recognition of what constitutes* It cannot be laid down as an inflexible rule of law that a landlord is not bound by the act of *gomastha* in recognising a *transferee* of an occupancy holding The question of the *gomastha s* power to bind his landlord is one which must be decided on the particular *facts of each case* The burden of proof is in the first instance upon the landlord to prove the *extent* of the authority of the *gomastha* as a matter peculiarly within his knowledge Where therefore a *gomastha* of the landlords accepted rent from a transferee of a jote and the landlords failed to show that the *gomastha* acted beyond the scope of his authority —*Held* that the facts constituted sufficient recognition of the transferee by the landlord SUDUMAN JAMADAR v BEHARI MAHTON (1911) 15 C W N 953

TRANSFER OF PROPERTY

See RIGHT OF SUIT I L R 35 Mad 373

See TRANSFER OF PROPERTY ACT (IV OF 1882) s. 6 CL. (a) I L R 32 All. 83

———————— to the jurisdiction of another Court—

See CIVIL PROCEDURE CODE (ACT V OF 1908) ss 37 38 and 150 I L R 37 Mad 462

TRANSFER OF PROPERTY ACT (IV OF 1882)

See MAHOMEDAN LAW—GIFT I L R 38 All 627

See MORTGAGE I L R 43 Bom 703
I L R 35 All 48

———————— applicability of to Crown lands—

See LEASE I L R 40 Mad 910

———————— *Vendee s right to possession against unpaid vendor—Vendor only entitled to statutory charge* The provisions of the Transfer of Property Act that the vendee after conveyance is entitled to possession and that the vendor has a statutory charge on the property for unpaid purchase money are clear and it is not competent to the Courts in a suit for possession by the vendee to pass a decree for possession conditional on the vendee paying the balance of the purchase money *Baij Nath Singh v Paltu I L R 30 All 125* not followed VELAYUTHA CHETTY v GOVINDASAWMI NAIKEN (1910) I L R 34 Mad 543

———————— In the absence of evidence to the contrary homestead land comprised in a tenancy created before the Transfer of Property Act 1882 was passed must be presumed to be non transferable AMBICA PRASAD SINGH v BALDEO LAL 1 Pat L J 253

———————— *Lease created before—Holding over—Reservation of a yearly rent—Presumption that tenancy one from year to year—Lease before Registration Act (VIII of 1871) reserving a yearly rent if required registration.* Where it appeared that the tenant took settlement of a

TRANSFER OF PROPERTY ACT (IV OF 1882)
—contd

holding for a term of one year by executing a *kabuliyat* in 1273 and after the expiry of the term he and his successors in interest were holding over until the present suit to eject upon 22 days notice to quit was instituted by the landlord *Held* that a stipulation in the *kabuliyat* that the tenant would be liable to pay the rent of which assessment notice will be served by the landlord and on his failing therein the landlord would be free to settle the holding with some body else did not take away the right of the landlord to eject the tenant after service of notice to quit according to law even if the landlord did not choose to exercise his right to call upon the tenant to pay additional rent and settle the land with others in the event of the tenant refusing to pay such rent That the tenancy having been created long before the Transfer of Property Act s 106 or 116 of the Transfer of Property Act did not apply and inasmuch as a yearly rent had been reserved the tenancy was to be presumed to be a yearly tenancy even though the rent was payable according to monthly instalments That the tenancy having been created before the Registration Act VIII of 1871 the stipulation reserving a yearly rent could be validly made without a registered instrument That the tenancy could be terminated by a reasonable notice to quit CHARU CHANDRA NAI *v* SATYA SEBAK GHOSAL (1919) 23 C W N 641

——— ss 2 cl (c) 116—*Ijaradar for a term sub lease for residential purposes granted by befor 1882—Holding over and acceptance of rent by next such ijaradar effect of—Transfer of Property Act effect of on such tenancy—S 2 cl (c) s 116 conditions necessary for the application of—Notice required to terminate such tenancy* The defendant was brought upon the land as a tenant under a verbal lease before the Transfer of Property Act came into force by an *ijaradar* of the land who held for a limited term which expired after the Transfer of Property Act had come into operation The tenancy was created for residential purposes The defendant continued in occupation of the land and was treated as tenant by the next *ijaradar* who accepted rent from the defendant The landlord the lessor of the *ijaradar* never accepted rent from her *Held* (in a suit for ejectment of the defendant) that in order to entitle the defendant to avail herself of the benefit of cl (c) of s 2 of the Transfer of Property Act it is necessary for her to establish that her right as it exists at present arose out of a legal relation constituted before the Transfer of Property Act came into force in other words that the tenancy created by the first *ijaradar* continued in operation even after the termination of the first *ijara* That the tenancy of the defendant came to an end when the *ijara* during which it was created expired and the true effect of the acquiescence by the second *ijaradar* in the continuance of the possession by the defendant and the acceptance of rent from her was to create in her a new tenancy and the provisions of cl (c) of s 2 of the Transfer of Property Act were consequently of no avail to the defendant That in order to come within the scope of s 116 the defendant besides proving that she as under lessee remained in possession of the property after the determination of the *ijara* granted to her lessor had to establish that the lessor or his legal representative

TRANSFER OF PROPERTY ACT (IV OF 1882)
—contd

——— ss 2, cl (c) 116—*contd*

accepted rent from her That the expression legal representative is not defined in the Transfer of Property Act but it clearly implies a person who occupies the same position as the lessor and it could not include the second *ijaradar* who had transferred to him only a fraction of the interest possessed by the lessor That the land in suit having been leased for a purpose other than agricultural or manufacturing the tenancy must, even if s 116 applied be deemed in the absence of an agreement to the contrary to have been a lease from month to month terminable by fifteen days notice expiring with the end of a month of the tenancy DUROI NIKARINI *v* COOBORDHAN BOSE (1914) 19 C W N 525

——— s 2 (d)—*Mortgage—Assignment of mortgage—Application of rule of damdupat* The fact that the person entitled to sue on a mortgage happens by assignment to be a Parsee cannot affect the (Hindu) mortgagor s right to claim the advantage of the rule of damdupat if it existed when the mortgage was entered into It is not proper to infer that because it has been expressly enacted that nothing in Chapter II of the Transfer of Property Act (IV of 1882) shall be deemed to affect any rule of Hindu Law the Legislature has deprived a Hindu mortgagor of the protection afforded him by the rule of damdupat The right of a mortgagee to sue for his principal and interest is a right arising from a contract and must be taken to be made subject to the usages and customs of the contracting parties JEEWANBAI *v* MANORDAS (1910) I L R 35 Bom 199

——— ss 2 (d) 8 36 44 52—

See SUBSTITUTION OF PROPERTY AND SECURITY I L R 39 Mad 283

——— ss 2 (d) 36—

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887) SCH II ART 7
I L R 41 Mad 370

——— ss 2 (d) 52—

See COMPANY I L R 42 Bom 215

——— ss 2 54—

See LAND REVENUE CODE (BOM ACT V OF 1879) s 74 I L R 41 Bom 170

——— ss 2 108 (h)—

See LANDLORD AND TENANT—TREES
I L R 37 Calc 815

——— s 3—

See MORTGAGE I L R 48 Calc 1

See NOTICE 25 C W N 49

See REGISTRATION ACT 1908 s 17
25 C W N 49

——— *Actionable claims, transfer of—Mortgage-debts book debts and Promissory notes gift of—Unregistered instrument validity of to effect gift—Law before and after amending Act of 1900* Under the Transfer of Property Act 1882 as originally passed mortgage debts were assignable as actionable claims and the assignment of the debt passed the security with it under s 8 of the Act But in consequence of the amendments made in 1900 of the original Act mortgage debts being excluded from the

TRANSFER OF PROPERTY ACT (IV OF 1882) —contd

——— s 3—*contd*

definition of actionable claims can only be transferred together with the security as immoveable property and therefore only by a registered instrument Where however the law still admits of the separate transfer of the mortgage debt as by the endorsement of promissory notes secured by a deposit of title deeds or by attachment and sale in execution of a mortgage debt under the Civil Procedure Code s 8 of the Transfer of Property Act still operates to carry the security with it Where certain mortgage debts, book debts and promissory notes were transferred by way of gift under an unregistered document the gift of the mortgage debts was invalid under s 123 of the Act but the gift of book debts and promissory notes fell under Chapter VIII of the Act (Transfer of actionable claims) and not under Chapter VII (Gifts) and was valid and took effect Where there is a gift of immoveables and moveables but the former fails owing to want of registration the latter may nevertheless be held good the question to be considered being whether the latter was conditional on the validity of the former *Godman v Godman (1920)* I 261 followed *Pothi Naicken v Naganna Naicker (1916) 30 M L J 63* distinguished PERUMAL AMMAL v PERUMAL NAICKER (1921) **I L R 44 Mad 196**

——— *Bare right to sue assignment of—Claim for unascertained damages—Comparison between the English and Indian law* The Defendants entered into a contract with one B undertaking to take delivery of certain goods in accordance with the contract and on their failure to do so the matter was referred to arbitrators who gave an award to the effect that the Defendants were to pay for and take delivery of the good B therefore resold the goods which fetched a lower amount than that contracted for He then brought a suit against the Defendants for the balance and then assigned to the Plaintiff all his claim in and the right to proceed with the suit and all advantages and benefits of all proceedings thereof *Held* that the suit was not maintainable inasmuch as the claim was for unascertained damages for breach of contract and the assignment was an assignment of a mere right to sue *Clegg v Bromley* (1) *referred to* That there were no materials justifying the application of sec 107 of the Contract Act and the resale was not justified by the award so that the claim was one for unascertained damages That on a true construction of the terms of the assignment the subject matter of the assignment was not property with an incidental right to sue but a mere right to sue for unascertained damages for alleged breach of contract within the meaning of sec 6 (*e*) of the Transfer of Property Act JEWAN RAM v PATAN CHAND FISSEN CHAND **26 C W N 285**

——— ss 3 and 41—*Doctrine of constructive notice—Court sale in execution—Certified purchaser—Benami—Mortgagee of certified purchaser—Civil Procedure Code (Act XIV of 1882) s 317 (Act V of 1908) s 66* The mortgagee of the certified purchaser at a Court sale is entitled to rely upon the title of his mortgagor including such immunity from suit as the law provides in support of the statutory title S 66 of the Civil Procedure Code (Act V of 1908)—which may be called in aid for

TRANSFER OF PROPERTY ACT (IV OF 1882) —contd

——— ss 3 and 41—*contd*

the purpose of assisting in the construction of s 317 of the Civil Procedure Code (Act XIV of 1882)—supports his conclusion *Hari Govind v Ramchandra I L R 31 Bom 61* followed The doctrine of constructive notice applies in two cases *first* where the party charged had actual notice that the property in dispute was charged incumbered or in some way affected in which case he is deemed to have notice of the facts and instruments to a knowledge of which he would have been led by an inquiry after the charge or incumbrance of which he actually knew and *secondly* where the Court has been satisfied from the evidence before it that the party charged had designedly abstained from inquiring for the very purpose of avoiding notice This does not conflict in any way with the statutory definition of notice in s 3 of the Transfer of Property Act (IV of 18) A purchaser of property is under no legal obligation to investigate his vendor s title But in dealing with real property as in other matters of business regard is had to the usual course of business and a purchaser who wilfully departs from it in order to avoid acquiring a knowledge of his vendor s title is not allowed to derive any advantage from his wilful ignorance of defects which would have come to his knowledge if he had transacted his business in the ordinary way This is what *is meant by* reasonable care in s 41 of the Transfer of Property Act (IV of 1882) Occupation of property which has not come to the knowledge of the party charged is not constructive notice of any interest in the property MANJI KARIMBAI v HOORBAI (1910) **I L R 35 Bom 342**

——— *Benami sale—Sale by benamidar—Estoppel—Notice—Wilful abstention from calling for title-deeds and from making enquiry as to title—Infant if may be estopped by his own fraudulent misrepresentations—Acts and admissions of guardian if bind ward* B executed in favour of P a benami sale deed which as well as the property conveyed (a putni tenure) he kept in his own possession R subsequently purported to transfer the property to the defendant *Held* in a suit by the representative of B against the defendant for recovery that if it was found that the latter made no attempt to take the title deeds of the property including the sale deed of B in R s favour the wilful or negligent abstention on the part of the defendant to call for the title deeds would deprive him of the protection which a Court of Equity would extend to a *bond fide* purchaser for value without notice and the defendant would not be allowed to set up the plea of estoppel against the plaintiff *Quære* Whether in a case of fraudulent representation an infant may be bound by an estoppel *Held* that an infant is not estopped by the acts or admissions of *other person* in this case his mother and natural guardian *Held* further that as the mother of the infant did not place the *benamidar* of his father P in a position where she knew R would be able to commit a fraud (there being no finding and it being unlikely that she even knew of the existence of the *benami* conveyance to R) there was no ground for a plea of estoppel as contemplated by s 41 of the Transfer of Property Act A purchaser is bound to make enquiry into the title and if he does not take reasonable care to do so,

TRANSFER OF PROPERTY ACT (IV OF 1882) —*contd*

——— ss 3 and 41—*concld*

he takes the chance of his claim being defeated by the real owner PAM CHARAN DAS *v* JOY RAM MAJHI (191_) 17 C W N 10

——— ss 3 78—

See MORTGAGE I L R 43 Calc 1052

——— ss 3 and 136—

See LEGAL PRACTITIONERS ACT (XVIII OF 1879) s 13 I L R 37 Mad. 238

——— s 4—

See DAMDUPAT RULE OF I L R 42 Calc 826

See MORTGAGE 2 Pat L J 168

——— ss 4 and 54—*Unregistered sale deed for land of less than Rs 100 in value invalidity of when no previous oral sale—Evidence inadmissibility of to prove adverse possession—Possession change of in cases of oral sale how to be effected* A sale of tangible immoveable property of the value of less than Rs 100 effected by an unregistered instrument (without any prior oral sale) followed by delivery of possession is invalid and inoperative to pass the title to the property under s 54 Transfer of Property Act (IV of 1882) A document which affects immoveable property and which is required by law to be registered is if it is not registered inadmissible in evidence to prove the nature of possession of the person claiming under it such as the adverse character of the possession *Per* CURIAM If an oral sale is made of immoveable property of the value of less than Rs 100 to a person already in possession of the property it is sufficient to pass title if the vendor converts by appropriate declarations or acts the previous possession into a possession as vendee and it is not necessary that to satisfy the section 54 of the Transfer of Property Act the person in possession should give it up formally and take it afterwards as vendee *Sibendrapada Banerjee* v *Secretary of State for India I L R 34 Calc 207* not followed MUTHUKARUPPAN *v* MUTHU (1914) I L R 38 Mad 1158

——— ss 4 105 107—

See KABULIYAT I L R 39 Calc 1016

——— ss 4 and 107—*Indian Registration Act (XVI of 1908) ss 17 and 49—Unregistered lease for six months—Whether admissible to prove tenancy* S 49 of the Registration Act applies only to instruments which are required to be registered by s 17 of that Act and is not applicable to instruments which have to be registered under the provisions of the Transfer of Property Act Hence an unregistered lease for a period of less than one year which is required to be registered under s 107 of the Transfer of Property Act but not under s 17 of the Registration Act is admissible in evidence to prove the nature of the possession under the instrument RAMA SAHU *v* GOWRO PATRO (1921)

I L R 44 Mad (F B) 55

——— ss 5 6 7 and 127—*Minor—Validity of transfer in favour of a minor Held* that inasmuch as there is nothing in the law to prevent a minor from becoming a transferee of immoveable property so a minor in whose favour a valid deed of sale has been executed is competent to sue for possession of the property conveyed thereby *Ulfat Rai* v *Gauri Shankar I L R 33 All 657* and *Raghunath Baksh* v *Haji Sheikh Muhammad Baksh 18 Oudh Cases 115* referred to *Mohori Bibee* v *Dharmodas Ghose I L R 30 Calc 539* and *Navakotti Narayan Chetty* v *Logalinga Chetty I L R 33 Mad 312* distinguished MUNNI KUNWAR *v* MADAN GOPAL (1915) I L R 38 All 62

TRANSFER OF PROPERTY ACT (IV OF 1882) —*contd*

——— ss 5 54—

See DEPOSIT I L R 35 Bom 403

——— s 6—

See s 3 26 C W N 285

See CONTRACT FOR SALE I L R 36 Bom 139

See EXPECTANCIES I L R 39 Mad 554

See HINDU LAW—REVERSIONER I L R 48 Calc 536

See HINDU LAW —WOMAN S ESTATE I L R 44 Bom 488

See MAHAMMADAN LAW—DOWER I L R 33 All 457

See MAINTENANCE I L R 38 Calc 13

See OFFERINGS TO A TEMPLE I L R 4_ Calc 28

See REVERSIONARY INTEREST 25 C W N 496

——— Of a contingent right of inheritance

See MAHOMEDAN LAW I L R 41 Mad 365

1 ——— Transfer of expectancy—*Compromise between Hindu brothers that property of a brother dying without male issue should be divided amongst survivors—Hindu law—Dayabhaga—Administration—Suit to enforce administration bond—Limitation Held* that a provision in a family settlement whereby certain Hindu brothers divided the family property belonging to them amongst themselves and agreed that upon the death of any one of them without male issue his share should pass to the surviving brothers was neither in contravention of Hindu Law nor obnoxious to the provisions of the Transfer of Property Act s 6 (*a*) as being a transfer of an expectant interest in property *Ram Nirunjun Singh* v *Prayag Singh I L R 8 Calc 138* followed *Held* also that where the assignee of a bond given by an executor for the due administration of the estate sues to enforce the bond time does not begin to run against him necessarily until the death of the obligor KANTI CHANDRA MUKERJI *v* ALI NABI (1911) I L R 33 All. 414

2 ——— Compromise of claim to possession of property of deceased person—*Such compromise not a transfer of reversionary rights* *B* claimed adversely to *M* the property left by *M* s deceased father The claim was compromised and *B* for a consideration of Rs 5 000 and some immoveable property withdrew his claim and recognized the title of *M* as absolute owner *M* died and the property passed to her husband *K* who sold part of it to *S* *Held* on suit by *S* to

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recover possession of the property so purchased that the compromise by *B* of his claim against *M* was not obnoxious to the prohibition contained in s 6 of the Transfer of Property Act 1882 as being a sale of reversionary rights *Mohammad Hashmat Ali* v *Kani Fatima 13 All L J 110* referred to BARATI LAL v SALIK RAM (1915) I L R 38 All 107

3 —————— Compromise *of claim to possession of property of deceased person—Such compromise not a transfer of reversionary rights* Of four separated Hindu brothers Hazari the second died first leaving a widow Musammat Mulo who married the eldest brother Parmal Next, another brother Pransukh died without issue leaving a widow Musammat Indo A question having arisen as to the legal effect of the remarriage of Musammat Mulo the two surviving brothers Parmal and Cokul entered into an arrangement by which in consideration of his being allowed to retain the property of Hazari Parmal agreed to make no claim against Cokul to the property of Pransukh on the death of his widow Musammat Indo *Held* that this was a valid agreement and did not offend against the provisions of s 6 (*a*) of the Transfer of Property Act 1882 *Rani Mewa Kuwar* v *Rani Hulas Kuwar L R 1 I A 157 Kanti Chandra Mukerji* v *Ali Nabi I L R 33 All 414 Nasir ul Huq* v *Faiyaz ul Rahman I L R 33 All 470 Mohammad Hashmat Ali* v *Kaniz Fatima 13 A L J 110* and *Barati Lal* v *Salik Ram I L R 38 All 107* followed *Olati Pulliah Chetti* v *Varadarajulu Chetti I L R 31 Mad 474* referred to *Bajrang Singh* v *Bhaguan Balsh Singh 11 Oudh Cases 301* referred to by PIGGOTT J CHAHLU v PARMAL (1919) I L R 41 All 611

4 —————— Release by reversioner of his interest—*in certain promissory notes expectant on death of present holder* The reversioner expectant on the death of a Hindu widow executed a document purporting to be a release in favour of the widow of his interest in certain Government promissory notes to which the widow was entitled during her life *Held* that this was a transfer of the chance of an heir apparent succeeding to property and therefore void *Sham Sunder Lal* v *Achhan Kunwar I L R 21 All 71* referred to HARGAWAN MAGAN v BAIJ NATH DAS (1909) I L R 32 All 88

5 —————— Hindu temple offerings to—*Pujari s right to a share of alienable—Estoppel—Res extra commercium* The chance that future worshippers will give offerings to a temple is a mere possibility within the meaning of s 6 cl (*a*) of the Transfer of Property Act and as such cannot be transferred Such a transfer being prohibited by statute the transferor is not estopped from questioning its validity *Per* SHARFUDDIN J The right of the *pujari* of a Hindu temple to take a share of the offerings is a *res extra commercium* PUNCHA THAKUR v BINDESHRI THAKUR (1915) 19 C W N 580

6 —————— Hindu law—Adoption—*Postponement of adopted son s estate during the widow s life—Transfer made by adopted son of property forming part of the estate in the widow s life time—Spes successionis* An agreement depriving an adopted son of his right to take possession of the property of his adoptive father is not prohibited by law *Kali Das Bysai* v *Shankar I L R 13 All 391* and *Visalakshi Ammal* v *Sivaramien I L R 27 Mad 577* referred to Where such an agreement has been entered into for example an agreement giving a life estate to the adoptive mother and the remainder to the adopted son, the interest of the son is not merely that of a contingent collateral Hindu reversioner but he has vested interest in the property of his adoptive father which he is competent to deal with subject only to the previous life estate He is not barred by the provisions of s 6 (*a*) of the Transfer of Property Act 1882 from dealing with the property BALWANT SINGH v JOTI PRASAD (1918) I L R 40 All 69?

—————— *Maha Brahmin—Mortgage by of right to receive dues of office.* There is nothing in the law to prevent a *Maha Brahmin* mortgaging his right to offerings receivable by him in his professional capacity *Ragho Pandey* v *Kassy Parey I L R 10 Calc 73* referred to SUKH LAL v BISHAMBHAR (1916) I L R 39 All 196

—————— Transfer of lessor s interest—*Breach of condition prior to the transfer—Right to enforce forfeiture by the transferee* A mulgeni lease provided that the lessee was not to alienate the property leased The lessee committed a breach of the condition by sale of his rights under the lease to defendant No 2 in 1908. In 1911 the plaintiff purchased the landlord s rights from the lessor who had not given the lessee notice of his intention to enforce the forfeiture before the transfer The plaintiff having sued to recover possession of the property on breach of the condition defendant No 2 contended that the plaintiff could not take advantage of the breach of condition incurred before the assignment in his favour *Held* disallowing the contention that the plaintiff was entitled to recover possession of the property from defendant No 2 VISHVESHWAR v MAHABLESHWAR (1918) I L R 43 Bom 28

—————— s 6 (*e*)— *Mere right to sue —Assignment of decree for mesne profits* *A* and *B* holders of a decree for (*a*) possession of immoveable property and (*b*) directing an enquiry as to mesne profits obtained possession through the Court and thereafter sold to *C* and *D* their right to recover the mesne profits All four applied to the Court to ascertain the amount of mesne profits and the Court ordered accordingly *Held* that the sale was valid the right of *A* and *B* under clause (*b*) of the decree not being a mere right to sue within the meaning of s 6 (*e*) of the Transfer of Property Act 188? *Held* further that proceedings under a decree directing an enquiry as to mesne profits are proceedings in the suit *C* and *D* acquired a right to carry on the suit on obtaining the leave of the Court under O XX r 10 of the Code of Civil Procedure 1908 They should have applied for leave under that rule but their omission to do so under the circumstances of this case was not fatal to their claim The order of the Court on the petition presented by *A B C* and *D* was equivalent to the grant of leave HARI PRASAD MISSER v KODO MARYA 1 Pat L J 427

—————— *Assignment of a decree passed for immoveable property and for ascertainment of mesne profits—Transferee s right to be*

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——— s. 6 (e)—*concld*

made a party and to mesne profits Where the right to mesne profits has been declared by a decree but the exact amount has been left to be a certained at a future stage in the same suit a transfer of such right is not invalid under s 6 (e) of the Transfer of Property Act as the transfer of a right to sue VENKATARAMA AIYAR v RAMASAMI AIYAR (1921) I L R 44 Mad. 539

——— *Right to sue assignment of—Tort—Assignment of claim founded on validity of—Damages for negligence of agent assignment of claim for* A mere right to recover damages for the negligence of an agent in failing to collect rents cannot be transferred Such a right is nothing more than a right to sue within the meaning of s 6 ( ) of the Transfer of Property Act (IV of 1882) If such a claim is founded on tort it is not assignable *Dawson v Great Northern and City Railway* [1905] *1 K B 260* and *Defries v Milne* [1913] *1 Ch 98* referred to *Held* also that the claim is founded on contract was unassignable in law being transferred after breach *Abu Mahomed v S C Chunder I L R 36 Calc 345* applied *Shyam Chand Koondoo v The Land Mortgage Bank of India I L R 9 Calc 695* referred to *Mahadas v Panji Patak I L R 16 All 280* distinguished *Dawson v Great Northern and City Railway* [1905] *1 K B 260* explained VARAHASWAMI v RAMACHANDRA RAJU (1913) I L R 38 Mad 138

——— *Transfer of right to past mesne profits illegality of* A transfer of a claim for past mesne profits is invalid under clause (e) of s 6 of the Transfer of Property Act (IV of 1882) *Varahaswami v Ramachandra Raju 24 Mad L J 298* followed *King v Victoria Insurance Company* [1896] *A C 250* distinguished SEETAMMA v VENKATARAMANAYYA (1913) I L R 38 Mad 308

——— *Settlement for concubinage—Immoral object carried out—Right to annul the settlement* It is a well established rule of equity that a person who has transferred a property to another for an illegal or immoral purpose cannot get it annulled if the intended purpose has been carried out and s 6 cl (h) of the Transfer of Property Act has not the effect of modifying it *Ayerst v Jenkins (1873) L R 16 Eq 275* followed *Per* OLDFIELD *J*—It is the sense of the community as a whole that decides whether a certain purpose is immoral the fact that in a certain section of the community concubinage is allowed and it is not regarded as immoral does not make a settlement made by a member of such community in consideration of concubinage any the less immoral DEIVANAYAGA PADAYACHI v MUTHU REDDI (1921) I L R 44 Mad 329

——— ss 6 and 7—

See s 5 I L R 38 All 62

——— s 7—

See MINOR I L R 40 Mad 308

——— s 8—

See s 3 I L R 44 Mad 196

See SUBSTITUTION OF PROPERTY AND SECURITY I L R 39 Mad. 283

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——— 9—

See MORTGAGE I L R 45 Calc 748

See REGISTRATION ACT 1908 ss 17 AND 49 I L R 43 All 1

——— s 10—

See LEASE I L R 45 Calc 940

——— *Hindu Law—Grant deed of for maintenance and other expenses—Grant by zamindar to his wife and minor son—Estate of grantees—Restraint on alienation—Lease for fifteen years by mother as guardian if void or voidable by minor—Repudiation by zamindar as natural guardian mere act of if sufficient—Suit to set aside—Decree in such suit necessary—Suit by guardian—Dismissal for default effect of—Suit by lessee for rent—Objection by tenants as to validity of lease* A zamindar made a grant of certain lands to his wife and his minor son for their maintenance clothing and other expenses The deed of grant contained a provision that the grantees were not to alienate the properties by sale mortgage etc The mother of the minor son granted a lease of the lands for fifteen years in favour of the plaintiff and died a few months thereafter The zamindar the father and natural guardian of the minor sued to set aside the lease but the suit was dismissed in consequence of the zamindar s default in obeying an order of the Court to appear in person The plaintiff as the lessee of the lands sued to recover *melvaram* due to him from the defendants who were the ryots but did not join the minor grantee as a party to the suit The defendants contended that the lease to the plaintiff was not valid and that the plaintiff was not entitled to recover rent from them *Held* (on a construction of the deed) that both the mother and the minor son obtained under the grant an estate in the property and were tenants in common during the life time of the mother after which the son was to hold the whole property The provisions against alienation contained in the deed of grant were absolute restraints on alienation and were void under s 10 of the Transfer of Property Act and under the Hindu Law The lease for fifteen years granted to the plaintiff by the mother acting as guardian of her minor son even if it was beyond the powers of a guardian was not void against the minor but only voidable by him The party who is entitled to avoid a transaction may do so by an unequivocal act repudiating the transaction or by getting a decree of Court setting it aside When a guardian (natural or appointed) of a minor has given a lease another guardian cannot set it aside by a mere act of repudiation he can do so only by obtaining a decree of Court in a suit which may be instituted on behalf of the minor during his minority but his action in instituting a suit to set it aside (which was dismissed for his default) has no greater effect than his mere act of repudiation *Held* consequently that the plaintiff was entitled to recover rent from the defendants under the lease. MUTHUKUMARA CHETTY v ANTHONY UDAYAR (1914) I L R 38 Mad 867

——— ss 10 and 11—

——— private religious gift to Brahmins—

See HINDU LAW—GIFT I L R 44 Bom. 304

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—contd

——— ss 10 108 111—

See LEASE 1 Pat L J 1

——— ss 10 111 117—

See KHOD KAST JATES
I L R 48 Calc 359

——— s 14—

See LEASE I L R 44 Mad 230

——— ss 14 40 and 45—

See CONTRACT 1 Pat L J 258

——— s 36—

See LESSOR AND LESSEE
I L R 38 Mad 86

See PROVINCIAL SMALL CAUSES COURT ACT 1887 SCH II ART 7
I L R 41 Mad 370

——— ss 36 44 and 52—

See SUBSTITUTION OF PROPERTY AND SECURITY I L R 39 Mad 283

——— ss 36 and 108—

See LESSOR AND LESSEE
I L R 38 Mad 86

——— s 38—

See HINDU LAW—DEBT
I L R 35 Mad 108

——— s 40—*Specific Relief Act (I of 1877) s 3—Indian Trusts Act (II of 1882) s 3 —Suit for declaration and possession—Sale—Prior agreement of purchase—Notice—Subsequent purchaser a trustee* Plaintiff sued for a declaration of title to and for possession of immoveable property from the defendant He based his title upon a registered sale deed dated the 5th December 1911 from one N Prior to this date the plaintiff had notice of the execution of a contract of sale of the same property by N to the defendant The defendant relied upon his possession under the contract of sale and contended that he had paid to N portion of the purchase money agreed upon and the balance was to be paid after the sale deed was passed Both the lower Courts allowed the plaintiff s claim for possession though it was found that the plaintiff had notice of the defendant s contract of sale and that nearly half the purchase money was in fact received by N from the defendant under the contract The defendant having appealed. *Held* that the plaintiff having purchased with notice of the defendant s contract his suit for possession must fail He stood in the position of a trustee for the defendant of the land purchased by him and could not profit by his conveyance except to stand in the shoes of his vendor and receive the balance of the purchase money due on payment of which he would have to convey to the defendant *Lalchand v Lakshman I L R 28 Bom 466* and *Kurri Veerareddi v Kurri Bapireddi I L R 29 Mad 336* doubted GANGARAM v LAXMAN GANODA (1916) I L R 40 Bom 498

——— s 41—

See s 3 I L R 35 Bom 342
17 C W N 10

See CIVIL PROCEDURE CODE 1908 s 47
I L R 45 Bom 812

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—contd

——— s 41—contd

See DEKKHAN AGRICULTURISTS RELIEF ACT 1879 s 10A
I L R 45 Bom 8[illegible]

See MAHOMEDAN LAW—ENDOWMENT
I L R 47 Calc 866

1 ——— *Ostensible owner —Owners of property minors at date of transfer—Act (Local) No II of 1901 s 201* The owner of certain zamindari property died leaving him surviving a widow and two minor sons During the minority of the sons their mother not only got herself recorded in respect of one third of the property left by the husband (her proper share being one eighth and the balance being her sons) but she mortgaged it to one N N sold his rights to R who brought a suit for sale on his mortgage and having brought the property to sale purchased it himself He subsequently transferred it to M M brought a suit for profits against the sons and got an *ex parte* decree *Held* on suit by the sons for declaration of title to their share in the property excluding the one eighth belonging to their mother or in the alternative for possession (i) that the suit was not barred by the provisions of s 41 of the Transfer of Property Act 1882 and (ii) that the proviso to s 201 of the Agra Tenancy Act 1901 protected the present suit *Dalibai v Gopibai I L R 26 Bom 43* and *Dambar Singh v Jawitri Kunwar I L R 29 All 292* referred to ABDULLAH KHAN v MUSAMMAT BUNDI (1911)
I L R 34 All 29

2 ——— *Ostensible owner —Finding as to question of fact—Second appeal* *Held* that the questions whether a person in apparent possession of immoveable property is the ostensible owner with the consent express or implied of the real owner within the meaning of s 41 of the Transfer of Property Act 1882 and whether a transferee from such a person took the transfer *bond fide* after taking reasonable care to ascertain the title of his transferor are questions of fact the finding on which by the lower Appellate Court cannot be disturbed in second appeal JAMNA DAS v UMA SHANKAR (1914)
I L R 36 All 568

3 ——— *Husband s property sold by wife—Bond fide purchaser for value without notice —His rights—Without notice —Husband s right to significance of the expression—Husband s absence redemption* Where during the husband s absence on pilgrimage the wife sold a piece of land which had before the husband s departure been mortgaged by her the purchaser who paid off the mortgage having by proper enquiries satisfied himself that the wife was owner *Held* that the husband could not recover the land nor was he entitled to be allowed to redeem the mortgage NIRAS PURBE v TETRI LASIN (1915)
20 C W N 183

4 ——— *Ostensible owner transfer by when binds real owner—Res judicata* In a suit by A to recover from B property the title to which was disputed between A and B If in whose favour B had on 14th March 1893 executed a usufructuary mortgage—in lieu whereof on 21st January 1893 another mortgage was executed in his favour by D—was made a defendant apparently on the ground of his being a transferee

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———— s 41—contd

under the mortgage of 14th March 1893 The suit was decreed In a suit by M to enforce his mortgage of 1st January 1895 which the *representative in title of A contested the High* Court held that the decision in the previous suit was *res judicata* and also that s 41 of the Transfer of Property Act did not apply to give *M* a title although *B* had got his name entered in the Revenue papers as owner because the applica*tion for the entry having been opposed by A B* could not be said to have been entered as ostensible owner with *A s* consent and also because if *M* had made enquiries before he advanced money to *B* he could have discovered the fact of *B s* opposition and facts showing *B s* title *The Judicial Committee on appeal found the* judgment of the High Court to be so satisfactory and sufficient that they felt themselves justified in advising the dismissal of the appeal without following the practice of making an elaborate report NAGESHAR PRASAD PANDE *v* PATESHRI PARTAB NARAIN SINGH (1915)

20 C W N 265

5 ———————— *Equitable estoppel —Hindu law—Mitakshara—Joint family—Karta s name recorded in survey papers in respect of joint property—Alienation by Karta whether other members of family estopped from challenging—Constructive notice—Suit for partition—Admission of separation by plaintiff effect of* The mere fact that the name of the *karta* of a joint family is entered in survey papers as the owner of the family properties is not sufficient to show that a minor member of the family had held the *karta* out to be the ostensible owner of the properties within the meaning of s 41 of the Transfer of Property Act 1882 A person dealing with the *karta* of a Hindu family governed by the *Mitakshara* must inquire whether and how far the other members of the family are interested in the family property and is not entitled to rely on entries in collectorate registers and survey papers The presumption is that all the members of the family are interested in the property If the person dealing with such a *karta* has had previous transactions with him and is a neighbour not only is he bound to enquire as to the interests of other members of the family but he is charged with notice and knowledge of the title of such members The reasonable care referred to in the proviso to s 41 is the care that is expected of an ordinary man of business Where *a Hindu and his nephew were members of a joint* family and the uncle executed a mortgage in the presence of the nephew who attested it *held* that the mere presence of the nephew did not involve any notice or knowledge that his share of the joint family property was being mortgaged and that he was *not estopped from subsequently* claiming his share unless it was satisfactorily proved that he was aware that the document dealt with his share of the property and that it was intended that his interest should be effected thereby KANHU LAL MARWARI *v* PALU SAHU

5 Pat L J 521

6 ———————— *Ostensible owner— Duty of transferee to inquire into transferor s title—Transferor in possession as sister s son of last full owner—Duty of transferee to ascertain if any collaterals existed* Defendant took a mortgage of a house from a person who was the son of a sister of the last full owner (a Hindu) The house was entered in the municipal register as in the possession of the mortgagor but the mortgagee did not appear to have made any inquiry as to the title although there was reason to suppose that he must have been aware of the existence of collaterals of the last owner *Held* on suit by the collateral heirs for recovery of possession of the house that the defendant mortgagee not having made proper inquiries as to his mortgagor s title was not entitled to the protection afforded by s 41 of the Transfer of Property Act 1882 BALLU MAL *v* RAM KISHAN **I L R 43 All 263**

7 ———————— *Rights of a mortgagee purchaser in execution of a decree upon a mortgage by a widow in whose* benami *her husband had purchased the property—Rights of a purchaser in execution of a money decree against the husband—such purchaser if estopped from disputing the rights of a mortgagee purchaser*—Boná fide *transferee for value without notice actual or constructive* A Hindu husband purchased some lands in the name of his wife who after his death mortgaged them and the mortgagee purchased them at a sale held in execution of the decree obtained upon the mortgage In the mean time the lands had been sold in execution of a money decree against the husband and taken possession of by the decree holder purchaser The mortgagee purchaser thereupon sued for a declaration that the lands belonged to the wife and for possession The *kabuliyats toujis* counter foil rent receipts stood in the name of the wife and the mortgagee had taken the mortgage in good faith after making proper inquiry *Held* —That so far as there were occasions for doing so the husband held out his wife as the real owner and therefore the purchaser in execution of the money decree against the husband being the successor in interest of the said husband was estopped from disputing the title of the wife and should not be allowed to defeat the rights of the mortgagee who is a transferee in good faith from the ostensible owner without notice actual or constructive of the husband s title The mortgagee was not bound to inquire into the financial position of the husband at the time when the purchase was made in the name of the wife ANNODA MOHAN ROY *v* NILPHAMRI LOAN

26 C W N 436

———— s 43—

See ADVERSE POSSESSION **I L R 40 Calc 173**

See BENAMI TRANSACTION **I L R 46 Calc 566**

See CENTRAL PROVINCES TENANCY ACT 1898 s 4 **4 Pat L J 505**

See CIVIL PROCEDURE CODE 1882 s 317 **I L R 33 All 382**

s 3 5A **I L R 36 Bom 510**

See MADRAS PROPRIETARY ESTATES VILLAGE SERVICE ACT 1894 s 5 **I L R 39 Mad. 930**

TRANSFER OF PROPERTY ACT (IV OF 1882) —contd

——— s 43—contd

1 ——— *Held* that a permanent lease by fractional co sharers was binding on them when they subsequently acquired the whole property LULIN MOHAN BANERJEE v RAJ KRISHNA GHOSE 25 C W N 420

2 ——— *Deshgat Vatan—Mortgage—Subsequent enlargement of the mortgagor s estate—Private property—Mortgagee s claim to hold the property against the mortgagor s heir—Reg XVI of 1827* A mortgagee of Deshgat Vatan knew that the property which was mortgaged to him was land appurtenant to an hereditary office and inalienable beyond the life time of the incumbent Subsequently to the mortgage the estate of the mortgagor was enlarged so as to be alienable in the life time of the holder After the enlargement the mortgagee having claimed to hold the property against the heir of the mortgagor *Held* that the mortgagee took only such estate as the holder of the Vatan property was capable of conveying to the mortgagee at the time of the mortgage and that the mortgagee could not claim to retain the property in virtue of the mortgage after the death of the mortgagor GANGABAI v BASWANT (1909) I L R 34 Bom 175

3 ——— *Benefit of section can be claimed only by person who has acted on the erroneous representation of another* The benefit of s 43 of the Transfer of Property Act can be claimed only where the person claiming such benefit has acted on the erroneous representation of the party who subsequently acquired interest he claims An undivided Hindu father had two sons *A* and *B* *A* who was entitled only to one third of the family property mortgaged one half of it to *C* who knew that *A* was entitled only to one third and did not bargain and pay for a half share Subsequently *A* s father died and *A* having become entitled to a half share *C* sued on his mortgage seeking to make *A* s half share liable *Held* that he could enforce his mortgage only against the one third share which belonged to *A* at time of mortgage PANDIRI BANGARAM v KARUMOORY SUBBARAJU (1910) I L R 34 Mad 159

4 ——— *Estoppel feeding of by after acquired property when transferor had no title at date of transfer—Principle if applies to Hindu conveyances* The observation in *Dooly Chand* v *Birj Bookun Lal Auasti 10 C L R 61 6 C I P 528* that the principle of English law which allows a subsequently acquired interest to feed on estoppel does not apply to Hindu conveyances was treated as *obiter* and held that when a grantor of a lease by a recital is shown to have stated that he is seised of a specific estate and the Court finds that the parties proceeded upon the assumption that such an estate was to pass an estate by estoppel is created between the parties and those claiming under them in respect of any after acquired interest of the grantor the newly acquired title being said to feed the estoppel The principle is not inapplicable to a case where there was originally no title at all and is not confined in its application to cases where there is an enlargement of an existing interest KRISHNA CHANDRA GHOSH v RASIK LAL KHAN (1916) 21 C W N 218

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——— s 43—concld

5 ——— *Permanent lease by fractional co sharers who subsequently acquire title to the whole property effect of — Permanent lease by widow if operative against her sons the reversionary heirs—Legal necessity—Such lease if void or voidable—if the lease has to be avoided before suit for possession—Tenancies of homestead or agricultural lands created before the Transfer of Property Act transferability of—Custom and contract* A widowed daughter of a Hindu M and her two male cousin J and S held a property in equal shares M and S granted a permanent lease of the entire property to the Defendant Subsequently J died making a testamentary disposition of his properties to M and S in equal shares On the death of M her sons and J s widow brought a suit to recover the property from the Defendant *Held* that the lease was operative in respect of a two third share during the life time of M and S But the one third share of J having subsequently vested in M and S the provisions of *sec 43* of the Transfer of Property Act applied and the share of J became available to perfect their title and consequently the title of the Defendant in the entire property That the *lease did not* bind the reversionary heirs of *M as she did* not execute it for any legal necessity Alienation by a Hindu widow is not absolutely void but voidable at the election of the reversionary heir It is not however necessary for him to take steps to avoid the lease before he brings an action for possession *Held further* that under the law as it stood before the Transfer of Property Act tenancies whether of homestead or of agricultural lands were not transferable in the absence of a custom to the contrary or of an express contract to that effect SULIN MOHAN BANERJEE v RAJ KRISHNA GHOSE 25 C W N 420

——— ss 44 52—

See SUBSTITUTION OF PROPERTY AND SECURITY I L R 39 Mad 283

——— s 45—

See JOINT TENANCY I L R 34 Mad. 80

——— ss 45 and 55—

See CROSS OBJECTION 5 Pat L J 3 8

——— s 48—

See CONSTRUCTION OF DOCUMENT I L R 40 Bom 3,8

——— 51 54 118—

See ESTOPPEL BY CONDUCT I L R 40 Mad 1104

——— s 52—

See CIVIL PROCEDURE CODE 1908 s 47 O XXI r 2 I L P 43 Bom 240

See COMPANY I L R 42 Bom 215

See SUBSTITUTION OF PROBATE AND SECURITY I L R 39 Mad 283

See LIS PENDENS I L R 41 Mad 458

1 ——— The rule of *lis pendens* will operate in favour of a plaintiff who at the time of the transfer was erroneously prosecuting his suit in a Court which from defect of

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—contd

——— s 52—contd

jurisdiction was unable to entertain it and in consequence returned it for presentation to the proper Court which Court ultimately decreed the suit on the basis of a lawful compromise TANGOR MAJHI v JALADHAR DEAPI (1909) 14 C W N 322

2. ——— *Suit on prior mortgage—Fresh mortgage pending suit to pay off mesne mortgages—Effect—Subrogation* Where during the pendency of a mortgage suit a fresh mortgage was executed with the object of paying off certain mesne mortgages *Held* that in so far as the mortgagee under the new mortgage was entitled to be subrogated to the rights of the mesne mortgagees the transfer was not affected by the rule of *lis pendens* That in the absence of evidence to show an intention to extinguish the mesne mortgages paid off the presumption was that they were intended to be kept alive TARA PROSAD MONDAL v KRISTA PROSAD PANDA (1910) 15 C W N 261

3 ——— *Lis pendens—Suit to enforce simple mortgage ending in compromise—Execution sale pending suit—Purchaser if bound by compromise—Contentious suit — Immoveable property suit respecting* The mere fact that a suit is terminated by a consent decree does not take the suit out of the operation of the doctrine of *lis pendens* as enunciated in s 52 of the Transfer of Property Act A suit to be Contentious within the *meaning of s 52* need not be contested in all its stages A contentious suit is one in which a party having *difference with another puts the law in motion* as against the other *Kailas Chandra* v *Ful Chand 8 B L R 474 Nasumunnesa* v *Nilratna I L R 8 Calc 188* distinguished *Kishory Mohan* v *Mazafar Hussa I L R 18 Calc 79* referred to *Faiyaz Hussain* v *Prag Narain L R 34 I A 102* relied on The doctrine of *lis pendens* applies to a suit to enforce a simple mortgage *Faiyaz Hussain* v *Prag Narain L R 34 I A 102* referred to The doctrine applies to a purchase at an execution sale pending the suit *Radha Madhub* v *Monohur L R 15 I A 97 Moti* v *Kurabuldin L R 24 I A 170 Faiyaz Hussain* v *Prag Narain L R 34 I A 102* relied on TINOODHAN CHATTERJEE v TRAILOKHYA CHARAN SANYAL (191) 17 C W N 413

4 ——— *Lis pendens—Partition between defendants inter se of the property in dispute—Partition affected by lis pendens—Plaintiff s omission to bring partition to the notice of the Court—Practice—Array of parties—Pleading—Change of parties in pending litigation—Procedure* The plaintiff who owned a third share in an equity of redemption obtained a decree to redeem his share of the mortgaged property from his four mortgagees The plaintiff paid the redemption money in the Court but after the expiry of the period fixed by the Court The Subordinate Judge held that the payment was validly made and ordered possession of the property to be delivered to the plaintiff This order was reversed by the District Judge on the 7th January 1902 On the 10th January 1902 the four joint mortgagees effected a partition *inter se* and the property the subject matter of the suit fell to the share of one of them Gopal The plaintiff appealed to the High Court from the District Judge s order on the 14th January 1902 The next day that is on the 15th January 1902 Gopal died leaving him surviving a widow Gangabai In the High Court appeal the fact of partition dated the 10th January 1902 was not mentioned but Gopal s death was brought to the Court s *notice but it was held that the right to sue survived* against the other defendants The High Court reversed the order of the District Judge and remanded the suit for extending the time of payment if any good cause were shown for it In the District Court Gopal s name was removed from the array of parties and time was extended The plaintiff paid the money within the time so extended and obtained an order to recover possession of the property Gopal s widow Gangabai intervened on the ground that as she was no party to the District Judge s order she was not bound by it and could not be dispossessed The Subordinate Judge granted the application The plaintiff *thereupon* brought a suit to establish his right to the possession of the property The Subordinate Judge decreed the plaintiff s claim but on appeal *it was dismissed by the District Judge* On appeal to the High Court the decree was confirmed on the ground that the plaintiff s right was affected by his own *negligence in omitting to bring* upon the record the representatives of Gopal and his right was not affected by the partition of the 10th January 1902 which did not fall within s 52 of the Transfer of Property Act 1882 On appeal under the Letters Patent *Held* that the plaintiff could not be defeated on the ground that in another proceeding he did not communicate to the Court the fact of Gopal s death which he did not know *Held* further that the partition in question fell within s 52 of the Transfer of Property Act 1882 for it was a transfer or at any rate a dealing with the property in suit *Per* CURIAM It is part of any litigant s right so far as the subject matter and conduct of the suit are concerned to know precisely where he stands He is entitled to know who his opponents are and when that has been definitely and finally ascertained to insist that no dealing on their parts with the property in suit shall compel to go further afield and bring in new parties who but for such dealing could have had no *locus standi* at all A complete right needs a person of incidence as well as a person of inherence No party during the conduct of a suit has any power by dealing with the property to change the person of incidence or inherence *to the detriment of the other* ISHWAR LINGO v DATTU GOPAL (1913) I L R 37 Bom 427

5 ——— *Lis pendens—Maintenance decree—Execution proceedings after a long period—Alienation of property during the period—Act* [illegible] In 190[illegible] No 1 obtained a maintenance decree which [illegible] a charge in her favour on the family [illegible] In 1906 the judgment debtors sold [illegible] the property to plaintiff Defendant [illegible] in 1907 to execute the decree In [illegible] proceeding one of the lands [illegible] was put up to sale and purchased by [illegible] in 1910 The plaintiff [illegible] that the sale to him was not aff[illegible] sale The lower Court [illegible]

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——— s 52—contd

ground that the sale in plaintiff s favour was affected by lis pendens On appeal *Held* reversing the decree that the doctrine of *lis pendens* had no application to the case for the decree was passed four years earlier and no execution proceedings were taken and it could not be said that the purchase by the plaintiff was made during the active prosecution of a contentious suit or proceeding BHOJE MAHADEV PARAB v GANGA BAI (1913) **I L R 37 Bom 621**

6 ——— *Lis pendens—Contentious suit meaning of—Friendly suit no contest—Plea of lis pendens not taken in the written statement—Point of Law—Plea permitted after remand* The words contentious suit in s 52 of the Transfer of Property Act (IV of 1882) are used in contradistinction to a friendly suit in which there is no contest Every suit other than such a friendly suit by its origin and nature falls within the definition of a contentious suit *Jogendra Chand r Ghose* v *Fulkumari Dassi I L R 27 Calc 77* followed *Krishna Kamini Debi* v *Dino Mony Chowdhrani I L R 31 Calc 658* and *Upendra Chandra Singh* v *Mohri Lal Marwari I L R 31 Calc 745* dissented from *Faiya Husain Khan* v *Prag Narain I L R 29 All 339* referred to A point of law such as *lis pendens* which was argued before the first court and which required no further facts than those already on record must be considered by the Appellate Court though the defendants did not plead it in the written statement KATHIR v MAREMADISSA (1913) **I L R 38 Mad 450**

7 ——— *Lis pendens—Attachment before judgment—Claim to attach property by third party allowed—Suit by decree holder against claimant to establish his right to attach—Suit dismissed—Appeal by decree holder—Judgment debtor not a party to suit or appeal—Sale in execution of another decree by another decree holder pending appeal—Decree on appeal—Subsequent sale in execution—Validity of prior sale* A decree holder had attached the property of his judgment debtor before decree in his suit and while he was seeking to establish his right to attach and sell such property as the property of his judgment debtor by suit against a successful claimant another decree holder attached the same property and brought it to sale during the pendency of the appeal in the claim suit The judgment debtor was not made a party to the claim proceedings or the subsequent suit or appeal The property was again sold in execution of the decree of the former decree holder who purchased it and sued to recover possession *Held* that the auction purchaser in the prior sale was not affected by the doctrine of *lis pendens* and his purchase was valid as against the purchaser in the subsequent auction sale *Per* WALLIS C J —The doctrine of *lis pendens* was inapplicable on the ground that the judgment debotr was not a party to the claim proceedings or the subsequent suit and could not be considered to be represented in that suit by the plaintiff therein *Lala Mulji Thakar* v *Kashi Bai I L R 10 Bom 400* referred to Even if the judgment debtor was a party thereto there is no *lis pendens* as the doctrine of *lis pendens* applies only to alienations which are inconsistent with the right which may be established by the decree in the suit here as the sale in execution proceeded on the very footing that the property belonged to the judgment debtor the doctrine is inapplicable *Per* NAPIER J —The doctrine of *lis pendens* does not apply as the judgment debtor was not actually or constructively a party to the claim suit *Phul Kumari* v *Ghanshyam Misra I L R 35 Calc 202* explained *Krishnappa Chetty* v *Abdul Khader Sahib I L R 38 Mad 535* dissented from PITHU AYYAR v SANKARANARAYANA PILLAI (1916) **I L R 40 Mad 955**

8 ——— *Lis pendens doctrine of —Suit which is compromised and in which a consent decree is passed whether falls within the scope of the doctrine— Contentious suit significance of* In a suit for declaration of title to a certain zemindari certain mortgagees who too were impleaded as Defendants set up their title by purchase in execution of a mortgage decree After being hotly contested for some time the suit was compromised with the said Defendants but was continued against the other Defendants The suit was eventually decreed partly in terms of solenama and partly on contest The purport of the compromise was that the compromising Defendants relinquished in favour of the Plaintiff whatever interest they had in the zemindari for a consideration of a sum of money which was secured by a mortgage on the zemindari as the Plaintiff was unable to pay the amount in cash The present suit was subsequently brought to enforce a mortgage security executed by the Plaintiff in the previous suit after the institution of the said suit and the above mentioned Defendant who had compromised were also made parties They set up the mortgage executed in their favour and contended that though subsequent in point of time it had priority over the mortgage in suit by the application of the doctrines of subrogation and *lis pendens* *Held*—That the compromise and the mortgage executed in the previous suit constituted one entire and indivisible transaction and when the said decree gave effect to the compromise it validated the whole contract between the parties inclusive of the mortgage The mortgage in suit executed after the institution of the previous suit was affected by virtue of the rule of *lis pendens* by the consent decree in the suit which incorporated and gave effect to the mortgage executed in connection with the said compromise If a suit is not collusive it is a contentious suit if it was so in its origin and nature and even if it is subsequently compromised *Faiya Husain* v *Prag Narayan L R 34 I A 102 s c I L R 29 All 339 11 C W N 561 (1907) Bandon* v *Beecher [1835] 3 Cl & F 479 Annamali* v *Malayandi I L R 29 Mad 426 (F B) (1906)* and other cases referred to *Kailash* v *Fulchand 9 B L R 474 (1871)* considered *Further* unless a compromise is collusive the very fact that there is a compromise shows that the suit was in its origin and nature contentious otherwise there would be nothing to compromise *Hence* a consent decree falls within the scope of the rule of *lis pendens* enunciated in sec 52 of the Transfer of Property Act *Landan* v *Morris* [1832] 2

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——— s 52—contd

L. J Ch 3, , Sim 24 and other cases referred to BHARAT RAMANUJ DAS MOHANTA v SRI NATH CHANDRA SAHOO

25 C W N 806

9 ——— *Contentious suit —Suit decided ex parte but not fraudulent* If a suit is neither fraudulent nor collusive it may be none the less a contentious suit within the meaning of s 52 of the Transfer of Property Act 1882 notwithstanding it was decided *ex parte* RAM BHAROSE v RAMPAL SINGH

I L R 42 All 319

——— s 52 56 81—

See APPEAL I L R 41 Calc 418

——— ss 52 and 91—

See CIVIL PROCEDURE CODE ACT (V OF 1908) O XXI R 103 AND O XXXIV R 1 I L R 43 Mad 696

——— s 53—

See ATTACHMENT I L R 44 Calc 662

See DECREE ASSIGNMENT OF I L R 37 Mad 227

See FRAUDULENT CONVEYANCE I L R 33 Mad 334
I L R 41 Mad 612

See MORTGAGE BY MINOR I L R 38 Mad 1071

1 ——— *Subsequent creditors are within the rule in l (1) of the section—Presumption in cl 2 of section applies to subsequent creditors* Subsequent creditors are within the rule enunciated in the first clause of s 53 of the Transfer of Property Act and a settlement can be avoided at the instance of subsequent creditors *Hussain Bhai v Haji Ismal Sait 5 Bom L R 255* referred to The presumption in cl 2 of s 53 of the Transfer of Property Act applies in the case of subsequent creditors THOMAS PILLAI v MUTHURAMAN CHETTIAR (1909)

I L R 33 Mad 205

2 ——— *Mortgage in fraud of creditors validity of* A being in insolvent circumstances mortgaged certain property to B there having been a failure in payment of part of the consideration money C holding a money decree against A impeached the mortgage as fraudulent *Held* that the fact that the mortgage was for an amount larger than was really paid was no reason for not upholding it to the extent that it was supported by a debt existing at the date of the mortgage and that B was entitled to a decree for the amount actually paid by him *Chidambaram Chettiar v Sami Aiyar I L R 30 Mad 6* distinguished *Ishan Chander Das Sircar v Bishu Sardar I L R 24 Calc 825* followed See CHINA PITCHIAH v PEDAKOTIAH (1913)

I L R 36 Mad 29

3 ——— *Fraudulent transfer—Transfer voidable at the option of the person defrauded—Purchaser at Court sale not a subsequent transferee —Person having interest at the property means person having interest at the date of the transfer* The plaintiff purchased certain lands in 1906. In execution of a money decree against the vendor the lands were sold at a Court auction and purchased by the defendant in 1909 with full notice of the sale of 1906 The defendant having been put into possession of the land the plaintiff sued to recover possession relying on the sale of 1906 The defendant contended that the sale was not genuine and was not supported by consideration and was made with the object of defeating the creditors of the vendor The trial court negatived the contentions and decreed the plaintiff s claim The lower appellate Court held that the sale of 1906 was bad under s 53 of the Transfer of Property Act as the consideration was grossly inadequate the sale was effected with the object of defeating and delaying the creditors of the vendor and the plaintiff participated in the fraud The plaintiff having appealed —*Held* that the sale of 1906 could not be avoided under s 53 of the Transfer of Property Act (IV of 1882) at the option of the defendant who was not a creditor of the vendor or a subsequent transferee or a person having an interest in the property within the meaning of the section Having regard to the preamble as well as s 5 of the Transfer of Property Act (IV of 1882) a person who steps in by operation of law and not by any act of the owner is not a subsequent transferee or a person having an interest in the property within the meaning of s 53 means the person who has such interest at the time of the transfer objected to VASUDEO RAGHUNATH v JANARDHAN SADASHIV (1915) I L R 39 Bom 507

4 ——— *Transfer to defraud or defeat single creditor validity of—Bona fide transfer effect of* S 53 of the Transfer of Property Act 1882 is not limited in its application to cases where there is an intention to defraud or defeat the general body of creditors The section is applicable where a debtor disposes of his property with the intention of defeating even a single creditor But if the property of the debtor is transferred for consideration to a *bona fide purchaser then even though such transfer has the effect* of putting the debtor s property out of the reach of the creditors the transfer will be effective and the creditors will not be entitled to have the transfer set aside or declared void FAKIRA SINGH v MAJHO SINGH 2 Pat L J 546

5 ——— A suit by the purchaser of property sold in execution of a decree for a declaration that a conveyance by the judgment debtor was fraudulent and for possession is not a suit on behalf of all the creditors within the meaning of s 53 of the Transfer of Property Act 1882 SRI THAKURJI v NARSINGH NARAIN SINGH

6 Pat L J 48

6 ——— *Fraudulent alienation to defeat and delay creditors—Attachment of alienated property—O XXI r 63 suit under—Plea of attaching creditor as to fraudulent nature of alienation validity of* In a suit by an alienee whose claim to property attached under a decree has been rejected to set aside the order and establish his title it is open to the attaching creditor to plead in defence that the transfer was in fraud of creditors *Subramania Ayyar v Muthia Chettiar (1918) I L R 41 Mad 612 (F B)* and *Pala*

——— s 53—*contd*

nandi Chetty v *Apparu Chettiar* (1916) *30 M L J 565* overruled RAMASWAMI CHETTIAR v MALLAPPA REDDIAR (1920)

I L R 43 Mad (F B) 760

7 ——— *Debtor and Creditor—Suit to set aside deed as being void as delaying or defeating creditors—Deed made on good consideration—Preference by debtor to one creditor rather than another where debtor retains no benefit for himself* In this appeal their Lordships of the Judicial Committee upheld the decision of the High Court which is reported in I L R 34 Calc 999 at page 1003 The transfer which defeats or delays creditors is not an instrument which prefers one creditor to another but an instrument which removes property from the creditors for the benefit of the debtor The debtor must not retain a benefit for himself He may pay one creditor and leave another unpaid *In re Moroney L J 21 Ir 27* and *Middleton* v *Pollock L P 2 Ch D 104* followed When it was found that the transfer impeached was made for adequate consideration in satisfaction of genuine debt and without reservation of any benefit to the debtor it followed that no ground for impeaching it lay in the fact that the plaintiff (appellant) who also was a creditor was a loser by payment being made to the preferred creditor—there being in the case no question of bankruptcy MUSAHAR SAHU v LALA HAKIM LAL (1915)

I L R 43 Calc 521

8 ——— *Mortgage in fraud of creditors* The first defendant mortgaged two properties viz a parcel of land and a hut on second parcel to the plaintiff Subsequent to the mortgage the second defendant a creditor of the first defendant purchased the hut in execution of a decree for money obtained by him against the first defendant prior to the mortgage In a suit by the plaintiff to enforce the mortgage security the lower Appellate Court made a decree for realisation of the mortgage money by sale of the first property alone although it found that at the date of the mortgage which was for an antecedent loan and an alleged cash payment which was not proved the plaintiff was not aware of the decree obtained by the second defendant nor of its impending execution against the first defendant and that there was no evidence to show that there were other creditors of the mortgagor at the time of the mortgage transaction who were intended to be defrauded or defeated *Held* that the facts found were not sufficient to bring the case within the scope of s 53 of the Transfer of Property Act That even assuming the mortgage to be within the mischief of s 53 the second defendant was under that section which rendered the transaction only voidable at the option of the person defrauded entitled to question the mortgage only in so far as it affected the property acquired by him and therefore the Court's order directing the sale of the first property was not open to exception That the Court in proceeding to grant relief by way of avoidance of the transaction would do so only on equitable consideration and would apply the principles of justice equity and good conscience and as it appeared that the second defendant acquired the hut subject to the lien of the plaintiff he should be granted relief only on condition that he satisfied the lien The plaintiff was therefore entitled to a decree for his dues also as against the second property in the hands of the second defendant KRISHNA KUMAR NANDY v JAI KRISHNA NANDY (1915)

21 C W N 401

9 ——— *Transfer to stranger for value in fraud of creditors—Knowledge of intention to defraud if sufficient* A transferee who is not himself a creditor and who takes the transfer with full knowledge of the fraudulent intention of the transferor to defeat his creditors is not a transferee in good faith and such a transfer is void as against a creditor even if the transferee has paid full value of the property purchased by him Such a transfer cannot be held to be valid on the ground that a portion of the consideration money was applied by the transferor in payment of some debts which he owed to third person AFTABUDDIN CHAWDHURY v BASANTA KUMAR MUKHAPADHYAYA (1916)

22 C W N 427

10 ——— *Transfer made with intent to defeat or delay the creditor —Whether the transfer void in toto or void in so far as there is no consideration* One J mortgaged his property with the plaintiff for Rs 4 000 in 1911 In the same year the defendant a creditor of J brought a suit against him and obtained a decree in execution of which the properties mortgaged to the plaintiff were attached The plaintiff having failed to raise the attachment sued for a declaration that the defendant was not entitled to attach the properties Both the lower Courts found that out of the consideration of Rs 4 000 the only sum for which the plaintiff was a creditor of J at the time of the mortgage transaction was Rs 1 000 and dismissed the plaintiff's suit on the ground that the plaintiff and J had an intention to defeat or delay the creditors of J in effecting the transfer On appeal to the High Court it was contended that the plaintiff was entitled to a declaration that he had a lien to the extent of the debt existing at the time of the mortgage *Held* that it being found that both the transferor J and the transferee plaintiff had the intention of defeating or delaying the creditors of the transferor and the consideration of the mortgage being treated as one and indivisible under s 53 of the Transfer of Property Act the document must at the option of the person defeated or delayed be treated as void in toto and not merely as void in so far as there was no consideration *Ex parte Chaplin In re Sinclair 26 Ch D 319* and *Halim Lal* v *Mooshala Sahu I L R 34 Calc 999* at p 1014 relied on BHIKABHAI MULJIBHAI v PANACHAND (1919)

I L R 43 Bom 707

11 ——— *Transfer in fraud of creditor —Attaching decree holder—Claim petition by transferee allowed—Right of suit of attaching decree holder and an ordinary creditor—Form of suit—Whether representative suit on behalf of all creditors necessary—English and Indian Law—Statutory right of suit under O XXI r 63 Civil Procedure Code—Objection to form of suit if permissible on appeal for the first time* An attaching decree holder whose attachment has been raised on the claim petition of a transferee of the attached property is not bound to bring a representative

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——— s. 53—contd

suit on behalf of all the creditors of the judgment debtor to set aside the transfer as fraudulent under s 53 of the Transfer of Property Act but is competent to institute a suit to establish his right to proceed against the property under O XXI r 63 of the Civil Procedure Code *Subramania Ayyar v Muthia Chettiar I L R 41 Mad 612* and *Palaniandi Chetty v Appavu Chettiar 30 M L J 565* explained and distinguished English and Indian cases reviewed *Quare* Whether an ordinary creditor who seeks to set aside an alienation as fraudulent under s 53 Transfer of Property Act is bound to sue in a representative capacity on behalf of all the creditors of the transferor? *Per* KRISHNAN J There is no rule either in English or Indian Law justifying the dismissal of a suit brought under s 53 Transfer of Property Act because it is not brought in a representative capacity and objections to the form of the suit should not be allowed to be taken for the first time in appeal Adopting the English rule an *attaching decree holder* has a personal right to sue by himself to avoid the transfer Further as the defeated party in a claim petition the attaching creditor has a statutory right of suit given to him under O XXI r 63 Civil Procedure Code and that suit must necessarily be one brought by himself alone and is not a representative suit such right of suit cannot be defeated by any rule of practice which has no statutory basis POKKER v I UNHAMAD (1918)
I L R 42 Mad 143

——— s 54—

See s 4 I L R 38 Mad 1158

See s 5 I L R 35 Bom 403

See ESTOPPEL BY CONDUCT
I L R 40 Mad 1134

See LAND REVENUE CODE (BOM) 1879 s 74 I L R 41 Bom 170

See MORTGAGE I L R 48 Calc 509
I L R 48 Calc 542

See OFFICIAL RECEIVER
I L R 46 Calc 887

See PRE EMPTION I L R 2 Lah 199

See REGISTRATION ACT s 1
25 C W N 985

See SALE I L R 41 Calc 148
I L R 43 Calc 790

——— Compromise in suit for land—whether a sale—

See LUNACY (DISTRICT COURT) ACT 1858 I L R 1 Lah 109

——— oral sale followed by—registered sale—

See SALE I L R 44 Bom 586

1 ——— *Pre emption—Whether sale is complete before registration* Defendant No 4 sold the property in dispute to defendant No 2 by a *Kobala* dated the 14th July 1911 The *kobala* was registered on the 17th At 6 A M on the 17th plaintiff heard of the sale At 3 P M he went to the Registration Office and put in a petition praying that the registration of the sale deed might be stayed *Held* that the petition to the Sub Registrar was not a sufficient compliance with the rules of Muhammadan Law with regard to the performance of the *Talabi mawasibat* and the *Talabi ishhad* *Per* MULLICK J A sale is not complete till legal ownership passes no matter whether there has been payment and delivery and a pre emptor's title in the case of property worth more than Rs 100 does not arise until after registration KHEYALI PRASAD v MULLICK NAZRUL ALUM 1 Pat L J 174

2 ——— *Sale of mortgaged property by mortgagor—Institution of suit by mortgagee—Registration of sale deed—Purchase by mortgagee in execution of decree—Suit by mortgagee against vendee for possession whether maintainable* Where an instrument which purports to transfer title to property requires to be registered the title does not pass until registration has been effected Therefore where a mortgagee instituted a suit on the mortgagor on the 7th November and the mortgagor had sold the property on the 11th August by a deed which was registered on the 24th November and the mortgagee purchased the property in execution of his decree but was resisted in taking possession by the mortgagor's vendee *held* that in a suit by the mortgagee against the vendee the mortgagee was entitled to decree for possession and not a decree for sale only TILAKDHARI SINGH v GOUR NARAIN 5 Pat L J 715

3 ——— *Sale —Compromise—Land worth less than Rs 100—Registration of deed or delivery of possession not necessary* The terms of a compromise affecting a claim to land of the value of less than Rs 100 were reduced to writing The document was not registered nor was the transaction accompanied by delivery of possession The material provisions of the deed were as follows — You and we are co sharers In your and our land Survey No 20 there is a well Therein you and we have a joint share Partition is to be made including it After the said (survey) number is divided we shall give 9 *pands* more from our share and both of us should put up a bandh (embankment) in the middle of the well and possession and enjoyment should be carried on according to our respective shares According to this condition we should not cause obstruction to each other One who will act in contravention of this agreement will be able to reimburse loss which may be caused The lower Appellate Court regarded the transaction as a sale which under the provisions of the Transfer of Property Act (IV of 188) required delivery of possession in order to validate it *Held* that the terms of the deed did not bring the transaction within the category of a sale as defined in the Transfer of Property Act (IV of 1882) *Held* further that the document in question merely embodied a compromise between the parties and was in effect an acknowledgment of existing right and that therefore no delivery of possession was necessary *Rani Mewa Kuwar v Rani Hulas Kuwar I P 1 I A 15* followed KRISHNA TANHAJI v ABA SHETTI PATIL (1909)
I L R 34 Bom 139

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———— s 54—contd

4 ———————— *Indian Registration Act (III of 1877) s 17 (b) (c) and 49—Agreement of sale—Registration—Possession given subsequently—Deed operating as transfer* The plaintiff s guardian executed in favour of the defendants a registered agreement of sale and received Rs 100 The agreement provided that in consideration of the defendants helping the plaintiff s guardian with money to carry on litigation to recover possession of certain property the latter agreed to sell half of the property to the defendants when recovered The suit was brought the property recovered and the defendants were put in possession of the moiety No registered conveyance accompanied the delivery of possession Subsequently the plaintiff brought a suit to eject the defendants alleging that in the absence of a registered conveyance the title to the property was still in him *Held* dismissing the suit that the transaction was intended to operate as a sale on the recovery of the property and that the deed operated as a transfer on the fulfilment of the condition KONDU BIN KANHOJI v VISHNU MORESHVAR (1912) I L R 37 Bom 53

5 ———————— *Sale compulsorily registrable to defendant by unregistered kobala—Part performance—Payment of purchase money and delivery of possession—Subsequent sale by registered kobala to plaintiff with notice of defendant s rights—Plaintiff if may recover—Equity—Specific performance—Registration Act (XVI of 1908) ss 17 and 49* Where a purchaser of immoveable property under an unregistered *kobala* paid Rs 500 the agreed price to his vendor and was placed in possession *Held* that in the absence of circumstances showing that such purchaser was not entitled to sue his vendor for specific performance a subsequent purchaser of the property under a registered conveyance could not succeed in a suit to recover possession of the property from the former purchaser The defendant is entitled apart from the provisions of the Registration Act to resist such a suit and to permit such a defence to be taken does not amount to an invasion or evasion of the Registration Act *Walsh v Lonsdale L R 21 Ch D 9* followed PUCHHA LAL v KUNJ BEHARY LAL MONDAL (1913) 18 C W N 445

6 ———————— *Sale—Condition attached to the payment of the purchase money—Public policy* Where a deed purporting to be a sale deed contained a stipulation that the price should be paid within one year provided that possession was obtained within that time if possession was not obtained then the payment of the price should be postponed and further that in the event of the vendee not getting the property the price should not be paid at all *Held* that the transaction amounted to a sale within the meaning of s 54 of the Transfer of Property Act and the condition postponing the payment of the consideration was not contrary to public policy KAULESHAR PRASAD MISRA v ABADI BIBI (1915) I L R 37 All 631

7 ———————— *Sale—Agreement to reconvey—No bar to recovery of possession—Construction of statute* An agreement by the plaintiff to reconvey the property to the defendant made contemporaneously with the sale deed cannot be pleaded in bar of plaintiff's right to recover possession under the deed of sale The provisions of s 54 of the Transfer of Property Act are imperative The express words of an Indian Statute are not to be overridden by reference to equitable principles which may have been adopted in the English Courts *Kurri Veerareddi v Kurri Bapireddi I L R 29 Mad 336* followed TIMAN GOWDA v BENEPGOWDA (1915) I L R 39 Bom 4 2

8 ———————— *Agreement to sell land not creating any interest therein—Rule of perpetuities not offending—Specific Relief Act (I of 1877) s 27 (b)—Indian Contract Act (IX of 1872) s 37* A contract to convey or reconvey immoveable properties *whenever demanded* for a certain amount is only a personal contract and does not create any interest in immoveable property and is therefore enforceable and not void as contravening the rule against perpetuities *South Eastern Railway v Associated Cement Manufacturers Limited (1910) 1 Ch 12 33* followed *Kolathu Ayyar v Ranga Vadhyar I L R 38 Mad 114* distinguished *Per* CURIAM —The contract is also enforceable according to s 37 of the Indian Contract Act (IX of 1872) against the representatives of the contracting parties CHARAMUDI v RAGHAVULU (1915) I L R 39 Mad 462

9 ———————— *Sale deed of property in possession of tenants—Deed should be registered* A house which was in the possession of defendants as tenants was sold to them by the owner in 1909 for Rs 50 by an unregistered deed of sale It was again sold in 1910 by the owner to the plaintiff by a registered sale deed The plaintiff having sued to recover possession *Held* that the defendants were entitled to set up their sale deed to defeat the plaintiff's claim for the deed though earlier in point of time required registration as the only interest which the vendor had at the date of the sale was a reversion in the house within the meaning of s 54 of the Transfer of Property Act (IV of 1882) BHASKAR GOPAL v PADMAN HIRA (1915) I L R 40 Bom 313

10 ———————— *Transfer of immoveable property of less than Rs 100 in value to mortgagee with possession on failure to pay off mortgage—Oral transfer—Delivery of possession necessity of—Formal delivery* Where immoveable property of less than Rs 100 in value was first mortgaged to *A* with possession and then on mortgagor s failure to pay up the mortgage amount the latter on 5th March 1906 orally sold the property to *A* and at the same time formally delivered possession by pointing out boundaries by endorsing on the back of the mortgage bond the fact of the sale and by handing it over to *A* and the mortgagor later on on 6th June 1906 sold the property to *B* by a registered deed *Held* that everything that could be done to deliver possession to give effect to the sale of 5th March 1906 was done and the requirements of s 54 of the Transfer of Property Act having thus been satisfied title passed to *A* and *B*'s suit to recover the property from *A* must fail *Sibendrapada Banerjee v*

TRANSFER OF PROPERTY ACT (IV OF 1882) —contd

——— s 54—contd

Secretary of State for India I L R 34 Calc 07 distinguished SONAI CHUTIA v SONARAM CHUTIA (1915) 20 C W N 195

11 ——— *Agreement for sale of immoveable property—Possession taken under the agreement—No registered conveyance—Suit by vendor to recover possession—Agreement for sale whether a valid defence to the suit—Agreement capable of specific enforcement at the date of the suit—Specific Relief Act (I of 1877) s 3 Illustration (q) and s 1 and 2—Indian Trusts Act (II of 1882) ss 41 95* Where the plaintiff being the owner of certain immoveable property seeks to recover possession of that property and there are no facts operating to his prejudice it is a valid defence to the suit that the plaintiff has agreed to sell the property to the defendant the agreement being at the date of suit still capable of specific enforcement but there being no registered conveyance passing the property to the defendant who has taken possession under the agreement for sale and is willing to perform his part of it with the plaintiff BAPU APAJI v KASHINATH SADOBA (1917) I L R 41 Bom 438

12 ——— *Indian Registration Act (XVI of 1908) ss 17 50—Sale of land below Rs 100 in value by unregistered deed of sale and delivery of possession—Sale valid on proof of sale and delivery of possession—Secondary evidence of unregistered deed of sale whether admissible* On the 10th May 1899 defendant No 1 sold the land in dispute to the plaintiff's father for Rs 40 and delivered possession thereof to him At the same time defendant No 1 executed a sale deed in favour of the plaintiff's father which was not registered The plaintiffs remained in possession till 1911 when they were dispossessed by defendant No . In the suit to recover possession of the lands the plaintiffs having lost the unregistered deed of sale adduced secondary evidence of its contents The lower Courts accepted the evidence and decreed the suit The defendants having appealed *Held* that the appeal failed inasmuch as the plaintiff's title was based on a contract of sale accompanied by delivery of possession which was proved *Per* BEAMAN J — I am clearly of opinion that neither the original unregistered deed of sale of 1899 nor secondary evidence of it was admissible in the present case to support the plaintiff's allegation that in 1899 there was a complete and valid sale of the property in suit effectuated by delivery of possession *Per* MACLEOD J — In my opinion in cases of transfer of property under the value of Rs 100 if the transfer is effected by delivery of possession accompanied by an unregistered document that document can be adduced in evidence in order to show what was the character of the possession given by the vendor of the land to the purchaser DAWAL PIRANSHAH v DHARMA RAJARAM (1917) I L R 41 Bom 550

13 ——— *Sale of immoveable property of less than Rs 100 in value—Delivery accompanied by an unregistered conveyance—Conveyance if admissible in evidence—Oral evidence to prove sale if admissible* When the property sold is less than Rs 100 in value and the sale is effectuated or completed by delivery of possession there is no reason why the transaction should not be evidenced by a writing in the terms of a conveyance even though the document is not registered The document does not confer title and is merely evidentiary but having regard to s 91 of the Evidence Act it may be the only admissible evidence of the nature and terms of the transaction though that section would not exclude proof of the fact of delivery of possession JUMAN SHEIKH v MOHAMMAD NOBINEOAZ (1917) 21 C W N 1149

14 ——— *Effect of section on doctrine of part performance where vendor has paid full purchase money and obtained possession* The plaintiff sued to recover possession of land which originally belonged to him and was purchased by *D* at a sale in execution of a decree for money against him Symbolical possession was taken by *D* who agreed to convey the lands to the plaintiff in consideration of a certain sum and actually executed a conveyance which however was not registered for non payment of the whole of the consideration money Thereafter the land was sold in execution of another money decree against the plaintiff who remained in possession and purchased by the defendant Subsequent to this the plaintiff obtained a second *kobala* from *D* which was duly registered It was found that the whole of the purchase money was paid by the plaintiff to *D* before the purchase by the defendant and he was in possession at that time *Held* that the plaintiff at the date of the purchase by the defendant had acquired a right to the property and as *D* could not at that date enforce any right against the plaintiff he could not contend that he had no interest in the property which could be purchased by the defendant That in *Maung Shwe Goh v Maung Inn I L R 44 Calc 54 . . . c 21 C W N 500* the Privy Council only pointed out that s 54 of the Transfer of Property Act differs from the rule of English law to this extent that it expressly lays down that a contract for the sale of immoveable property does not of itself create any interest in or charge on such property The question whether the equitable doctrine of part performance which arises from the fact that the vendor has paid the full purchase money and has obtained possession of the property agreed to be sold is inapplicable by reason of the provisions of s 54 of the Transfer of Property Act was not considered nor decided by their Lordships JNAN CHANDRA DAS v HARI MOHAN SEN (1917) 22 C W N 522

15 ——— *Sale of equity of redemption by unregistered document—Admissibility of document to show satisfaction of mortgage* Two plots of land were mortgaged to the defendant stipulating that he should keep possession of them for a fixed period in satisfaction of the debt and interest Subsequently the mortgagor sold one plot to the defendant and thus paid off the mortgage and took back the other plot The conveyance of sale was by an unregistered document In a suit by the mortgagor for recovering possession of the plot sold *Held per* CHITTY J That the property being in the possession of the mortgagee the sale was of the equity of redemption and being a sale of an intangible thing could under s 54 Transfer of Property Act only be effected by a registered document The conveyance was therefore inadmissible to prove the sale or to show

TRANSFER OF PROPERTY ACT (IV OF 1882)
—contd

——— s 54—contd

when and how the mortgage was satisfied *Per* WALMSLEY *J* (upon finding that the plot was sold free from incumbrance)—That the sale was never theless ineffective for want of delivery of posses ion HUSHMAT SHEIKH *v* SHEIKH JAMIR (1918) 23 C W N 513

16 ——— *Purchaser of immoveable property suit to recover possession by—Agreement to reconvey to person in possession* Certain taluk was sold in execution of a mortgage decree The auction purchaser transferred the properties to the plaintiffs by a conveyance The plaintiff sued for declaration of title to and posses sion of the land by virtue of the conveyance while the defendant in possession alleged that the purchase was for his benefit and the plaintiff was his *benamdar* It appeared that prior to the pur chase there was an agreement between the plain tiff and the defendant that the properties would be reconveyed *Held* that the Transfer of Property Act did not contain the whole law on the subject of the transfer of property because there are other Acts which contain provisions relating to the same subject and s 54 of the Act was not of itself sufficient to enable the plaintiff to succeed in the contention that title being in the plaintiff by virtue of the conveyance the defend ant cannot resist his claim for possession on the basis of a mere agreement to re onvey *Held* (as to the argument that the defendant could not rely on the agreement because it was too late for him to sue for specific performance)—That it might be that the defendant could not actively enforce his rights under the agreement by legal proceedings but *pos ession is itself a title (at any rate to remain in possession)* which a plaintiff must displace before he can succeed SHAFIKUL HUQ CHOWDHURY *v* KRISHNA GOVINDO DUTT (1918) 23 C W N 284

——— ss 54 55—

See s 118 I L R 38 Mad 519

See MINOR I L R 38 All 154

See SALE OF LAND I L R 43 Mad 712

——— *Purchase money non payment of portion—Sale of nevertheless complete—Registration of complete conveyance—Non delivery to purchaser—Intention—Vendor s lien if may be given effect to in purchaser s suit for poss ssion—Equities—Subsequent purchaser s rights—Cos s—False allegations in plaint* Where it w s found that there was no intention on the part of the vendor or the purchaser to postpone the operation of a conveyance till consideration had been actually paid and the conveyance was executed and regis tered but not delivered to the purchaser and a part of the purchase money remained unpaid *Held* that the conveyance was completed and title in the property pa sed to the purchaser That the vendor had a lien on the land for the unpaid balan e of the purchase money and though the lien does not entitle him after execution of the conveyance to res ime possession of the land sold, it gives him the right to keep the title deeds until payment A Court of equity can direct the vendor

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—contd

——— ss 54, 55—contd

to be again let into possession if on a sale directed by it for enforcement of his lien the property is found unsaleable at an adequate price The right of the purchaser to obtain possession under s 55 (1) (f) of the Transfer of Property Act and the right of the vendor to realise the unpaid balance of the purchase money under s 55 (4) (b) may be enforced in one action. In this suit by the pur chaser for recovery of the land sold he was directed to deposit in Court the unpaid balance of the pur chase money within a time specified failing which the suit was directed to be dismi ed Certain persons to whom the vendor had again sold the property for consideration having been joined as parties to the suit were given liberty to with draw the unpaid balance of the purchase money to be deposited by the purchaser The purchaser plaintiff was made liable for the co ts of the liti gation as he had come to Court with a false plea viz that the whole of the purchase money had been paid to the vendor NILMADHAB PARHI *v* HARA PROSHAD PARHI (1913) 17 C W N 1161

——— ss 54 and 118—*Usufructuary Mortgage—Oral arrangement that mortgagee should give up possession of the mortgaged property in part and receive the equity of redemption in part—Sale or Exchang — Price meaning of—Evid nce Act (I of 1872) s 92—Adverse possession by mortgagee* A and B sued to redeem item A alleging that item B had been previously redeemed by him The defendant usufructuary mortgagee of items A and B sued to pleaded that more than 12 years prior to suit the mortgage had been extinguished by an oral ar rangement by which the mortgagor orally sold item A to the mortgagee in consideration for the latter surrendering item B to the mortgagor freed from the mortgage lien. The defendant also con tended that the posses ion of the mortgagee became adverse from the date of the arrangement and that the suit was barred by limitation. *Per* CURIAM *Held* that the transaction pleaded was not merely a compromise in acknowledgment of existing right but amounted to an exchange of prope ty within s 118 of the Transfer of Property Act if it was not a sale and was invalid for want of a registered instrument *Per* MILLER *J* The transaction could not be proved for showing the change of the mortgagee s possession into adverse possession since the intention to discharge the mortgage involved the intention to make certain transfers and it could not be said that if those transfers failed both the parties nevertheless intended to discharge the mortga e *Per* SADA SIVA AYYAR *J* All transfers by conveyance if they are not settlements or declarations of trust were intended by the Legislature to come within one of the headings sale exchange or gift in the Transfer of Property Act *Thirurengada charer* v *Ranganatha Aiyangar* 13 *Mad L J* 500 dissented from Price means not only money in current coin but includes money due on prior debt and the words price paid will cover cases where the vendor s claim to the receipt of the price is sati fied by giving him what he accepts as tantamount to such payment A mortgagee in pos es ion as such cannot by merely asserting po se sion as owner under an invalid sale convert his possession into adv r e possession so as to

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———— **ss 54 and 118**—*concld*

pre cribe for a title und r the Limitation Act *Bya r v Puttarna I L R 14 Mad 30 Bhagvan Govind v Kordi valad Mahadu I L R 14 Bom 2.9 Ramunni v Kerala Varma Val a Raja I L R 15 Mad 16* and *Khiarajmal v Da m I L R 3? Calc 296* applied. A mortgage created by a registered instrument may be proved to have been discharged by admissible evidence (including oral evidence) of payment of the mortgage amount or by admissible evidence of any other transaction which operates as mode of payment *Ramaiatar v Tulsi Prosad Singh 14 C L J 517 Kattika Bapanamma v Katt ka Kristnamma I L R 30 Mad 231 Karampalli Unni Krup v Thekku Vittil Muthoralutti I L R 26 Mad 195* and *Gositi Subba Pow v Var gonda Narasimham I L R 27 Mad 368* referred to But oral evidence of an invalid oral conveyance (of which evidence is legally inadmissible) of the equity of redemption in a portion of the mortgaged property in discharge of the mortgage debt is inadmissible ARIYAPUTHIRA v MUTHUKOMARASWAMI (1912)

I L R 37 Mad 423

———— *Mutual sales of property effected by registered deeds—Subsequent agreement to exchange portions of the property sold—Agreement acted upon but without execution of written instrument—Legal position of parties* In 190. 4 by means of a duly registered deed sold property X with other property to B and B similarly sold property Y with other property to A Possession of items X and Y was however not transferred and shortly afterwards A and B agreed to exchange the two properties No deed of exchange was ever executed but the parties remained in possession of the properties in question from 190. onwards In 191. some of the heirs of B sued to recover property X from A in virtue of the sale deed of 190. *Held* that in the circumstances the plaintiffs were not entitled to recover *Kurri Veerareddi v Kurri Bapireddi I L R 29 Mad 336* and *Chidambara Chettiar v Vaidilinga Iadayachi I L R 38 Mad 519* dissented from *Mahomed Musa v Aghore Kumar Ganguli I L R 42 Calc 801 Maddison v Alderson 8 A C 467 Sumsuddin Choolam Husein v Abdul Husein Kalmuddin I L R 31 Bom 165 Karalia Kanutha Malomedbha v Mansukhram Lakatchand I L R 24 Bom 400 Ram Bakhsh v Mughlani Khanam I L R 26 All 266 Begam v Muhammad Yakub I L R 16 All 344 Muhammad Talib Husain v Inayati Jan I L R 33 All 6.3 Jhamplu v Kutramani I L R 39 All 696* and *Maung Shwe v Maung Inn I L R 14 Calc 542* referred to SALAMAT UZ ZAMIN BEGAM v MASHA ALLAH KHAN (19)

I L R 40 All 187

———— **s 55**—

See [illegible] RIGHT

R 42 Calc 28

See VENDOR AND PURCHASER.

I L R 1 Lah 380

———— *Vendor's lien for unpaid purchase money—Consideration paid in part—Bond executed by vendee promising to pay balance of purchase money by instalments* The acceptance by a vendor of immoveable property of a separate bond given by the vendee to secure payment

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———— **s 55**—*concld.*

by instalments of the balance of the purchase money does not in any way imply an intention on the part of the vendor to relinquish the lien given to him by s 55 of the Transfer of Property Act 1882 *Webb v Macpherson I L R 31 Calc* [illegible] referred to BASHIR AHMAD KHAN v NAZIR AHMAD KHAN

I L R 43 All 544

———— *Sale of land—Covenant of title—Failure of consideration—Warranty implied—Absence of express covenant to the contrary—Mortgage for balance of unpaid purchase money if may be enforced on failure of consideration for sal—Adverse claim compromised by purchaser—Vendor if bound—Notice of compromise* A conveyed a property to D and D executed a mortgage bond for a part of the purchase money yet remaining due At the time of the sale there was some dispute between A and some other persons relating to some part of the lands sold Subsequently after D's purchase a suit was instituted by one P for a part of these lands and the suit was ultimately decreed in the first Court Against that decree D appealed to the High Court where it was compromised on terms by which D gave away 133 bighas of the lands —*Held* that A's legal representative who acquiesced in the decision of the original Court could not contest the validity of the compromise made in the appeal Court in her presence and without any protest on her part that it was improvident The law relating to compromise of an adverse claim by the purchaser with or without notice to the vendor as affecting the vendor's covenant of title discussed That the purchaser was entitled to a reduction of the price settled because the vendor had failed to convey all that he had agreed to sell and the consideration for the mortgage [illegible] unpaid purchase money the liability under it should be reduced *pro tanto* That D was entitled to the benefit of s 55 of the Transfer of Property Act although there was no active fraud on the part of A as there had been a failure of consideration with reference to 133 bighas Any express covenant to the contrary relied on as a bar to the plaintiff's claim to be indemnified under s 55 of the Transfer of Property Act must be in plain and unambiguous language DIGAMBAR DAS v NISHIBALA DEBI (1910)

15 C W N 655

———— **s 55 Sub s (1) cl (b)**—

See SPECIFIC PERFORMANCE.

I L R 41 Calc 852

———— **s 55 (1) (g)**—

See VENDOR AND PURCHASER

I L. R 38 Calc 458

———— *Sale free from incumbrances of property subject to mortgage charges—Incumbrances discharged by purchaser—Right of purchaser to be indemnified—Payment of incumbrances by purchaser if voluntary—Indian Contract Act (IX of 1872) sec 69—Arrangement by vendor with a third party to pay off incumbrances if enforceable by purchaser when no trust created* Where a deed of sale of properties which in fact were subject to mortgage charges contained an express declaration that the property was sold free from incumbrance the vendor was under sec 55 (1) (g) sub sec (2) of the Transfer of Property

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——— s 55 (1) (g)—*concld*

Act liable to the purchaser for moneys paid by the purchaser either for redemption of the mortgages existing on the property purchased at the date of the purchase or for purchase of the properties on sales under such mortgages or to prevent such sales *Semble* —It is difficult to accept the view that purchasers of a property are not compelled to pay off mortgagees who have obtained decrees for sale even though a sale is not immediately threatened Where after the sale the vendor sold another item of property to a third person and it was agreed between them that the latter should discharge the incumbrances on the property which the vendor had sold to the first purchaser free from incumbrances *Held* —That a suit by the first purchaser against the second purchaser for recovery of the amount of incumbrances was misconceived the former being no party to the latter s purchase deed and no trust having been thereby created in his favour NATHU KHAN v THAKUR BURTONATH SINGH (P C) 26 C W N 514

——— s 55 (2)—

See CONTRACT ACT (IX OF 1872) s 73 I L R 40 Mad 338

See CROSS OBJECTION 5 Pat L J 328

See SALE DEED I L R 38 Mad 1171

——— s 55 (4) (b)—

See DEBT I L R 42 Calc 849

——— *Vendor has no absolute title to interest in all cases irrespective of equities—Right of vendor in possession to interest* S 55 cl (4) of the Transfer of Property Act does not give the vendor an absolute title to interest in all cases irrespective of equities It only provides that the vendor shall have a lien for interest when it is payable Interest on the purchase money cannot be claimed so long as the vendor remains in possession of the property sold MUTHIA CHETTY v SINNA VELLIAM CHETTY (1912) I L R 35 Mad 625

——— *Sale of land—Vendor and purchaser—Vendor s direction to pay purchase money to a third party on his behalf—Existence of vendor s lien in spite of* A contract to forego the vendor s charge for unpaid purchase money is not to be necessarily inferred when the whole or part of the consideration for the purchase of immoveable property is agreed to be paid by the purchaser to a third party on behalf of the vendor *Abdulla Beary v Mammali Beary I L R 33 Mad 446* and *Sivasubramania Mudaliar v Gnana Sambanda Pandarah Sannadhi 21 Mad L J 359* overruled. *Webb v Macpherson I L R 31 Calc 57* referred to SIVASUBRAMANIA AYYAR v SUBRAMANIA AYYAR (1916) I L R 39 Mad 997

——— *Sale—Consideration therefor—Covenant by purchaser to discharge liabilities of seller—Breach of covenant gives rise to action for damages only—Statutory charge under cl 4 (b) negatived by contract to the contrary arising by implication* When a purchaser of immoveable property covenants in consideration of the transfer on such property to him to discharge certain liabilities of the seller and further stipulate that upon his

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——— s 55 (4) (b)—*concld*

failure to do so he shall be liable for any damage resulting from such default *Held* that upon breach of such a covenant the seller is entitled to be compensated in damages but has no charge upon the property in the hands of the purchaser under s 55 cl 4 (b) of Act IV of 1882 To negative the statutory charge afforded by s 55 it is sufficient if a contract to the contrary arises by implication. *Webb v Macpherson L R 30 I A 238* referred to *In re Albert Life Assurance Company v Western Life Assurance Society 11 Eq 164* followed. *Ramakrishna Ayyar v Subramania Ayyar I L R 29 Mad 305* distinguished ABDULLA BEARY v MAMMALI BEARY (1910) I L R 33 Mad. 446

——— *Sale—Vendor s lien—Lien not enforceable against subsequent purchaser without notice* The vendor s lien for unpaid purchase money provided for by s 55 (4) (b) of the Transfer of Property Act 1882 cannot be enforced against the property in the hands of subsequent transferees for value without notice of the lien. *Webb v Macpherson I L R 31 Calc 57* distinguished. GUR DAYAL SINGH v KARAM SINGH (1916) I L R 38 All 254

——— On a sale of immoveable property a suit for preemption was brought and succeeded At the time of the sale part of the purchase money had been left in the hands of the purchasers to pay off incumbrance of which fact the preemptors had notice As a matter of fact however owing to a suit for preemption the incumbrance was not paid off *Held* that the vendor had a lien on the property in the hands of the preemptors to the extent of the unpaid purchase money RAMA NAND BHARTI v SHEO DAS I L R 43 All 314

——— s 55 (6) (b) 123—*Registration Act (III of 1877) s 17—Exemption of assessment in lieu of services rendered or to be rendered—Document granting exemption not stamped or registered—sale—Gift—Hindu Law—Nibandha* In consideration of services already rendered or thereafter to be rendered by the defendant to the predecessor in title of the plaintiff the latter executed two documents whereby he released the defendant from payment to him of the assessment on certain land Those documents were not stamped or registered The plaintiff sued to recover arrears of assessment from the defendant who pleaded exemption under the two documents The lower Appellate Court found the transaction to be one of sale and applying s 55 (6) (b) of the Transfer of Property Act 1882 ordered the plaintiff to pay to the defendant what the Court calculated to be the equivalent of purchase money before he (the plaintiff) could recover the assessment *Held* that the transaction evidenced by the documents could not be regarded as sale for the consideration could not be regarded as price and even if it could be assessed in money value it was vitiated by the fact that it was vague and uncertain as to future services. *Held* further that the transaction must be regarded as one of gift It was a gift of the grantee s right to assessment and such a right is regarded as nibandha in Hindu Law and therefore immoveable property The documents not having been registered the gift did not operate *Held* also that their having

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——— ss 55 (6) (b) 123—contd

been no registered instrument in support of the defendant s title the right set up in defence must be negatived. MADHAVRAO v KASHIBAI (1909)
I L. R 34 Bom 287

——— ss 55 58 100—

See RATES AND TAXES
I L. R 42 Calc. 625

——— s 56—*Marshalling—Application of doctrine as between purchasers of different properties subject to the same mortgage—Act No III of 1907 (Provincial Insolvency Act) ss 16 and 34—Insolvency—Property of applicant sold in execution of decree before order of adjudication but after filing of application* The rule of equity stated in s 56 of the Transfer of Property Act 1882 does not apply to a case between purchaser and purchaser the section being limited in its operation to the case in which the party claiming marshalling is a purchaser and the party against whom it is claimed is the original mortgagor *Magniram* v *Mehdi Hosein Khan I L R 31 Calc 95* followed. *Held* also that s 16 cl. (6) of the Provincial Insolvency Act 1907 does not control s 34 cl. (1) of the Act But where property of the applicant in insolvency is sold in execution between the dates of the application and of the order of adjudication the property sold vests in the auction purchaser and not in the receiver *Sri Chand* v *Murari Lal I L R 34 All 6?8* followed. *Basarmal Awatmal* v *Khemchand Daryanomal 11 Indian cases 433* approved. DIN DAYAL v GUR SARAN LAL.
I L R 42 All 336

——— ss 56 and 81—

See APPEAL I L R 41 Calc 418

——— ss 56 81, 88—

See MORTGAGE I L R 35 Bom 395

——— s 57—

See MORTGAGES I L R 39 Mad 419

See MORTGAGE DECREE 2 Pat L J 118

——— s 58—

See s 6 I L R 39 All 196

See CONSTRUCTION OF DEED
I. L. R 40 Bom. 74 378

See LIMITATION ACT 1908 SEC 5 ART 132 25 C W N 57

See MORTGAGE 1 Pat L J 563

See RATES AND TAXES
I L R 42 Calc 625

——— *Mortgage—Construction of document* A bond was executed in the following terms — I have borrowed Rs 1 000 from so and so and ½ out of the entire 20 biswa zamindari property in belonging to me and have brought the same to my use I therefore covenant and give it in writing that I shall repay the aforesaid amount with interest etc Until the repayment of the aforesaid amount I shall not transfer the aforesaid property
If I do so then such transfer shall be invalid. I have *therefore* executed these few presents by way of a bond (*tamassuk*) *Held* that the document did not constitute a simple mortgage as there was no *transfer of a* specific interest in immoveable property to the lender nor any power of sale conferred on him *Dalip Singh* v *Bahadur Ram I L R 34 All 446* referred to by PIGGOTT J MOHAN LAL v INDOMATI (1916)
I L. R 39 All. 244

——— *Mortgage by conditional sale—Sale and agreement to re sell same transaction whether a sale or a mortgage—Construction—Intention of parties—Surrounding circumstances terms of instrument or oral evidence of intention whether can be considered—Decisions of Privy Council on transactions before Transfer of Property Act—Applicability of to those after the Act* Where in one and the same transaction land is sold absolutely but with a right of re purchase to be exercised before a certain date the transaction does not *necessarily* become by virtue of s 58 of the Transfer of Property Act a mortgage by conditional sale whatever the intention of the parties might have been. The Privy Council have laid down that in transactions before the Transfer of Property Act not governed by Bengal Regulation XVI of 1806 instruments of the above kind are to take effect according to their tenor unless it appears from the terms of the instrument or the surrounding circumstances excluding oral evidence of intention as inadmissible that the intention was to effect a mortgage Though such decision dealt with transactions before the Act they still govern transactions after the Act which has not effected any change in the pre existing law on this subject *Pattabhiramier* v *Venkatarow Naiken 13 Moo I A 560 Thumbuswamy Moodelly* v *Hossein Routher I L R 1 Mad 1 Situl Purshad* v *Luchmi Purshad I L R 10 Calc 30 Bhagwan Sahai* v *Bhagwan Din I L R 12 All 387 Bal kishen Das* v *W F Legge I L R 22 All 149* and *Jhanda Singh* v *Wahid ud din I L R 38 All 570* relied on *Palaniappan* v *Subbaraya Goundan 1 L W 80* overruled. MUTHUVELU MUDALIAR v VYTHILINGA MUDALIAR (1919)
I L R 42 Mad. 407

——— ss 58 59 70 and 71—

See EQUITABLE MORTGAGE
2 Pat L J 293

——— ss 58 59 68—

See MORTGAGE I L R 44 Calc 388

——— ss 58 60 98—*Possessory mortgage in 1894 for one year with a covenant to treat it as sale in default of payment—Anomalous mortgage—No right to redeem after one year* A document of 1894 which was described as a Swadina Tanaka Meddatu Sharatu Pattiram which may be translated as a possessory mortgage deed containing a condition for a period fixed contained among others the following terms within these limits a house site together with a thatched house thereon we have mortgaged that is we have kept it as a possessory mortgage and have received Rs 10 from you So having paid the principal and interest pertaining to these Rs 10 within the end of a year from the said date we shall take possession of our house and site If we do not act according to the said condition we shall quit the land and house as if this is a sale In a suit for redemption brought after the date fixed for redemption *Held* that the transaction was as an anomalous mortgage as described in s

TRANSFER OF PROPERTY ACT (IV OF 1882) —contd

———— ss 58 60 98—*contd*

98 of the Transfer of Property Act (IV of 1882) that the rights of the parties were governed by the terms of the mortgage document and that accordingly the plaintiff had no right to redeem after the period of one year fixed by the document The right of redemption given by s 60 of the Transfer of Property Act to every mortgagor has no application to cases governed by s 98 of that Act *Sreenivasa Iyengar* v *Radakrishna Pillai I L R 38 Mad 667* referred to *Usman Khan* v *Dasanna I L R 37 Mad 545* distinguished HAKEEM PATTE MUHAMMAD v SHAIK DAVOOD (1916) I L R 39 Mad 1010

———— ss 58 67 and 68—

See MORTGAGOR AND MORTGAGEE. I. L R 45 Bom. 523

———— *Usufructuary mortgage —Failure of mortgagor to deliver possession—Right of mortgagee to sue for sale* *Held* by the Full Bench —Where a mortgagor fails to deliver possession to his mortgagee the mortgage is not a usufructuary mortgage within the meaning of s 58 (*d*) of the Transfer of Property Act and the mortgagee is entitled to bring a suit for sale of the mortgaged property Ss 58 (*a*) and (*d*) 67 and 68 (*c*) of the Transfer of Property Act referred to *Ram Narayan Singh* v *Adhindra Nath Mukherji I L R 44 Calc 388* followed *Arunchalam Chetti* v *Ayyaiayyan I L R 21 Mad 476* overruled SUBRAMMA v NARAYYA (1917) I L R 41 Mad 259

——— ss 58 100—

See MORTGAGE I L R 34 All. 446

———— *Construction of document—Mortgage—Charge* A deed commenced by reciting that the executant had borrowed a certain sum of money from certain persons and then proceeded to refer to certain share in a property and finally there was a clause by which the executant undertook that until repayment of the amount he would not transfer the property by sale mortgage gift or in any other way but there was in no part of the document any expression conveying the idea of mortgage or hypothecation, nor was there any reference to any right of sale in the property *Held* by RICHARDS *C J* that it was the intention of the parties to make the property mentioned therein security for the loan and interest and that the document created a charge within the meaning of s 100 of the Transfer of Property Act 1882 But as there was no transfer of any interest for the purposes of securing the loan, in the property mentioned in the deed it was not a simple mortgage within the meaning of s 58 *Per* BANERJI *J* (*contra*) The intention was that the persons who had lent the money should have a right to realize their money from the property by causing it to be sold. The document was therefore a simple mortgage within the meaning of s 58 of the Transfer of Property Act *Martin* v *Pursram N W P H C 124* referred to JAWAHIR MAL v INDOMATI (1914) I L R 36 All. 201

——— s 59—

See ATTESTATION I L R 37 Calc 526

See ATTESTING WITNESS I L R 48 Calc 61

TRANSFER OF PROPERTY ACT (IV OF 188°) —contd

———— s 59—*contd*

See EQUITABLE MORTGAGE I L R 38 Calc. 824
2 Pat L. J 293

See EVIDENCE I L R 44 Calc 345

See EVIDENCE ACT 1872 s 68 1 Pat L J 129

See MALABAR LAW I L R 44 Mad. 344

See MORTGAGE I L R 43 Calc 895
I L. R 45 Calc 748

See MORTGAGE BOND I L R 46 Calc 5°2

See NOTICE 25 C W N 49

See REGISTRATION ACT 1877 s 17 25 C W N 49

See USUFRUCTUARY MORTGAGE I L. R 39 Calc 227

1 ———— *Executant if may attest so as to bind co executants—Improperly attested mortgage bond if operates as a charge.* A party to a document cannot under any circumstances be allowed to sign a document as an attesting witness and a person who has once signed as an executant of a mortgage bond and as one of the persons who were borrowing the money on the bond cannot be allowed to have his position altered from an executant of the bond to that of a witness for the purpose of rendering the document valid as a mortgage against the other executants DEBENDRA CHANDRA POY v BEHARI LAL MUKERJEE (1912) 16 C W N 1075

2 ———— The attestation of certain mortgage deeds by two witnesses required by s 59 of the Transfer of Property Act is attestation of the actual fact of the execution *Ganga Die* v *Shiam Sundar I L R 26 All 69* overruled SHAMU PATTER v ABDUL KADIR RAVUTHAN (1912) 16 C W N 1009
I L. R 35 Mad 607

3 ———— *Mortgage bond—Attestation by only one witness—Bond judicially found to be invalid and unenforceable—Government notification—Retrospective effect—Exemption of certain Districts from the operation of s 59 of the Transfer of Property Act (IV of 188°)—Subsequent suit to enforce the mortgage—Res judicata—Rights vested under decrees not affected* In execution under a money decree certain property mortgaged to the plaintiff on the 8th September 1893 was attached and was about to be brought to sale The plaintiff thereupon applied that the property should be sold subject to his mortgage lien The Court rejected the plaintiff s application on the ground that the mortgage bond was invalid and not enforceable because it was attested by only one witness and not by two as required by s 59 of the Transfer of Poperty Act (IV of 188) The plaintiff thereupon brought a suit in the year 1905 for a declaration that his mortgage bond was valid and operative according to law and, therefore enforceable The suit came up in second appeal to the High Court which on the 14th August 1908 finally decided that the plaintiff's mortgage was void and therefore inoperative

TRANSFER OF PROPERTY ACT (IV OF 1882) —contd.

——— s 59—*contd*

under s. 59 of the Transfer of Property Act (IV of 1882) In the meanwhile on the 4th June 1908 the Government of Bombay issued a notification exempting certain districts including the Poona District in which the mortgaged property was situate from the operation of s 59 of the Transfer of Property Act (IV of 1882) The notification was given a retrospective effect from the 1st January 1893 On the strength of the said notification the plaintiff applied to the High Court for review of judgment and his application being rejected he in the year 1910 instituted the present suit to enforce his mortgage and both the lower Courts having rejected the claim on the ground of *res judicata* the plaintiff preferred a second appeal *Held* confirming the decree that the decree passed by the High Court in 1908 still subsisted and was not affected by the Government notification although the notification had retrospective effect The notification could not abrogate rights which had been judicially declared and had been merged in decree *Kay* v *Goodwin 6 Bing 576* and *Lemm* v *Mitchell [1912] A C 400* followed LAKSHMANRAO KRISHNAJI *v* BALKRISHNA RANGNATH (1912) **I L R 36 Bom 617**

4. ——— Where a deed was executed by two pardanashin ladies in the presence of their husband and the latter after seeing the execution of the document signed his name underneath but not where other witnesses signed and apparently just to notify his approval *Held* he was not an attesting witness SRIMATI BAR KUARIN ALAK MANJARI KUARI *v* SIRCAR BARNARD COMPANY **6 Pat L J 473**

5 ——— *Equitable mortgage—Deposit of title deeds of property situate in mofussil—Intention to create charge proof of—Registration* The plaintiff deposited with the defendant in Bombay title deeds of his property situate at Nasik and borrowed a sum from the defendant The defendant also at the same time executed in favour of the plaintiff a writing setting forth the clear intention of the defendant that the deposit of title deeds should be security for the loan from the plaintiff and binding the defendant to execute on demand a proper legal mortgage of the property covered by the title deeds deposited This writing which was the only evidence available of the defendant s intentions in making the deposit of title deeds was not registered *Held* that the deed required registration as it created a charge upon the property that in its absence there was no evidence whatever of intention to connect the deposit of title deeds with the debt and that the mere fact that there was a subsequent or contemporaneous loan was not sufficient in law to warrant a presumption apart from any other evidence that the contemporaneous or antecedent deposit of title deeds was necessarily made as security for the loan BEHRAM RASHID *v* SORABJI RUSTOMJI (1913) **I L R 38 Bom. 372**

6 ——— *Mortgage deed executed by pardanashin ladies attestation of—Requirements as to identity of executants and as to witnesses seeing signatures made—Waiver of right of priority by first mortgagee in favour of second mortgagee—Right to recover unsatisfied portion of claim in subsequent suit from purchaser of mortgagor s interest in other property comprised in mortgage* In a suit on a mortgage executed by two pardanashin ladies the defendant objected that the deed had not been duly attested in accordance with the provisions of s 59 of the Transfer of Property Act (IV of 1882) as interpreted in the decision of the Privy Council in *Shamu Patter* v *Abdul Kadir Ravuthan I L R 35 Mad 607 L R 39 I A 218* and was therefore not operative as a mortgage On this point the High Court differed Sir H G RICHARDS *C J* finding that the attestation was not complete because the attesting witnesses had not actually seen the signatures of the executants put on the deed and Sir P C BANERJI being of opinion that that requirements as well as all others necessary had been observed *Held* (upholding the finding of BANERJI *J*) that the deed had been duly attested within the meaning of s 59 of the Act Two at least of the witnesses were well acquainted with the executants and though they did not see their faces they recognized their voices and saw them sign the mortgage deed *Held* (affirming the decision of the High Court) that the plaintiffs (respondents) had not in a former suit insisted on their right as prior mortgagees but had waived it in favour of the second mortgagees and so left their claim only partly satisfied did not under the circumstances of the case di entitle them from recovering the unsatisfied portion of the debt in the present suit from the appellants (defendants) who were purchasers of the mortgagor s interest in other portion of the property comprised in the mortgage PADARATH HALWAI *v* RAM NAIN UPADHIA (1915) **I L R 37 All 474**

7 ——— *Attestation—Document attested by one witness only—Mortgage—Charge* A document purporting to be a deed of mortgage bore the signature of one attesting witness and the name of another person was written on the margin by the scribe but there was no signature or mark made by his second person In a suit brought upon the document after his death it was *held* that the document was not duly attested by two witnesses within the meaning of s 59 of the Transfer of Property Act inasmuch as there was nothing to show that the person whose name appeared on the document as an attesting witness had authorised the scribe to sign it for him and therefore it could neither operate as a mortgage nor create a charge on immoveable property PARAM HANS *v* RANDHIR SINGH (1916) **I L R 38 All. 461**

7 (a) ——— *Attestation of mortgage deed—Scribe who signs for and on behalf of the mortgagor if competent to become one of the attesting witnesses—Personal decree when allowable* The executant of a certain mortgage deed was illiterate and she executed the instrument by the pen of the scribe of the document who also signed the document as one of the attesting witnesses *Held*—That the document was not legally attested by the scribe according to the provisions of sec 59 of the Transfer of Property Act Where no mark seal or thumb impression of the mortgagor appears on the mortgage deed the scribe who executes the document for and on behalf of the mortgagor is not competent to become an attesting witness to attest the signature he himself has written out *Upendra*

TRANSFER OF PROPERTY ACT (IV OF 1882)
—*contd*

———— s 59—*contd*

v *Hukum* I L R 46 Calc 522 s c 23 C W N 290 approved and followed A personal decree for the money is only allowable if the suit is brought within 6 years of the date of the Bond or for any payment within section 20 of the Limitation Act SRISTIDHAR GHOSE v RAKHYAKALI DASI

26 C W N 264

8 ———————— *Mortgage bond—Attestation—Person subscribing as scribe if attesting witness* Per CHAMIER C J —To be an attesting witness within the meaning of s 59 of the Transfer of Property Act the witness must not only have seen the execution of the document but should have also subscribed as a witness *Shamu Patter v Abdul Kadir L R 39 I A 218 s c I L R 35 Mad 607 16 C W N 1000 Raj Narain Ghose v Abdur Rahim 5 C W N 454 Dinamoyi Debi v Bon Behari Kapur 7 C W N 160* and *Badri Prasad v Abdul Karim I L R 35 All 254* referred to Where a person who subscribed a mortgage bond as scribe was proved to have been present when the document was executed and the lower Appellate Court upon this and other evidence found that he had seen the document executed and held that he was an attesting witness within the meaning of s 59 of the Transfer of Property Act *Held per* CHAMIER C J —That although on the finding he must be held to have seen the mortgage deed executed the scribe was not an attesting witness as he did not subscribe as a witness *Per* JWALA PRASAD J —That in the absence of evidence showing that he had witnessed the execution it could not be presumed that he had A scribe of a deed who has witnessed the execution may sign the deed because he has done so and yet describe himself as a scribe RAM BAHADUR SINGH v AJODHYA SINGH (1916)

20 C W N 699

9 ———————— *Deed of mortgage—Attestation—Execution—Mark by illiterate executant—Mark described by the scribe—Signature—General Clauses Act (X of 1897) s 3 cl 52* An illiterate person signed a deed of mortgage by putting his mark to it which mark was described by the scribe of the deed It was attested by two witnesses The deed was sought to be proved by the testimony of one of the witnesses and the scribe *Held* that the deed was duly proved for its execution was completed when the executant made his mark and the object of the scribe in describing the mark was to authenticate the mark that is to vouch the execution GOVIND BHIKAJI v BHAU GOPAL (1916)

I L R 41 Bom 384

10 ———————— *Mortgage deed executed by the scribe on behalf of the mortgagor—Attestation only by the scribe and one witness if sufficient* Where the mortgagor not being able to sign his own name the mortgage-deed which contained no mark or seal or thumb impression of the mortgagor was executed by the scribe on behalf of the mortgagor *Held* that the scribe having executed the document for and on behalf of the mortgagor was not competent to attest his own signature as an attesting witness even in the view that the subscription of his own name as the

TRANSFER OF PROPERTY ACT (IV OF 1882)
—*contd*

———— s 59—*concld*

scribe amounted to attestation within the meaning of s 59 of the Transfer of Property Act RAJANI KANTA BHADRA v PANCHANANDA (1918)

23 C W N 990

11 ———————— *Mortgage—Attestation—Execution—Scribe whether an attesting witness— Attesting witness meaning of—Indian Evidence Act (I of 1872) s 68* A mortgage bond was written and signed at the writer s house where one of the attestants put his attestation on the deed but the other witness attested the document in the Sub Registrar s office Both the lower Courts held that there was no proper attestation of the document as required by the Transfer of Property Act 1882 On appeal to the High Court it was contended that the scribe who signed the document should be treated as an attesting witness —*Held* that a writer of a document who put his signature at the end of a document could not be treated as an attesting witness within the meaning of s 68 of the Indian Evidence Act 1872 unless he actually signed as an attesting witness in the document Attesting witness is a witness who has seen the deed executed and who signs it as a witness *Govind Bhikaji v Bhau Gopal (1916) 41 Bom 384* distinguished *Ranu v Laxmanrao (1908) 33 Bom 44* followed DALICHAND SHIVRAM v LOTU SAKHARAM (1919)

I L R 44 Bom 405

12 ———————— *Validity of mortgage bond when scribe who executed the deed on behalf of the mortgagor attested his own signature—Evidence Act (I of 1872) secs 68 and 70 proof of the deed by the scribe who also acted as an attesting witness if sufficient where execution of the deed is admitted* In a suit upon a mortgage bond the Defendant admitted the execution of the bond but pleaded inter alia that the bond should not be regarded as a mortgage bond The first Court held that the execution of the bond being admitted the necessity of its proof did not arise and decreed the suit On appeal it was held that the scribe having executed the deed on behalf of the Appellant was not competent to attest his own signature and there being no other evidence dismissed the suit *Held*—That the validity of a mortgage bond and the proof of its execution are two different questions The question of the validity of a mortgage bond with reference to the provisions of section 59 of the Transfer of Property Act can arise even though the document might be proved according to law or is not required to be proved by calling an attesting witness under sec 68 of the Evidence Act by reason of the execution of the document being admitted by the executant as laid down in sec 70 of the Evidence Act Where in the above circumstances the Plaintiff produced only the scribe who executed the deed on behalf of the executant to prove the deed although the names of other persons appeared as attesting witnesses in the document *Held*—That instead of dismissing the suit the plaintiff should be given an opportunity of producing evidence that the document was duly executed PATAN KHAN v BADAL SARDAR

26 C W N 959

———— ss 59 100—*Mortgage—Charge—Attestation—Document attested by one witness only* *Held* that a document which purported to be a mortgage but which was attested by only one wi

TRANSFER OF PROPERTY ACT (IV OF 1882) —*contd.*

——— ss. 59 100—*contd.*

ness, could not operate either as a mortgage or as creating a charge on immoveable property within the meaning of s. 100 of the Transfer of Property Act 188_ *Shamu Patter v Abdul Kadir Ravu than I L R 35 Mad. 607* referred to COLLECTOR OF MIRZAPUR v BHAGWAN PRASAD (1913)
I L. R 35 All 164

——— s 60—

See s 58	I L R 39 Mad 1010
See s. 98	I L. R 43 Mad 589
See MORTGAGE	I L R 43 Bom 334
	I L R 43 Mad 37

1. ——— *Mortgage—Redemption—Tender of mortgage money as a condition precedent to a suit for redemption* S 60 of the Transfer of Property Act 188? does not necessarily mean that before a suit for redemption can be instituted the amount due on the mortgage must be paid or tendered and this would obviously be impossible when, the mortgage being usufructuary the plaintiff's case is that the debt has been liquidated by the profits of the property mortgaged *Bansi v Girdhar Lal Weekly Notes 1894 p 143 Narsingh Singh v Achhaibar Singh I L R 36 All. 36 Muhammad Ali v Baldeo Pande 14 A L J 56 Mewa Ram Singh v Ganga Pam 17 A L J 910* and *Muhammad Mushtaq Ali Khan v Banke Lal I L R 42 All 420* referred to HET SINGH v BIHARI LAL.
I L R 43 All 95

2 ——— *Mortgage—Redemption—Mortgagee to remain in possession so long fruit bearing trees remain on land—Whether the term operated as a clog on equity of redemption—Dekkhan Agriculturists Relief Act (XVII of 1879) s 13* A mortgage deed of 1867 provided that on payment of the principal sum on the expiry of twenty one years the mortgagor shall be entitled to recover the land and trees free of all charges and that if the money was not so paid the mortgagee will be allowed to develop the land by growing fruit bearing trees on it and will not be required to give up possession until the trees had ceased bearing fruit The mortgagor did not redeem at the expiry of the stipulated period of twenty one years The mortgagee who remained in possession planted a number of fruit bearing trees on the land In 1913 the mortgagor sued for redemption of the mortgage of 1867 under the Dekkhan Agriculturists Relief Act contending that the stipulation in the deed postponing the mortgagor's taking possession so long as there were fruit bearing trees on the land was a clog on the equity of redemption *Held* that the provision in the deed postponing the mortgagor's taking possession so long as there were fruit bearing trees did not operate as a clog on the equity of redemption *Held* further that the proper relief which the mortgagor was entitled to was that under s 13 of the Dekkhan Agriculturists Relief Act 1879 namely the taking of an account from the beginning of the mortgage up to the date of the suit The words at any time after the principal money has become payable in s 60 of the Transfer of Property Act mean become payable according to the terms of the contract *Per* HEATON *Acting C J* —S 60 of the Transfer of Property Act merely enacts that redemption is to be according to the terms of the mortgage contract and there is nothing in the Transfer of Property Act which says anything about clogs on the equity of redemption GENU v NARAYAN (1920)
I L. R 45 Bom 117

3 ——— *Suit by assignee of Hindu widow's right to annuity charged on properties a portion whereof acquired by plaintiff—Apportionment of the plaintiff's claim between properties acquired by him and rest of charged properties—Widow's right whether personal or transferable* A Hindu widow in consideration of releasing her life interest in her husband's properties obtained from her two brothers in law a deed of maintenance whereby she was entitled to receive Rs 100 per annum in cash and certain rice from them with the payment whereof certain properties were charged The plaintiff the assignee of this right of the widow subsequently purchased a portion of the properties not free from encumbrance created by the deed of maintenance The first Court partly decreed the plaintiff's suit to enforce the charge The lower Appellate Court decreed the whole of the suit against the properties not purchased by the plaintiff *Held* that the case was covered by the last few words of the final clause of s 60 of the Transfer of Property Act A mortgagee having become a partial owner of the equity of redemption is bound to apportion the money which he seeks to recover as between the properties acquired by him which were subject to the charge and the rest of the mortgaged properties *Held* also that this was not a personal right of the Hindu widow It was a claim which the widow had under a deed of covenant for which there was a charge on certain properties and it was capable of transfer in the same manner as in other cases The mere fact that the grantee of the deed of covenant happened to be a Hindu widow did not prevent her from transferring her interest if she thought fit so to do RAJAT KAMINI DEBI v RAJA SATYA NIRANJAN CHAKRABARTY (1919)
23 C W N 824

4 ——— *Mortgage—Suit for redemption—Tender of mortgage money not a condition precedent—Usufructuary motgagee planting trees— Improvement* It is not necessary that a mortgagor who wishes to redeem should make a tender or payment of the money due on the mortgage before instituting a suit for redemption All that s 60 of the Transfer of Property Act 1882 provides is what constitutes the right of redemption and there is nothing in the section which requires that a tender of the mortgage money should be made as a condition precedent to the institution of a suit for redemption The planting of trees on the mortgaged property by a mortgagee in possession is not such an improvement as entitles him to claim compensation from the mortgagor but he is entitled to [illegible] and remove those trees. RAGHUNANDAN [illegible] v PAGHUNANDAN PANDE
I L. R 4? All [illegible]

5 ——— *[illegible] mortgagors if may redeem [illegible] foreclosing without making [illegible] the mortgaged properties party [illegible]* —

TRANSFER OF PROPERTY ACT (IV OF 1882) —contd

———— s 60—*concld*

deem that property only—English law and Indian law on the point if different It is not the law in India any more than it is in England that one of several mortgagors cannot redeem more than his share unless the owners of the other shares consent or do not object Subject to proper safeguarding of the right to redeem which these other owners may possess he is entitled to redeem the mortgage in its entirety, unless something had happened which extinguished the mortgage in whole or in part The concluding part of sec 60 of the Transfer of Property Act does no more than declare applicable what is but the law as established in England In English law the transferee of a part of the security is entitled to redeem the entire mortgage on the properties generally and correlatively cannot compel the mortgagee to allow him to redeem his part by itself MIRZA YADALLI BEG *v* TUKARAM (P C)

25 C W N 241

———— ss 60 61, 62—*Mortgage with possession and charge on the same property in favour of the same person—Assignment of equity of redemption—Breach of contract by mortgagor—Loss to mortgagee—Right of assignee of equity of redemption to redeem mortgage with possession without paying amount due on the charge and the loss sustained by mortgagee* A mortgagor has a statutory right under s 62 (*b*) of the Transfer of Property Act to redeem a usufructuary mortgage on property which is also subject to a simple mortgage without redeeming the latter also Therefore where a person mortgaged some of his properties with possession and regained possession of them by executing a rental agreement giving a charge thereon and on other properties for all arrears of rent held that the mortgagor could redeem the properties mortgaged with possession alone without being obliged to pay at the same time any amount due under the simple mortgage *Tajjo Bibi v Bhagwan Prasad (1894) I L R 16 All 295* followed The losses which the mortgagee might have sustained by reason of breach of contract committed by the mortgagor and which were not specifically charged on the mortgaged properties are recoverable only from the mortgagor and not from the mortgaged properties in the hands of his assignee *Bohra Thakur Das v Collector of Aligarh (1910) I L R 32 All 612 (P C)* followed *Per* WALLIS *C J*—*Quære* whether in India a mortgagor has the right to redeem one mortgage on his property without at the same time paying off another mortgage on the same and other properties as well *Per* SESHAGIRI AYYAR *J*—Whatever may be the rights of a mortgagee in India to compel the mortgagor to consolidate mortgages upon the same property the rule is not applicable against purchasers of the equity of redemption The rule in *Vint v Padget (1858) 2 De G J 611 s c 44 E R 1126* is not applicable to India. RAMARAYANINGAR *v* MAHARAJAH OF VENKATAGIRI (1921)

I L R 44 Mad. 301

———— ss 60 67—93—*Suit for redemption—Previous suit by mortgagee for sale—Decree for sale—Decree in favour of mortgagor as defendant for redemption and recovery of possession in execution—Decree not executed by Mortgagee or mortgagor—Suit for redemption by mortgagor Maintainability*

TRANSFER OF PROPERTY ACT (IV OF 1882) —contd

———— ss 60, 67—93—*contd*

of—Res judicata Where a mortgagee sued for sale on a mortgage bond of 1864 and obtained a decree in 1872 which contained a provision in favour of the mortgagor who was a defendant therein for redemption and recovery of possession of the mortgaged lands in execution of the decree but the decree was not executed by either party *Held* that a fresh suit instituted by the mortgagor for redemption of the mortgage was barred by the rule of *res judicata* *Vedapuratti v Vallabha Valiya Raja I L R 25 Mad 300* and *Adipuranam Pillai v Gopalasami Mudali I L R 31 Mad 354* referred to *Pama v Bhagchand, I L R 39 Bom 41* dissented from. RANGA AYYANGAR *v* NARAYANA CHARIAR (1915)

I L R 39 Mad 896

———— ss 60 74 91—

See MORTGAGE **I L R 34 Mad. 115**

———— ss 60 89 and 95—

See REDEMPTION **3 Pat L. J 490**

———— ss 60 and 91—*Redemption suit for by the owner of a portion of the equity of redemption—Mortgagee in possession—Vendee from other co owners of the equity of redemption—Payment by vendee of his share of mortgage-amount to the mortgagee—Possession surrender of by mortgagee to vendee of aliquot portion of lands—Objection by mortgagee and vendee to redemption of the whole mortgage and surrender of the whole mortgaged property—Redemption of plaintiff's share only on payment of his share of debt—Possession of lands right to by fair partition in a suit for redemption—Equities on partition—Transfer of Property Act (IV of 1882) s 91 construction of* Where the plaintiff (an owner of a half share in the equity of redemption) sued the mortgagee and the owner of the other half of the equity of redemption who had redeemed one-half of the mortgage for redemption of the whole mortgage and for the recovery of possession of the whole of the mortgaged property the High Court on Second Appeal passed a decree for redemption of the plaintiff's half share on payment of half the mortgage-amount and for partition and delivery of possession of half the mortgaged lands in respect of such share The owner of a portion of the equity of redemption is not entitled as matter of right to redeem the whole of the mortgage and recover possession of the whole of the mortgaged property on payment of the whole of the mortgage-amount against the will of the mortgagee in possession and of the vendee of another portion of the equity of redemption who was put in possession of some of the lands by the mortgagee on payment of an aliquot portion of the mortgage-amount. The question whether the Court will allow redemption of the whole of the mortgage at the instance of a person entitled to a part only of the equity of redemption must depend on the circumstances of each case and the rights acquired by the mortgagee or by third persons subsequent to the mortgage *Kuray Mal v Puran Mal I L R 2 All 565* *Munshi v Daulat I L R 29 All 264* and *Nawab Azimut Ali Khan v Jowahir Singh 13 Moo. I A 404* followed. *Hutfasanan Nambudri v Parameswaran Nambudri I L R 22 Mad 209*

TRANSFER OF PROPERTY ACT (IV OF 1882) —*contd.*

——— ss 60 and 91—*contd*

dissented from. S 91 of the Transfer of Property Act explained. RATHNA MUDALI v PERUMAL REDDY (1912) I L R 38 Mad 310

——— ss 60 and 98—

See s. 58 I L R 39 Mad 1010

——— *Mortgage deed simple and usufructuary combined—No anomalous mortgage—Redeemable—Mortgagee to be vendee on mortgagor's failure to pay at the stipulated time—Whether mortgage by conditional sale* Where the usufructuary mortgage deed provided that if the mortgage amount was not paid on the stipulated date the mortgage was to work itself out as a sale for the principal amount and further contained a covenant that the mortgagor would pay to the mortgagee the costs of the construction of earth work, etc on the date fixed for redemption as per the accounts of the mortgagee *Held* that it was not an anomalous mortgage as defined in s 98 of the Transfer of Property Act the word not in s 98 governing equally the words a combination of the first and third or the second and third of such forms in the section and that therefore it was redeemable *Amarchand* v *Kila Marar I L R 27 Bom 600* and *Ammanna* v *Gurumurthi I L R 16 Mad 64* dissented from *Perayya* v *Venkata I L R 11 Mad 403* and *Ankineedu* v *Subbiah I L R 35 Mad 744* followed *Per* SADASIVA AYYAR *J* It is a combination of a simple mortgage and a usufructuary mortgage clogging the equity of redemption A mortgage deed which begins as a mortgage transaction cannot be called a mortgage by conditional sale though it is a mortgage giving the mortgagee after a certain time and on breach of certain conditions a right to claim title as vendee *Per* SPENCER *J* It is either a usufructuary mortgage deed with a clog on the equity of redemption or a usufructuary mortgage combined with a mortgage by conditional sale and in either case redeemable under s 60 of the Transfer of Property Act *Gopalasami* v *Arunachella I L R 15 Mad 304* referred to *Kangayya Gurukal* v *Kalimuthu Annavi I L R 27 Mad 526* distinguished. SRINIVASA AYYANGAR v RADHZAKRISHNAM PILLAI (1913) I L R 38 Mad 667

——— s 61—

See MORTGAGE 25 C W N 129
I L R 1 Lah 105

——— ss 61 and 62—

See s 60 I L R 44 Mad 301

——— ss 61 85 and 99—*Civil Procedure Code (Act V of 1908) O XXXIV rr 1 and 14—Mortgagee holding two mortgages—Suit on the second mortgage subject to his interest in a prior mortgage—Maintainability* It is open to a mortgagee to bring a suit for the recovery of his debt by sale of the properties mortgaged to him subject to his interest in a prior mortgage SUBRAMANIA v BALASUBRAMANIA (1915) I L R 38 Mad 927

——— s 63—*Accession to mortgaged property mortgagor's right to if depends on special advantage of mortgagee as such in acquiring the accession—Mortgagee also co-owner of the property—acquisition by mortgagee of raiyati holdings in the Property—Mortgagee's right on redemption of mortgage* Where the plaintiff's share in a mehal was mortgaged to the co proprietors of the mehal and the mortgagees during the continuance of the mortgage bought in some of the raiyati holdings of the mehal from the tenants and obtained possession thereof separating the lands purchased from those in the possession of the tenants *Held* that on redemption of the mortgage, the plaintiff was entitled to get *khas* possession of the lands to the extent of the share in the mehal on payment to the mortgagees of the proportionate share of the expenses incurred in acquiring them *Per* N R CHATTERJEA *J*—The purchases were accessions to the mortgaged property within the meaning of s 63 of the Transfer of Property Act The mortgagee's right to the accessions to the mortgaged property under s 63 of the Act does not depend upon whether the mortgagee had any special advantage by reason of his position as mortgagee in acquiring the accession *Kishen datt* v *Mumtaz Ali I L R 5 Calc 198* referred to S 63 of the Act applies to a case where the mortgagee hold the property both as co proprietor and as mortgagee RAM BRICH NARAIN SINGH v AMBIKA PRASAD SINGH (1913)
17 C W N 586

——— ss 63 72 76—

See MORTGAGOR AND MORTGAGEE
I L R 43 Bom 69

——— s 65—

See s 68— 2 Pat L J 490

See MORTGAGE I L R 35 All 48
I L R 38 Mad. 18

——— *Duty of a mortgagor in possession to pay public charges purely personal—Acquisition of equity of redemption by trespasser—Non payment of public revenue and purchase by trespasser in revenue sale—Extinguishment of mortgage* The implied covenant on the part of the mortgagor in possession mentioned in s 65, cl (c) of the Transfer of Property Act (IV of 1882), to pay all public charges is in the nature of a personal covenant and is not one arising by virtue of his being in possession of the mortgaged property Hence if after the creation of a simple mortgage a stranger acquires the equity of redemption by adverse possession as against the mortgagor the acquirer is under no duty towards the mortgagee to pay the public revenue payable on the property and therefore if after allowing it to be sold for arrears of revenue he buys it himself he holds it free from the mortgage. The rule that no man can take advantage of his fraud does not apply to a case like this where the party charged with fraud does not stand in any fiduciary relation to or has a joint interest with, the person defrauded and is under no duty to protect his interests *Nawab Sidhee Nuzur Ally Khan* v *Rajah Ojoodhyaram Khan 10 Moo I A 540* distinguished. *Quære* Whether an assignee for value from the mortgagor is affected by the mortgagor's covenant to pay the public charges? SUBBIAH v RAMI REDDI (1916)
I. L. R 39 Mad. 959

TRANSFER OF PROPERTY ACT (IV OF 1882)
—*contd*

———— s 67—

See MORTGAGE I L R 47 Calc 175
I L R 39 Mad 17

———— *Usufructuary mortgage —Date payable within a fixed period—Expiry of the period—Mortgagee s right to an order for sale* Where under a usufructuary mortgage the mort gage debt is made payable within a fixed period, the mortgage is not purely a usufructuary mort gage and the mortgagee has, in the absence of a contract to the contrary the right to an order under s 67 of the Transfer of Property Act (IV of 1882) that the property be sold after the debt has become payable *Mahadaji* v *Joti I L R 17 Bom 425* and *Krishna* v *Hari 10 Bom L R 615* explained DATTAMBHAT RAMBHAT *v* KRISHNABHAT (1910)
I L R 34 Bom 462

———— *Right of puisne mort gagee to sue for sale subject to prior mortgages—Suit for sale by first mortgagee without impleading subsequent mortgagee—Purchaser in execution rights of—Right of puisne mortgagee to sue for sale against purchaser—Purchaser in puisne mortgagee s suit right of* Where a prior mortgagee sued for sale on his mortgage without making a puisne mort gagee a party to his suit and obtained a decree and in execution of the decree the property was sold and purchased by a third person the puisne mortgagee is entitled to sue for sale on his mort gage subject to the prior mortgage after making the purchaser a party to his suit *Mulla Vittil Seethi* v *Achuthan Nair 21 Mad L J 213* fol lowed *Venkatagiri* v *Sadagopa Chariar 22 Mad L J 129* and *Venkatanarasammah* v *Ramiah I L R 2 Mad 108* dissented from *Muhammad Usan Rowthan* v *Abdulla I L R 24 Mad 171* *Venkataramana Iyer* v *Gompert I L R 31 Mad 425* and *Rangayya Chettiar* v *Parthasarthi Naicker I L R 20 Mad 120* referred to Case law on the subject reviewed. Rights of purchasers in the prior or subsequent mortgagee s suits dis cussed CHINNU PILLAI *v* VENKATASAMY CHET TIAR (1915) I L R 40 Mad 77

———— *Mortgage—Suit by one mortgagee to recover his individual share in the mortgage debt—What amounts to a severance of the interests of the mortgagees* Certain property was mortgaged by *K* to *B* and *J* Then other property was mortgaged by *G* (*K* s brother) also to *B* and *J* Subsequently *K* and *G* made a usufructuary mortgage of both properties in favour of *B* alone ostensibly in lieu of the former mortgages and *B* purported to give the mortgagors a discharge of those mortgages *Held* that in these circum stances it was competent to *J* to sue the mort gagors for the recovery of his share in the mort gage debts due in respect of the two earlier mort gages the action taken by *B* amounting in law to a severance of the interests of the mortgagees with the consent of the mortgagors *Gobind Ram* v *Sundar Singh 1899 All Weekly Notes 246* distinguished. JAUHARI SINGH *v* GANGA SAHAI (1919) I L R 41 All 631

———— *Mortgagee s right to a decree for sale when the mortgage is an English mortgage—Civil Procedure Code (Act V of 1908) Or XXXIV r 6—Mortgagee s right to a per sonal decree against the mortgagor when after the transfer and redempt on clauses in the mortgage*

TRANSFER OF PROPERTY ACT (IV OF 1882)
—*contd*

———— s 67—*contd.*

deed there is a covenant for payment of the mort gage debt—Appellate Court s power to pass a per sonal decree in the appellate stage Under the provisions of sec 67 of the Transfer of Property Act a decree for sale may be made in favour of the mortgagee when the mortgage is an English mortgage When the mortgagor covenants to transfer the hypothecated properties indefeasibly to the mortgagee with the usual clause for redemp tion and further covenants to pay the mortgage debt with interest to the mortgagee his heirs and assigns the latter clause is a personal covenant to pay out of properties other than the hypothe cated properties as the latter clause would be entirely superfluous if the parties had no intention that the mortgagor should be personally liable to pay to the mortgagee the money due to him Therefore in such cases the mortgagee is entitled to a decree for sale as also to a personal decree against the mortgagor A personal decree may be made against the mortgagor at the appellate stage ASHARAN BAID *v* GOBORDHAN ROBRA
26 C W N 318

———— ss 67 and 68—

See s 58 I L R 41 Mad 259
I L R 45 Bom 523

———— ss 67 93—

See s 60 I L R 39 Mad 898

———— ss 67, 99 100—

See CIVIL PROCEDURE CODE O XXXIV RR. 4 5 14 AND 15 2 Pat L J 55

———— s 68—

See CIVIL PROCEDURE CODE 1908 O XXXIV R 14 I L R 39 All. 36
I L R 44 Calc 388

See MORTGAGE 3 Pat L J 162

———— *Usufructuary mortgage —Dispossession of mortgagee—Right of mortgagee to sue for debt* A usufructuary mortgagee who has failed in a suit by a subsequent mortgagee to take a defence which would have pre erred the security is not entitled to sue for the mort gage money under s 68 DUNIA LAL CHOWDHURY *v* MUSAMMAT NOWRATAN KOER
2 Pat L J 490

2 ———— *Mortgage with possession—Dispossession by per on having higher title than mortgagor—Right to sue for mort gage money* Dispossession of the mortgagee by a person holding a better title than the mortgagor s comes under the provisions of s 68 (c) of the Transfer of Property Act and entitles the mortgagee to sue for the mortgage money *Kalchedi Ram* v *Ram Charitar Rai, Weekly Notes 189, p 11* referred to RAM SURAT MISRA *v* GUR PRASAD
I L R 43 All. 454

3 ———— *Usufructuary mortgagee invalid for want of attestation—Depriva tion of possession not by mortgagor but by title para mount—Suit for mortgage money whether maintain able* S 68 of the Transfer of Property Act does not entitle a person who takes a usufructuary mortgage which is invalid for want of attesta ion and who is deprived of his possession by title para

TRANSFER OF PROPERTY ACT (IV OF 1882) —contd

——— s 68—contd

mount and not by any act of his mortgagor to sue for the mortgage money The default referred to in s 68 (b) as entitling the mortgagee to sue for the mortgage money is one anterior to the deprivation of possession and failure of the mortgagor to establish the possession when called upon as against the strangers dispossessing the mortgagee is no default within s 68 (b) *Ram Narayan Singh v Abhindra Nath Mukherji I L R 44 Calc 388* distinguished. KUPPIER v PERIAKARUPA KAVUNDAN (1919) I L R 42 Mad 578

——— s 69—*Sale by mortgagee—Surplus proceeds retained by mortgagee—Whether attachable under warrant under Criminal Procedure Code (V of 1898) s 386—Priority of Crown over attaching creditor* A mortgagee sold the mortgaged property under a power of sale and after discharging his own dues retained the surplus sale proceeds for payment to the mortgagor The mortgagor was convicted and sentenced to pay a fine which if recovered was directed to be paid to the complainant A warrant for recovery of the fine was issued under s 386 of the Criminal Procedure Code against the funds in the hands of the mortgagee who paid the amount to the bailiff The plaintiff who had attached the mortgaged property in execution of a decree against the mortgagor disputed the right of the Crown to proceed against the fund or at least in preference to him and sued the Secretary of State for India and the complainant to whom the amount was paid *Held* (i) that the surplus amount retained by the mortgagee was money held in trust by him for the mortgagor under s 69 of the Transfer of Property Act (ii) that a warrant could be issued for the levy of the fine by distress on the amount in the hands of the mortgagee under s 386 of the Criminal Procedure Code and (iii) that the fine was a Crown debt which had priority over the plaintiff s debt though the fine if recovered was directed to be paid to the complainant PICHU VADHIAR v THE SECRETARY OF STATE FOR INDIA (1916) I L R 40 Mad 767

——— s 70—

See EQUITABLE MORTGAGE 2 Pat L J 293

——— *Mortgage of mukarrari right* Where a mukarrandar mortgaged his mukarrari right and the mortgagee obtained a decree on the mortgage for sale of the mortgaged property *Held* that the decree holder was not entitled in execution of the decree to sell the brahmottar right in the property which had been acquired by the mortgagor subsequent to the passing of the decree HARADHAN CHAKERVARTTY v HARGOBIND DUTTA 6 Pat L J 347

——— ss 70 and 71—

See EQUITABLE MORTGAGE 2 Pat L J 293

——— s 72—

See MORTGAGE I Pat. L J 589
I L R 46 Calc 448
I L R 38 Mad. 18

See MORTGAGOR AND MORTGAGEE I L R 43 Bom 69

TRANSFER OF PROPERTY ACT (IV OF 1882) —contd

——— s 72—contd

——— *Mortgage—Redemption—Purchase by mortgagee of portion of mortgaged property—Right of mortgagee to put whole burden of mortgage debt on remainder—Enhancement of revenue assessed on mortgaged property whose mortgagor makes himself liable for it and mortgagee pays it to protect property* In 1868 a village named Kachaura was mortgaged to the predecessors of the respondent (defendant) and in 1870 the same mortgagor mortgaged 11 biswas of Kachaura and 6 biswas of another village called Agrana to the same mortgagee Under the terms of the later mortgage the mortgagee was to have possession of the mortgaged properties realize the rents and profits and pay therewith the Government revenue which was separately assessed on the two shares out of the balance he was to retain the interest of the loan and pay the mortgagor a yearly sum as malikana As a fresh settlement was in progress the mortgage further provided that if at the recent settlement the Government revenue is enhanced or decreased to some extent I (the mortgagor) shall be entitled to and liable for it and the mortgagee shall have nothing to do with it The revenue on the two properties was enhanced on Kachaura by Rs 895 and on Agrana by Rs 469 In 1873 the equity of redemption in Agrana was purchased by the predecessor of the appellants (plaintiffs) who afterwards sued and obtained a decree for the apportionment of the malikana due in respect of his share of Agrana which amount they subsequently received annually less the enhanced amount of the Government revenue assessed on it In 1878 the mortgagee purchased the whole of Kachaura in execution of a decree obtained by him on the mortgage of 1868 but he only obtained possession of an 11 biswas share of it The mortgagee had from the date of the enhancement up to the time of his purchase paid the enhanced revenue assessed on Kachaura for which the mortgagor had made himself liable on the terms of the mortgage In a suit by the appellants to redeem their 6 biswas share of Agrana on payment of a proportionate amount of the mortgage money and for surplus profits if any *Held* by the Judicial Committee (affirming the decree of the High Court) that Agrana was liable for the whole mortgage debt and the applicants could not therefore redeem on payment of only a proportionate amount *Held* also (reversing the decree of the High Court) that in calculating the amount to be paid on redemption the mortgagee was not entitled to tack on to the mortgage debt the amount he had paid for the enhanced revenue on Kachaura The mortgagee was on the terms of the mortgage liable to pay the Government revenue The clause as to the enhanced revenue could not be construed as meaning that the mortgagor agreed to pay every year separately the enhanced revenue nor did it alter the liability of the mortgagee to meet the demand for the Government revenue In the case of Agrana he had protected himself by deducting the enhanced revenue from the malikana but he had omitted to do so in the case of Kachaura and could not now be allowed to throw the burden of his laches on Agrana It was not the mortgagor who was seeking to redeem the property and any equity that might have been invoked against him, did not in their Lordships opinion arise as against the appellants

TRANSFER OF PROPERTY ACT IV OF 1882—*contd.*

——— s. 72—*contd.*

RORI[illegible] THAKUR DAS *v.* [illegible] OF [illegible] 1910 . . . . I. L. R. [illegible] All. [illegible]

——— *Mortgage—Right of mortgagee in possession to charge for repairs and additions to the mortgaged property.* During the subsistence of a mortgage on a house, the mortgagee being in possession, a portion of the house, consisting of a [illegible] room, fell down. The mortgagee rebuilt this at a cost of Rs. [illegible], making a [illegible]. But he then proceeded to add, without the consent of the mortgagor, an upper storey at a cost of Rs. [illegible] and a staircase costing Rs. [illegible], and, on suit by the mortgagor for redemption, he claimed a right to add the various sums so spent to the principal mortgage money which was Rs. 400. *Held*, that the mortgagee's claim could only be allowed in so far as it fell within the terms of s. 72 of the Transfer of Property Act, 1882, and it was allowed as to the first item, but not as to the upper storey or the staircase. [illegible] *v.* *Sukhu* [illegible], I. L. R. [illegible] and *Sammy v.* [illegible], [illegible] followed. [illegible] *v.* [illegible] and *Shepard v. Jones*, [illegible] Ch. D. [illegible], referred to. [illegible] SINGH *v.* CHANDA LAL (1910)

I. L. R. [illegible] All. [illegible]

——— *Lasting improvements made by mortgagee.* Though a mortgagee is entitled, apart from the provisions of section 72 of the Transfer of Property Act, to claim the value of lasting improvements, the claim will depend upon what are reasonable improvements. A mortgagee should not be allowed to improve the property to such an extent as to deprive the mortgagor in effect of the right to redeem. [illegible] *v.* [illegible] [illegible] Bom. [illegible] referred to. [illegible] LAKHMAN *v.* [illegible]

I. L. R. 35 Bom. [illegible]

——— s. 73—

——— *Putni created and registered after mortgage of revenue-paying estate—Act XI of 1859, s. 40—Decree on mortgage against proprietor and putnidar—Sale of estate for arrears of revenue—Transfer of lien to sale-proceeds not relieve putni interest from liability to sale.* The proprietor of a revenue-paying estate executed a mortgage in favour of *A* and subsequently granted a putni to *B* who had it registered under s. 40 of Act XI of 1859. The mortgagee, *A*, obtained a decree on his mortgage in a suit in which the putnidar *B* was made a party. After the decree the estate was sold for arrears of revenue subject to the encumbrance of the putni. The mortgagee withdrew the surplus sale-proceeds in part satisfaction of his decree and for the unsatisfied balance applied for sale of the putni interest: *Held*, that s. 73 of the Transfer of Property Act by providing that the mortgage lien is to be transferred to the surplus sale-proceeds did not relieve the putni from liability to sale in satisfaction of the mortgage decree. A mortgagee is not bound upon receipt of notice of an application for registration of an incumbrance under s. 40 of Act XI of 1859 to oppose such application. *Quære*: Whether such opposition by a mortgagee would be a sufficient ground for the rejection of the application by the revenue officer. [illegible] DAS [illegible] *v.* [illegible]

Roy Chowdhry, I. L. R. [illegible] Cal. [illegible]; *Gora* [illegible] *v.* [illegible], I. L. R. [illegible] Cal. [illegible]; *Kamala Kant Sen v.* [illegible], I. L. R. [illegible] Cal. [illegible], considered. [illegible] DASI *v.* [illegible] KANTA NATH (1909) . . . 14 C. W. N. 152

——— *Mortgage in possession—Compulsory acquisition of land—Injunction for payment of purchase money to mortgagee—Whether mortgagee entitled to an injunction.* Where, during the pendency of a suit by a mortgagee in which he obtained a preliminary decree, a part of the mortgaged property was compulsorily acquired under the Land Acquisition Act, 1894, *held*, the mortgagee was entitled to an injunction, restraining the mortgagor from taking the purchase-money out of the hands of the Land Acquisition Deputy Collector. [illegible] *v.* [illegible]

5 Pat. L. J. [illegible]

——— s. 74—

See MORTGAGE . . . I. L. R. [illegible] Cal. 359
I. L. R. [illegible]

——— *Prior and subsequent mortgagees—Subsequent mortgagee paying off prior mortgagee—No receipt obtained for the payment made to prior mortgagee—In lieu of receipt, assignment deed secured—Subsequent mortgagee, if can sue for amount on the first mortgage.* If a second mortgagee pays off the first mortgage without obtaining an assignment of the mortgage and without getting a receipt for the amount paid, but in lieu thereof obtains the actual mortgage document, it cannot be said according to the principle of justice, equity and good conscience that the first mortgage is extinguished, and that the second mortgagee has no right to sue for the amount due under the first mortgage. [illegible] *v.* [illegible] (19 [illegible]); *Hossein Khan v.* [illegible] [illegible] NARAYAN [illegible] *v.* [illegible], [illegible] Cal. [illegible] followed. I. L. R. 35 Bom. [illegible] [illegible] (1920) . .

——— *Mortgage—Prior and subsequent mortgagees—[illegible] and subsequent mortgagee—[illegible]—[illegible] property in execution of a decree [illegible] mortgagee [illegible] for sale.* [illegible] mortgaged [illegible] to *C* a second mortgage [illegible] to *B* and afterwards [illegible] certain property first to *B*. *D* mortgaged the [illegible] and finally sold it to *D*. *D* mortgaged and [illegible] party to *E*, who paid off *B*'s mortgage and [illegible] the property to sale in satisfaction of [illegible]. *But* the property [illegible] was purchased by *E*, the second mortgagee, and *E* was purchased by *C* the second [illegible] on suit for sale on his mortgage by *C* [illegible] mortgagee, that *E* was entitled to hold up as a shield against *C* the mortgage in favour of *B* which had been satisfied by *E*. [illegible] *v.* [illegible] *Weekly Notes* (1891) [illegible]; *Bhaiya* [illegible] *v.* [illegible], I. L. R. [illegible] All. [illegible] and [illegible] *v.* [illegible] [illegible] referred to. [illegible] [illegible] distinguished. All. *Weekly Notes* (19[illegible]) [illegible] LAL. [illegible] KHAN *v.* [illegible] I. L. R. [illegible] All. [illegible]

——— s. 76—

See DEKKHAN AGRICULTURISTS' RELIEF ACT XVII OF 1879.

I. L. R. [illegible] Bom. [illegible]
. . 2 Pat. L. J. [illegible]

See MORTGAGE . . .

See MORTGAGOR AND MORTGAGEE.

I. L. R. [illegible] Bom. [illegible]

TRANSFER OF PROPERTY ACT (IV OF 1882) —*contd*

——— s 76—*contd*

——— *Mortgagee in possession obligations of—Mortgagee in possession as lessee obligations of*—There is a difference between the case of a mortgagee who enters into possession of the mortgaged property by virtue of a lease under which a rent is payable to the lessor and the ca e of a mortgagee who enters into possession of the mortgaged property by virtue of a lease under which the rent is appropriated by the lessee towards the reduction of the mortgage debt In the former case he is not chargeable as a lessee in possession under s 76 of the Transfer of Property Act 1882 and in the latter case he is so chargeable KISHUNDAYAL *v* MAHABIR BHAGAT
5 Pat L J 492

——— ss 76 92—

See LIMITATION ACT s 23 SCH II ARTS 36 115 116
I L R 33 Mad 71

——— s 78—

See MORTGAGE L R 43 Calc 1052

——— s 81—

See APPEAL I L R 41 Calc 418

——— ss 81 and 88—

See MORTGAGE I L R 35 Bom 395

——— s 82—

See MORTGAGE (CONTRIBUTION)

——— *Mortgage—Contribution—Principle upon which contribution is to be assessed* Where of two properties belonging to the same owner one is mortgaged to secure one debt and then both are mortgaged to secure another debt for the purpose of apportioning the liability of the respective properties in regard to the subsequent mortgage the value of the two properties must be taken into account and credit given for the amount due upon the earlier mortgage out of the value of the property comprised in the subsequent mortgage Where the amount due upon the earlier mortgage exceeds the value of the property comprised in that mortgage the necessary result is that the whole of the amount of the second mortgage is recoverable from the other property comprised in the latter mortgage GHULAM HAZRAT *v* GOBARDHAN DAS (1911)
I L R 33 All 387

——— *Mortgage—Contribution—Principle upon which contribution should b assessed—Civil Procedure Code (1908) O XXI r 89* Where a co mortgagee is suing the other co mortgagors for contribution upon the allegation that the portion of the mortgaged property in which he is interested has been made to discharge more than its proper share of liability under the mortgage the Court in assessing contribution has first to ascertain the values of the various items of property in question as they stood at the date of the mortgage next the rateable liability of each item for the amount payable under the decree next how much each item has contributed to the payment of the decretal amount disregarding any purcha e money which any of the purchasers has paid or retained and it should then proceed to apportion the liability between the different items BHAGWAN SINGH *v* MAZHAR ALI KHAN (1914)
I L R 36 All 2"2

TRANSFER OF PROPERTY ACT (IV OF 188 —*contd*

——— s 82—*contd*

——— *Mortgage—Contribution—Charge* In the year 1830 one Tikam Singh who with several sons constituted a joint Hindu family executed a mortgage of a village forming part of the joint family property In 1889 he with five of his sons executed a second mortgage of the same village In 1891 he with two of his sons executed a third mortgage of the same village. Tikam Singh died and the sons partitioned the village amongst them into several mahals The first mortgagee brought a suit for sale on his mortgage and having obtained a decree brought to sale the share of Het Singh one of the brothers and the mortgage was discharged. Thereafter Het Singh brought a suit for contribution and obtained a decree After the satisfaction in this manner of the mortgage of 1880 the *other brothers discharged the later mortgages of* 1889 and 1891 and then brought the present suit for contribution against Het Singh *Held* that in these circumstances the plaintiffs were not entitled to a decree against Het Singh *Har Prasad* v *Raghunandan Prasad I L R 31 All 166*, referred to KASHI RAM *v* HET SINGH (1914)
I L R 37 All 101

——— ss 82 and 56—*Mortgage—Contribution between several properties subject to the same mortgage—Part of mortgaged property passing to auction purchasers at a court sale—Mortgage money reali ed from property remaining in hands of mortgagor—Mortgagor s right of contribution against the auction purchasers* Some out of several properties covered by a mortgage were sold subject to the mortgage in execution of a simple money decree against the mortgagor The mortgagee then brought to sale in execution of his decree on the mortgage a village *L* which still remained in the possession of the mortgagor and the proceeds of the sale of this village being insufficient to satisfy the decree subsequently caused a share in another village *D* in the possession of the mortgagor to be sold In this way the mortgage decree was fully satisfied Thereafter the mortgagor brought a suit for contribution against the auction purchasers of the villages above referred to upon the groun l that the village *L* had been made to contribute more than its rateable share of the mortgage debt *Held* that the suit would lie and the plaintiff after the sale of *L* was entitled to get contribution from the other villages which had been sold subject to the mortgage in execution of the simple money decree *Magniram* v *Mehdi Hossein Khan, I L R 31 Calc 95* and *Ibn Husain* v *Brij [illegible] Saran I L R 26 All 407* distinguished [illegible] *Das* v *Karam Husain I L R [illegible] All [illegible]*, referred to RAMA SHANKAR PRASAD *v* [illegible] HUSAIN
I L R 4? All [illegible]

——— ss 82 100—*[illegible]—Equitable lien—Limitation—Indian [illegible] Act (IX of 1908) Sch I Arts [illegible]* The owner of a property [illegible] with other properties to secure a [illegible] by virtue of the provisions of ss 82 and 100 of the Transfer of Property Act 1882 a [illegible] against such other properties [illegible] property has been sold in execution of a [illegible] and has contributed more than [illegible] share of the mortgage-d [illegible] the owner of such property [illegible]

TRANSFER OF PROPERTY ACT (IV OF 1882) —*contd*

——— ss 82, 100—*contd*

gaged property nor has the sale of his property alone discharged the mortgage decree A claim to enforce such a charge is governed by Art 132 of the first schedule to the Indian Limitation Act, 1908 *Ibn Hasan* v *Brijbhukan Saran I L R 26 All 407*, *Muhammad Yahiya* v *Rashid ud-din I L R 31 All 65 Rajah of Vizianagram* v *Rajah Satrucherla Somasekhararaz I L R 26 Mad 686* and *Bhagwan Das* v *Har Dei, I L R 26 All 227*, referred to *Per* BANERJI and CHAMIER JJ (*dubitante* RICHARDS *C J*) —If property against which a charge for contribution would otherwise have accrued has been sold and has realized more than the amount remaining due on the mortgage an equitable lien on the surplus sale proceeds arises in favour of the person entitled to contribution A suit to recover contribution in virtue of such a lien is governed by Art 62 of the first schedule to the Indian Limitation Act 1908 if not, perhaps by Art 120 *Berhamdeo Pershad* v *Tara Chand I L R 23 Calc 92 Gosto Behary Pyne* v *Shib Nath Dutt I L R 20 Calc 241 Kamala Kant Sen* v *Abul Barkat I L R 27 Calc 180 Mahomed Wahib* v *Mahomed Ameer I L R 32 Calc 527 The Rajputana Malwa Railway Co operative Stores Limited* v *The Ajmere Municipal Board I L R 32 All 491* and *Guru Das Pyne* v *Ram Narain Sahu, I L R 10 Calc 860* referred to BHAGWAN DAS *v* KARAM HUSAIN (1911)

I L R 33 All 708

——— s 83—

1 ——— *Deposit paid to mortgagee—Balance of mortgage debt promised—Mortgage not discharged* The consequences resulting from a payment into Court under s 83 of the Transfer of Property Act 1882 only occur when the amount paid in is found to be or is accepted by the mortgagee as being equivalent to the full amount due under the mortgage in suit HAR DAYAL *v* PIRTHI SINGH (1909)

I L R 32 All 142

2 ——— *Tender under s 83 in one Court subsequent to suit by mortgagee in another Court to enforce his mortgage invalid—Where mortgagee entitled to possession mortgagee must be put in possession before deposit under s 83—Costs right of mortgagee to* Where after the institution of a suit by the mortgagee to enforce his mortgage in one Court the mortgagor deposits the amount in another Court under s 83 of the Transfer of Property Act the deposit is not a valid one and cannot have the effect of stopping the running of interest on the amount deposited Where the mortgagor proposes to take action under s 83 of the Act he must have a valid right to redeem under his contract with the mortgagee No deposit can be made if the mortgagee being entitled to possession is not put in possession *Ram Sonji* v *Krishnaji I L R 26 Bom 312* followed A mortgagee is entitled to his costs unless there are special reasons disentitling him to them. BAYYA SAO *v* NARASINHA MAHAPATRO (1911) I L R 35 Mad 209

3 ——— *Redemption of mortgage—Money payable on last day of Jeth—Deposit in Court on last day of Jeth—Notice served on mortgagee after month of Jeth—Effect of such deposit* A deed of usufructuary mortgage provided that if the mortgagor wished to redeem the mortgage he could do so on the last day of Jeth in any year The mortgagor filed a suit for redemption and paid the mortgage money into court on the last day of Jeth 1910 *Held* that it was no reason for dismissing the suit that notice could not be given to the mortgagee within the time limited Even if the tender was not enough to warrant the Court in passing a decree for redemption from the date of the deposit it was certainly proper and legal for the Court to pass a decree from the last day of Jeth next succeeding the date of the deposit *Het Singh* v *Bihari Lal I L R 43 All 95* referred to SAIYID AHMAD BEG *v* DHARMUN RAI.

I L R 43 All 424

4 ——— *Usufructuary mortgages—Hypothecation—Deposit of usufructuary mortgage amount only—Refusal by mortgagee—Subsequent deposit of hypothecation amount—Compound interest at enhanced rate—Penalty—Deposit of compound interest at the original rate only sufficiency of—Acceptance by Court as reasonable compensation effect of—Mesne profits claimed for by plaintiff from date of deposit if sustainable* The plaintiff as the vendee of certain lands which were subject to a usufructuary mortgage as well as a hypothecation in favour of the defendant sought to recover the property on payment into Court of the amount due under the usufructuary mortgage under s 83 of the Transfer of Property Act The defendant claimed that the plaintiff should deposit the sum due under the hypothecation bond also The plaintiff paid subsequently into Court an amount as due for principal and interest on the latter bond, but calculated compound interest at the original rate and not at the enhanced rate after default as mentioned in the bond disputing the provision as penal. The Court held the provision to be penal and accepted the amount paid for interests as reasonable compensation The plaintiff claimed mesne profits from the date of his first deposit but the defendant disputed his right to any mesne profits as the plaintiff did not deposit the full amount specified in the bond. *Held* (i) that the plaintiff was bound to deposit the amounts due under both the bonds and (ii) that the plaintiff was not bound to deposit the penal rate of interest but that the payment of an amount as reasonable compensation which was accepted by the Court as proper was legally sufficient to entitle the plaintiff to mesne profits from the date of the second deposit AYYAKUTTI MARKONDAN *v* PERIYASWAMI KAVUNDAN (1915)

I L R 39 Mad. 579

——— ss 83 84—

——— *Deposit under s 83 and withdrawal by mortgagor effect of—Interest on mortgage amount does not cease to run—Costs of mortgagee in redemption suit* Where the mortgage amount deposited by the mortgagor under s 83 of the Transfer of Property Act has been withdrawn by the mortgagor on the mortgagee's refusal to accept it interest in such amount does not cease to run under s 84 The continuance of the deposit is necessary to justify the claim to the cessation of interest. The mortgagee is entitled to his costs in a redemption suit It will be forfeited by some improper defence or misconduct

TRANSFER OF PROPERTY ACT (IV OF 1882) —contd

——— ss 83 84—contd

but not by merely claiming a larger amount than is due KRISHNASAMI CHETTIAR v RAMASAMI CHETTIAR (1910) I L R 35 Mad 44

——— *Deposit in Court—Title of mortgagee's legal representative in dispute in suit—Withdrawal by mortgagor before decision in suit—Cessation of interest* Where a mortgagor who had deposited in Court under s 83 of the Transfer of Property Act the money due from him on the mortgage withdraw the amount from Court before the title of the legal representatives of the mortgagee which was then in dispute was established in a suit *Held* that the mortgagor was not entitled to exemption from interest on the mortgage amount from the date of the deposit under s 84 of the Transfer of Property Act *Krishnasami Chettiar* v *Ramasami Chettiar I L R 35 Mad 44* referred to THEVARAYA REDDY v VENKATACHALAM PANDITHAN (1916) I L R 40 Mad 804

——— *Mortgage—Redemption—Right of owner of share in property mortgaged to redeem the entire mortgage* The owner of a portion only of the equity of redemption is competent to maintain a suit for redemption of the entire mortgage even against the will of the mortgagee *Norender Narain Singh* v *Dwarka Lall Mundur L R 5 I A 18 Huthasanan Nambudri* v *Parameswaran Nambudri I L R 22 Mad 209 Velayadan Chetty* v *Alangaran Chetty 15 I C 605* and *Mustafa Khan* v *Shadi Lall 10 Oudh C 31* referred to *Girish Chunder Dey* v *Juramoni Dei 5 C W N 83* dissented from FAKIR CHAND v BABU LAL (1917) I L R 39 All 719

——— s 84—

——— *Tender what amounts to* Under s 84 of the Transfer of Property Act interest ceases to run on the principal amount from the date of tender it is not necessary that the mortgagor should after such tender always keep the money ready for payment VELAYUDA NAICKER v HYDER HUSSAIN KHAN SAHIB (1909) I L R 33 Mad 100

——— *Held* that an offer by letter of the amount due on a mortgage is not a good tender within s 84 It is necessary that the money should be actually produced unless the person entitled to receive has waived this condition. CHETAN DAS v GOBIND SARAN I L R 36 All. 139

——— s 85—

See ATTACHMENT I. L R 44 Mad 232

See DEKKHAN AGRICULTURISTS RELIEF ACT (XVII OF 1879) ss 47 AND 48 I L R 36 Bom 624

See HINDU LAW—JOINT FAMILY I L R 33 All 7 "1
I L R 36 All. 383

See HINDU LAW—MORTGAGE I L R 42 Calc 1068

See MORTGAGE I L R 38 Calc 60
I L R 39 Calc 527
I L R 48 Calc 1

See NOTICE 25 C W N 49

TRANSFER OF PROPERTY ACT (IV OF 1882) —contd

——— s 85—contd

——— *Suit upon mortgage—Mortgage executed by adult members of the family—Suit brought against all members excepting a minor—Decree—Sale of mortgaged property in execution—Minor seeking to exempt his share from sale—Representation of the minor by the adult members* A Hindu family living jointly consisted of *S* his son *M* and his two grandsons S^1 and *R* (minors) by a predeceased son *S* mortgaged a house for purposes allowed by Hindu law The deed of mortgage was signed by *S M* and S^1 represented by his mother The mortgagees sued on the mortgage and joined *S M* and S^1 as party defendants The suit passed into a decree in execution of which the house was sold at a Court auction and purchased by the plaintiff In a suit by the plaintiff against *M* S^1 and *R* (*S* having died) for possession of the house *R* claimed to exempt from the sale his share in the house which was one fourth on the ground that as he was not a party to the suit he was not bound by the decree *Held* that though *R* was omitted from the suit he was represented by the adult members who were the managing members of the family *Held* also that the debt was contracted by *S* the grandfather of *R* and *R* was bound by it unless it had been contracted for illegal or immoral purposes RAMKRISHNA v VINAYAK NARAYAN (1909) I L R 34 Bom 354

——— ss 85 89—

See LIMITATION I L R 42 Calc 776

See CIVIL PROCEDURE CODE 1908 s 156 AND SCH V

See MORTGAGE I L R 40 All 407

——— *Civil Procedure Code (1908) O XXXIV r 5—Mortgage—Suit on prior mortgage without impleading puisne mortgagee—Effect of failure to implead—Suit for sale by puisne Mortgagee impleading prior mortgagee—Duty of puisne mortgagee to redeem the prior mortgage* A prior mortgagee without impleading the puisne mortgagee sued for and obtained a decree for sale on his mortgage under the provisions of s 88 of the Transfer of Property Act 1882 After the Code of Civil Procedure of 1908 has come into force the decree holder obtained a decree absolute for sale Before however the sale actually took place the puisne mortgagee instituted a suit for sale on the basis of his mortgage and in such suit he contended that the prior mortgagee by omitting to implead him had forfeited his right to execute his decree *Held* that this was not so The position of the puisne mortgagee was rendered neither better nor worse by his not having been impleaded in the prior mortgagee's suit If the prior mortgage was valid the puisne mortgagee was not entitled to a decree for sale without giving the prior mortgagee an opportunity of redeeming him *Janki Prasad* v *Kishen Dat I L R 16 All 482* dissented from *Ram Prasad* v *Bhikari Das I L R 26 All 464 Deokali Kunwar* v *Al m an nissa Bibi Weekly Notes 1901 p 22* and the judgment of BANERJI, J in *Bhawani Prasad* v *Kallu I L R 17 All 537* referred to *Het Ram* v *Shadi Ram L R 45 I A 130* distinguished. HUKUM SINGH v LALLANJI. I. L. R. 43 All. 204

TRANSFER OF PROPERTY ACT (IV OF 1882)
—*contd*

——— ss 85 90—

See MORTGAGE I L R 40 Calc 342

——— ss 85 91—*Mortgage suit—Parties—Non joinder of attaching money decree holder—Sale, validity of* Where after attachment by a money decree holder of certain property previously mortgaged by the judgment debtor the mortgagee brought a suit on the mortgage without impleading the attaching decree holder as a party obtained a decree for sale and himself bought the property in execution of his decree *Held* that the order for sale and the sale held thereunder were not binding on the attachment decree holder and that the latter was entitled to bring the properties to sale under his attachment An attaching decree holder has under s 91 Transfer of Property Act an interest in the mortgaged property entitling him to redeem the mortgage and is a necessary party in a suit on the mortgage *Ghulam Hussain* v *Dina Nath I L R 23 All 467* referred to VENKATA SEETHARAMAYYA v VENKATARAMAYYA (1912) I L R 37 Mad 418

——— ss 85 99—

See s 61 I L R 38 Mad 927

See MORTGAGE I L R 41 Calc 727

——— ss 86 to 90—

See CIVIL PROCEDURE CODE, 1908 O XXXIV

——— ss 86 88 and 90—*Mortgage decree for sale—Decree silent as to costs whether costs recoverable against mortgagor personally* In a mortgage decree for sale costs are part of the amount due upon the mortgage and are recoverable from the mortgaged property and not personally from the debtor unless the decree itself so directs Such a direction cannot be presumed where the decree is silent on the point *Per* ATKINSON J—Costs awarded by a decree prepared under the joint provisions of ss 86 and 88 of the Transfer of Property Act 1882 can only be realised from the mortgaged property MATUKDHARI SINGH v RAMDAS SINGH 2 Pat L J 51

——— s 88—

See s 86 2 Pat L J 51

See MORTGAGE I L R 35 Bom 395

See MORTGAGE DECREE 4 Pat L J 213

——— ss 88, 89—

See MORTGAGE I L R 38 Calc 913

See MORTGAGE DECREE 4 Pat L J 213

——— *Joint decree for sale—Application for order absolute made by some of the decree holders after the coming into force of the Civil Procedure Code 1908—Civil Procedure Code 1908 O XXXIV—General Clauses Act (X of 1897) s 6* A decree for sale under the provisions of s 88 of the Transfer of Property Act 1882 was passed jointly in favour of *B* and *K* *B* died before any order absolute for sale was passed. On 30th April 1909 the sons of *B* made an application for an order absolute for sale under s 89 of the Transfer of Property Act *K* was not made a party to it *Held* that the application would lie inasmuch as the sons of *B* being joint decree holders with *K* were entitled to apply for an order for sale (whether or not such order be in fact a final decree) their right to do so being inherent in the decree under s 88 of the Transfer of Property Act The subsequent repeal of the section could not affect any right acquired or liability incurred thereunder GANGA SINGH v BANWARI LAL (1911) I L R 34 All 72

——— *Application for order absolute for sale—Limitation—Limitation Act (XV of 1877) Sch II, Art 179* Where a preliminary decree for sale on a mortgage was passed on 28th September 1898 *Held* that an application for order absolute made more than three years after that date was barred by limitation—such an application being a proceeding in execution. *Kista Bar* v *Banamoyi Debia 19 C W N 470* reversed *Munna Lal* v *Sarat Chandra Mukerjee 21 C L J 118 s c 19 C W N 561* referred to *Batuk Nath* v *Munni Dei I L R 36 All 284 s c 18 C W N 740* and *Abdul Majid* v *Jawahir Lall I L R 36 All 350 s c 18 C W N 983* followed. KISTA BAR v BANAMOYI DEBIA (1915) 19 C W N 649

——— *Civil Procedure Code (Act XIV of 1882) s 244—Limitation Act (XV of 1877) Sch. II Arts 178 179—Civil Procedure Code (Act V of 1908) s 97 O XXXIV rr 1 and 5—Order passed under s 88 of the Transfer of Property Act if not appealed against cannot be questioned in an appeal from the decree absolute for sale* In 1907 a suit was filed to recover the mortgage amount by sale of the mortgaged property A preliminary decree was passed on the 30th of June 1910 as contemplated by O XXXIV r 4 of the Civil Procedure Code (Act V of 1908) ordering among other things defendants Nos 1 and 2 to pay the mortgage amount within six months to the plaintiff and in default directing a sale of the mortgaged property The payment was not made and a final decree for sale was made on the 15th March 1912 Defendant No 1 appealed against the decree of 1912 and raised substantially points against the decree of 1910 The lower Appellate Court held that the defendant not having appealed against the preliminary decree within time was precluded by s 97 of the Civil Procedure Code (Act V of 1908) from disputing its correctness in an appeal preferred from the final decree The defendant appealed to the High Court contending that the suit having been filed in 1907 the right of appeal which he had under the Civil Procedure Code of 1882 was not taken away by the Civil Procedure Code of 1908 *Held* that whether an order absolute for sale was treated as an order falling under s 244 of the Civil Procedure Code (Act XIV of 1882) and appealable on that footing or not it was quite clear that even under the Civil Procedure Code of 1882 the correctness of the decree under s 88 of the Transfer of Property Act (IV of 1882) corresponding with O XXXIV r 4 of the Civil Procedure Code of 1908 could not be questioned in an application for an order absolute made under s 89 or in an appeal from an order absolute made on such an application. MURLIDHAR NARAYAN v VISHNUDAS (1915) I L R 40 Bom 321

——— s 89—

See CIVIL PROCEDURE CODE 1908 O XXXIV R 5 I L R 42 All 517

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——— s 89—*contd*

See MORTGAGE I L R 42 All 364
I L R 37 Calc 897

See PRIVY COUNCIL—PRACTICE OF
I L R 36 All 350

See REDEMPTION 3 Pat L J 490

——— *Execution of a decree—Benamidar* *Held* that in an application under s 89 of the Transfer of Property Act the fact that the Court came to the conclusion that the applicants transferees were *benamidars* was no bar to its granting an order absolute A *benamidar* is competent to take out execution of a decree *Intikhab Husain* v *Rafi un nissa All Weekly Notes (1907) s 39 Yad Ram* v *Umrao Singh I L R 21 All 380 Nand Kishore Lal* v *Ahmed Ata I L R 18 All 69 Bachcha* v *Gajadhar Lal I L R 28 All 44 Parmeshwar Datt* v *Anardan Datt I L R 37 All 113* referred to KAMTA PRASAD v INDOMATI (1915)
I L R 37 All 414

——— *Suit on prior mortgage —Second mortgagee not made a party—Sale of property and purchase by decree holder—Subsequent suit by second mortgagee on his mortgage—First mortgagee purchaser if may claim to be paid on the foot of mortgage contract or the amount decreed—Transfer of Property Act (IV of 1882) s 89* An order made under s 89 of the Transfer of Property Act (IV of 1882) for the sale of the mortgaged property has the effect of substituting the right of sale thereby conferred upon the mortgagee for his rights under the mortgage and the latter rights are extinguished Where a first mortgagee obtained a decree for sale upon his mortgage in a suit in which he did not make the second mortgagee a party and purchased the mortgaged property at such sale *Held* in a suit by the second mortgagee upon his mortgage that the first mortgagee purchaser had no greater rights than any stranger would have had who had purchased the property under the mortgage decree and paid cash for it and the latter was entitled to set up only the amount of the decree made in his suit *Het Ram* v *Shadi Lal L R 45 I A 130 22 C W N 1033 (1918)* followed *Umesh Chunder Sircar* v *Musummat Zahoor Fatima L R 17 I A 201 (1890)* distinguished LALA MATHU MAL v MUSAMMAT DURGA KUNWAR (P C)
25 C W N 397

——— s 90—

See s 86 2 Pat L J 51

See CIVIL PROCEDURE CODE 1908 s 47
I L R 35 Bom 452

See MORTGAGE 47 Calc 370

See SUIT TO SET ASIDE A DECREE
I L R 38 All 7

1 ——— *Civil Procedure Code (Act XIV of 1882) ss 43 and 50—Transfer of Property Act (IV of 1882) s 90—Suit to recover mortgage-debt by sale of mortgaged and unhypothecated property—Decree against mortgaged property alone—Sale—Amount realised not sufficient—Application for supplemental decree to recover balance by sale of other property—Limitation—Putting forward allegations at a late stage* In a suit upon a mortgage dated the 18th April 1887 the plaintiff claimed on the 18th April 1899 to recover the mortgage debt by sale of the mortgaged property and the balance if any from the non hypothecated property of the mortgagor The decree was passed in plaintiff s favour against the mortgaged property alone The amount realized by the sale of the mortgaged property being insufficient to satisfy the decree the plaintiff applied under s 90 of the Transfer of Property Act (IV of 1882) for a supplemental decree against the other property of the mortgagor The first Court found that the claim for a personal decree against the mortgagor was time barred On appeal by the plaintiff he attempted to prove that the claim was within time owing to an intermediate payment by the defendant but the Appellate Court found that the plaintiff failed in his attempt and confirmed the decree On second appeal by the plaintiff *Held* confirming the decree that the mortgage in suit being of the year 1887 and the suit of the year 1899 the plaintiff's right to a personal decree against the mortgagor was time barred the plaintiff having failed to show the ground on which exemption from the law of limitation was claimed. *Held* further that the plaintiff could not be allowed at a late stage of the suit to bring forward for the first time allegations which it was necessary to prove in order to show that he was entitled to a further decree against the defendant personally GULAM HUSSEIN v MAHAMADALLI IBRAHIMJI (1910) I L R 34 Bom 540

2 ——— *Mortgage—Sub mortgage—Purchaser from mortgagor—Mortgage money forming part of consideration for sale—Personal liability of purchaser—Sale of mortgage rights* In this case it was *held* (affirming the decisions of the Courts in India in *Jamna Das* v *Ram Autar Pande I L R 31 All 352*) that the purchaser of the mortgaged property was not a person from whom the balance of the mortgage debt was legally recoverable within the meaning of s 90 of the Transfer of Property Act IV of 1882 JAMNA DAS v RAM AUTAR PANDE (1911)
I L R 34 All 63

3 ——— *Mortgage decree —Decree for costs if a personal decree* A decree had been passed on appeal in a mortgage suit upholding the mortgage and ordering that the appellant who was a transferee of a portion of the mortgaged property from the mortgagor do pay costs to the respondents the mortgagee The mortgaged property having been sold in execution of the decree the decree holder applied for execution of the decree for costs against the transferee personally *Held* on a construction of the decree that there was a personal liability imposed by the decree In such cases regard should be had to what decree was passed rather than to what decree ought to have been passed. MOHANYA OJAH v RAM BAHADUR SINGH (1912)
16 C W N 731

4 ——— *One decree on mortgage for sale as also on personal covenant for sale of other properties if mortgaged properties fail to satisfy decree if legal—Civil Procedure Code (Act XIV of 1882) s 316—Sale set aside before confirmation—Second sale before former sale set aside if passes title—Delay in litigation* The words of

TRANSFER OF PROPERTY ACT (IV OF 1882) —contd

——— s 90—concld

s 90 of the Transfer of Property Act are satisfied when the Court in passing a decree in a mortgagee s suit granting him the necessary relief under the mortgage proceeds in addition to provide that if the proceeds of the sale be not sufficient to cover the amount secured by the mortgage with interest till the date of realisation the balance should be recovered from the other properties of the mortgagor Where property previously sold in execution of another decree was before con firmation of such sale sold again and the sale was never confirmed by reason of its being subse quently set aside *Held* that under s 316 of the Civil Procedure Code of 1882 which was in force at the date the property remained the property of the judgment debtor notwithstanding the sale and passed by the second sale Exces sive delay in bringing litigations to a final hearing condemned JEUNA BAHU *v* PARMESHWAR NARAYAN MAHTHA (1918) 23 C W N 490

——— s 91—

See s 60 I L R 38 Mad 310

See s 85 I L R 37 Mad 418

See ATTACHMENT I L R 37 Mad 418
I L R 44 Mad 232

See CIVIL PROCEDURE CODE 1908 O XXI r 103 I L R 43 Mad 696

See MALABAR LAW
I L R 43 Mad 393

See MORTGAGE I L R 36 Mad 426
I L R 34 Mad 115

1 ——— *Redemption mortgage of fixed rate tenancy—Death of tenant without heirs—Right of zamindar to redeem—Escheat to Crown—Agra Tenancy Act (Local II of 1901) ss 5 18 20 57* *Held* that on the death of a fixed rate tenant without heirs his tenancy does not escheat to the Crown but reverts to the zamindar *Ram Dihal Rai* v *The Maharaja of Vizianagram I L R 30 All 488* overruled *Ranee Sonet Kowar* v *Mirza Himmut Bahadur L R 3 I A 92 I L R 1 Calc 391* distinguished TULSHI RAM SAHU *v* GUR DAYAL SINGH (1910)
I L R 33 All 111

2 ——— *Mortgage suit—Attaching creditor if necessary party—Right of purchaser in execution of money decree to redeem purchaser pending attachment in execution of mortgage decree—Attachment effect of* Although an attaching creditor is entitled to redeem a mortgage under s 91 Transfer of Property Act he has no interest in the mortgaged property A purchaser at the sale in which the attachment culminated has no right to redeem the purchaser at the mortgage sale or to resist his getting possession of the property *Ghulam Hussain* v *Dina Nath I L R 23 All 467 480* commented on *Frederick Peacock* v *Madan Gopal I L R 29 Calc 428* and *Motilal* v *Karrabuldin I L R 25 Calc 179* referred to SHASANDA CHANDRA PAL *v* SRI NATH RAY CHOWDHURY (1912)
17 C W N 871

3 ——— *Mortgage—Right to redeem—Attaching creditor* Certain property was mortgaged on the 4th of April 1889 One

TRANSFER OF PROPERTY ACT (IV OF 1882) —contd

——— s 91—contd

N K obtained a simple money decree against the mortgagor on the 25th of May 1889 Before judgment *N K* had attached the property and it was subsequently sold by auction and purchased by *L R* on the 28th of September 1902 In 1897 the mortgagees sued on their mortgage without impleading either *N K* or *L R* In execution of their decree the property was sold and purchased by defendant s father who obtained possession on the 25th of April 1900 *L R* brought suit for recovery of possession or in the alternative for redemption *Held* that under s 91 (*f*) of the Transfer of Property Act *N K* was entitled to redeem and the plaintiff as a person claiming under him is also entitled to redeem LAKHPAT RAI *v* FAKHR UD DIN (1917)
I L R 39 All 538

——— s 92—

See LIMITATION ACT 1877 s 23 SCH II ART 36 I L R 33 Mad 71

See MORTGAGE I L R 47 Calc 317

——— ss 92 and 93—*Power of mortgagor to apply for sale of mortgaged properties* In a suit for redemption of a mortgage (the mortgage not being a simple mortgage or a mortgage by way of conditional sale) where the mortgagor fails to pay the mortgage amount according to the decree he may apply for sale of the mortgaged properties Paragraph 2 of s 93 Transfer of Property Act while giving the defendant mortgagee a right to apply for sale does not take away such right from the plaintiff mortgagor GOVINDA TARAGAN *v* VEERAN (1913) I L R 36 Mad 32

——— s 93—

See s 60 I L R 39 Mad. 896

——— s 95—

See s 58 I L R 39 Mad. 1010

See LIMITATION ACT (IX OF 1908) SCH. I ARTS 134 144
I L R 38 All 138
14 C W N 617

See MORTGAGE 3 Pat L J 490

See REDEMPTION

——— ss 95 100—

See LIMITATION I L R 46 Calc 111

See MORTGAGE (REDEMPTION)
6 Pat L J 680

——— s 96—

See MORTGAGE I L R 47 Calc 662

——— s 98—

See s 60 I L R 39 Mad 1010
I L R 38 Mad 667

See MALABAR LAW
I L R 44 Mad. 344

——— ss 98 and 60—*Anomalous mortgage—Mortgages defined in s 58 and combined mortgages under s 98—Clog on equity of redemption valid under s 98—Applicability of provisions of the Act to ordinary and anomalous mortgages—Terms of the deed and of local usage how far binding—Construction of deed—* Where the mortgagee was put in possession of the lands mortgaged under a deed executed in 1900 which provided that the principal with interest at a specified rate should be repaid on a

TRANSFER OF PROPERTY ACT (IV OF 1882) —*contd*

—— ss 98 and 60—*contd*

certain date eleven years thereafter and that in default the mortgagor should give up the lands as sold to the mortgagee and execute a proper sale-deed and further that the latter should enjoy the property paying the revenue due to Government and where the mortgagor sued in 1914 to redeem the mortgage and the mortgagee pleaded that the former could not redeem after the time limited under the deed *Held* (by the Full Bench) that the transaction evidenced by the deed was not a mortgage by conditional sale or an anomalous mortgage under s 98 but a combination of a simple mortgage and a usufructuary mortgage and that consequently the stipulation in the deed which fetters the equity of redemption was invalid as opposed to s 60 of the Act *Held* (by WALLIS C J and SESHAGIRI AYYAR J)—In the case of anomalous mortgages referred to in s 98 the provisions of s 60 as to the right of redemption do not apply when there is a contract or local usage to the contrary KANDULA VENKIAH v DONGA PALAYA (1920) I L R 43 Mad (F B) 589

—— s 99—

See CIVIL PROCEDURE CODE 1908 O XXXIV—

r 4 — 2 Pat L J 55

r 14 — I L R 35 Bom. 248

See EQUITY OF REDEMPTION — 2 Pat L J 587

See MORTGAGE — I L R 47 Calc 377; 14 C W N 579; I L R 42 Calc 780

—— *Civil Procedure Code (1908) O XXXIV r 14—Hindu law—Joint Hindu family—Mortgage by father alone—Suit on mortgage ending in money decree—Sale of mortgaged property in execution—Suit by sons for redemption* One *N S* the father and managing member of a joint Hindu family executed a simple mortgage of joint family property in favour of *R L* *R L* brought a suit for sale on this mortgage against *N S* alone not impleading his son, but in that suit he released the security and took a simple money decree against *N S* in execution of which he attached and brought to sale the mortgaged property and purchased it himself The sons of *N S* neither objected to the passing of the decree against their father nor to the sale of the property but subsequently filed a suit against *R S* for redemption of the mortgage *Held* that the mortgagee could not by taking a simple money decree for his debt and bringing the property to sale in execution of such decree divest himself of his character as a mortgagee and that the sons of the mortgagor not having been made parties to the original suit for sale were still entitled to sue for redemption of the mortgage made by their father *Mayan Pathuti* v *Pakuran I L R 22 Mad 347 Martand Balkrishna Bhat* v *Dhondo Damodar Kulkarni I L R 22 Bom 624 Pancham Lal Chaudhury* v *Kishan Pershad Misser 14 C W N 579* and *Khiarajmal* v *Daim I L R 32 Calc 296* referred to *Debi Singh* v *Jia Ram I L R 25 All 214 Tara Chand* v *Imdad Husain I L R 18 All 325 Parmanand* v *Daulat Ram I L R 24 All 549 Banh Bal* v *Manni Lal I L R 27 All 450 Muhammad Abdul Rashid Khan* v *Dilsukh Rai I L R 27 All 517 Kishan Lal* v *Umrao Singh I L R 30 All 146* and *Muthu* v *Karuppan 17 Mad L J 163* distinguished SARDAR SINGH v RATAN LAL (1914) I L R 36 All 516

—— *Sale of mortgaged property in contravention of terms of section—Right of representatives of mortgagor to redeem* If a mortgagee brings the mortgaged property to sale in contravention of the provisions of s 99 of the Transfer of Property Act 1882 such sale is not void but merely voidable If such a sale is confirmed the auction purchaser whether he be an outsider or the mortgagee bidding with the leave of the Court obtains an indefeasible title and the right of the mortgagor and those who represent him to redeem is absolutely extinguished *Tara Chand* v *Imdad Husain I L R 18 All 325 Muhammad Abdul Rashid Khan* v *Dilsukh Rai I L R 27 All 517 Madan Mukund Lal* v *Jamna Kavlapuri 2 All L J 123* and *Mangli Prasad* v *Pali Ram 1 All L J 260* followed. *Jhabba Lal* v *Chhajju Mal 4 All L J 787* overruled *Sardar Singh* v *Ratan Lal I L R 36 All 516 Ashutosh Sikdar* v *Behari Lal Kirtania I L R 35 Calc 61* and *Pancham Lal Chowdhry* v *Kishun Pershad Misser 14 C W N 579* referred to LAL BAHADUR SINGH v ABHARAN SINGH (1915) I L R 37 All 165

—— *Held* that where a mortgagee in contravention of s 99 has attached the mortgaged property and brought it up to sale and purchased it himself the mortgagor or his transferee cannot successfully maintain a suit for redemption of the property without first getting the sale set aside Assuming that upon purchase by the mortgagee himself of the equity of redemption in contravention of s 99 the mortgagee merely becomes a trustee for the mortgagor in respect of it *Held* by the majority of the Court that the mortgagor's right to recover the property cannot be enforced by a suit for redemption within art 148 of the Limitation Act 1908 UTTAM CHANDRA DAW v RAJ KRISHNA DALAL 24 C W N 230

—— s 100—

See s 58 — I L R 36 All. 20

See s 59 — I L R 35 All 164

See s 82 — I L R 33 All 708

See CIVIL PROCEDURE CODE 1908 O XXXIV r 4 — 2 Pat L J 55

See LIMITATION — I L R 46 Calc 111

See MADRAS ESTATES LAND ACT (I OF 1908) s 5 — I L R 42 Mad 114

See MORTGAGE — I L R 34 All. 446

See PROVINCIAL SMALL CAUSE COURTS ACT ss 25 and 23 — 5 Pat L J 248

See RATES AND TAXES — I L R 42 Calc 625

—— *Construction of document—Charge created where words though used are definite* Where by a document the "properties" of one of the parties are made liable and it appears on the construction of the document that the word "properties" does not mean the properties of such party generally but certain specific properties a

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——— s 100—*contd*

charge will be created on such specific properties alone A distinction must be drawn between wideness and indefiniteness of language *Bheri Dorayya* v *Moddi Patu Ramayya I L R 3 Mad 35* considered MANICKAM PILLAI v AUDINARAYANA PILLAI (1910) I L R 34 Mad 47

——— A document which is imperative as a mortgage by reason of its not being properly attested cannot take effect as creating a charge under s 100 Transfer of Property Act DEBENDRA CHANDRA ROY v BEHARI LAL MUKERJEE (1912) 16 C W N 1075

——— s 101—

See MORTGAGE I L R 38 Bom 24
I L R 38 Mad. 18

——— *Prior and subsequent mortgagees—Purchase of mortgaged property by prior mortgagee—Suit for sale by subsequent mortgagee* *Held*, that a prior mortgagee who had in the exercise of a right of pre emption purchased the property mortgaged to him had a right to be repaid the money due in respect of his mortgage before a subsequent mortgagee could bring such property to sale in execution of a decree on the mortgage held by the latter BALDEO PRASAD v UMAN SHANKAR (1907) I L R 32 All 1

——— *Purchase—Satisfaction of mortgage on property purchased—Intention of purchaser to keep mortgage alive for his benefit—Presumption* In considering the question whether an incumbrance should be deemed to continue to subsist on the ground that the continuance of it was for the benefit of the person who has acquired the property the point of time to be regarded is the date of the acquisition of the property If an intention to keep alive a charge on property is inconsistent with the real intention of the parties to the deed by which the purchaser of the property takes an assignment of it the charge cannot be treated as still subsisting simply because the purchaser afterwards finds that it would have been better for him to have kept the charge alive *Liquidation Estates Purchase Co* v *Willoughby [1898] A C 321* followed *Bindeshuri Singh* v *Pandit Balraj Sahai 10 Oudh Cases 49* and *Mohesh Lal* v *Bawan Das I L R 9 Calc 961* referred to JUGAL KISHORE v RAM NARAIN (1912) I L R 34 All 268

——— *Extinguishment of charge—Mortgagee having two charges—Purchase by mortgagee at the sale under the first mortgage—Second mortgage cannot be enforced* *G* took a mortgage of certain lands in 1886 They were mortgaged to him again in 1894 In 1895 he sued on his first mortgage and obtained a decree In execution of the decree the lands were sold subject to the mortgage of 1895 and purchased by *G* with the permission of the Court. In 190- a partition took place between *G's* heirs at which the certificate of sale went to the share of the defendant and the mortgage deed of 1895 went to the share of the plaintiff The plaintiff next sued the defendant to enforce the mortgage against her *Held* that the plaintiff could not sue the defendant on the mortgage for after what had occurred in 1895 *G* could have had no right to sue himself in a double capacity as mortgagee under the mortgage of 1894 and mortgagor under the sale certificate of 1895 that is he could have had no cause of action against himself and the plaintiff as his heir could have no higher rights LAXMAN GANESH v MATHURABAI (1913) I L R 38 Bom 369

——— s 105—*Lease—Proof—Kabuliyat executed by alleged lessees if sufficient* A kabuliyat by itself does not prove a lease being only an undertaking by the prospective tenant to take the lease *Nand Lal* v *Hanuman Das I L R 26 All 368* *Kashi Gir* v *Jogendra Nath Ghose I L R 27 All 136* *Turof Sahib* v *Esuf Sahib I L R 30 Mad 322*, approved NIZAMUDDIN SARKAR v BOUL DAS (1909) 14 C W N 73

——— ss 105 and 107—

See COMPROMISE 3 Pat L J 255

See KABULIYAT I L R 39 Calc 1016

——— *Agreement to let land on payment of annual rent—Construction of building in reliance on agreement—Licence—Remedy of licensee for wrongful eviction* The defendant's father gave the plaintiffs permission to build a *gola* or market place on a certain plot of land the latter agreeing to pay Rs 6 a year as ground rent but no lease was executed The plaintiffs began to build the *gola* but before it was finished they were evicted by the owner of the land *Held* on suit by the plaintiffs for possession and for an injunction to prevent the defendant from interfering with the *gola* that the plaintiffs were not lessees but merely licensees and that their remedy if any was by way of a suit for damages for the wrongful revocation of their license BASDEO RAI v DWARKA RAM (1915) I L R 38 All 178

——— ss 105 and 109—*Whether Lessee can give notice to quit a monthly tenant who has not been informed of the lease* One H P leased his house to the plaintiff on the 1st October 1917 The defendants were in possession of the house as monthly tenants of *H P* The plaintiff on the 16th February 1918 gave the defendants notice to vacate the house before the 17th March. The defendants replied that they had no knowledge of the plaintiff's lease and did not recognize him as the landlord. Then at the plaintiff's request *H P* also sent a notice to the defendants on the 23rd March to quit within a week As the defendants did not comply with the notice the plaintiff brought the present suit for ejectment and for Rs. [illegible] on account of rent The only question was whether the plaintiff's notice to the defendants of the 16th February 1918 was valid no notice having been given by the owner to the defendants of the lease in favour of the plaintiff *Held* that it was not necessary for the landlord to inform the defendants that he had leased the house to the plaintiff referred *Gour's Law of Transfer 4th Edn P 1701* referred to *Held* also that the plaintiff as lessee was a transferee of a part of the lessor's interest in the property and under s 109 of the Transfer of Property Act possessed all the rights of the lessor as to the property transferred and was consequently entitled to serve the defendants with a notice to quit *Manikam Pillai* v *Pathakamu Nadar (43 Indian Cases 910)* approved. PARBHU RAM v TEK CHAND I L R 1 Lah. 241

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——— s 106—

See EJECTMENT I L R 40 Calc 858

See LANDLORD AND TENANT I L R 46 Calc 458

——— ss 106 107—

See LANDLORD AND TENANT I L R 44 Calc 403

——— *Land held not for agricultural or manufacturing purpose on oral settlement at an annual rent—Presumption that tenancy annual— Contract to the contrary not valid because not registered—Notice length of* Where there being no written lease the tenants were found to have been holding the land on an annual rent of Rs 15 and not for an agricultural or manufacturing purpose *Held* that from the fact that the rent was an annual rent the presumption ought to be drawn that the tenancy was an annual tenancy That in the absence of anything to rebut the presumption s 106 of the Transfer of Property Act if it stood alone would be inapplicable there being a contract to the contrary within the meaning of that section This contract however not being in writing and registered was invalid under s 107 That the tenancy was therefore terminable under s 106 on fifteen days notice expiring with the end of a month of the tenancy *Durga Nilarini v Goberdhan Bose 19 C W N 5?5 s c 20 C L J 448 454* referred to AKLOO v EMANON (1916) I L R 44 Calc 403 20 C W N 1005

——— *Lease without registered instrument for purposes other than agriculture or manufacture at a fixed rent a year without any settlement as to duration of tenancy—Effect of holding over with acceptance of rent by landlord—Notice necessary to terminate tenancy nature of—Notice signed by am muktear if valid—Fifteen days from date of notice calculation of* The defendant took the premises in suit for a stationery shop as a tenant from the commencement of the Bengali year, the rent being fixed at a certain amount a year but the period during which the tenancy was to continue was not settled The tenant continued in occupation after the end of the year and the landlords accepted rent for the next year The *plaintiff landlords* subsequently served a notice to quit by registered post The notice was signed by an *am muktear* and was dated the 16th Baisakh and called upon the defendant to vacate the premises within the 31st Baisakh The registered cover which was addressed to the defendant at his place of business was returned to the sender by the Postal authorities with an endorsement that the addressee had refused to accept it There was no oral evidence to show where the cover was posted or when and where it was tendered to the defendant On the cover were the seals of the office of posting and the office of destination as also an endorsement that the letter was returned as the addressee refused to receive it the seals and the endorsement bearing date corresponding to the date of the notice *Held* that under s 107 of the Transfer of Property Act which was in force at the time a lease of immoveable property from year to year or for any time exceeding one year or reserving a yearly rent could be made only by a registered instrument and consequently the

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——— ss 106 107—*contd*

defendant became a tenant for one year only and in the absence of an agreement to the contrary within the meaning of s 116 of the Act the effect of his holding over was that after the expiry of the year in which the tenancy took effect it was renewed from month to month and was terminable by the lessors by fifteen days notice expiring with the end of a month of the tenancy That the notice was a fifteen days notice and was properly signed It was not intended to lay down in *Subadani v Durga Charan I L R 28 Calc 118 s c 4 C W N 790* that in calculating the 15 days the day on which the notice was served as also the date on which the notice expired were both to be excluded GOBINDA CHANDRA SHAHA *v* DWARKA NATH PATITA (1914) 19 C W N 489

——— *Notice to quit—Construction of—* A notice of ejectment served by a landlord on his tenant contained besides the usual terms of a notice to quit a further statement that if the tenant did not vacate the house by the time specified the landlord would hold him liable from that date to rent at an enhanced rate The tenant did not attempt to treat this latter statement as an offer to renew the tenancy at the enhanced rate *Held* that the notice was a good notice and the landlord was entitled to a decree for ejectment SHANKAR LAL *v* BABU RAM I L R 43 All 330

——— s 107—

See s 4 I L R 44 Mad. 55

See s 105 I L R 38 All 178

See COMPROMISE 3 Pat L J 255

See KABULIYAT I L R 39 Calc 1016

See LEASE 25 C W N 225

See REGISTRATION ACT 1908 ss 17 AND 90 I L R 36 All 176

See TENANCY AT WILL I L R 44 Calc 214

1 ——— *Lease exceeding one year—Registration—Unregistered lease cannot be received as evidence—Evidence Act (I of 1872) s 91—Oral evidence of the lease cannot be given—Tenant admitting landlord's title—Amount of rent can be proved by other evidence—Parties—Admission—Estoppel—Practice* The plaintiff owned a one third share in certain salt pans which share was during her minority leased by her guardians for a period of three years at an annual rental of Rs 500 The plaintiff having attained majority she at the expiration of the period let her share to the same lessees for a further period of two years at the rent of Rs 1 000 a year The new lease though in writing was not registered The plaintiff sued to recover the rent for the two years at the rate of Rs 1 000 a year and also Rs 6?3 for rent due on the first lease The defendants admitted the plaintiff s ownership and their tenancy under her but disputed the amount of rent *Held* that the plaintiff could not be allowed to rely on the lease set up by her because it was not registered (s 107 of the Transfer of Property Act) nor could she be allowed to give oral evidence of the lease (s 91 of the Indian Evidence Act) *Held* further that the defendants having admitted the ownership of the plaintiff and that they were in as her

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———— s 107—*contd*

proof of the relation of landlord and tenant became unnecessary *Held* also, that the plaintiff could only recover as for use and occupation for the two years of the tenancy admitted at the rate claimed by her which was not excessive RAMCHANDRA SHIVAJIRAM *v* TAMA (1912)
I L R 36 Bom 500

2 ———— *Signature of lessor necessity of to registered instrument* The registered instrument which under s 107 of the Transfer of Property Act is necessary to create a lease within the section need not necessarily be an instrument signed by the lessor Such a lease may be created by a registered instrument signed by the lessee and accepted by the lessor *Turof Sahib* v *Esuf Sahib I L R 30 Mad 322* over ruled *Per* THE CHIEF JUSTICE AND AYLING J — If a registered instrument signed by the lessee and accepted by the lessor is not a lease the mere fact that the instrument is signed by the lessee does not preclude him from denying his liability thereunder *Per* KRISHNASWAMI AYYAR J — If a registered instrument signed by the lessee and accepted by the vendor is not a lease the lessee will not be liable except on the footing of use and occupation SYED AJAM SAHIB *v* MADURA SREE MEENATCHI SUNDAREZWARAL DEVASTANOM (1910)
I L R 35 Mad 95

3 ———— *Oral lease for a year with delivery of possession—Renewal every year by annual oral lease Leases if valid Non delivery of possession—Holding over* where a lessee to whom possession of the demised land was delivered under an oral lease for one year continued to hold the land under successive oral leases each of one year's duration *Held* that even if these later leases be invalid on the ground of non delivery of possession *Sibendrapada* v *Secretary of State I L R 34 Calc 207* there was a holding over by the lessee with the lessor's assent within the meaning of s 116 of the Transfer of Property Act A series of successive leases each for one year is quite different from a lease from year to year MITRAJIT MAHTON *v* SHEIKH LEAKUT HOSAIN (1914) 18 C W N 858

———— ss 107 108 (b)—

See CIVIL PROCEDURE CODE 1882 s 375
I L R 33 Mad 102

———— s 108—

See HOMESTEAD LAND
1 Pat L J 253

See LANDLORD AND TENANT
I L R 37 Calc 815

See LEASE 2 Pat L J 713

See LESSOR AND LESSEE
I L R 38 Mad. 86

See LESSOR AND LESSEE
I L R 37 Calc 683

———— Applicability of to Crown Lands—

See LEASE I L R 40 Mad 910
I L R 43 Mad 132

1 ———— *Failure of lessor to put lessee in possession—Absence of request by lessee to be put in possession—Applicability of section to agricultural leases* In a case where the

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———— s 108—*contd*

lessor does not put the lessee in possession, but there is no obstruction or likelihood of obstruction to the lessee taking possession of the same and he neither tries nor requests the lessor to put him in possession *Held* in a suit by the lessor for rent, that the lessee is liable NARAYANASWAMI NAIDU GURU *v* YERRAMILLI RAMAKRISHNAYYA (1910) I L R 33 Mad. 499

2 ———— *Landlord and tenant—Sub lessee—Avoidance of lease—Vacant possession—Holding over* The plaintiffs were lessees of a godown for one year from 1st April 1908 at a monthly rent From 1st May 1908 they sublet it on the same terms for the remainder of their lease to the defendant who used it for storing bags of sugar On 5th December the godown was partially destroyed by fire and a quantity of sugar therein considerably damaged The defendant s insurers came in to take charge of the salvage but soon after sold the remains of the sugar to *G M* and the latter then took po session and continued in possession sorting the sugar until 16th February 1909 Meanwhile on 10th December the plaintiffs had written to the landlord advising him of the fire and of their termination of the lease in consequence The landlord however insisted on their liability to pay rent until such time as vacant possession should be given to him The defendant in answer to a bill for rent wrote to the plaintiffs to the effect that he had terminated his lease on account of the fire and would not pay more than the proportionate rent for the first 5 days of December As however vacant possession was not given until 16th February (on which day *G M* went out of possession) the plaintiffs sued the defendant for rent and for use and occupation *Held* that the plaintiffs could not exercise their option to terminate the lease until they put the landlord into possession If the avoidance of the lease under s 108(e) of the Transfer of Property Act (IV of 1882) was effectual without surrender of vacant possession the plaintiffs by failing to give vacant possession were holding over after the termination of their lease and were liable for rent under an implied monthly tenancy on the same terms as before If the avoidance was ineffectual the lease continued until put an end to by mutual consent *Held* further that the abandonment to the insurers by the defendant was effected for his benefit and in the absence of evidence that the insurers and their vendee *G M* kept the sugar in the godown in spite of protests by the defendant the latter (as between the plaintiffs and the defendant) must be taken to have been in occupation either under his original tenancy or under a similar one resulting from his holding over SIDICK HAJI HOOSEIN *v* BRUEL & CO (1910)
I L R 35 Bom 333

3 ———— *Working of new mines by lessee—Mining lease from the holder of maintenance-grant for life—Absence of express authorisation to work new Mines in deed of grant—Contract of parties reliance on for ascertaining intention of grantor—Open mine what is* Three of the principal defendants held a mining lease of the disputed properties from defendant No. 1

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——— s 108—contd

to whom the property had been given for her maintenance for life by the former proprietor The deed did not contain any express provision authorising the grantee to open new mines and to appropriate the minerals therefrom The plaintiff who was a proprietor by right of purchase sued for a declaration that these four defendants had no right to open new mines and to raise minerals therefrom on the disputed property also for a perpetual injunction to restrain them from opening and working new mines and from further working the new mines which they had opened *Held* that s 108 of the Transfer of Property Act which defines the rights and liabilities of lessor and lessee provides in cl (o) that in the absence of a contract or local usage to the contrary the lessee must not work mines or quarries not open when the lease was granted and no question of local usage arising in the present case and there being no express provision authorising the grantee to open new mines and to appropriate the minerals therefrom in the deed which was one for maintenance for the life of the grantee the grantee had no right to grant a mining lease for the purpose of opening and working new mines Circumstances under which a mine may be said to be open considered CHRISTIAN v NARBADA KOERI (1914)

19 C W N 796

4 ——— *Fixture right of tenant to remove—Acquisition of land with building by Government—Tenant if only entitled to price of material* *Held* (as to the contention that under s 108 of the Transfer of Property Act the right of the tenant to remove fixtures must be exercised during the continuance of the lease) that the provisions of s 108 of the Transfer of Property Act are subject to local usage and in the present case the leases not being determined by any notice to quit and the decree in the mortgage suit under which the respondents lost their right not having given them an opportunity to remove the building they should be allowed to remove them unless the appellant chose to take them on payment of compensation In the circumstances of the case the respondents were given one half of the amount awarded on account of the building KANAILAL JALAN v PASIK LAL SADHUKHAN (1914)

19 C W N 361

——— s 108 (a) and (e)—*Lease—Disturbance of possession by paramount title holder—Lessor s liability to indemnify—Lessor s defective title if a material defect in the property with reference to its intended use* R the registered proprietor in possession of the estate left by her husband granted a *zurpeshgi* lease of certain properties to the plaintiff and others C the brother of the husband of R instituted a suit against R and obtained a declaration that on the death of P s husband he became the rightful owner of the estate and R had no title in it The plaintiff remained in possession till he was dispossessed by C The plaintiff sued P for the recovery of his share of the *zurpeshgi* money and for damages for loss sustained by him in consequence of dispossession There was no evidence to warrant a finding that the defect in R's title was one which the plaintiff could have with ordinary care discovered *Held* that s 108 cl (c) of the Transfer of Property Act is wide enough to include disturbance of possession by a person with a paramount title A defect in the lessor s title is not a material defect in the property with reference to its intended use within the meaning of s 108 cl (a) Those words have reference to the nature and condition of the property demised *Held* further that s 108 cl (a) is inapplicable to the present case and the defendant is liable for damages for the interruption of the plaintiff s possession under the provisions of s 108 cl (c) MUKHTAR AHMED v SUNDAR KOER (1913)

17 C W N 960

——— s 108 (e)—

See LESSOR AND LESSEE

I L R 43 Mad 132

——— *Lease of colliery—Destruction by fire—Notice by lessee to determine lease if should be 15 days notice* A notice by the lessee under s 108 (e) of the Transfer of Property Act avoiding the lease on the ground of destruction of the lease hold property by irresistible force takes effect immediately on service S 106 of the Act has no application to such a notice DAMODA COAL COMPANY LIMITED v HURMOOK MARWARI (1915)

19 C W N 1019

——— s 108 (h)—

See BOMBAY LAND REVENUE CODE (BOM ACT V OF 1879) s 83

I L R 38 Bom 716

See LANDLORD AND TENANT

I L R 38 Mad 710

See MADRAS ESTATES LAND ACT 1908 s 3

I L R 37 Mad 1

——— s 108 (j)—

See LANDLORD AND TENANT

I L R 37 Calc 377

See LEASE

1 Pat L J 1

——— *Lessee or licensee—Agricultural land left for building purposes under special agreement and afterwards included in neighbouring town* Some fifty years ago by an agreement between the Government the zamindars and certain butchers a certain area of cultivated land adjoining the city of Allahabad was let in plots to the butchers for building purposes at a uniform rent of Rs 10 per bigha There was also a proviso against arbitrary enhancement of the rent Subsequently the land upon which the butchers had settled was included in the municipal limits of the city of Allahabad and was called muhulla Atala One of the butchers having sold his house the zamindars sued him and his vendee under the terms of the wajib ul arz claiming either one fourth of the price or in the alternative that the site might be cleared and possession made over to them *Held* that in the circumstances these sites were not subject to the ordinary law with reference to village sites occupied by agricultural tenants but the butchers must be taken to be lessees and in the absence of a contract to the contrary their rights as such were transferable without reference to the zemindars ABDUL HAQ v DATTI LAL (1914)

I L R 37 All 144

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—*contd*

———— s 108 (j)—*contd*

———————— *Lessor and lessee—Mortgage with possession by lessee—Mortgagee not liable to the lessor for rent—Privity of estate meaning of* A mortgagee with possession from the lessee is not liable to the lessor for rent as there is neither privity of estate nor of contract between them *Per* WALLIS *C J* —Privity of estate is a technical term of English Law and under that law such privity arises only where the whole of the lessee s interest is assigned over and not where a subsidiary interest is carved out of the lessee s interest The Transfer of Property Act in enacting s 108 (j) does not seem to have introduced any departure from the English Law English and Indian cases reviewed THETHALAN v THE ERALPAD RAJAH CALICUT (1917) I L R 40 Mad 1111

———————— *Lease from year to year in existence from before 1882—Transferability—Custom—Onus—Sublease transfer by way of—Landlord if may recover khas possession* A lease of homestead land from year to year which was in existence before the passing of the Transfer of Property Act is not governed by that Act and s 108 cl (j) of that Act does not make it transferable *absolutely or by way of sub lease* Such leases are not transferable except by custom the burden of proving which is on the party who sets it up Whether a tenant from year to year had power before the Transfer of Property Act to transfer the holding by way of sub lease or not where it appeared that the tenant had abandoned the lands without arranging for payment of rent and no rent had been paid by him since the *ijara* and that the transaction was in substance though not in form an assignment *Held* that the landlord was entitled to recover *khas* possession of the land ANANDA MOHAN SAHA *v* GOBINDA CHANDRA RAY CHOUDHURY (1915) 20 C W N 322

———— s 108 cl (o)—*Principle applicable to agricultural lease —Mulgeni tenant has no right to fell timber standing at time of grant* Although Ch V of the Transfer of Property Act does not apply to agricultural leases the principles embodied therein may be applied to such leases The rules contained in s 108 (h) (o) will apply to mulgeni leases and a mulgeni tenant is not entitled to cut trees standing at the date of grant The law applicable to occupancy tenants will not apply to such leases as the former is not a tenant but one holding divided ownership CANGAMMA v BHOMMAKKA (1909) I L R 33 Mad 253

———— ss 108 117—

See LANDLORD AND TENANT
L R 37 Calc 723

———— s 109—

See s 106 I L R 1 Lah 241

———— ss 109 and 111—

See s 6 I L R 43 Bom 28

———— s 111 (d) (f)—*Merger doctrine of—Application to tenures in India—Equitable considerations* The predecessors of the defendants who held a *malju ari* tenure directly under the 16 as zamindar afterwards took a *mokurari lease from the putnidar* under 8 as 1 gd maliks *Held* that the condition which would make s 111 cl

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—*contd*

———— s 111 (d) (f)—*contd*

(d) or s 111 cl (f) of the Transfer of Property Act applicable did not exist in the case and the *malju ari* interest did not merge in the *mokurari* either under these provisions or under the general law The English doctrine of merger has never been held to apply to land tenures in India in their entirety On the other hand very eminent Judges have doubted that it does *Woomesh Chandra Goopto* v *Raj Narain Ray 10 W R 15* and *Jibanti Nath Khan* v *Gocool Chandra Chowdhuri I L R 19 Calc 760* referred to *Raja Kishen Datt Ram* v *Raja Mumtaz Ali I L R 5 Calc 198* was not decided on the ground of merger In *Promatho Nath Mitter* v *Kali Prasanna Choudhury I L R 28 Calc 741 Surja Narain Mandal* v *Nanda Lal Sinha I L R 33 Calc 1212* and *Ulfat Hussain* v *Gayani Das I L R 36 Calc 802* apart from the application of s 111 cl (d) of the Transfer of Property Act there was no equitable consideration to prevent the merging of rights whereas in the present case there was no equitable consideration to attract the application of the doctrine of merger In equity deciding whether there is a merger in equity what must be first looked at is the intention of the parties and if that be not expressed then the Court looks to the benefit of the person in whom the interests coalesce *Gokuldas Gopal Das* v *Puran Mal I L R 10 Calc. 1035* referred to AMATOO v SHEIKH MUK UD ALI (1914) 19 C W N 435

———— s 111 (g)—

See s 6 I L R 43 Bom 98

See EJECTMENT I L. R 45 Calc 469

See KHOD KAST JOTES
I L R 48 Calc 359
1 Pat L J 1

See LEASE

See LANDLORD AND TENANT
I L R 41 Mad 609
I L R 42 Mad 569 654

See LESSOR AND LESSEE.
I L. R 38 Mad 445

———————— *Suit for khas possession on breach of covenant of lease—Overt act of lessor determining lease as condition precedent—Limitation Act (IX of 1908) Art 143—Period of limitation and point of time whence period runs* A lease provided that the lessee was to enjoy the land from generation to generation for purpose of residence without any power of alienation and that in the event of such alienation the lessor would be entitled to *khas* possession The lessee sold the land and the lessor sued to recover possession *Held*—Art 143 was applicable and the period of limitation was 12 years and time began to run from the date of alienation and not from the date when the lessee surrendered possession to the transferee That under cl (g) of s 111 of the Transfer of Property Act it was necessary for the plaintiff to establish that the lessor had done some act prior to the institution of the suit showing an intention to determine the lease Where the rights and obligations of the parties are regulated by cl (g) of s 111 of the Transfer of Property Act there is no determination of a lease by forfeiture immediately on breach of covenant but such breach must be followed by an

TRANSFER OF PROPERTY ACT (IV OF 1882) —contd

——— s 111 (g)—contd

overt act on the part of the lessor before the institution of the suit for ejectment the institution of the suit cannot be rightly regarded as the requisite act because the forfeiture must be completed and the lease determined before the commencement of the action *Nowrang v Janardan I L R 45 Calc 469 s c 22 C W N 312 27 C L J 277 (1917)* approved A suit for ejectment does not lie in respect of a portion of the lands of a tenancy which has been forfeited or a condition whereof has been broken *Gopalram Mohuri v Dhukeshwar Pershad Narain Singh I L R 35 Calc 807 (1908)* and *Syed Ahmad Sahib Shullari v Magnesite Syndicate Ltd I L R 39 Mad 1049 (1915)* referred to MOTILAL PAL CHAUDHURY v CHANDRA KUMAR SEN

24 C W N 1064

——— *Landlord and tenant —Denial of title—Suit for ejectment of tenant—Landlord's intention to take advantage of denial of title to be expressed before suit* The denial of his landlord s title by a tenant in order to work a forfeiture under s 111 (g) of the Transfer of Property Act 1882 must be an unequivocal and unambiguous denial mere non payment of rent or even the mortgaging of the premises as belonging to the tenant does not necessarily constitute such a denial A landlord wishing to take advantage of his tenant s denial of title to determine the lease must do some act showing his intention to do so before he can file a suit for ejectment PRAG NARAIN v KADIR BAKSH (1913)

I L R 35 All 145

——— *Landlord and tenant —Forfeiture—Ejectment—Cause of action—Intention to determine the lease—Whether institution of the suit to eject a sufficient manifestation of intention* A landlord sued to eject his tenant on the ground that the lease was determined by the tenant s disclaimer of the landlord s title The tenant contended that the landlord had no cause of action inasmuch as he had never before filing the suit done any act showing his intention to determine the lease as required by cl (g) of s 111 of the Transfer of Property Act 1882 *Held* that the mere institution of the suit and the assertion in the plaint as to the repudiation of the landlord s title constituted a sufficient manifestation of the landlord s intention to determine the lease ISABALI TAYABALI v MAHADU EKOBA (1917)

I L R 42 Bom 195

——— s 114—

See LANDLORD AND TENANT

I L R 39 Mad 834
I L R 42 Mad 654
I L R 44 Mad. 629

See LEASE I L R 45 Bom 300

——— s 116—

See s 2 19 C W N 525

See s 106 19 C W N 489

See s 107 18 C W N 858

See PENAL CODE s 341

I L R 43 Bom 531

——— s 117—

See KHOD KAST JOTES

I L R 48 Calc 359

TRANSFER OF PROPERTY ACT (IV OF 1882) —contd

——— s 117—contd

See LANDLORD AND TENANT

I L R 37 Calc 723
I L R 42 Mad 654

See UNDER RAYATI HOLDING

I L R 42 Calc 751

——— s 118—

See s 54 I L R 37 Mad 423
I L R 40 All. 187

See ESTOPPEL BY CONDUCT

I L R 40 Mad 1134

——— ss 118 119 120 54 and 55 cl 6 (b)— *Exchange of lands of the value of one hundred rupees or upwards—No registered instrument—Oral transfer invalid—Parties placed in possession of the lands—Sale by one of the parties of lands obtained on exchange—No estoppel against the transferor or his creditor—No estoppel against statute—No charge for the value or price of the lands on the date of the transactions* An exchange of immoveable property the value of one hundred rupees and upwards can be made only by a registered instrument under ss 118 and 54 of the Transfer of Property Act No estoppel can be pleaded against the directions and the prohibitions enacted by the statute law and against the rights accruing to any party by reason of such directions and prohibitions A party to an exchange which is not valid in law is not entitled to a charge on the property obtained by him in exchange for the price of such property on the date of the exchange under ss 120 and 55 cl (b) of the Transfer of Property Act *Kurri Veerareddi v Kurri Bapireddi I L R 29 Mad 336* followed *Ram Bakhsh v Mughlani Khanam I L R 26 All 266* dissented from *Karalia Kanubhai v Mansukhram I L R 24 Bom 400* distinguished *Muthe Venkatachellapathy v Pyinda Venkatachellapathy 23 Mad L J 652* referred to CHIDAMBARA CHETTIAR v VAIDILINGA PADAYACHI (1913) I L R 38 Mad 519

——— s 119—

See LIMITATION ACT (IX OF 1908) ARTS. 113 AND 143 I L R 42 Mad 690

——— ss 122 123 126—

See OCCUPANCY HOLDING

I L R 45 Calc 434

——— s 123—

See s 3 I L R 44 Mad. 196

See s 55 I L R 34 Bom 687

See s 55 I L R 34 Bom 287

See GIFT

See LIMITATION I L R 43 Mad 244
I. L R 46 I A 285

See OUDH ESTATES ACT (I OF 1869) ss. 13 16 AND 17 I. L. R 32 All 227

——— *Gift of land—Oral gift —No registered deed of gift—Gift inoperative—Unauthorised occupation and use of land—Owner of land making an oral gift of land—Acquiescence—Estoppel—Indian Evidence (Act I of 1872) s 115* In 1903 the defendant Municipality took plaintiff's land into its possession and used it for making a new road through it After a major portion of the road was constructed the plaintiff's

TRANSFER OF PROPERTY ACT (IV OF 1882) —*contd.*

——— s 123—*contd.*

father objected to the unauthorised occupation and use of his land but he was prevailed upon to give the land in gift to the Municipality The gift was orally made and no writing was made or registered The plaintiff's father died in 1906 The plaintiff sued in 1914 to recover possession of the land from the Municipality —*Held* decreeing the suit that the absence of a registered deed of gift invalidated the gift owing to the provisions of s 123 of the Transfer of Property Act 1882 and that the mere consent of the plaintiff s father to make the gift was not sufficient to vest the land in the Municipality *Held* further, that the plaintiff was not estopped under s 115 of the Indian Evidence Act 1872, from denying the gift because the defendant had occupied the land and laid out a substantial part of the road before the plaintiff s father was prevailed upon to make the gift KUVERJI KAVASJI *v* MUNICIPALITY OF LONAVALA (1920)
I L R 45 Bom 164

——— *Gift—Attestation—Meaning of attested* A deed of gift was attested by two witnesses At the trial of the suit only one witness was examined and he deposed that he was at some distance when the deed was being written and that he did not see the executant making his mark on the deed *Held,* that the deed of gift was not properly executed within the meaning of s 123 of the Transfer of Property Act 1882 The word attested in s 123 of the Transfer of Propery Act 188? meant the witnessing of the actual execution of the document by the person purporting to execute it *Shamu Patter* v *Abdul Kadir* (1912) *14 Bom L R 1034* relied to AMARAPPA *v* RACHAVA (1919)
I L R 44 Bom 231

——— ss 123 129—*Gift—Validity of gift of immovable property—Mahomedan law* Where a Mahomedan had made a gift of immovable property which was valid according to Mahomedan law it was *held* that the gift was none the less valid because the donor had executed a deed of gift purporting to convey the property to the donee which owing to a defect in the attestation, was invalid according to the provisions of the Transfer of Property Act 1882 KARAM ILAHI *v* SHARF UD DIN (1916) I L R 38 All 212

——— s 126—

See GIFT I L R 39 Calc 933

See OCCUPANCY HOLDING
I L R 45 Calc 434

——— s 127—

See s 5 I L R 38 All 62

——— s 129—

See s 123 I L R 38 All 212

——— s 130—

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 60 I L R 37 Bom 471

See MORTGAGE I L R 43 Mad 803

See SUCCESSION ACT (X OF 1865) s 190
I L R 38 Bom. 618

——— s. 130— *Actionable claim —Claims to proceeds of policy of insurance by depositee of policy and by assignee of policy by an*

TRANSFER OF PROPERTY ACT (IV OF 1882) —*contd*

——— s 130—*contd*

instrument in writing—Transfers by way of security The appellant and the respondent were rival claimants to the proceeds of the policy of insurance on the life of their debtor which had been paid into Court by the Insurance Company as a defendant in a suit brought for the money in which the appellant was also a defendant The appellant relied on an assignment by the debtor of the policy by an instrument in writing and the respondent based his claim on a deposit of the policy with him by the debtor unaccompanied by any written instrument *Held* (reversing the decision of an Appellate Bench of the High Court) that the case was governed by s 130 sub s (*1*) of the Transfer of Property Act (IV of 1882 as amended by Act II of 1900) which precluded the application in India of the principles of English Law and the title of the appellant as being based on an instrument in writing and so conforming in all respects with the provisions of that section was absolute as against that of the respondent who acquired no right to the policy or its proceeds by reason of the deposit The right to the proceeds was an actionable claim and *s 130 covered* transfer by way of security as well as absolute transfers as appeared from illustration 2 to the section MULRAJ KHATAU *v* VISHWANATH PRABHURAM VAIDYA (1912) I L R 37 Bom 198

——— ss 130 131 134—*Transfer of debt notice of—Duty of debtor on receiving notice from transferee* Where a creditor hypothecates a debt due to him and authorises the person to whom the debt is hypothecated by power of attorney in writing to recover the debt from the debtor the debt is absolutely transferred to the transferee under s 130 of the Transfer of Property Act Notice of the transfer is not necessary to perfect the title of the assignee but until the debtor receives notice of the assignment in accordance with law his dealings with the original creditor will be protected The notice of transfer need not necessarily be free from any condition or qualification A debt was assigned absolutely and the debtor received notice of assignment from the transferor who at the same time requested the debtor to pay only if the liability forming the consideration for the transfer was not discharged The debtor also received notice of the assignment from the transferee who claimed payment The transferee did not represent that he had discharged the claim on account of which the transfer was made The debtor after receiving the above notices refusing to recognise the assignment paid the amount to the transferor —*Held* that the payment was inoperative and that the transferee was entitled to recover from the debtor If the fact of the assignment or its validity is disputed the only safe course for the debtor who has received notice of the assignment is not to pay either party but to ask them to interplead *Brandt's Sons & Co* v *Dunlop Rubber Co* (*1905*) *A C 454* referred to COPALA KRISHNA IYER *v* COPALAKRISHNA IYER (1909) I L R 33 Mad 193

——— ss 130 and 134—*Mortgage in writing of a promissory note—Assignee's title and liability to sue on the promissory note* By virtue of ss. 130

TRANSFER OF PROPERTY ACT (IV OF 1882) —*concld*

——— ss 130 and 134—*contd.*

and 134 of the Transfer of Property Act (IV of 1882) *a mortgage in writing of a promissory* note executed in favour of the mortgagor by a third party creates an assignment of the promissory note in favour of the mortgagee even without an endorsement and as the right of the promisee to sue on the note becomes vested in the mortgagee the mortgagee alone is entitled to sue on the note and in taking accounts he is liable to be debited with the amount of the note if he without any justification allows the recovery of debt barred by limitation *Mulraj Khatau* v *Viswanath Prabhuram I L R 31 Bom 198* followed. *Shyam Kumari* v *Rameshwar Singh I L R 32 Calc 27* followed MUTHUKRISHNIER v VEERARAGHAVA IYER (1913)

I L R 38 Mad. 297

——— s 132.

See CIVIL PROCEDURE CODE (ACT XIV OF 1882) ss 268 278 283

I L R 38 Bom 631

——— Where a mortgage is transferred without the privity of the mortgagor the transferee takes subject to the state of accounts between the mortgagor and mortgagee at the date of the transfer but not subject to any independent debt in no way connected with the mortgage SUBRAMANIA AYYAR v SUBRAMANIA PATTAR.

I L R 40 Mad. 683

——— s 134—

See s 130

See DEBT HYPOTHECATION OF

I L R 34 Mad 53

——— s 136—

See LEGAL PRACTITIONERS ACT 1879 s 13 I L R 37 Mad 238

——— s 137—

See CONTRACT I L R 41 Calc 670

See CONTRACT ACT (IX OF 1872) ss 4 61 103 I L R 38 Bom 255

See VENDOR AND SUB VENDEE

I L R 38 Calc 127

TRANSFER OF PROPERTY AMENDMENT ACT (III OF 1885)

——— s 3—

See KABULIYAT I L R 39 Calc 1016

TRANSFER OF PROPERTY (VALIDATING ACT (XXVI OF 1917)

——— s 3 proviso 5—

——— *Review of judgment—Judgment reviewed that of appellate court—Former Court* Where action is taken by an appellate court on an application for review presented in accordance with the provisions of Act No XXVI of 1917 and an appeal which had been dismissed is restored the former court mentioned in proviso (3) to the section is not the court of first instance but the appellate court KAMTA DEBI v KISHORI LAL

I. L. R 42 All. 430

TRANSFER OF SHARES

See COMPANIES ACT (VI OF 1882) ss 58 147 I L R 40 Bom 134

See COMPANY I L R 36 All 365

TRANSFER OF SUIT

See CIVIL PROCEDURE CODE (1908) s 24

I L R 41 All 381

5 Pat L J 588

——— *Transfer of a suit under s 92 Civil Procedure Code (Act V of 1908) from the Court of a District Judge to that of the Additional District Judge—Authority of Additional District Judge to try such suit—Civil Courts Act (XII of 1887) s 8 sub s (2)—Convenience* An Additional District Judge by virtue of the assignment of all the functions of a District Judge under the provisions of sub s (2) of s 8 of Act XII of 1887 *is empowered to exercise the same powers* as the District Judge in suits under s 92 of the Civil Procedure Code *Semble* Any other Court empowered in that behalf by the Local Government in s 92 of the Code probably refers to Courts such as the Subordinate Judges Courts Transfer of the suit was ordered in this case on the ground of convenience the opposite party being compensated by payment of his costs MOHABOR RAHMAN v HAZI ABDUR RAHIM (1920) I L R 48 Calc 53

TRANSFERABILITY

See BUILDING LEASE

I L R 37 Calc 377

See OCCUPANCY HOLDING

I L R 45 Calc 434
I L R 48 Calc 184
I L R 42 Calc 172
I L R 44 Calc 272 720

See OFFERINGS TO A TEMPLE

I L R 43 Calc 28

See PALAS OR TURN OF WORSHIP

I L R 42 Calc 455

See UNDER RAIYATI HOLDING

I L R 42 Calc 751

TRANSFERABLE RIGHT

See SABBARAKARI TENURE

I L. R 46 Calc 378

TRANSFEREE

See DEPOSIT IN COURT

I L R 43 Calc 100

——— from benamidar right of to sue—

See MORTGAGE I L R 41 Mad. 435

——— from execution purchaser—

See PARTIES I L. R 39 Calc 881

——— of trust estate liability of—

See TRUSTEE I. L. R 39 Mad. 115

TRANSIT

——— duration of—

See SALE OF GOODS ACT (56 AND 57 VIC c 71) ss 45 AND 47

I L R 34 Bom 640

TRANSMISSION BY POST

See SEDITION I L R 39 Calc 522

TRANSPORT

See EXCISEABLE ARTICLES
I L R 39 Calc 1053

TRAVELLING WITHOUT TICKET

See RAILWAY PASSENGER
I L R 44 Calc 279

TREASURY OFFICER

———— appropriation of payment by—

See SALE FOR ARREARS OF REVENUE
I L R 38 Calc 537

TREATY

See EXTRADITION I L R 48 Calc 328

See BOMBAY REVENUE JURISDICTION ACT (X OF 1876) s 12
I L R 45 Bom 463

TREES

See LANDLORD AND TENANT
I L R 34 All 545

See BOMBAY LAND REVENUE CODE (BOM ACT V OF 1879) s 83
I L P 38 Bom 716

See TIMBER

———— overhanging ones land—

See TORT I L R 43 Bom 164

———— right of removal of—

See LANDLORD AND TENANT
I L R 37 Calc 815

———— partition of—

See JURISDICTION (CIVIL AND REVENUE)
I L R 42 All 574

———— whether temporary right to take fruit of is immoveable property—

See PUNJAB PRE EMPTION ACT 1913
I L R 1 Lah 567

———— growing on boundary between 2 fields—

See EASEMENT I L R 44 Bom 605

———— Growth of sandalwood trees on occupancy lands subsequent to survey settlement—

See FOREST ACT (VII OF 1878) s 75 CL (c) R 2 I L R 45 Bom 110

———— *Trees planted after lease—Right of removal of trees by tenant—Fixtures doctrine of—Bengal Tenancy Act (VIII of 1885) s 23—Transfer of Property Act (IV of 1882) ss 2 108 (h)* In the absence of any special provision in a lease granted before the Transfer of Property Act (IV of 1882) came into force the property in the trees planted by the lessee after a *kaimi* lease had been granted does not vest in the landlord The rule laid down in s 108 cl (h) of the Transfer of Property Act (IV of 1882) has no application to such a case The lease in the present case not being for agricultural or horticultural purpose s 23 of the Bengal Tenancy Act has no application. The doctrine of the

TREES—*contd*

English Law of Fixtures cannot be appropriately extended to this country on equitable grounds *Bain* v *Brand 1 App Cas 762 Mears* v *Callender (1901) 2 Ch 388 Elwes* v *Mau 2 Smiths Leading Cases 189 3 East 38 Ness* v *Pacard 2 Peters 137* referred to The Law of Fixtures is not recognised under the Hindu or Mahomedan laws *Thakoor Chunder Paramanick* v *Ramdhone Bhuttacharjee 6 W R 228 B L R F B 595 Secretary of State* v *Charlesworth Pilling & Co I L R 26 Bom 1 Khodeeram Serma* v *Trilochan 1 Mac Sel Rep 35 Jankee Singh* v *Bukhooree Singh (1856) Beng S D A 761 Pogose* v *Nyamutoollah (1858) Beng S D A 1517 Brij Bhookun* v *Dabee Dyal (1863) 2 Agra S D A 480 Kalee Pershad Dutt* v *Gouree Pershad Dutt 5 W P 108* relied upon Before the passing of the Transfer of Property Act the doctrine of the English Law of Fixtures did not prevail in this country and the provisions of that Act substantially reproduced the law on this subject as recognised by Hindu and Mahomedan jurisprudence *Ismai Kani Rowthan* v *Nazarali Sahib I L R 27 Mad 211* referred to MOFIZ SHEIKH v RASIK LAL GHOSE (1910)
I L R 37 Calc 815

TREE PATTA

———— *Effect of cancellation of on land pattadar—No resumption or grant to the latter—Right of tree pattadar for the trees even after cancellation as against land pattadar—Possessory right protection of as against trespassers* A person who was in possession until dispossessed by defendants who having no title as owners were mere trespassers is entitled to rely on his possession and succeed in a suit to eject them *Narayana Rao* v *Dharmachar I L P 26 Mad 514* and *Subbaroya Chetty* v *Aiyasami Aiyar I L R 39 Mad 86* followed In the absence of proof to the contrary a cancellation of patta issued by the Government in favour of the plaintiff in respect of trees standing on certain lands for which lands the patta was being issued in favour of defendants does not amount to a resumption of possession of the trees by the Government or to a grant of them by the Government to the defendants The only effect of cancellation of the patta for the trees was that the Government no longer made any demand on the tree pattadars for revenue in respect of the tree The facts that when both pattas were in existence the land pattadar was credited with whatever revenue was collected from the tree pattadar and that on cancellation of tree patta the whole revenue was payable by the land pattadar cannot amount to a grant of the trees to the land pattadar On the rights of the tree pattadar and land pattadar *Reference under s 39 of Madras Forest Act I L R 12 Mad 203* and *Thenu Pandithan* v *Secretary of State for India I L P 21 Mad 433* referred to SENGODA GOUNDAN v VARADAPPAN (1913)
I L R 36 Mad 145

TRESPASS

See ARREST OF SHIP I L R 42 Calc. 85

See CRIMINAL TRESPASS.

See EASEMENT I L R 37 Bom 491

TRESPASS—*contd*

See FOOTING I L R 38 Calc 687

See GRAVEYARD I L R 40 Calc 548

See JURISDICTION I L R 42 Calc 942

See LIMITATION ACT (IX OF 1908) SCH I ARTS 1 0 144
I L R 42 Bom 333

See PENAL CODE (ACT XLV OF 1860) s 297 I L R 33 All 773

See TORT I L R 43 Bom 164

———— suit for declaration by Trespasser—

See SPECIFIC RELIEF ACT 1877 s 42
1 Pat L J 95

———— when supported by Land lord—suit by tenant—

See EJECTMENT 1 Pat L J 430

1 ———— what constitutes—The foundation of tre pass is the doing of an illegal act forcibly and without legal authority as against the property of another To sustain trespass the illegality and the wrongfulness of the act must be established by proof If the act is not illegal no right is infringed DANAI DAS v GOVINDA GEDI
1 Pat L J 533

2 ———— Suit for damages—*Provincial Small Cause Courts Act (IX of 1887) Art 31 Sch II Jurisdiction under* Where the plaint alleged that the defendants had trespassed upon plaintiff's land and removed his crop and assessed damages at the profit thus wrongfully obtained by defendants *Held* that the suit was one for damages for a single act of trespas and not exempted from the jurisdiction of the Provincial Small Cause Courts by Art 31 Sch II of the Provincial Small Cause Courts Act (IX of 1887) *Annamalai v Subramanyan I L R 15 Mad 298* followed and *Venkoba Rao v Muthu Aiyar 18 Mad L J 88* dissented from RAMAIYAR v SAMINATHA AYYAR (1912) I L R 35 Mad 726

3 ———— Right of Magistrate to order search for arms—*Criminal Procedure Code (Act V of 1898) ss 36 94 96 105 Sch III (8)—Jurisdiction to issue search warrant—Arms Act (XI of 1878) s 25—Provision as to recording grounds for belief in s 25 whether mandatory or directory—Protection of Judicial Officers—Directing search where offence has been committed is judicial action—Charge of want of bona fides and malice reprobated* For some time prior to 27th April 1907 much illfeeling existed in and about Jamalpore a sub division of Mymensingh between the Hindu and Mahomedan communities and much excitement and resentment had been aroused on account of the action of the Hindus in attempting some days before that date to enforce a boycott of *bideshi* or foreign goods On 27th April at night a Mahomedan was wounded by a revolver shot fired by one of a party of Hindus dressed as Mahomedans who after the occurrence took refuge in some cutcherries belonging to the leading zamindars of the neighbourhood who were active sympathisers with the action of the Hindus A crowd of Mahomedans at once collected and proceeded to the cutcherries but were prevented from attacking them by the District Superintendent of Police and the Sub divisional Officer who hearing of what had occurred proceeded to the cutcherries and restrained the mob thereby averting a serious riot A large number of Hindus some of them with arms had collected in a temple close by and having bolted and barred the doors refused admittance which was demanded by the District Superintendent of Police and the Sub divisional Officer Shots were fired from inside the temple and a man in the crowd outside was wounded The District Magistrate was then sent for and on his arrival on the morning of 28th April he decided in consultation with the District Superintendent of Police and the Sub divisional Officer that it was necessary to search the cutcherries to obtain possession of the arms used on the 27th and others which it was reported to them were concealed there and also for the purpose of and in connexion with the investigation of the offences committed The cutcherries were found locked and as no officer or servant of the zamindars could be found they were broken open under the District Magistrate s orders and instructions and a search was made therein by the District Superintendent of Police and the men acting under his orders No arms of any kind were found In a suit for tre pass against the District Magistrate instituted by one of the zamindars whose cutcherry had been searched—*Held* (reversing the decision of the first Court and of the majority of the Appellate Court and upholding the decision of BRETT J) that the search was warranted by the Code of Criminal Procedure (Act V of 1898) A serious offence had been committed against the public tranquillity into which it was the duty of the District Magistrate to enquire and by virtue of his superior rank he was at Jamalpore the proper person to conduct the enquiry By s 36 Sch III and s 96 of the Code the power of issuing a search warrant was among his ordinary powers and therefore under s 105 he had power to direct a search to be made in his presence if he thought it advisable to do so That being so it was unnecessary to decide on the other defences set up but *semble* (agreeing with the majority of the Court of Appeal) that the District Magistrate not having complied with the preliminary condition prescribed by s 25 of the Arms Act (XI of 1878) could not defend his action under that Statute Also (agreeing with BRETT J) that the District Magistrate in directing a general search of the plaintiff s cutcherry in view of an enquiry under the Criminal Procedure Code, was acting in the discharge of his judicial functions and had it been necessary might have appealed for protection to Act XVIII of 1850 The charge of personal misconduct advanced and reiterated without any shadow of proof deserved the severest reprobation CLARKE v BRAJENDRA KISHORE ROY CHOWDHURY (1912)
I L R 39 Calc 953

4 ———— Who may sue for—tenant or owner—*Title by adverse possession not pleaded if may be allowed in the Court of Appeal—Civil Procedure Code (Act V of 1908) O XLI r 24—Adverse possession against Municipality or the Crown* Per SANDERSON C J and MOOKERJEE J —The tenant is the proper plaintiff to sue for trespass committed in respect of the land the reversioner can only sue for the alle[illegible] tre pass is injurious of [illegible] land and to the [illegible] C J —Even though t[illegible]

TRANSMISSION BY POST

See SEDITION I L R 39 Calc 522

TRANSPORT

See EXCISEABLE ARTICLES
I L R 39 Calc 1053

TRAVELLING WITHOUT TICKET

See RAILWAY PASSENGER
I L R 44 Calc 279

TREASURY OFFICER

——— appropriation of payment by—
See SALE FOR ARREARS OF REVENUE
I L R 38 Calc 537

TREATY

See EXTRADITION I L R 48 Calc 328
See BOMBAY REVENUE JURISDICTION ACT (X OF 1876) s 12
I L R 45 *Bom* 483

TREES

See LANDLORD AND TENANT
I L R 34 All 545
See BOMBAY LAND REVENUE CODE (BOM ACT V OF 1879) *s 83*
I L R 38 Bom 716
See TIMBER

——— overhanging ones land—
See TORT I L R 43 Bom 164

——— right of removal of—
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I L R 37 Calc 815

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I L R 1 Lah 567

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See EASEMENT I L R 44 *Bom* 605

——— Growth of sandalwood trees on occupancy *lands* subsequent to survey settlement—
See FOREST ACT (VII OF 1878) s 75 cl (c) r 2 I L R 45 Bom 110

——— *Trees planted after lease —Right of removal of trees by tenant—Fixtures doctrine of—Bengal Tenancy Act (VIII of 1885) s 23—Transfer of Property Act (IV of 1882) ss 2 108 (h)* In the absence of any special provision in a lease granted *before* the Transfer of Property Act (IV of 1882) came into force the property in the trees *planted* by the lessee after a *kaimi* lease had been granted does not vest in the landlord The rule *laid* down in s 108 cl *(h)* of the Transfer of Property Act (IV of 1882) has no application to such a case The lease in the present case not being for agricultural or horticultural purpose s 23 of the Bengal Tenancy Act has no application The doctrine of the

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I L R 37 Calc 815

TREE PATTA

——— *Effect of cancellation of on land pattadar—No resumption or grant to the latter—Right of tree pattadar for the trees even after cancellation as against land pattadar—Possessory right protection of as against trespassers* A person who was in possession until dispossessed by defendants who having no title as owners were mere trespassers is entitled to rely on his possession and succeed in a suit to eject them *Narayana Rao* v *Dharmachar I L R 26 Mad 514 and Subbaroya Chetty* v *Aiyasami Aiyar I L R 29 Mad 86* followed In the absence of proof to the contrary a cancellation of patta issued by the Government in favour of the plaintiff in respect of trees standing on certain lands for which lands the patta was being issued in favour of defendants does not amount to a resumption of possession of the trees by the Government or to a grant of them by the Government to the defendants The only effect of cancellation of the patta for the trees was that the Government no longer made any demand on the tree pattadars for revenue in respect of the trees The *facts that* when both pattas were in existence the land pattadar was credited with whatever revenue was collected from the tree pattadar and that on cancellation of tree patta the whole revenue was payable by the land pattadar cannot amount to a grant of the trees to the land pattadar *On the rights of the tree pattadar and land pattadar Reference under s 39 of Madras Forest Act I L R 12 Mad 203* and *Theiru Pandithan* v *Secretary of State for India I L R 21 Mad 433* referred to SENGODA GOUNDAN v VARADAPPAN (191)
I L R 36 Mad. 148

TRESPASS

See ARREST OF SHIP I L R 42 Calc 85
See CRIMINAL TRESPASS.
See EASEMENT I L R 37 Bom 491

TRESPASS—*contd*

See FOOTING I L R 38 Calc 687

See GRAVE YARD I L R 40 Calc 548

See JURISDICTION I L R 42 Calc 942

See LIMITATION ACT (IX OF 1908) SCH I ARTS 120 144
I L R 42 Bom 333

See PENAL CODE (ACT XLV OF 1860) s 297
I L R 33 All 773

See TORT I L R 43 Bom 164

———— suit for declaration by Trespasser—

See SPECIFIC RELIEF ACT 1877 s 42
1 Pat L J 95

———— when supported by Land lord—suit by tenant—

See EJECTMENT 1 Pat L J 430

1 ———— **what constitutes**—The foundation of trespass is the doing of an illegal act forcibly and without legal authority as against the property of another To sustain trespass the illegality and the wrongfulness of the act must be established by proof If the act is not illegal no right is infringed. DANAI DAS *v* GOVINDA GEDI
1 Pat L J 533

2 ———— *Suit for damages—Provincial Small Cause Courts Act (IX of 1887) Art 31 Sch II Jurisdiction under* Where the plaint alleged that the defendants had trespassed upon plaintiff's land and removed his crop and assessed damages at the profit thus wrongfully obtained by defendants *Held* that the suit was one for damages for a single act of trespass and not exempted from the jurisdiction of the Provincial Small Cause Courts by Art 31 Sch II of the Provincial Small Cause Courts Act (IX of 1887) *Annamalai v Subramanyan I L R 15 Mad 298* followed and *Venkoba Rao v Muthu Aiyar 18 Mad L J 88* dissented from RAMAIYAR *v* SAMINATHA AYYAR (1912) I L R 35 Mad. 726

3 ———— **Right of Magistrate to order search for arms**—*Criminal Procedure Code (Act V of 1898) ss 36 94 96 105 Sch III (8)—Jurisdiction to issue search warrant—Arms Act (XI of 1878) s 25—Provision as to recording grounds for belief in s 25 whether mandatory or directory—Protection of Judicial Officers—Directing search where offence has been committed is judicial action—Charge of want of bona fides and malice reprobated* For some time prior to 27th April 1907 much illfeeling existed in and about Jamalpore a sub division of Mymensingh between the Hindu and Mahomedan communities and much excitement and resentment had been aroused on account of the action of the Hindus in attempting some days before that date to enforce a boycott of *bilesh* or foreign goods On 27th April at night a Mahomedan was wounded by a revolver shot fired by one of a party of Hindus dressed as Mahomedans who after the occurrence took refuge in some cutcherries belonging to the leading zamindars of the neighbourhood who were active sympathisers with the action of the Hindus A crowd of Mahomedans at once collected and proceeded to the cutcherries but were prevented from attacking them by the District Superintendent of Police and the Sub divisional Officer who hearing of what had occurred proceeded to the cutcherries and restrained the mob thereby averting a serious riot A large number of Hindus some of them with arms had collected in a temple close by and having bolted and barred the doors refused admittance which was demanded by the District Superintendent of Police and the Sub divisional Officer Shots were fired from inside the temple and a man in the crowd outside was wounded The District Magistrate was then sent for and on his arrival on the morning of 28th April he decided in consultation with the District Superintendent of Police and the Sub divisional Officer that it was necessary to search the cutcherries to obtain possession of the arms used on the 27th and others which it was reported to them were concealed there and also for the purpose of and in connexion with the investigation of the offences committed The cutcherries were found locked and as no officer or servant of the zamindars could be found they were broken open under the District Magistrate s orders and instructions and a search was made therein by the District Superintendent of Police and the men acting under his orders No arms of any kind were found In a suit for trespass against the District Magistrate instituted by one of the zamindars whose cutcherry had been searched—*Held* (reversing the decision of the first Court and of the majority of the Appellate Court and upholding the decision of BRETT J) that the search was warranted by the Code of Criminal Procedure (Act V of 1898) A serious offence had been committed against the public tranquility into which it was the duty of the District Magistrate to enquire and by virtue of his superior rank he was at Jamalpore the proper person to conduct the enquiry By s 36 Sch III and s 96 of the Code the power of issuing a search warrant was among his ordinary powers and therefore under s 105 he had power to direct a search to be made in his presence if he thought it advisable to do so That being so it was unnecessary to decide on the other defences set up but *semble* (agreeing with the majority of the Court of Appeal) that the District Magistrate not having complied with the preliminary condition prescribed by s 25 of the Arms Act (XI of 1878) could not defend his action under that Statute Also (agreeing with BRETT J) that the District Magistrate in directing a general search of the plaintiff s cutcherry in view of an enquiry under the Criminal Procedure Code was acting in the discharge of his judicial functions and had it been necessary might have appealed for protection to Act XVIII of 1850 The charge of personal misconduct advanced and reiterated without any shadow of proof deserved the severest reprobation CLARKE *v* [illegible] KISHORE ROY CHOWDHURY (1912)
I L R [illegible]

4 ———— **Who may sue** [illegible] **owner**—*Title by adverse possession* [illegible] *may be allowed in the Court of Appeal* [illegible] *Procedure Code (Act V of 1908) O XLI r 27—Adverse possession against* [illegible] *Per* SANDERSON *C J* and [illegible] *J*—The tenant is the proper plaintiff [illegible] for trespass committed in respect of the [illegible] the [illegible] sioner can only sue for trespass if the alleged trespass is injurious [illegible] of the land and to the [illegible] *C J*—Even though the [illegible]

TRESPASS—*concld*

by a claim of right it is not necessarily injurious to the reversionary estate *Baxter* v *Taylor* *4 Barn & Ad 72* referred to *Per* WOODROFFE J—It is not sufficient for the plaintiff in an action in ejectment to prove possession He must show title *Per* MOOKERJEE J—Mere previous possession will not entitle a plaintiff to a decree for recovery of possession except in a suit under s 9 of the Specific Relief Act *Purm shwar* v *Brojolal I L R 17 Calc 256* *Mishachand* v *Kanchiram I L R 26 Calc 579* s c *3 C W N 563* *Shama Charan* v *Abdool 3 C W N 155* and *Manik Borai* v *Banicharan 13 C L J 619* referred to The plaintiff may be allowed to succeed on a title by adverse possession pleaded for the first time in the Court of Appeal provided such a case arises on the facts stated in the plaint and the defendant is not taken by surprise *Sundari Dossee* v *Madhu Chunder I L R 14 Cal 592* *Vasudeva* v *Maguni L R 28 I A 81 88* s c *5 C W N 545* *Vajlal* v *Thunbuswamy (1914) Mad W N 784* *Soma sundarum* v *Vaduvelu I L R 31 Mad 531* *Shirokumari* v *Govind Shaw I L R 2 Calc 418* *Joytara* v *Mahomed Mobaruck I L R 8 Calc 975* and *Bijoya* v *Bydonath 24 W R 444* referred to To establish a title by adverse possession the plaintiff must prove enjoyment possessing the same characteristics as are necessary for presumption of a lost grant and consequently that the possession was adequate in continuity in publicity and in extent to extinguish the title of the true owner *Subramania* v *Secretary of State 21 Mad L J 132* and *Radhamoni* v *Collector of Khulna I L R 27 Calc 943* s c *4 C W N 593 690* referred to *Per* WOODROFFE J—Where in a suit for declaration of title and possession the plaintiff did not in the alternative plead title by adverse possession the plaintiff cannot ask the Court to frame such an issue on appeal except by amendment and O XLI r 24 which authorises the Court to remodel the issues does not apply to such a case RAM CHANDRA SIL v RAMANMANI DASI (1916)

20 C W N 773

TRESPASSER

See BENGAL TENANCY ACT s 102
14 C W N 812

See EJECTMENT I L R 37 Mad 281

See MADRAS ESTATES LAND ACT (I OF 1908) s 8 EXCEPT
I L R 38 Mad 843

See MESNE PROFITS 4 Pat L J 301

See PUBLIC RELIGIOUS TRUST
I L R 41 Calc 749

——— purchase by—

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 65 (c)
I L R 39 Mad 959

——— tenant as—

See LIMITATION ACT (IX OF 1908) s 28 ART 47 I L R 38 Mad 432

——— *Tenants settled by trespasser—Principle of Binad Lal Pakrashi's Case if applies when tenant never got possession—Bona fides* The principle of the Full Bench case of *Benad Lal Pakrashi* v *Kalu Pramanick I L R 20 Calc 708* is an encroachment upon the ordinary rule of law that a grantor is not competent to confer upon the grantee a better title than what he himself possesses and must be cautiously applied and is not to be extended In order to make the principle available it is essential that the lessor should be in possession of the disputed property as *de facto* landlord and that in good *faith* he should have inducted into the land a cultivator who has accepted the settlement in good faith Want of good faith either on the part of the lessor or the lessee makes the rule inapplicable The principle could not be applied in favour *of the* plaintiff who took a lease from the owner after his interest had been sold in execution of a decree who never obtained juridical possession of the disputed property and who had to be bound down by a Criminal Court to prevent him from interfering with the possession of the defendant KRISHNA NATH CHAKRAVARTI v MAHOMED WAFIT (1916)
21 C W N 93

TRIAL

See CONTEMPT OF COURT
I L R 45 Calc 169

See CRIMINAL PROCEDURE CODE s 235 AND 342 I L R 38 Mad 302

s 369 I L R 42 Bom 202

See JOINT TRIAL

See SUMMARY TRIAL
I L R 39 Mad 942

——— a new demand for—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 367
I L R 40 Mad 108

——— conduct of—

See PRESIDENCY MAGISTRATES
I L R 42 Calc 313

——— Reduction in Bench of Magistrates during—

See CRIMINAL PROCEDURE CODE, s. 16
I. L. R. 44 Bom. 400

——— of an offence with the aid of assessors—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 238
I L R 45 Bom 619

——— *Trying cases piecemeal —Practice condemned—Grant—Ekrarnama—Lease or License—Construction—Practice* Cases ought not to be tried piecemeal such a method may facilitate the disposal of a case but certainly does not conduce to the administration of justice MOHIPAL SING v LALJI SING (1912)
17 C W N 166

TRIAL BY JURY

See EVIDENCE I L R 47 Calc 671

See JURY, TRIAL BY

See REFERENCE
I L R 42 Calc 789

TRIAL BY JURY—*contd*

——— *Charge to the Jury—Misdirection—Omission to explain the law as to abetment—Uncertainty in the meaning of the Judge's direction relating to a confession—Omission to direct the Jury upon the evidentiary value of a retracted confession* Where one accused was charged under s 52 of the Post Office Act (VI of 1898) and s 380 of the Penal Code and the other under s 52 read with s 70 of the Post Office Act and ss [illegible] of the Penal Code and the Judge omitted to direct the Jury to consider what evidence there was of abetment and to explain the law in connection therewith —*Held* that the law was not adequately explained and that the omission of any explanation with regard to the charge of abetment constituted a misdirection. *Abbas Peada v Queen Empress I L R 25 Calc 736* referred to Where it did not appear clear in the charge to the Jury whether the Judge intended to require them to consider how far the statements of the accused amounted to admissions of guilt or how far they believed them to be true —*Held* that the uncertainty in the meaning of the charge when the statements formed a large part of the evidence against the accused was a misdirection The omission to direct the Jury that a retracted confession should have practically no weight as against a person other than the maker and that the very fullest corroboration was necessary far more than was required for the sworn testimony of an accomplice on oath, *held* to be a serious misdirection *Yasin v King Emperor I L R 28 Calc 689* followed HEMANTA KUMAR PATHAK v EMPEROR (1919)

I L R 47 Calc 46

——— *Charge to the Jury—Record of heads of charge—Directions on the law actually given to be embodied in the record—Verdict of Jury justified by the evidence—Retrial not ordered—Criminal Procedure Code (Act V of 1898) s 367 (5) proviso* A mere statement by the Judge in the record of the heads of charge that he referred to certain sections of the Penal Code and explained the law relating thereto is insufficient The record must itself embody the directions on the law actually given so as to enable the High Court on appeal to determine whether the constituent elements of the offence or offences charged were correctly and fully explained to the Jury The Court however refused to direct a new trial for such defect in the record when the Jury were justified in convicting on the evidence in the case KASIMUDDIN NASYA v EMPEROR (1920)

I L R 47 Calc 795

——— The law requires the judge to record only the heads of charge to the jury but this record should be sufficient to enable the High Court to ascertain what was actually said to the jury ABDUL GOFUR v KING EMPEROR

26 C W N 996

——— *Jury trial by—Misdirection on points of law and improper direction on facts* The three accused were found guilty by the unanimous verdict of the jury two under secs 302 34 Indian Penal Code and one under ss 302 149 Indian Penal Code and further all under ss 364 148 I P C The Sessions Judge in charging the jury said— Sec 34 provides that where it is doubtful which of several persons has taken the chief part in any given crime committed in

TRIAL BY JURY—*concld*

furtherance of the common intention of all of them each of such persons is severally liable as if he alone had done the deed *Held*—That it is necessary for the Judge to read the very words of the section itself to the Jury if he purports to give them what are the provisions of the section and then if necessary to explain what is the meaning of the section and the direction with regard to s 34 was not a proper direction In charging the Jury as to what constitutes murder the Sessions Judge said— Murder is the intentional killing of another human being with malice afore thought *Held*—That it is not the way in which Judges ought to charge the Jury in this country It is usual to refer to the sections which relate to culpable homicide and to direct the Jury as to what is culpable homicide and in what circumstances culpable homicide amounts to murder As to the charge under ss 302 149 the Sessions Judge charged the jury as follows — This charge is to some extent redundant and strictly applies only to one accused A for the other accused are supposed to have been the actual murderers By s 149 A becomes a constructive murderer and liable for the substantive offence Just as by s 34 all the accused are equally liable for the murder as though each of them had committed it single handed *Held*—That this was a misdirection *Held further*—That the Sessions Judge was in error in not drawing the attention of the jury to some material evidence and to the fact that many of the prosecution witnesses were related to a person who was the prime mover in the prosecution or to one another and to the discrepancies in the evidence and his direction on the evidence in one instance was not borne out by the record That the attention of the jury should have been directed to the individual cases of the three accused On th[illegible] of misdirection the High Court set aside the verdict of murder as regards all the accused and [illegible] that there was no misdirection as [illegible] under s 364 Indian Penal Code upheld the [illegible] tion of two of the accused on that charge [illegible] set it aside in the case of the other [illegible] set aside the conviction of two of the [illegible] under s 148 and upheld it in [illegible] other KING EMPEROR v [illegible] BEHARI

[illegible]

TRIBAL COMMUNITY, [illegible]

See CUSTOM I L R 46 Calc [illegible]

TRIBUNAL OF APPEAL

See BOMBAY CITY [illegible]

I L R [illegible]

TRUST

See [illegible]

See [illegible]

See [illegible]

See [illegible]

[illegible]

TRUST—*contd*

See CONTRACT I L R 38 Mad 788

See COURT FEES ACT 1870 SCH III (ART) 2 Pat L J 611

See HINDU LAW—ENDOWMENT L R 46 I A 204

See KHOJA MAHOMEDANS I L R 36 Bom 214

See LIMITATION ACT (IX OF 1908) s 10 SCH I ARTS 14 120 I L R 39 Bom 572

See MAHOMEDAN LAW—GIFT I L R 38 All 627 I L R 41 Bom 372

See MAHOMEDAN LAW—TRUST I L R 34 Bom 604

See MAHOMEDAN LAW—WAKF I L R 42 Calc 933

See MORTGAGE I L R 38 All 209

See PUBLIC TRUST I L R 42 Mad 335

See RESULTING TRUST I L R 40 Bom 341

See SUCCESSION ACT (X OF 1865) s 190 I L R 38 Bom 618

See TALUQDAR I L R 33 All 125

See TRUSTEE

See TRUSTS ACT (II OF 1882) s 88 I L R 34 All 306

See TRUST FUND

See WILL I L R 38 All 214

1 ———— Deed of trust construction of —Uncertainty—*Gift for religious acts (dharma karmarthe) and for religious purposes (dharmod deshe)—Works of public good—Discretion of trustee* A settler by a deed of trust in the Bengali language after declaring that for religious acts (*dharmakarmarthe*) with a desire for the spiritual benefit of the deceased forefathers and to please Vishnu she made over the properties covered by the deed for religious purposes (*dharmod deshe*) proceeded to direct that certain *Thakoors* should be worshipped and maintained and the annual *Durgotsab* performed out of the income of the trust estate and further by the sixth clause of the trust deed provided that out of the income which should remain after incurring the expenses aforesaid a sum not exceeding one thousand rupees should be applied in supporting the poor the blind and the destitute and in imparting education in *upanayan* (assumption of the sacred thread ceremony) in removing marriage difficulties (getting girls married) or in works of public good It was to be paid at the discretion of the trustee towards dispensaries hospitals charitable societies schools or any students education feeding of the poor etc marriage *upanayan* etc excavation and consecration of tanks etc in villages having a dearth of water or in the construction and consecration of *ghats* and *maths* The trustee for the time being had under the deed discretion to render assistance beyond a thousand rupees and had also full power to decide where or for whose education *upanayan* or for whose daughter s marriage the same should be applied *Held* that such directions as were contained in the sixth clause of the trust deed, were void and inoperative for vagueness and uncertainty *Trikumdas Damodhar* v *Haridas Morarji I L R 31 Bom 583 Grimond (or Macintyre)* v *Grimond (1905) A C 124 Bai Chadunbai* v *Dady Nusseruanji Dady I L R 26 Bom 632 Williams* v *Kershaw 5 Cl & F 111 Surbomungola Dabee* v *Mohendranath Nath I L R 4 Calc 508* and *Runchordas Vandravandas* v *Parvatibai I L R 23 Bom 725 L R 26 I A 71*, referred to SARAT CHANDRA GHOSE *v* PRATAP CHANDRA GHOSE (1912) I L R 40 Calc 239

2 ———— Scheme of management of a temple made by the High Court—*Provision in its decree for modification of scheme by itself and for lower Court carrying out modification so made —Application to lower Court for directions involving modification of scheme—Competence of lower Court to entertain such application* Under a decree of the High Court the petitioner was appointed High Priest of a temple and the opposite party and another person members of a committee thereafter on the application of one of the members of the committee the High Court amended its decree in so far as it gave liberty to any person interested to apply to the High Court for any modification of the scheme that might appear necessary or convenient and to apply to the District Judge with reference to the carrying out of the directions of the High Court on such application Subsequently the members of the committee applied to the District Judge for such directions on the petitioner as involved a modification of the scheme *Held* that the application could be entertained only by the High Court UMESHANANDA DUTTA JHA *v* RATANESWAR PRASAD SINGH (1912) 17 C W N 841

3 ———— Deed of trust construction of—Scheme of Management—*Superintendent of cestui que trust—Trustees power of dismissal by—Contract of service—Perpetual injunction—Specific Relief Act (I of 1877) ss 21 (b) and 54* A donor by an *arpannama* or deed of trust transferred certain property to trustees for religious and charitable uses The deed provided *inter alia* that there should be a superintendent of the trust properties subject to the control of the trustees It was further provided that the superintendent should be the executive hand of the trustees should supervise the management of the properties which were to be registered in his name in the Collectorate summon meetings of the trustees and keep accounts and submit them to the trustees The first superintendent was to be the donor himself and after his death or relinquishment of office the superintendent was to be appointed by the trustees No express power of dismissal was given to the trustees by the deed *Held* that a superintendent appointed by the trustees under the foregoing power was not a *cestui que trust* but was the servant of the trustees and that if dismissed by them he had no right to an injunction restraining the trustees from interfering with his enjoyment of the rights and privileges of such superintendent as in the deed of trust provided *Dean* v *Bennett L R 6 Ch App 489 Wills* v *Child 13 Beav 117 Attorney General* v *Magdalen College Oxford 10 Beav 402* and *Whiston* v *Dean and Chapter of Rochester 7 Hare 532* referred to *Daugars* v *Rivaz 28 Beav 233* distinguished The position of such

TRUST—*contd*

a superintendent is not analogous to that of a *shebait* or *mutwali* Nanabhai v *Shriman Goswami Girdharji I L R 12 Bom 331 Goswami Shri Girdharji* v *Madhowdas Premji I L R 17 Bom 600* and *Gulam Hussain* v *Ali Ajam 4 Mad H C 40* referred to *Held* further that the contract of service between the superintendent and the trustees was governed by s 21 (b) of the Specific Relief Act and an injunction should therefore not be granted in respect of it under s 54 A power of appointment ordinarily involves a power of dismissal RAM CHARAN BAJPAI v RAKHAL DAS MOOKERJEE (1913)

I L R 41 Calc 19
17 C W N 1045

4 ———— Trust charitable—*construction of conditional gift—cypres doctrine*—To determine the true construction of a deed of settlement regard must be had to the object and scope of the instrument judged if necessary by surrounding circumstances Where a charitable gift is made upon a condition precedent the gift fails if the condition is not satisfied To attract the cypres doctrine an absolute declaration of intention to give a charity must be established SREEMATTY SANTOVA ROY v THE ADVOCATE GENERAL BENGAL

25 C W N 344

5 ———— Court's power to sanction sale of trust property—*Voluntary settlement—Sale of trust property—Trustees having no express power to sell immoveable property—Remainder estate in favour of issue of the tenant for life—Trustees contracting to sell immoveable property with the consent of beneficiaries living—Such consent not sufficient as issue may include unborn children or grand-children of the tenant for life—Sanction of Court to a sale by trustees under its extraordinary jurisdiction—Sanction given in a case of emergency—The Indian Trusts Act (II of 1882) ss 20 36 40* An immoveable property in Bombay was settled in trust in February 1898 by a Parsee lady since deceased the trustees being her two daughters *S* and *R* The trusts were for the settlor for life with remainder as to one moiety for *R* for life with remainder for the issue of the body of the said *R* in the shares prescribed by law as if the said *R* had died possessed of the said share in estate leaving such issue only as her right heirs and in default of such issue upon the trusts hereinafter declared in regard to the other half The other moiety went to the other daughter *S* for life with a limitation over to her issue similar to that contained as regards *R*'s moiety There was an ultimate gift over of all the property to charity in case there should be no person living entitled to take the said premises under the trusts hereinbefore declared In March 1918 the trustees entered into an agreement of sale of the property at a fairly advantageous price All the beneficiaries living at the date of the agreement namely *R S* and her six children had consented to the sale The trust instrument itself did not contain a power of sale and the purchasers did not accept the title without the sanction of the Court The trustees accordingly presented a petition to the Court asking for sanction It was urged that ss 40 and 36 of the Indian Trusts Act II of 1882 enabled the trustees to effect such a sale or in the alternative that the case was one of emergency not foreseen by the author of the trust The property stood at

TRUST—*concld*

the corner of two streets and was liable to a set back under Municipal Regulations and if the set back arose it would be very seriously depreciated The property further needed heavy repairs and was defective as regards sanitary conveniences The trustees apprehended that they might be served any moment with a sanitary notice which might result in a set back being enforced *Held* (i) that the proposed sale could not be said to have been consented to by all the beneficiaries interested under the trust instrument appearing before the Court inasmuch as it was possible that when the settlement came finally to be construed and the trusts wound up some child or grandchild born hereafter might be entitled to a share in the property (ii) that the present case however was one of emergency not foreseen or anticipated by the author of the trust and the sale though not provided for by the trust instrument ought in the interests of all the beneficiaries concerned to be sanctioned by the Court in the exercise of its extraordinary jurisdiction (iii) that the extraordinary jurisdiction of the Court to sanction a sale of immoveable property in the absence of a power of sale in that behalf in the trust instrument is of an extremely delicate character and should be exercised with the greatest caution *In re New (1901) 2 Ch 534* and *In re Tollemache (1903) 1 Ch 457 955* referred to *In re* SHIRINBAI MERWANJI (1918)

I L R 43 Bom 519

TRUST DEED

See STAMP ACT 1899 s 2 (24) SCH I ART 7 I L R 35 Bom 444

TRUST ENDOWMENT

———— *Held* that possession of a portion of endowment property by other persons who pay over and apportion revenue to different purposes of the trust is not incompatible with the position of general trustee but may be adverse to him AMBALAVANA PANDARA SAUNIDHI AVERGAL v SRI MEENAKSHI SUNDARESWARAL DARAS PANAM 25 C W N 1

TRUST PROPERTY

See PRINCIPAL AND AGENT

L R 46 I A 250

See TRUSTEE I L R 38 Mad 71

———— *Permanent lease not void ab initio* A permanent lease of trust lands is not void *ab initio* it is only voidable KADIR MASTAN POWTHER v SENGAMMAL (1920)

I L R 43 Mad. 433

———— *Suit for account by trustee against trustee de son tort—Intermeddling when there is a personal representative—Limitation Act (IX of 1908) s 10 applicability to suit for accounts in respect of trust property—Limitation Act (XV of 1877) Sch II Art 120—Continuous obligation* The Plaintiff and another person as executors and trustees appointed by the Will of a Hindu lady took out probate but the estate was administered by the latter alone during his life time and on his death in 1900 by his son and by his grandsons the Defendants on the death of his son In 1915 the Plaintiff sued the Defendants for accounts *Held*—That the Defendants were in the position of a trustee de son

TRUST PROPERTY—*contd*

and it was not open to them to deny their liability as such or to contend that they were trespassers and could not therefore be liable to render accounts The rule of English law that no liability as *executor de son tort* can arise where there is a personal representative did not apply in this case where Plaintiff the rightful executor took no part in the administration when the Defendants were intermeddling with the estate *Narayanasami v Esa Abbayi I L R 28 Mad 351 (1905)* referred to That the trustee represents the *cestui que trust* and the suit for accounts at the instance of the Plaintiff was maintainable against the Defendants That under the present Limitation Act a suit for accounts in respect of trust property comes under s 10 and a trustee *de son tort* stands in the same position as an express trustee That the claim for accounts for six years prior to the institution of the suit would be saved by Art 120 of the Limitation Act of 1877 The obligation of a trustee to account being continuous *Held*—That the suit was barred as to the Defendants dealings with the trust property from 1900 to 1903 but was not barred as to their dealings from 1904 DHANPAT SINGH KHETTRY *v* MOHESHNATH TEWARI
24 C W N 752

TRUSTEE

See CHURCH I L R 36 Mad 418

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 92 I L R 37 Mad 184
I L R 40 Bom 439

See LIMITATION ACT (XV OF 1877) s 10
I L R 35 Bom 49

SCH II ART 120
I L R 38 Mad 260

See MORTGAGE 14 C W N 579

See RELIGIOUS ENDOWMENTS ACT (XX OF 1863) s 3 I L R 38 Mad 1176

See TRUSTEES AND MORTGAGEES POWERS ACT I L R 35 Bom 380

———— alienation by—

See LIMITATION I L R 37 Bom 231

———— alienee of—

See PARTIES I L R 42 Calc 1135

———— appointment of—

See MAHOMEDAN LAW—ENDOWMENT
I L R 43 Calc 1085

See RELIGIOUS ENDOWMENT ACT (XX OF 1863) s 5 14 C W N 1104

———— compromise of suit by—

See TRUSTEE I L R 39 Mad 115

———— death of pending appeal—

See CIVIL PROCEDURE CODE (ACT V OF 1908) ss 92 AND 93
I L R 38 Mad 1064

———— liability of on hundi—

See NEGOTIABLE INSTRUMENTS ACT ss 26 27 28 I L R 41 Mad 815

———— line of failure of—

See RELIGIOUS ENDOWMENT
I L R 40 Mad 612

TRUSTEE—*contd*

———— loan by—

See MAHOMEDAN LAW—ENDOWMENT
I L R 37 Calc. 149

———— of a temple in Malabar—

See LIMITATION ACT (IX OF 1908) SCH I ART 124 I L R 41 Mad. 4

———— of charitable inams—

See CHARITABLE INAMS
L. L. P 40 Mad. 939

———— power of dismissal by—

See TRUST I L R 41 Calc. 19

———— suit against—

See LIMITATION ACT (IX OF 1908) s 10
I L. R 41 Mad. 319

———— suit by against co trustee—

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 92 I L R 40 Bom 439

———— suit for recovery of office of—

See CIVIL PROCEDURE CODE (ACT XIV OF 1882) s 539
I L R 36 Mad 364

———— suit to remove—

See PARTIES I L. R 42 Calc 1135

———— transfer by—

See MAHOMEDAN—LAW—ENDOWMENT
I L R 47 Calc. 866

1 ———— Powers of investment of—*Investment by trustees, who are members of a firm in the firm under direction of cestui que trust—in the firm under direction in a fiduciary capacity Firm does not hold the money in a fiduciary capacity —Indian Trusts Act s 51* Where the settlor appoints the members of a banking firm as trustees and directs them to invest the trust funds with the firm in deposit account without any directions which would constitute the firm a trustee such funds are when invested, held by the firm as its own property and the relation between the firm on the one hand and the trustees and settlor on the other is merely that of debtor and creditor On the bankruptcy of the firm such amount cannot be recovered in full but can only be proved as a debt The doctrine embodied in s 51 of the Trusts Act that a trustee cannot use trust funds for his own profit does not apply where the settlor directs such use *In re Beale Ex parte Corbridge L R 4 Ch D 246* referred to OFFICIAL ASSIGNEE OF MADRAS *v* KRISHNASWAMI NAIDU (1909) I L R 33 Mad. 154

2 ————Trustee mixing trust money with his own—*Indian Insolvency Act 11 & 12 Vict c XXI s 24—Voluntary payment* By a resolution dated 31st July 1906 the Directors of the Madras Equitable Insurance Company resolved that a sum of Rs 75 000 standing to the credit of the company with Messrs Arbuthnot & Co its Secretaries and Treasurers should be invested in Government promissory notes Messrs Arbuthnot & Co purchased for the Insurance Company Rs 25 000 of Government promissory notes on 7th August 1906 Rs 0 000 on 8th October 1906 and R 10 000 on 20th October 1906 the securities being credited to the Insurance Company On 22nd October 1906 Arbuthnot & Co failed *Held* that Arbuthnot & Co held

TRUSTEE—*contd*

the securities as trustees for the Insurance Company which was entitled to rank as a secured creditor *Held* also that the fact that Arbuthnot & Co before purchasing the Government promissory notes mixed up the Insurance Company s money with their own and used it in their banking business did not amount to misappropriation of the money the trust having a lien on the aggregate amount in the hands of the trustee and any sum which may have been drawn for the trustee s own u e being deemed to have been taken out of his own money *Held* further that even if Arbuthnot & Co could be held to have misappropriated the trust money a subsequent payment in reparation by them would not amount to a voluntary payment within the m aning of s. 24 of the Indian Insolvency Act (1848) 11 & 12 Vict Cap XXI RAMSAY & Co *v* THE OFFICIAL ASSIGNEE OF MADRAS (1912) I L R 35 Mad 712

3 ———— Breach of trust—*Liability in damages—Failure to trust invest funds in authorised se urities—Indian Trusts Act (II of 1882) s 20 —Failure of unauthorised security—Degree of care and prudence—Indian Trusts Act (II of 1882) ss 15 and 20—Fund to be applied immediately or at an early date construction of—Fund payable to minor if payable to guardian—Liability of trustee for interest—Interest on damages—Indian Trus s Act (II of 1882) ss 41 and 23* A testator appointed certain p rsons as trustees and directed them to realise an amount payable by the Oriental Life Assurance Company and to pay a sum of Rs 200 to his brother another sum of Rs 400 to his daughter for her bride s jewels and the remainder to his minor son The trustees realise the amount due from the Insurance Company and after paying Rs 200 to the testator s brother invested the balance on one year's fixed deposit with Messrs Arbuthnot & Co who were then believed to be in very good credit After the deposit had been renewed several times Messrs Arbuthnot & Co became insolvent and the trust fund was lost The plaintiff who was appointed by the Court as trustee in the place of the defendants (who were the previous trustees appo nted under the will) brought this suit against the latter for damages for loss of the trust funds by reason of their breach of trust The District Judge decreed damages against the defendants who preferred a Second Appeal to the High Court *Held* that the defendants were liable in damages for breach of trust As regards the amount payable to the minor son it could not be applied for the purposes of the trust immediately or at an early date as the trustees could not pay the money to the minor until the attainment of his majority nor could it be paid to the guardian of the minor during minority S 41 of the Trusts Act permits payment to the guardian only of the income of the property The specific provi ions contained in the other sections of the Indian Trusts Act are as obligatory as the general provisions of s 15 of the said Act The defendants were bound to invest the trust moneys in the securities specified in s 20 of the Indian Trusts Act and having failed to do so they must be held to have committed a breach of trust although they had acted honestly and with the prudence which an ordinary man would exercise in the conduct of his own affairs A trustee guilty of breach of trust by not investing trust funds as required by s 20 of the Indian Trusts Act is not exempted by s 15 thereof from liability in damages The Indian Courts have not been given the power (conferred by statutes in England) to protect trustees in any case where a clear breach of trust has been committed Where a trustee invests money in an unauthorized security this must be treated as tantamount to failure to invest within the terms of s 23 cl (c) of the Trusts Act and he is liable to pay interest under that section It may be doubted whether the rule disentitling the beneficiary to interest except in the cases enumerated in s 23 could be applied where the trust money has been lost in an unauthorised investment The Court should have power in such cases to award interest as damages TIRUPATIRAYUDU NAIDU *v* LAKSHMINARASAMMA (1912) I L R 38 Mad 71

4 ———— Powers improperly and unreasonably exercised—*Liability of transferee of trust estate—Compromise of suit by trustee—Decree ordering party benefiting by breach of trust to repay benefit—Compromise where minor is party to suit—Civil Procedure Code (Act XIV of 1882) s 462* In the suit out of which this appeal arose the plaintiff (respondent) was the minor Raja of Ramnad The first defendant (appellant) was a creditor of the late Raja and the party in who e favour the three instruments which the suit sought to set aside were made The second defendant was the trustee appointed under a deed of settlement executed by the late Raja on 12th July 1895 The suit was brought for a declaration that an agreement of 16th January 1899 between the appellant and the trustee and two mortgages of 6th and 13th July 1899 executed by the trustee in favour of the appellant were invalid and for an order that a sum of Rs 43 C00 paid under those instruments should be repaid by the appellant to the credit of the trust estate The validity of the deeds was largely dependent on the consideration of whether the trustee under the voluntary settlement of 12th July 1895 had power to give a mortgage bond for four lakhs of rupees on the security of a suitable portion of the Ramnad estate to the then Raja of Ramnad *Held* by the Judicial Committee (upholding the decision of the High Court) that on the evidence and the construction of the settlement and under the circumstances of the case the power of the trustee was not exercised properly and reasonably and in the interest of the trust estate that the deed of comprom e was therefore not valid and that being so the mortgages could not be regarded as valid and binding on the properties therein comprised. Their Lordships concurred in the conclu ions of the High Court both as to the validity of the deed of compromise and of the two mortgages and as to the amount of the re payment ordered to be made by the appellant to the credit of the trust e tate Even if the deed of comprom e could be supported on other grounds it was invalid as not complying with the condition impo ed by s 462 of the Civil Procedure Code 188° in that one of the parties to the suit being a minor the sanction of the Court to the making of the comprom e had not been obtained *Manohar Lal v Jadu Nath Singh I L R 28 All 585 5°9 L R 33 I A 1°8 131 Per* Lord MACNAGHTEN and *Ganesha Row v*

TRUSTEE—*contd*

Tuljaram Row I L R 36 Mad 295 L R 40 I A 132 followed SUBRAMANIAN CHETTIAR *v* RAJA RAJESWARA DORAI (1915)

I L R 39 Mad 115

TRUSTEES AND MORTGAGEES POWERS ACT (XXVII OF 1866)

——— s 3—

See MAHOMEDAN LAW—WAKF

I L R 37 Calc 870

——— ss 8 20 32—

See RECEIVER **I L R 43 Calc 124**

——— s 43—

——— *Trust deed—Application by trustees to divert funds to other objects—Trustee s opinion—Cypres doctrine* The surviving trustees of a fund founded with the object of distributing food amongst such poor persons as might assemble at certain stated times and places petitioned the Court under s 43 of the Trustees and Mortgagees Powers Act to divert the fund to more useful purposes on the grounds that in their opinion the charity tended to pauperise the recipients thereof and to encourage thriftlessness and laziness and vagrancy and to produce other undesirable results that the donor s intention was to benefit the poor of Bombay and the best way to carry out his intention would be to devote the trust funds to the education of poor boys *Held* that the application was entirely misconceived so far as the Act was concerned as the word trustees has been deleted in s 43 of the Trustees and Mortgagees Powers Act of 1882 Even if the Act applied the Court could not under s 43 do more than give advice or directions It could not pass any order which would in any way alter the duties of the trustees under the trust deed *Held* further on the merits of the application that the trustees had no justification for coming to the Court to try and get their duties under the trust deed altered according to their ideas of what was fit and proper *In re Weir Hospital (1910) 2 Ch 124* referred to *In re* CURIMBHOY EBRAHIM BART (1910)

I L R 35 Bom 380

——— s 45—

See MAHOMEDAN LAW—WAKF

I L R 37 Calc 870

TRUSTEE DE FACTO

See TRUSTEE OF A TEMPLE

I L R 39 Mad 456

TRUSTEE IN BANKRUPTCY

See INSOLVENCY **I L R 38 Calc 542**

TRUSTEE OF TEMPLE

See SPECIFIC RELIEF ACT ss 9 42

I L R 33 Mad 452

See TRUSTEE

——— and Temple Committees respective rights of—

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 92 **I L R 40 Mad 212**

1 ——— *Delegation of powers of the trustee—Power to appoint and dismiss hereditary temple servants—Delegation of such*

TRUSTEE OF TEMPLE—*contd*

power to an agent whether valid—Dismissal of archaka by agent whether valid A trustee of a temple cannot appoint an agent to do acts which involve the exercise of judicial discretion by himself He cannot therefore delegate to an agent his power of appointing and dismissing hereditary temple servants who cannot be dismissed without sufficient cause being established *Krishnamacharlu v Rangacharlu (1893) I L R 16 Mad 73* referred to PARASURAMA UDAYAN *v* THIRUMAL ROW SAHIB (1921)

I L R 44 Mad 636

2 ——— *Trustees of Temple powers of suspend hereditary archakas—Suspension otherwise justifiable not bad for want of previous notice—Archaka a servant subject to the disciplinary power of trustees—Power of interim suspension incidental to trustee s power to enquire and dismiss for misconduct* The position of the hereditary archaka of a temple is that of a servant subject to the disciplinary power of the trustee The trustee of a temple has power to inquire into the conduct of such servants and dismiss them for misconduct The right of *interim* suspension pending such inquiry is incidental to such power and no notice is required for an *ad interim* suspension pending enquiry Even if such notice is deemed necessary the order of suspension will not be set aside if misconduct is proved at the enquiry A hereditary archaka can be dismissed by the trustee but only for good reasons which are liable to examination by a Court of Justice SESHADRI AIYANGAR *v* RANGA BHATTAR (1912)

I L R 35 Mad. 631

3 ——— *Transfer of management—Void or voidable—Setting aside if necessary—Suit by trustees to recover temple properties and for account—Indian Limitation Act (IX of 1908) Art 91 or 124 applicability of—Some trustees joined as defendants—Denial of their title by plaintiffs—Abandonment of the denial—Decree in favour of plaintiffs and defendants—Expenses during management—Right for reimbursement—Right to retain possession of trust property—Indian Trusts Act (II of 1882) s 32—Decree for possession and for account—Provision for account of expenses incurred in the final decree* The plaintiffs who were the *huldars* (trustees) of a temple brought the suit on the 30th January 1911 to recover possession of the temple properties from the defendants to whom the trustees had made over the management of the temple under an agreement dated 21st June 1901 The plaintiffs alleged in the plaint that the ninth and the tenth defendants (who were also originally *huldars*) had lost their right to the office owing to their neglect to discharge its duties and that they were joined as defendants merely because they asserted a right to it But at the trial in the original Court the plaintiffs abandoned this contention The defendants contended *inter alia* that the suit was bad for non joinder of all the trustees as plaintiffs and was barred under art 91 of the Limitation Act and that the defendants were entitled to be reimbursed out of the trust properties for expenses properly incurred by them during their management and to retain possession of the properties until they were so reimbursed The lower Court passed a decree in favour of the

TRUSTEE OF TEMPLE—*contd*

plaintiffs and the ninth and the tenth defendants for possession and a preliminary decree for accounts against the defendants *Held* that the objection as to non joinder was not sustainable, but that a decree could be passed in favour of the plaintiffs and the ninth and the tenth defendants as trustees with the consent of the latter and the other defendants *Kokilasari Dasi* v *Mohunt Rudranand Goswami 5 C L J 527* distinguished The transfer to the defendants being void did not require to be set aside Art 91 of the Limitation Act did not apply to the suit but Art 124 was the Article that was applicable and under that Article the suit was not barred *Mallarjun* v *Narhari I L R 25 Bom 337* followed *Gnanasambhanda Pandara Sannadhi* v *Velu Pandaram I L R 23 Mad 371* explained *Sidhu Sahu* v *Gopicharan 17 C L J 233* referred to A trustee of a public charitable endowment like a trustee of a private trust is entitled to reimburse himself all expenses properly incurred in connection with the trust and has a first charge enforceable only by prohibiting any disposition of the trust property without previous payment of such expenses—not that is to say in the ordinary way by sale of the property subject to such charge It is the duty of the Court especially in the case of a public charitable trust to take the trust property out of the possession of persons not entitled to hold it while making due possession for any claims that they may have in respect of expenditure properly incurred in connection therewith *Held* consequently that the defendants were not entitled to retain possession of the suit properties but that the preliminary decree should direct that accounts should be taken as to what was due to the defendants from the trust leaving it to be determined by the final decree how such claim if established should be enforced NARAYANAN v LAKSHMANAN (1915)
I L R 39 Mad. 456

4 ——————— *Suspension from office of an hereditary archaka—Order passed without notice to archaka or previous inquiry whether valid—Order ad interim continued for an unreasonably long time whether legal—Punitive order of suspension whether valid without notice* Where the trustees of a temple suspended an hereditary archaka of the temple from his office on account of certain imputations of misconduct made against him without giving him notice or making any inquiry previous to passing such order and no subsequent inquiry was made by them for fourteen months after the date of the order whereupon the latter brought a suit to recover his office and damages for wrongful suspension *Held* that the order of suspension pending inquiry into alleged misconduct should not have been continued in force for a longer period than was reasonably necessary that in this case the delay of fourteen months between the date of the order and the institution of the suit being unreasonable the order as an *ad interim* order ceased to be valid before the date of the suit and that the order viewed as a punitive order was invalid as having been passed without notice and inquiry whatever the merits of the case might be *Tiruvambala Desikar* v *Manikkavachaka Desikar I L R 40 Mad 177* and *Venkatanarayana Pillai* v *Ponnuswami Nadar I L R 41 Mad 357* followed *Willis* v *Sir G Gipps 5 Moore 379* applied *Seshadri Iyengar* v *Ranga Bhattar I L R 35 Mad 631* distinguished *Held* further that out of the temple funds the plaintiff was entitled to recover damages due to him as the trustees in passing the order of suspension and continuing it acted in their capacity as trustees and in what they conceived to be the proper discharge of their duties on behalf of the temple JAGANNATHA ACHARIAR v SEENU BHATTACHARIAR (1919) I L R 42 Mad 618

TRUSTEES OF CASTE FUNDS

See TRUSTS ACT (II OF 1882) s 5 AND 6
I L R 24 Bom 467

TRUSTS ACT (II OF 1882)

——— s 3 and 6—

See MORTGAGE 24 C W N 769

——— s 5—

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 60 I L R 37 Bom 4 1

See STAMP ACT (II OF 1899) SCH I ART 22 I L R 38 Bom 576

——————— *Trust declared outside British India—Proceedings in British Indian Courts—Redeemed mortgagee retaining mortgaged share as trustee for mortgagor—Notice of assignment by mortgagor—Death of mortgagor before registration of transfer to assignee—Validity of trust—Completion of gift* A through her agent *T* mortgaged a share in the Bank of Bombay with *P* Later she directed *T* to redeem it and have it transferred by way of gift to her two nephews It was redeemed and a transfer form was signed by *P* in favour of the nephews but the Bank declined to register it on the ground that the transferees were minors A thereupon directed that it should be transferred to the names of *T* and *M* jointly as trustees for the minors A transfer was accordingly signed by *P* in favour of *T* and *M* and this was duly registered by the Bank The day before it was lodged with the Bank for registration A died It was contended that the gift was imperfect and the trust in favour of the nephews invalid *Held* that as the trust was set up in a British Indian Court the Indian Trusts Act applied although both A and *P* were living and domiciled in Kathiawar (*i e* outside British India) when A declared her wishes regarding the share *Held* further that A had an equitable interest in the share and that the mortgage having been discharged *P* the registered proprietor held the legal title as trustee and was bound to deal with it as *T* or his principal A should direct *Held* further that the share had passed out of the control of A before her death the certificate as well as the transfer being in the hands or under the control of *T* to whom her desire to benefit the minors had been communicated and that the legal holder *P* having notice and having signed a transfer in favour of the minors before A's death could only convey for their benefit and had subsequently done so to the trustees desired by A *Held* therefore that the trust was valid and the gift complete MADONJI DEVCHAND v TRIBHOWAN VIRCHAND (1911) I L R 36 Bom 306

TRUSTS ACT (II OF 1882)—*contd*

———— ss 5 and 6—

See DEPOSIT I L R 35 Bom 403

———— Caste fund—*Trustee of caste funds—Extent of right to inspect documents—Demand and refusal—Jurisdiction of Civil Courts in caste questions—Application of Indian Trusts Act (II of 1882) ss 5 and 6 to creation of trusts of caste funds—Civil Procedure Code (Act V of 1908) s 151* As a result of dissensions in a Hindu caste a suit was filed by the plaintiff a trustee of certain caste funds and member of the Managing Committee, against the defendant a co trustee and the President of that Committee The plaintiff prayed for a declaration that he had the right to inspect all books and documents of the Mahajan Managing Committee Sub Committee and Trustees and for an injunction restraining the defendant from interfering with him in the exercise of such right The only two documents about which there was any real controversy were the minutes of the Sub Committee and the correspondence file of the Mahajan *Held* that as trustees of the Derasar and Sadharan funds, the plaintiff had no right either in law or by virtue of any caste rules to the roving inspection claimed *Bank of Bombay v Suleman I L R 32 Bom 466 474*, referred to *Held* further that the Mahajan fund of this caste being a purely secular fund the Indian Trust Act applied and the plaintiff could not claim to have been made a trustee of that fund merely by virtue of a caste resolution and his own letter of acceptance *Held* further on the evidence that there had been no express demand addressed by the plaintiff to the proper quarter and no refusal by the defendant such as would be necessary to enable a suit of this character to succeed *Held* further that where rights to property are not involved all matters of internal management must be left to the decision of the caste The question in dispute was in reality a question between the caste and a section apparently a small section of the caste led by the plaintiff and as such it was outside the Court s jurisdiction in accordance with the decision in *Nemchand v Savaichand I L R 5 Bom 84 F N*, *Lalji Shamji v Walji Wardhman I L R 19 Bom 507* referred to and distinguished *Held* lastly that when according to well established principles certain questions have been removed from the jurisdiction of the Court they cannot be brought within the jurisdiction under s 151 of the Civil Procedure Code (Act V of 1908) JETHABHAI NARSEY v CHAPSEY COOVERJI (1909) I L R 34 Bom 467

———— s 10—

See TRUST PROPERTY 24 C W N 752

———— ss 15 and 20—

See TRUSTEE I L R 38 Mad 71

———— ss 20 36 40—

See TRUST I L R 43 Bom 519

See TRUSTEE I L R 38 Mad 71

———— s 32—

See TRUSTEES OF A TEMPLE. I L R 39 Mad 456

———— s 36—Lease by trustee—*Lease by trustee for term exceeding twenty one years not void but only voidable* A lease by a trustee for a term exceeding twenty one years is not void and illegal under s 36 of the Indian Trusts Acts, but only voidable at the instance of the *cestui que trust* KADIR IBRAHI POWTHEN v ARUNACHELLAM CHETTIAR (1909) I L R 33 Mad. 397

———— ss 38 and 40—

See TRUST I L R 43 Bom 519

———— ss 41 95—

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 54 I L R 41 Bom 433

———— s 42—

See CHARITABLE TRUST I L R 39 Mad. 597

———— s 51—

See TRUSTEE POWERS OF INVESTMENT OF I L R 33 Mad 154

———— ss 80 to 96—

See LIMITATION ACT 1877 ART 91 I L R 38 Mad. 321

———— s 83—

See SETTLEMENT BY A HINDU WOMAN ON TRUSTS I L R 40 Bom 341

———— ss 86, 89 90 91 and 96—

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 91 I L R 8 Mad. 310

———— s 88—

See INAM I L R 42 Mad 161

See PRINCIPAL AND AGENT I L R 41 All. 635

———— *Trust—Trustee entering into dealings in which his own interest may come into conflict with his duty as trustee—Purchase of mortgage-deed comprising property belonging at the time of purchase to the trust* A member of a body of trustees purchased for a very low price at an auction sale in execution of a simple money decree a mortgage bond held by the trustees as such comprising amongst other property a village of which two thirds had been previously purchased by the author of the trust and formed part of the trust property Neither the purchaser nor the trustees had obtained the leave of the Court to bid The auction purchaser claimed the purchase for himself and sought to enforce the mortgage by suit *Held* that the auction purchaser could not be allowed to do this but must on the contrary be taken to have made the purchase for the benefit of the trust All that he was entitled to was to be repaid the actual sum which he himself paid for the mortgage deed at the auction sale. GAURI NARAIN v KUNJ BEHARI LAL (1912) I L R 34 All. 308

———— *Sale deed in favour of uncle—Fiduciary relationship of contracting parties—Voidable contract—Indian Contract Act (IX of 1872) ss 19 and 19A—Hindu Law—Marriage—Asura form—Succession* Two sisters M and S executed a sale deed in favour of their uncle After the death of M S sued for a declaration that the sale deed was obtained by the uncle through fraud misrepresentation and undue influence and to recover possession of the property from him S claimed the property both

TRUST ACT (II OF 1882)—*contd*

——— s. 88—*contd*

in her own right and also as the heir of *M* The lower Courts allowed the plaintiff s claim holding that the uncle was in a fiduciary relation to his nieces and the consideration paid under the sale deed was inadequate. On appeal to the High Court two contentions were raised (i) that *S* was not the heir of *M* and (ii) that claiming through *M* *S* had no right to exercise the option to avoid the deed as to one moiety of the property since *M* in her lifetime did not exercise the option *Held* that *S* was heir of *M* as *M* s marriage was performed in *Asura* form *Held* further that on the facts found the case fell within the scope of s 88 of the Indian Trusts Act 1882 and the sale deed was therefore null and void. GOVIND RAMAJI *v* SAVITRI (1918)
I L R 43 Bom 173

——— s 90—

See DEKKHAN AGRICULTURISTS RELIEF ACT (XVII OF 1879)
I L R 40 Bom 483

See HINDU LAW—(WIDOW)
I L R 43 All 374

——— *Co owner right of to appropriate rents collected by him towards his share* A co owner who has collected as rent more than sufficient to pay the Government peshkash and has paid it is not entitled to sue another co owner for contribution to the peshkash S 90 of Trusts Act (II of 1882) referred to SIVARNARASA REDDI *v* DORAISAMI PEDDI (1918)
I L R 41 Mad 861

——— s 91—

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 40 I L R 40 Bom. 498

——— s 95—

See TRANSFER OF PROPERTY ACT 1882 s. 54 I L R 41 Bom 438

TURN OF WORSHIP

See PALAS OR TURNS OF WORSHIP

See USUFRUCTUARY MORTGAGE
I. L. R 39 Calc 227

U

UBAYAKAR

See HINDU LAW—CUSTOM
I L R 40 Mad. 1108

ULTRA VIRES

See ASSESSMENT I L R 37 Calc 374

See LEGISLATION ULTRA VIRES

See LIMITATION ACT (IX OF 1908) SCH I ART 14 I L R 39 Bom 494

See MERCHANT SEAMEN ACT (I OF 1859) s 83 CL. (4) I L R 39 Bom 558

See PROSECUTION—BYE LAWS.
I L R 37 Calc. 545

ULTRA VIRES—*contd*

——— Orders—

See BOMBAY DISTRICT POLICE ACT s 42
I L R 36 Bom 504

See LIMITATION ACT 1877 SCH II ART 14 I L R 36 Bom 325

——— Rules—

See ADEN SETTLEMENT REGULATION (VII OF 1900) s 13
I L R 40 Bom 446

See RAILWAYS ACT (IX OF 1890) ss 72 47 I L R 39 Bom 485

See SCHEDULED DISTRICTS ACT (XIV OF 1874) s 7 I L R 41 Bom 657

——— *Bengal Tenancy Act (VIII of 1885) s 101 cls 2 (a) and (3)— A large proportion of landlords meaning of—Order passed by Local Government under s 101 cl 2 (a) at the instance of landlords having large proportion of interest effect of—Jurisdiction of Civil Court to question validity of the order after issue of Notification under the section* The words a large proportion of the landlords in s 101 cl 2 (*a*) of the Bengal Tenancy Act mean a large porportion of the landlords as determined by the interests they hold in the estates Where therefore an application was made by landlords having a large proportion of interest in an estate to the Local Government for the issue of an order under the said section and an order was accordingly issued by a Notification in the official Gazette *Held* that the order was not *ultra vires* *Held* further that it was with the Local Government the discretion rested to determine whether the application was in due form under the provisions of s 101 cl 2 (*a*) of the Act and after the Local Government had decided that point and had issued the Notification the jurisdiction of the Civil Court to interfere with the order was barred by cl 3 of the same section SECRETARY OF STATE FOR INDIA *v* PURNENDU NARAYAN ROY (1912)
I L R 40 Calc 123

——— A Calcutta landlord was tried by the President of the Tribunal appointed under the Calcutta Improvement Act 1911, for cutting off water connection and was fined On a rule to set aside *Held* that the provision of s 20 of the Act was not *ultra vires* but rule 4 framed under s 93 was GOBERDHONE DAS DEORA *v* DOOLICHAND SETHIA
I L R 48 Calc 955

UNALIENATED VILLAGE

See BOMBAY LAND REVENUE CODE (BOM ACT V OF 1879)—

Ss 83 216 I L R 44 Bom 566

S 216 I. L. R 45 Bom 994

UNANIMOUS VERDICT

See CRIMINAL TRESPASS
I L R 41 Calc 662

UNAUTHORISED ACT

See PRINCIPAL AND AGENT
I. L. R. 43 Calc 511

UNCERTAIN EVENT

See Will I L R 38 Calc 327

UNCERTAIN POSSESSION

See Limitation I L R 44 Mad 883

UNCERTAINTY

See Custom I L R 45 Calc 475

See Dedication I L R 46 Calc 951

See Religious Trust I L R 40 Calc 232

UNCERTIFIED PAYMENT

See Limitation I L R 45 Calc 630

UNCHASTITY

See Hindu Law—Inheritance I L R 36 Bom. 138

See Hindu Law—Maintenance I L R 34 Bom 278
I L R 39 All 234

UNCONSCIONABLE BARGAIN

See Contract Act ss 16 and 74

See Interest I L R 42 Calc 652
I L R 43 Calc 632

See Specific Performance I L R 38 Calc 805

UNDEFENDED SUIT

See Ex Parte Decree I L R 43 Calc 1001

UNDER BROKER

——— dismissal of—

See Damages I L R 47 Calc 290

UNDER ESTIMATION OF VALUE OF PROPERTY

See Appeal to Privy Council I L R 40 Calc 635

UNDERGROUND RIGHTS

See Landlord and Tenant I L R 37 Calc 723

See Mineral Rights

UNDER PROPRIETOR

See Birt I L R 43 All 358

UNDER RAIYATS

See Ejectment I L R 40 Calc 858

See Landlord and Tenant I L R 43 Calc 164

See Occupancy Holding I L R 44 Calc 272

See Occupancy Right I L R 46 Calc 43

See Orissa Tenancy Act 1913 s 57 3 Pat L J 112

UNDER RAIYATS—*contd*

1 ——— *Eviction of occupancy raiyat under decree for rent—Position of under raiyat* Where an occupancy *raiyat* in Chota Nagpur has been evicted in execution of a decree for rent obtained against him by the landlord an under *raiyat* holding under him becomes a trespasser and is liable to be evicted by the landlord by a suit in the Courts of ordinary civil jurisdiction In a suit for eviction by the landlord under such circumstances the under *raiyat* has no *locus standi* under the Bengal Rent Act 1859 to contest the validity of the decree obtained by the landlord against the occupancy *raiyat* *Bishun Narayan Das Poddar v Chandra Kanta Naik*
1 Pat L J 543

2 ——— The heir of an under ryot has no heritable right to continue as such Nadiram Chandra Sil v Srinath Chakravarti
24 C W N 93

3 ——— *Bengal Tenancy (Act VIII of 1885) s 48—Holding of Under raiyat* S 48 of the Bengal Tenancy Act applies to cases in which the land held by the raiyat is co extensive with the land held by the under raiyat Nim Chand Saha v Joy Chandra Nath (1912)
I L R 39 Calc 839

4 ——— *Patta for a period of indefinite duration—Ejectment—Notice—Bengal Tenancy Act (VIII of 1885) s 49 cl (b)* The case of an under raiyat holding under a patta executed before the passing of the Bengal Tenancy Act and not expressly providing for the period of its duration comes within cl (b) of s 49 of the Bengal Tenancy Act and the notice must be as provided thereunder *Madan Chandra Kapali v Jaki Karikar 6 C W N 377* overruled Raj Kumari Debi v Baratulla Mandal (1911)
I L R 39 Calc 278

5 ——— *If may acquire occupancy right—Transferability of under raiyat's interest* The provisions of the Bengal Tenancy Act show that an under raiyat may under certain circumstances acquire an occupancy right If he does acquire such a right that right may be transferable by custom or local usage but there is no authority for the proposition that the interest of an under raiyat is *ipso facto* transferable Akhil Chandra Biswas v Hasan Ali Sadagar (1913)
19 C W N 246

6 ——— *Acquisition of status of* A person in whose favour a permanent sub lease has been granted by a raiyat acquires on payment of rent to his grantor the status at least of an under raivat if he is shown to have been in possession of the holding from before the lease Janakinath Hore v Prabhasini Dasi (1915)
19 C W N 1077
I L R 43 Calc 1?8

7 ——— *Permanent lease by if valid—Suit by lessee to recover possession from lessor* As between grantor and grantee a permanent lease granted by an under raiyat is a valid document and the grantee can recover possession of the land from the grantor on the strength of such a lease *Gurudas Das v Kalidas Changa 18 C W N 889* followed Purushulla Sheikh v Sital Chandra Das (1915)
19 C. W N 1110

UNDER RAIYATS—concld

8 ——————— *Status of under raiyat where raiyat evicted from occupancy holding for non payment of rent in Chota Nagpur—Interest of under raiyat void or voidable—Distinction between proceedings with respect to a tenure holder and a raiyat—Right of under raiyat to contest the validity of the decree against his lessor* Where a holding of an occupancy raiyat is sold the interest of an under raiyat is not void but voidable But when the occupancy holding has been destroyed by eviction of the raiyat for non payment of rent s 82 of Act X of 1859 provides that the decree holder shall be put in physical possession of the land There is a clear distinction between proceedings in regard to a tenure holder and proceedings in regard to a raiyat Where the proceeding has been with regard to a tenure holder or under tenant the decree is to take the form of an order to all raiyats to pay rent to the decree holder and the decree holder cannot be put into actual physical possession of the land An under raiyat cannot contest the validity of the decree against his lessor as a defence to a suit in which it is sought to declare him a trespasser BISHUN NARAIN DASS PODDAR v CHANDRA KANTA NAIK (1916)
20 C W N 1240

9 ——————— *Under raiyat to whom permanent sub lease granted suit for khas possession against—Bengal Tenancy Act (VIII of 1885) s 85—Defendant in possession—Notice to quit under s 49 (b)—Whether defendant can rely upon any subsisting tenancy* In a suit for *khas* possession of the disputed land from the defendant an under raiyat to whom a permanent sub lease had been granted after the passing of the Bengal Tenancy Act in contravention of s 85 it was found that a notice to quit under s 49 (*b*) had been duly served upon him *Held* that the defendant could not rely upon any subsisting tenancy and the plaintiff was entitled to *khas* possession NAZIR ALI SHIKDAR v BANSHI BADAN PATWARI (1917) **23 C W N 435**

10 ——————— *Suit for ejectment of defendant an under raiyat after notice to quit under s 49 of the Bengal Tenancy Act (VIII of 1885)—Defendant setting up permanent sub lease by plaintiff's vendor—S 85 (2)—Lease whether valid—Whether the tenancy can be put an end to by the notice—Whether defendant can rely upon previous possession* Where in the plaintiff's suit to eject the defendant an under raiyat after service of a notice to quit under s 49 of the Bengal Tenancy Act the defendant set up a permanent sub lease granted by the plaintiff's vendor and pleaded that he could not be ejected on the principle that such a lease should be held to be binding on the lessor on the ground of estoppel *Held* that the lease being invalid according to the provisions of cl. (2) of s 85 the tenancy could be put an end to by a notice under s 49 and the defendant not having a subsisting tenancy could not rely upon his previous possession *Held* that the principle of estoppel cannot be invoked to defeat the plain provision of a statute If the contention were given effect to the provisions of cl (2) of s 85 would be defeated in every case ALIMUDDI BEPARI v CHINTAHARAN MUKHOPADHYA (1918) **23 C W N 437**

UNDER RAIYATI HOLDING

See LANDLORD AND TENANT

UNDER RAIYATI HOLDING—contd

See UNDER RAIYAT

——————— *Transferability—Transfer of Property Act (IV of 1882) s 117—Agricultural lands—Relinquishment or abandonment what constitutes* An under raiyati holding is not transferable What is relinquishment or abandonment depends on the substantial effect of what has been done in each case When a tenure or holding apart from the Transfer of Property Act is not transferable it cannot become so unless it is expressly made so by some other statute If it had been intended to make holdings transferable which were before non transferable the Legislature in framing the Bengal Tenancy Act would have said so S 117 of the Transfer of Property Act excludes agricultural land from the operation of the rule which makes leasehold property transferable *Hiramoti Daseya v Annoda Prosad Ghose 7 C L J 555* followed AMINNA SA v JINNAT ALI (1914)
I L R 42 Calc 751

——————— *Transferability—Purchase by landlord in execution of a money decree without objection by tenant—Title and possession* Where an under raiyati holding was without objection on the part of the under raiyat sold successively in execution of two money decrees and purchased at the first sale by a stranger and at the second by the landlord who was the decree holder *Held* that the title of the landlord purchaser should prevail PRAMATHA BHUSAN DEB v RAM CHARAN MONDAL (1917) **22 C W N 124**

UNDER TENANT

See BENGAL RENT ACT 1859 s 1?
2 Pat L J 75

See LANDLORD AND TENANT
I L R 45 Calc 756

UNDER TENURE

See HOMESTEAD LAND
I L R 42 Calc 638

See REVENUE SALE
I L R 37 Calc 559

——————— *Act VIII of 1865 B C s 15—Court sale of under tenure if collusive and fraudulent does not destroy incumbrances—Second appeal—Findings of fact* If a Court sale of an under tenure under Act VIII B C of 1865 had been the result of a corrupt agreement between the under tenure holder and the purchaser at the sale the purchaser would lose the benefit of s 16 of the Act specially if the default in payment of rent had been deliberately incurred in furtherance of such an agreement The findings of fact of the Court of first appeal in this case (which did not result from the misconstruction of a document or the misapplication of law or procedure but depended upon the evidence in the case) being that there had been no fraud or collusion the High Court had no authority to go behind them in second appeal THE MIDNAPUR ZEMINDARI COMPANY v UMA CHARAN MANDAL **24 C W N 201**

——————— *Effect of sale of under tenure by co-sharer landlord for arrears of rent—Non registration of purchase in execution sale by the whole body of landlords—Locus standi to maintain a suit—Rent Recovery Act (X of 1859) ss 27 105 106 108 109 and 110—Civil Procedure Code (VIII of 1859) s 259—Landlord and Tenant Procedure Act (Beng VIII of 1865)* While under

UNDER TENURE—*contd*

s 105 of Act X of 1859 which contemplates a decree by the landlord or the whole body of land lords for an arrear of the entire rent due in respect of an under tenure it is the tenure that is sold under s 108 which does not contemplate a decree for an arrear of rent but a decree for money due on account of a share of rent and a suit for it by only a sharer in a joint undivided estate it is only the right title and interest of the judgment debtor in the under tenure that passes *Doolar Chand Sahoo* v *Lala Chabeel Chand L R 6 I A 47 3 C L R 561* and *Shamchand Kundu* v *Brojonath Pal Chowdhry 12 B L R 484 21 W R 94* followed in principle The purchaser of an under tenure under s 105 of Act X of 1859 is entitled to maintain a suit for possession against a subsequent purchaser under s 108 though he has not got his name registered in the landlord s sherista *Kristo Chunder Ghose* v *Raj Kristo Bandyopadhya I L R 12 Calc 24* followed *Luckhinarain Mitter* v *Khettro Pal Singh Roy 13 B L R 146 20 W R 380* referred to *Patit Shahu* v *Hari Mahanti I L R 27 Calc 789* distinguished *Bichitrananda Roy* v *Behari Lal Pandit 5 C L J 89* questioned The mere fact that a person cannot succeed in a suit does not mean that he has no *locus standi* to maintain the suit It is only where the Legislature distinctly or in effect provides that certain conditions must be fulfilled to entitle a person to maintain a suit and those conditions precedent are not fulfilled that the person has no *locus standi* to sue NILADRI MAHANTI *v* BICHITRANAND ROY (1910)

I L R 37 Calc 823

UNDERTAKING

——— unconditional to pay—

See VARTHAMANAM

I. L. R 38 Mad. 660

UNDERVALUATION OF SUIT

See JURISDICTION I L R 38 Calc 639

UNDISCHARGED BANKRUPT

——— *Vesting order under the Indian Insolvency Act 1848 (11 & 12 Vict C 21) s 7—Subsequently acquired property title to—Right of stranger to dispute title without alleging or proving intervention by the Official Assignee.* At the trial of this suit it appeared according to the admissions made by the plaintiff s witnesses and according to the original documents produced that the plaintiff s predecessor in title one *J* had a vesting order made against him on two occasions under s 7 of the Indian Insolvency Act 1848 *viz* on the 2nd December 1899 and on the 4th May 1905 In case of neither insolvency did *J* get his final discharge On the 1st August 1911 *J* acquired the premises in dispute from one *D* by means of a conveyance bearing that date After *J s* death one *P* took a conveyance of the said premises from the administrator appointed by the Court to *J s* estate *P* was alleged by the plaintiff to be a mere *benamidar* for himself and on the 26th May 1916 a deed of relinquishment was executed by *P* in favour of the plaintiff The issue in the case broadly speaking was whether the plaintiff could prove his title There was no reference in the written statement of the defendant to the fact of either of the two insolvencies of *J* which were apparently brought to the notice of

UNDISCHARGED BANKRUPT—*contd*

the defendant s advisers at a late stage if not actually during the conduct of the plaintiff s case In this state of things at the close of the plaintiff s case the defendant s counsel took the point that the plaintiff s suit should be dismissed without calling on the defendant to enter on his defence the ground being that the title to the said premises had been shown to be vested in some one else according to the plaintiff s evidence *Held* on the authority of *Herbert* v *Sayer 5 Q B 965* that the action must go on as the point raised was not available to a stranger (as distinct from the Official Assignee or his assign) as a complete defence unless he had pleaded and was able to prove that the Official Assignee had intervened In the circumstances of this case leave was given to the defendant to amend his written statement in order to state the fact of each of the said insolvencies and to aver and prove if he could, that at any date down to the institution of this suit the Official Assignee had intervened DASARATHY SINHA *v* MAHAMULYA ASH (1920)

I L R 47 Calc 961

UNDISCLOSED PRINCIPAL

See HUNDI SUIT ON I L R 46 Calc 663

See KUMAUN RULES (1894) R 17 I L R 42 All 642

See PRINCIPAL AND AGENT I L R 39 Calc 802

UNDIVIDED FAMILY

See HINDU LAW—ALIENATION I L R 35 Mad. 177

UNDIVIDED INTEREST

——— purchase of—

See SALE FOR ARREARS OF REVENUE I L R 39 Calc. 353

UNDUE ADVANTAGE

See TEMPORARY INJUNCTION I L R 41 Calc 4o6

UNDUE INFLUENCE

See BENGAL TENANCY ACT 1885 s 0 1 Pat L J 76

See CIVIL PROCEDURE CODE (ACT X OF 1908) O XXII R 3 I L R 38 Mad. 850

See CONTRACT ACT (IX OF 187?)—

S 16

See HINDU LAW—WILL I L R 39 Bom 441

See INTEREST I L R 42 Calc 652 690

See LIMITATION ACT (XV OF 187?) SCH II ART 91 I L R 38 Mad ?01

See PARDANASHIN LADY I L R 43 All 5?5

See SUCCESSION ACT 186? s 2

See TRUSTS ACT (II OF 188?) s 88 I L R 43 Bom 1?3

See WILL I L R 38 Calc 355

UNDUE INFLUENCE—*contd*

1 ——————— *Contract—Illegal composition of non compoundable offence—Stifling prosecution—Suit for refund—Contract Act (IX of 1872) ss 16 19* No refund of money or return of security given under agreement not to prosecute a criminal case will be allowed unless circumstances disclose pressure or undue influence. Mere fear of punishment in a criminal case does not constitute undue influence *Jones v Merionethshire Building Society* [1892] *1 Ch 173* referred to AMJADUNNESSA BIBI v RAHIM BUKSH SHIKDAR (1914) I L R 42 Calc 286

2 ——————— The Judicial Committee did not approve of the idea that in India the law would make the possession of reputation or high standing an element of suspicion BAL GANGADHAR TILAK v SHRI SHRINIWAS PANDIT (1915) 19 C W N 729
I L R 39 Bom 441

UNHYPOTHECATED PROPERTY

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 90 I L R 34 Bom 540

UNENFRANCHISED PERSONAL INAM OF LANDS

——————— *Attachment in execution of decree validity of* Unenfranchised *inam* lands granted not for future public or private services but as a matter of favour for the maintenance of the donee and his heirs are liable to attachment and sale in execution of a decree against the holder of the *inam* *A Vissappa v A Ramajogi (1865) 2 M H C R 319* and *Bhanappa Garu v Kamanna S A No 1397 of 1918* (unreported) followed VENKATARAMA AYYAR v CHANDRASEGARA AYYAR (1921)
I L R 44 Mad 632

UNITED PROVINCES AND OUDH ACTS.

See NORTH WEST PROVINCES AND OUDH ACTS

——————— 1869—I—

See OUDH ESTATES ACT

——————— 1873—VIII—

See NORTHERN INDIA CANAL AND DRAINAGE ACT

XVIII

See NORTH WEST PROVINCE RENT ACT

XIX

See N W P LAND REVENUE ACT

——————— 1876—XVII—

See OUDH LAND REVENUE ACT

——————— 1881—XII—

See NORTH WESTERN PROVINCES RENT ACT

XVIII

See CENTRAL PROVINCES LAND REVENUE ACT

——————— 1886—XXII—

See OUDH RENT ACT

——————— 1898—XI—

See CENTRAL PROVINCES TENANCY ACT

UNITED PROVINCES AND OUDH ACT—*contd*

——————— 1899—III—

See UNITED PROVINCES COURT OF WARDS ACT

——————— 1900—I—

See NORTH WESTERN PROVINCES AND OUDH ACTS

See UNITED PROVINCES MUNICIPALITIES ACT

X

See NORTH WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT

——————— 1901—II—

See AGRA TENANCY ACT

III

See UNITED PROVINCES LAND REVENUE ACT

——————— 1903—II—

See BUNDELKHAND ALIENATION OF LAND ACT

——————— 1904—I—

See GENERAL CLAUSES ACT

——————— 1910—IV—

See UNITED PROVINCES EXCISE ACT

———————1912—IV—

See UNITED PROVINCES COURT OF WARDS ACT

VI

See UNITED PROVINCES PREVENTION OF ADULTERATION ACT

——————— 1916—II—

See UNITED PROVINCES MUNICIPALITIES ACT

UNITED PROVINCES COURT OF WARDS ACT (III OF 1899)

——————— ss 2 8 9 34—

See NORTH WESTERN PROVINCES LAND REVENUE ACT 1873 s 194
I L R 42 All 509

——————— ss 10 and 37—

See UNITED PROVINCES LAND REVENUE ACT 1873 s 194
I L R 42 All. 509

——————— ss 16 20—*Claim not notified—Maintainability of suit—Admissibility of documents* S 20 of the Court of Wards Act 1909 applies only to cases where persons who have notified their claims under s 16 of the said Act have failed to produce their documents Where the property of the debtor was taken over by the Court of Wards at a time when the Court of Wards Act of 1899 was in force and the creditor did not notify his claim under s 16 but brought a suit upon his bonds after the property was released by the Court of Wards *held* that the bonds were admissible in evidence and the suit was maintainable *Collector of Ghazipur v Balbhaddar Singh 10 All L J 234* overruled A BRAR ALI v KALYAN DAS (1915) I L R 37 All. 585

——————— ss 16 19 49—*Decree on contract made while debtor was a ward of Court—Collector not made a party—Execution of decree* C obtained a decree

UNITED PROVINCES COURT OF WARDS ACT (III OF 1899)—contd

——— ss 16 19 49—*contd*

fo money against M based upon a contract entered into by the latter after he had become a ward of the Court of Wards In execution of the decree certain movable property belonging to M was attached Upon objection taken that a certificate that the claim was notified under s 16 of the Court of Wards Act 1899 should be obtained from the Collector *held* that the decree was bad inasmuch as the suit and proceedings in execution were a fraud upon the Court and that as soon as it was brought to the notice of the Court that the judgment debtor was a ward of Court the Court should have of its own motion then and there made the Collector a party and waited for such defence as the Collector might put forward MUAZZAM ALI SHAH *v* CHUNNI LAL (1911)

I L R 33 All 791

——— s 48—

Notice of suit— Property of any ward —Property attached in execution of a decree held by a ward *Held* that the term property of any ward as used in s 48 of the United Provinces Court of Wards Act 1899 does not include property attached in execution of a decree held by a ward No notice is therefore required of a suit brought by a person claiming title to such property for a declaration of his title LAL SINGH *v* THE COLLECTOR OF ETAH (1914)

I L R 36 All 331

——— *Notice of suit—Amendment of plaint—Whether fresh notice rendered necessary by amendment* Certain persons who intended bringing a suit against a ward under the Court of Wards upon a promissory note of date the 20th of November 1909 served upon the Collector by way of notice under s 48 of the Court of Wards Act 1899 a copy of the proposed plaint in which they stated — For a long time there were money dealings between the shop of the plaintiffs and Kunwar Pohkar Singh caste Thakur resident of mauza Ghungchai Accordingly the said Pohkar Singh having adjusted his account under the former promissory note dated the 15th of November 1907 executed a promissory note on the 20th of November 1909 In the course of the suit the plaintiffs discovered that they could not succeed on the promissory note of the 20th of November 1909 inasmuch as Pohkar Singh was already a Ward of Court at the date of its execution and accordingly asked and obtained leave to amend their plaint and base their claim entirely on the promissory note of the 15th of November 1907 *Held* that in these circumstances no fresh notice to the Court of Wards was rendered necessary by the amendment of the plaint *McInerny v The Secretary of State for India* I L R 38 Calc ~97 referred to BALDEO PRASAD *v* THE COLLECTOR OF PILIBHIT (1914)

I L R 37 All. 13

UNITED PROVINCES COURT OF WARDS ACT (IV OF 1912)

——— ss 2 8, 9 10 and 34—

See N W P LAND REVENUE ACT 1873 s 194

I L R 42 All. 509

——— ss 8 and 11—

Mortgage decree against [illegible] [illegible] proprietor— [illegible] from super[illegible] [illegible] Wards—Discharge [illegible] order by Government of India—Validity of decree Where a mortgagor has been declared a disqualified proprietor under the United Provinces Court of Wards Act 1912 and a final mortgage decree is made against the Court of Wards during its superintendence of the estate the decree is binding upon the mortgagor after the Local Government acting under an order of the Government of India has discharged the estate from superintendence in the absence of proof that the proceedings of the Court of Wards were a nullity NARINDRA BAHADUR SINGH *v* THE OUDH COMMERCIAL BANK LD

I L R 43 All 478

UNITED PROVINCES EXCISE ACT (IV OF 1910)

——— s 40—*Rules framed under Act—Transfer or sub lease of licence—Agreement to share profit* The plaintiff entered into an agreement with the defendant who was a drug contractor in consideration of a sum money advanced by him to the defendant that he would be entitled to a share in the profits or responsible for the losses of the drug business to an extent there n set forth *Held* that such an agreement was neither a transfer nor a sub lease of the drug contractor s licence and did not constitute a violation of r 82 of the rules framed under the United Provinces Excise Act 1910 SHIAM BIHARI LAL *v* MALHI (1916)

I L R 39 All 107

——— s 60—*Unlawful possession of excisable article—Search warrant—Indian Oaths Act (X of 1873) s 13—Presumption that oath was duly administered* An excise inspector searched the house of a person suspected to be in illicit possession of an excisable article namely cocaine and cocaine was found in the house *Held* that the subsequent conviction of the person in possession of the said house was not rendered illegal by the fact that the excise inspector had not previously obtained a search warrant *Emperor v Allahdad Khan* 11 All L J 442 I L R 35 All 358 *Emperor v Hargobind* I L R 35 All 1 referred to *Held* also that it is a reasonable presumption that an oath has been duly administered to a witness appearing before a Court although the record of the Court may contain no reference to that fact EMPEROR *v* SAYEED AHMAD (1913)

I L R 35 All. 575

——— s 63—*Criminal Procedure Code s 537—Unlawful possession of excisable article—Search warrant—Conviction not invalidated owing to absence of warrant* Where the superintendent of police and a sub inspector searched the house of a person suspected of being in illicit possession of excisable articles and such articles were found in the house searched it was *held* that the conviction of the owner of the house under s 63 of the United Provinces [illegible] Act 1910 was not rendered invalid by th[illegible] that no warrant had been issued for the se[illegible] though it was presumably the intention [illegible] legislature that in a case under s 63 wher[illegible] necessary to search a house a search w[illegible] be obtained beforehand EMPEROR [illegible] KHAN (191)

I L R 35 All. 359

UNITED PROVINCES EXCISE ACT (IV OF 1910)—*contd*

——— s 64 (c)—*Breach of conditions of licence—Breach committed by servant—Responsibility of master* In order to establish an offence under s 64 (c) of the United Provinces Act 1910 against a licence holder in respect of the alleged keeping of incorrect accounts by a servant it must be shown that the licence holder himself allowed the offence to be committed by his servant or was cognizant of what his servant was doing EMPEROR v RAM DAS (1918) I L R 40 All 583

UNITED PROVINCES GENERAL CLAUSES ACT (U P ACT 1 OF 1904)

S GENERAL CLAUSES ACT

UNITED PROVINCES LAND REVENUE ACT (U P ACT III OF 1901)

——— s 4—*Mahal—Partition—Unculturable land—Jurisdiction—Civil and Revenue Courts* Land such as roadways uncultivated plots and even *abadi* sites of villages are all within the boundaries of a mahal although no revenue may be derived from them Thus land forming the site of a *parao* but bearing a khasra and khata number in the revenue records must be considered as part of the mahal in which it is situated and can only be partitioned by a Court of Revenue MAHMUD JAHAN BEGAM v GOBIND RAM I L R 43 All 45

——— s 18—*Suit for rent before Assistant Collector—Sanction to prosecute granted by him—Officer at the time of granting sanction placed in charge of another sub division of the same district—Jurisdiction* An Assistant Collector tried a suit under the Agra Tenancy Act in the course of which a question as to the genuineness of a certain document tendered in evidence by the defendants arose Subsequently to the decision of that suit the Assistant Collector was put in charge of the work of another sub division in the same district *Held* that such a transfer of work did not deprive him of jurisdiction to grant sanction for a prosecution in respect of the forging of the document so tendered DALIP SINGH v NAWAL (1917) I L R 39 All 297

——— s 32 (d)—*Mahal—Land held revenue free by Government not of necessity excluded from the mahal* *Held* (i) that s 3 clause (d) of the United Provinces Land Revenue Act 1901 shows that there may be in a mahal persons holding land revenue free and the land so held yet forms part of the mahal and (ii) that a finding as to whether such land does or does not form part of the mahal is not a pure finding of fact but a mixed finding of fact and law ABDUL RAHIM KHAN v AHMAD KHAN (1914) I L R 36 All 231

——— s 34—

See AGRA TENANCY ACT (II OF 1901) s 158 I L R 39 All 689

——— s 36—*Agra Tenancy Act (II of 1901) s 41—Ex proprietary tenant—Enhancement of rent* The tenant of an ex proprietary holding whose rent had been fixed by the Collector under s 36 of the United Provinces Land Revenue Act entered into an agreement with the zamindar to pay an enhanced rent The agreement was

UNITED PROVINCES LAND REVENUE ACT (U P ACT III OF 1901)—*contd*

——— s 36—*contd*

effected by means of a registered instrument and the enhanced rent was not in excess of the beneficial rate mentioned in s 10 of the Act but it was made within the period of ten years from the fixation of rent by the Collector *Held* that such agreement was not open to any legal objection BHAIRON PRASAD v SOMWARPURI (1917) I L R 39 All 318

——— ss 51 52 99—*Assignment of Government Revenue—Right of Government to enhance or remit revenue* An assignee of Government revenue takes the assignment subject to all the rights of Government to assess enhance reduce remit or suspend the revenue BENI MADHO v BHAGWAN PRASAD (1911) I L R 33 All 556

——— ss 56 and 86—Cess—Gaonkharch—*Civil and Revenue Courts—Jurisdiction* In a permanently settled portion of the Mirzapur district the tenants were in the habit of paying to their zamindars an addition to their rent of 3 to 4 pies per rupee under the name of *gaon kharch* This additional payment however was not recorded under s 56 or s 86 of the United Provinces Land Revenue Act and it did not appear from the evidence that it could be regarded as part and parcel of the contract of rent *Held* that whether or not a suit might lie in a Civil Court for the recovery of the payment known as *gaon kharch* no such suit would lie in a Court of Revenue RADHA MADHO LALJI v RAM SEWAK I L R 43 All 422

——— Market—*Right to levy toll—Cess* *Held* that the levy by the owner of a private market of market dues at so much per head for every beast sold and of rent for land occupied by stalls is not illegal *Sukhdeo Prasad* v *Nihal Chand I L R 29 All 740* distinguished SADANAND PANDE v ALI JAN (1910) I L R 32 All 183

——— Cess—*Rent—Rent payable partly in cash and partly in kind* Certain tenants holding under a *qabuliat* agreed to pay as rent a fixed sum in money and also certain quantities yearly of *bhusa chari* grain and sugarcane described in the *qabuliat* as *rasum zamindari* *Held* that notwithstanding that the payments in kind were described as *rasum zamindari* they were nevertheless part of the rent and could be recovered by the lessor and did not fall within the purview of s 56 or s 86 of the United Provinces Land Revenue Act 1901 *Sri Ram* v *Asghar Ali I L R 35 All 19* distinguished RANGI LAL v JASSA (1916) I L R 38 All 286

——— ss 56 233—

See JURISDICTION OF CIVIL COURTS I L R 34 All. 358

——— s 99—

See S 51 I L R 33 All. 556

——— ss 106 and 233 (k)—*Partition of isolated plot in abadi—Owners not co sharers—Civil and Revenue Courts—Jurisdiction* *Held* that a suit for partition of an isolated plot in the *abadi* of a village the parties not being co sharers in the mahal but merely the purchasers of the plot from the zamindars lies in the Civil Court and not in the Revenue Court *Ram Ratan* v *Mumtaz*

UNITED PROVINCES LAND REVENUE ACT (U P ACT III OF 1901)—*contd*

——— ss 107 and 233—*contd*

Ahmad 16 Indian Cases 876 followed *Ram Dayal v Megu Lal I L R 6 All 452 (454)* referred to *Narain Das v Bhup Narain I L R 31 All 330* distinguished RAHTU LAL *v* BALDEO SAHAI I L R 43 All 454

——— s 107—

See PARTITION ACT (IV OF 1893) ss 1 2 AND 3 I L R 35 All 387

——— ss 107 111—

1 ——— *Partition—Joint Hindu family—Claim for partition by widow in possession in lieu of maintenance merely though recorded* solatu causâ *as a co sharer* *Held* that the widow of a member of a Hindu family who is in possession of a portion of the family property under a family arrangement in lieu of maintenance merely is not a co sharer and cannot in virtue of such possession enforce a claim for partition of the share of which she is so in possession even though her name may be recorded *solatu causâ* as a co sharer *Kailashi Kuar v Badri Prasad S A No 344 of 1913 decided 17th July 1913* and *Bhoop Singh v Phool Kouar N W P H C Rep 368* and *Jhunna Kuar v Chain Sukh I L R 3 All 400* followed *Bhupat Singh v Mohan Singh I L R 19 All 324* referred to *Habib ullah v Kushimba 3 All L J 481* distinguished PEMA v JAS KUNWAR (1913) I L R 35 All 527

2 ——— *Partition—Joint Hindu family—Hindu widow—Claim for partition by widow in possession in lieu of maintenance merely though recorded* solatu causa *as a co sharer* *Held* that the widow of a member of a joint Hindu family who is in possession of a portion of the family property under a family arrangement in lieu of maintenance merely is not a co sharer and cannot in virtue of such possession enforce a claim for partition of the share of which she is so in possession even though her name may be recorded *solatu causâ* as a co sharer *Bhoop Singh v Phool Kower N W P H C Rep 368* and *Jhunna Kuar v Chain Sukh I L R 3 All 400* referred to KAILASHI KUNWAR *v* BADRI PRASAD (1913) I L R 35 All 548

——— ss 110 111 and 112—*Partition—Question of proprietary title* One of the co sharers in a village applied in a Court of Revenue for partition whereupon another of the co sharers raised the objection that the village had already been partitioned privately and could not again be divided *Held* that this objection raised a question of proprietary title in respect of which the Court of Revenue had jurisdiction to refer the parties to the Civil Court RAM NARAIN *v* JAGAN NATH PRASAD (1915) I L R 38 All 115

——— s 111 (1) (b)—

——— *Partition—Non applicant required to file suit in Civil Court—Non compliance with order—Appeal* A Collector trying a partition case made an order under s 111 *(1) (b)* of the United Provinces Land Revenue Act 1901 against the non applicant He failed to comply with this order but alleged that in a civil suit between the parties to the partition case it had been decided in respect of certain non revenue paying property that both sides were members of a joint Hindu family The Collector however over ruled his objection finding that the ruling did not apply to revenue paying property *Held* that no appeal lay to the District Judge from this order HAR PRASAD *v* MUKAND LAL (1915) I L R 38 All 70

——— *Partition proceedings—Question of proprietary title—Party raising question ordered to file civil suit—Suit filed beyond time allowed—Suit barred* Where an order has been made by a Court of Revenue under s 111 *(1) (b)* of the United Provinces Land Revenue Act 1901 requiring a party to partition proceedings to institute within three months in the Civil Court a suit for the determination of a question of proprietary title raised in such proceedings the Civil Court has no jurisdiction to entertain a suit if it is not filed within the time limited *Barwari Lal v Gopi 4 A L J 713* followed *Randhir Singh v Bhagwan Das I L R 35 All 451* referred to TAIMUR ALI SHAH *v* SHAH MUHAMMAD KHAN (1918) I L R 41 All 211

——— ss 111 112—*Private partition—Lands held under a private partition claimed by non applicant—No question of proprietary title—Appeal* When in a suit for partition of revenue paying lands one of the non applicants alleged that under a private partition he was in possession of certain lands and claimed those lands for himself and the Collector in appeal ordered those lands to be given to him *Held* that no question of proprietary title was raised and no appeal lay to the District Judge against the order of the Collector *Tulsi Ram v Gate Ram All W N (1904) 295* followed *Muhammad Jan v Sadanand Pande I L R 28 All 394* distinguished MUHAMMAD NASAR ULLAH KHAN *v* MUHAMMAD ISHAQ KHAN (1910) I L R 32 All 523

——— ss 111 112 233 (k)—

——— *Partition—Hindu law—Joint Hindu family—Minor—No necessity for minor to be specially represented in partition proceedings* Where a partition of the property of a joint Hindu family in which one of the members was a minor was found to have been properly carried out with due regard to the interests of the minor it was *held* to be no ground for upsetting the partition were such a course possible having regard to s 233 *(k)* of the United Provinces Land Revenue Act 1901 that the minor was not represented in the partition proceedings by a formally appointed guardian In such circumstances a minor member of the family is suitably represented by the managing member or members BHAGWATI PRASAD *v* BHAGWATI PRASAD (1912) I L R 35 All 126

——— *Civil Procedure Code (1908) s 11 O II r 2—Partition—Suit for possession of property the subject of partition* A person who was really entitled to one half of a four biswa zamindari share but was recorded only in respect of a 3¾ biswa share applied for partition of the latter share After the date fixed for filing objections the person who was recorded in respect of the remaining one fourth biswa share came in and asked for partition of that one fourth biswa share The partition was completed but sub

UNITED PROVINCES LAND REVENUE ACT (U P ACT III OF 1901)—*contd*

———— 111 112, 238 (*k*)—*contd.*

sequently the original applicant brought suit to recove the one fourth biswa share *Held* that the suit was not barred by s 233 (*k*) of the United Provinces Land Revenue Act (1901) neither was it barred by O II r 2 of the Code of Civil Procedure inasmuch as that rule did not apply to proceedings under the Land Revenue Act nor by the rule of *res judicata* KALKA PRASAD v MANMOHAN LAL (1916) I L R 38 All 302

———— s 118—*Partition—Co sharers—Effect of order allotting to one co sharer land upon which are standing buildings belonging to another co sharer* Where a partition has been effected under the provisions of the United Provinces Land Revenue Act 1901 and the site of the house of one co sharer has been allotted to the share of another co sharer the presumption is that the owner of the house is to retain possession of the house The mere fact that ground rent has not been assessed cannot deprive the owner of the house of his right to it *Iswar Prasad* v *Jagannath Singh All Weekly Notes 1906 194* followed *Nandan Pat Tewari* v *Radha Kishun Kaluar 5 Indian Cases 664* distinguished SARUP LAL v LALA (1917) I L R 39 All 707

———— s 121—*Plaintiff referred to Civil Court—Suit filed within time but subsequently withdrawn—Second suit filed after prescribed period* Where a Revenue Court acting under s 111 of the United Provinces Land Revenue Act 1901 required a party to the case before it to institute to a suit in the Civil Court within three months and the plaintiff did so but for some technical reason had to withdraw it with permission to bring a fresh suit which was in fact filed without delay but after the three months had expired *Held* that the second suit must be considered to be a continuation of the first suit and it could not therefore be held that the plaintiff had not complied with the order of the Revenue Court PANDHIR SINGH v BHAGWAN DAS (1913)
I L R 35 All 541

———— ss 142 143 146—

See PENAL CODE (ACT XLV OF 1860) s 225B I L R 32 All 116

———— ss 203 to 207—*Agra Tenancy Act (II of 1901) s 95—Arbitration—Decision of Revenue Court based on award—Dispute between rival tenants as to possession of land—Suit for possession—Jurisdiction—Civil and Revenue Courts* *Held* that s 207 of the United Provinces Land Revenue Act 1901 does not bar a separate suit on title independently of the decision of the Revenue Court based on the award, to recover possession of property which has been the subject of arbitration proceedings under ss 203 to 206 of the Act *Girdhari Chaube* v *Ram Bharan Misir 14 All L J 85* approved and followed *Held* further that a suit between the rival tenants adjoining holdings to determine the question whether a certain parcel of land appertains to the holding of the one or of the other is cognizable by the Civil Court *Bhup Ram* v *Ram Lal I L R 33 All 795* and *Jagannath* v *Ajudhia Singh I L R 35 All 14* referred to TAPSI SINGH v HAR DEO SINGH (1917) I L R 39 All 711

UNITED PROVINCES LAND REVENUE ACT (U P ACT III OF 1901)—*contd*

———— s 233—

See s 106 I L R 43 All 454

See s 311 I L R 35 All 126
I L R 38 All 302

See JURISDICTION OF CIVIL COURTS
I L R 34 All 358

———— *Partition—Land belonging to plaintiffs mahal allotted to defendants and a different plot to plaintiffs—Civil and Revenue Courts—Jurisdiction* By a mistake of a partition amin a plot belonging to the defendants was allotted to the plaintiffs and two plots belonging to the plaintiffs were allotted to the defendants *Held* that no suit would lie in a Civil Court to rectify this error *Kishan Prashad* v *Kadher Mal All W N (1900) 11* distinguished TIRBENI SAHAI v GOKUL PRASAD (1911) I L R 33 All 440

———— *Revenue Court irregularly entertaining an application for allotment of a share to applicant—Suit in Civil Court for declaration of title as to share so allotted—Jurisdiction* Some of the co sharers in a mauza applied for partition *H* one of the non applicants came in within the time limited in the proclamation issued under s 110 of the Land Revenue Act 1901 and asked for his share also to be partitioned off After the time for objecting to the partition had expired *L* filed an application claiming a share in the portion alleged by *H* to be his share and without notice to *H* this application was granted and part of the share allotted to him was given to *L* *H* then sued in the Civil Court asking for a declaration of his title to the plots so allotted to *L* *Held* that however erroneous the procedure of the revenue authorities might have been *H's* suit was barred by s 233 (*k*) of the Land Revenue Act 1901 *Muhammad Sadiq* v *Laute Ram I L R 23 All 91* followed *Khasay* v *Jugla I L R 28 All 432* and *Muhammad Jan* v *Sadananda Pande I L R 28 All 394* distinguished *Per Curiam*— We can only repeat here what was laid down in the full bench case of *Muhammad Sadiq* v *Laute Ram* (*I L R 23 All 291*) in which it was held that any exercise of jurisdiction of a Civil Court which would disturb or in any way affect the distribution of land made by partition is barred by s 233 of Act III of 1901 whatever question is raised LACHMAN DAS v HANUMAN PRASAD (1910) I L R 33 All 169

———— *Civil Procedure Code (1908) s 11—Res judicata—Joint mahal formed on partition—Suit by one co sharer against the other for exclusive possession of entire mahal* *A* and *B* applied jointly as against the other co sharers to have certain revenue paying property made into a joint mahal in their names and this was done Thereafter *A* sued *B* on title for exclusive possession of the entire mahal *Held* that this suit was not barred either by the principle of *res judicata* or by s 233 (*k*) of the United Provinces Land Revenue Act 1901 In the partition proceedings no question of title as between the present plaintiff and defendant had been raised and in his suit the plaintiff did not seek to alter the constitution of the mahal as it had been formed by the revenue authorities LAL BIHARI v PARKALI KUNWAR I L R 42 All 309

UNITED PROVINCES LAND REVENUE ACT (U P ACT III OF 1901)—contd

—— s. 233—contd

Courts —Jurisdiction—Civil and Revenue — Partition—Land of a third party alleged to be wrongly included in a partition formed by imperfect partition—Suit for recovery of property in Civil Court Where land belonging to one party was, apparently by mistake and without notice to the person who claimed to be the rightful owner thereof, included in another patti and made the subject of an imperfect partition it was *held* that the person who claimed to be the owner of the land so dealt with was not debarred by s. 233 (k) of the United Provinces Land Revenue Act 1901 from suing in the Civil Court to have his right to the land declared and to recover possession thereof. *Muhammad Sadiq v. Laute Ram* I. L. R. 23 All 291 distinguished. *Quære* Whether s. 233 (k) of the United Provinces Land Revenue Act 1901 applies at all to an imperfect partition. SHAMBHU SINGH v. DALIP SINGH (1916)

I. L. R. 38 All. 243

—— Partition—Suit to recover property which had been the subject of a partition Certain co-sharers in a village applied for partition of their shares under s. 107 of the United Provinces Land Revenue Act 1901 Notice was issued to all the recorded co-sharers as required by s. 109 of the Act, and thereupon an application was made by other co-sharers under cl. (c) of the section praying for partition of their shares. In that application the applicants set forth the extent of the shares which they prayed should be formed into one lot or patti. Subsequently a proceeding was drawn up under s. 114 of the Act, declaring the basis upon which partition was to be effected. Some time after the partition was completed certain of the parties to the partition proceedings instituted a suit in a Civil Court to recover possession of shares other than those specified in the application aforesaid, upon which the partition had been based *Held* by BANERJI and TUDBALL, JJ. (RICHARDS, C. J. *dissentiente*) that the suit was barred by s. 233 (k) of the Act. *Muhammad Sadiq v. Laute Ram* I. L. R. 23 All. 291 referred to. *Shambhu Singh v. Dalip Singh* I. L. R. 38 All. 243 distinguished. BIRAJ MISIR v. KALI PRASAD MISIR (1917)

I. L. R. 39 All. 469

—— Partition—Property wrongfully assigned to one party owing to a fraud practised on the Revenue Court—Suit in Civil Court to recover property so assigned—Jurisdiction An action will lie in a Civil Court to provide a remedy where a person's rights have been infringed by some fraudulent act of the defendant even though the fraud was one practised upon a Revenue Court and would affect the result of partition proceedings. *Kalawati Devi v. Tahir Rai* I. L. R. 38 All. 70 and *Rahmatullah Khan v. Gopi* ... I. L. R. 41 All. 16 followed. *Muhammad Sadiq v. Laute Ram* I. L. R. 23 All. 291 referred to. JHUMAK PANDE v. BINDESHRI RAI (1919)

I. L. R. 41 All. 626

—— Partition—Fraud by defendant—Subsequent suit with the object of setting aside the partition and lots formed—s. 233 (k) of the United Provinces Land Revenue Act, 1901 will not operate so as to bar a subsequent suit in a Civil Court having for its object the upsetting of a partition when the basis of the suit is the allegation that the partition effected by the Revenue Court was due to a fraud, based upon that Court and upon the plaintiffs by the defendant. RAGHUNANDAN AHIR v. SHEONANDAN AHIR (1918)

I. L. R. 41 All. 112

—— Imperfect partition—Share legally the property of one party allotted to another—Suit for a declaration of plaintiff's ownership of the share Plaintiff as the result of a suit for pre-emption got possession of certain zamindari property but never obtained mutation of names in respect thereof Some years after the pre-emption suit the defendants applied for imperfect partition of their share as recorded in the khewat which included the property decreed to the plaintiff. During the partition proceedings the plaintiff applied for mutation of names in his favour but failed, and the partition was concluded on the basis of the entries in the khewat. Thereafter the plaintiff brought the present suit for a declaration that the pre-empted share which stood in the names of the defendants and which had been allotted to them by the partition, belonged to him and did not belong to them *Held* that the suit was barred by s. 233 (k) of the United Provinces Land Revenue Act 1901 *Kalawati Devi v. Laute Ram* I. L. R. 23 All. 291 followed. *Biraj Misir v. Kali Prasad Misir* I. L. R. 39 All. 469, and *Shambhu Singh v. Dalip Singh* I. L. R. 38 All. 243 explained *Per Curiam*—An examination of the plaint shows clearly that the object of the present suit is to upset partition proceedings. The plaintiff in his plaint sets forth the facts of the partition suit and the fact that he applied for correction of the khewat and failed. Hence he asks the Court for a declaration that he is entitled to the property. The case is in our opinion fully covered by precedent BHUPAL SINGH v. TAHSIN SINGH

I. L. R. 43 All. 55

—— s. 234—

See CONTRACT ACT (IX OF 1872), s. 23.

I. L. R. 39 All. 51 55

UNITED PROVINCES MUNICIPAL ACCOUNTS CODE.

See UNITED PROVINCES GENERAL CLAUSES ACT I OF 1904 s. 24

I. L. R. 40 All. 105

UNITED PROVINCES MUNICIPALITIES ACT (I OF 1900).

See NORTH WEST PROVINCES AND OUDH MUNICIPALITIES ACT

—— s. 49—... a member of a Municipal Board ... member of the Municipal Board, as such member, made report to the Board which resulted in the prosecution of certain persons for a municipal offence. The persons prosecuted were acquitted and thereafter brought a suit for damages for malicious prosecution against the maker of the report. *Held* that the defendant was entitled to the notice provided by

UNITED PROVINCES MUNICIPALITIES ACT (I OF 1900)—*contd*

——— s 49—*contd*

by s 49 of the Municipalities Act 1900 *Muhammad Saddiq Ahmad* v *Panna Lal* I L R 26 All 290 distinguished JUGAL KISHORE v JUGAL KISHORE (1911) I L R 33 All 540

——— ss 87 152—*Municipal Board—Refusal of permission to re erect a building—Remedy open to applicant special appeal not suit* When a Municipal Board refuses permission to erect or re erect a building the proper way to contest such refusal is to appeal in the manner provided for by s 152 of the United Provinces Municipalities Act 1900 The applicant for permission cannot maintain a civil suit for an injunction to restrain the Board from interfering with the plaintiff's building ABDUS SAMAD v THE CHAIRMAN MUNICIPAL BOARD MEERUT (1914) I L R 36 All 329

——— *Held* that s 152 does not apply when the prohibition notice or order issued by the Board is *ultra vires* and that s 87 (5) applies only to buildings of the kind referred to in the preceding sub sections that is new buildings in respect of which notice should have been given under sub section (1) EMPEROR v RAM DAYAL I L R 33 All 147

——— ss 88 and 91—*Municipal Board—Power of Board to order demolition of structure over hanging a public road—Compensation—Offer to pay compensation not a condition precedent to order for demolition* The owner of a house to which was attached a balcony overhanging a public road repaired the balcony which had become dilapidated and made it serviceable but without obtaining the permission of the Municipal Board thereto The Board thereupon issued notice to the house owner under s 88 of the Municipalities Act 1900 to remove the balcony and in default of compliance prosecuted him *Held* that the Board had power under s 88 cl (2) of the said Act to order the removal of the balcony without assigning any reason and that it was not necessary for the Board in the case of a notice issued under s 88 to tender or express its willingness to pay compensation in respect of the structure the demolition of which was ordered EMPEROR v NANNA MAL (1913) I L R 35 All 375

——— s 128 (h) (i)—*Municipal Board—Power of Board to make rules—Rule regulating use by hawkers of parties of public roads* *Held* that the United Provinces Municipalities Act 1900 did not empower a Municipal Board to make rules regulating the sale or exposure for sale of goods in streets or public places under the control of the Board EMPEROR v IMAMI (1912) I L R 35 All 24

——— s 130—

——— In order to render a person liable to punishment for breach of the rule made under cl (e) of s 130 by reason of the continuance of the sale of certain articles on premises then used for such purpose it is necessary that 6 months notice in writing should have been served upon him EMPEROR v GHAMMAN I L R 33 All 455

——— s 147—

1 ——— *Municipal Board—Jurisdiction—Prosecution in respect of matter concerning which a civil suit was pending* The plaintiff to a suit against a Municipal Board was permitted by the Court to erect certain structures as specified in the decree of the Court Subsequently a dispute arose as to whether the structures which the plaintiff had erected were within or in excess of the powers given to him by the decree and the Court decided and the Board did not contest its decision that the plaintiff had exceeded his rights under the decree and that some portion of the said structures must be demolished The Board meanwhile took action against the plaintiff under s 147 of the United Provinces Municipalities Act 1900 *Held* that it was not open to the Board to prosecute the plaintiff in respect of the structures pending the decision of the Civil Court and to continue the prosecution after its decision EMPEROR v BALDEO PRASAD (1910) I L R 32 All 620

2 ——— *Conviction for disobedience to notice—Continuing breach* After a conviction under s 147 of the United Provinces Municipalities Act the person convicted cannot be permitted to challenge the correctness of that conviction as often as he is prosecuted for continued disobedience of the order of the Board SITAL PRASAD v THE MUNICIPAL BOARD OF CAWNPORE (1914) I L R 36 All 430

3 ——— *Prosecution for disobedience to notice—Validity of notice to be considered* Before anyone can be convicted of an offence under s 147 of the United Provinces Municipalities Act the Court must be satisfied that what he had disobeyed was a notice lawfully issued by the Board under the powers conferred upon it by the Act EMPEROR v PIARI LAL (1914) I L R 36 All 185

——— ss 147 and 152—*Notice—Disobedience to lawfully issued notice—Competence of accused to challenge validity of notice* *Held* that s 152 of the United Provinces Municipalities Act 1900 does not prevent a person who may be prosecuted for disobedience to a notice issued by a Municipal Board from establishing the defence that the notice in question was not as a matter of fact the Board's notice inasmuch as it was not signed by any one legally authorized to sign such notices on behalf of the Board EMPEROR v HAZARI LAL (1914) I L R 36 All 227

——— 152—

See s 87 I L R 36 All 29

——— s 187—

See U P GENERAL CLAUSES ACT (I OF 1904) s 23 I L R 34 All 91

See NORTH WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT s 10 I L R 35 All 68

——— *Municipal election—Rules framed by Local Government for regulation of elections—Petition by defeated candidate—Appeal—Procedure—Decree — Order* *Held* on a construction of r 42 of the rule framed by the Local Government under s 187 of the Municipalities Act 1900 for the regulation of municipal election that the term competent Court as used in r 42 means a civil Court of competent jurisdiction with reference to the valuation given by the petitioner in his petition *Gur Charan Das* v *Har Sarup*

UNITED PROVINCES MUNICIPALITIES ACT (I OF 1900)—*concld*

———— s 187—*contd*

I L R 31 All 391 followed *Held* also that no appeal lies from the order of a competent Court passed on an election petition under r 42 above referred to *Sundar Lal* v *Muhammad Faiq 16 Oudh Cases 36* approved. *Raghunandan Prasad* v *Sheo Prasad I L R 35 All 308* and *Sabhapat Singh* v *Abdul Ghafur I L R 24 Calc 107* referred to KHUNNI LAL v RAGHUNANDAN PRASAD (1913) I L R 35 All 450

———— *Municipal election—Rules framed by the Local Government for regulation of elections—Validity of rules—Petition against successful candidate—Appeal* *Held* (i) that the provisions of s 187 of the United Provinces Municipalities Act which gave power to the Local Government to make rules generally for regulating all elections under the Act were wide enough to include rules for the filing and decision of election petitions and (ii) that no appeal lies from the order of a competent Court passed on an election petition under r 42 of the rules framed by the Local Government under s 187 (*1*) cl (*h*) of the Act *Khunni Lal* v *Raghunandan Prasad I L R 35 All 450* followed *Sundar Lal* v *Muhammad Faiq 16 Oudh Cases 36* approved NAND RAM v CHOTE LAL (1913)
I L R 35 All 578

UNITED PROVINCES MUNICIPALITIES ACT (U P ACT II OF 1916)

———— ss 19 to 23—*Election petition—Petition presented by unsuccessful candidate against several respondents* It is not a valid objection to a petition filed by an unsuccessful candidate at a municipal election under s 19 of the United Provinces Municipalities Act 1916 having as respondents more than one of the successful candidates that the petitioner cannot be himself declared elected in the room of more than one of the respondents ABDUL BAQI KHAN v SIRAJ UL HASAN (1919) I L R 41 All 646

———— ss 185 186—*Erection of building without sanction of Municipal Board—Prosecution—Notice for demolition of building not necessary before prosecution* Where it is found that a building for which the sanction of a Municipal Board is required has been erected either without such sanction or in contravention thereof it is not necessary for the Board to direct the demolition of the building before it can prosecute the person who has erected it EMPEROR v HASHIM ALI (1917) I L R 39 All 482

———— ss 209 210— *Erect a structure — Movable planks placed across a public drain in front of a shop* *Held* that the placing without the permission of the Municipal Board of movable planks over a municipal drain outside a shop the planks being put out in the morning when the shop was opened and removed at night did not amount to an offence under the United Provinces Municipalities Act 1916 The expressions used in s 209 of that Act indicate that it refers to something of a permanent nature *Kamta Nath* v *The Municipal Board of Allahabad I L R 38 All. 196* referred to EMPEROR v MUHAMMAD YUSUF (1917) I L R 39 All. 386

UNITED PROVINCES MUNICIPALITIES ACT (U P ACT II OF 1916)—*contd*

———— s 233—

See s 111 I L R 35 All 126
I L R 38 All 302

————s 263—

See s 267 I L R 42 All 485

————s 267—

———— *Notice to construct a cesspool—Appeal—Prosecution for failure to comply Power of trying Court to question reasonableness of Board s order on the merits—Procedure in case of continuing breach indicated* No appeal will lie from a notice legally issued under section 6[illegible] (*b*) of the United Provinces Municipalities Act 1916 requiring the owner of premises to construct a cesspool The effect of section 321 read with section 318 of the United Provinces Municipalities Act 1916 is that certain orders directions or requirements of a Municipal Board or of the Committee of a notified area only can be called in question as regards their reasonableness or practicability but the legality of any such orders directions or requirements can be questioned in any Court in which penal proceedings are brought in respect of any alleged breach for non compliance therewith *Emperor* v *Ram Dayal I L R* [illegible]3 All 147 *Municipal Board of Etawa* v DEVI PRASAD I L R 42 All 435 *Ram Pratap Marwari* v *Emperor* 18 A L J 229 and *Emperor* v *Mannu* I L R 43 All. 295 referred to EMPEROR v KASHMIRI LAL I L R 43 All 644

———— ss 267 and 263—*Municipal Board—Distinction between order issued to protect public from physical danger and order issued to protect it from insanitary conditions* A Municipal Board issued an order purporting to do so under s 267 of the Municipalities Act to a person living within municipal limits requiring him to fill up a certain cesspool and to build another with a proper cover to it the order being issued because the cesspool was without a cover and passers by were likely to fall into it at night *Held* that the order was a bad order, inasmuch as the only order which could be legally made under s 267 was an order which was based on sanitary grounds MUNICIPAL BOARD OF ETAWAH v DEBI PRASAD
I L R. 42 All. 485

———— s 274— *Occupier* *Held* that a person of whom no more could be said than that he was held responsible for the upkeep and cleanliness of a temple by the former adhikari was not an occupier of the temple and could not be convicted as such under s 274 of the United Provinces Municipalities Act 1916 for throwing rubbish on to the street EMPEROR v PIARI LAL (1917) I L R 39 All. 309

———— ss 293 and 318—*Dangerous or offensive trades—Licence—Power of Municipal Board to refuse licence—Remedy of person whose application for licence has been refused* In matters to which s 293 List I Heading G of the United Provinces Municipalities Act 1916 relates a Municipal Board is not bound to grant a licence to any one who is prepared to abide by the prescribed conditions unless it be found that the necessary licence cannot be granted in respect of the particular site in question without prejudice to the health safety or convenience of the inhabitants of the municipality If an application for such a licence is refused, the

UNITED PROVINCES MUNICIPALITIES ACT (U P ACT II OF 1916)—*contd*

——— s 298 and 318—*contd*

remedy of the applicant is by way of appeal under s 318 of the Act *Moran v Chairman of Motihari Municipality I L R 17 Calc 329* and *Queen Empress v Mukunda Chunder Chatterjee I L R 20 Calc 654* referred to EMPEROR v MANNU

I L R 42 All 294

——— s 307—*Disobedience to notice lawfully issued by a Municipal Board—Recurring fine—Procedure necessary to imposition of daily fine* A Magistrate convicting an accused person of an offence under s 30 (b) of the United Provinces Municipalities Act 1916 cannot by the same order further sentence him to a recurring fine in the event of non compliance with the order of the Board The liability to a daily fine in the event of a continuing breach has been imposed by the Legislature in order that a person contumaciously disobeying an order lawfully issued by a Municipal Board may not claim to have purged his offence once and for all by payment of the fine imposed upon him for neglect or refusal to comply with the said order The liability will require to be enforced as often as the Municipal Board may consider necessary by the institution of a second prosecution in which the questions for consideration will be how many days have elapsed from the date of the first conviction under the same section during which the offender is proved to have persisted in the offence and secondly the appropriate amount of daily fine to be imposed under the circumstances of the case subject to the maximum prescribed EMPEROR v AMIR HASAN KHAN (1918)

I L R 40 All 569

——— ss 318 and 321—

See s 2b7 I L R 43 All 644

——— s 324—*Suit for damages by lessee of land against a Municipal contractor for causing obstruction to the use of his land* *Held* that section 324 of the United Provinces Municipalities Act 1916 does not apply to a suit by lessee of land for damages against a contractor of the Municipal Board who stacks building materials upon that land and thereby prevents the lessee from using it MUHAMMAD GHAZANFAR ULLAH v BABU LAL

I L R 43 All 614

——— s 326 (4)—*Suit for establishment of title and injunction—Notice—Suit filed before expiration of prescribed time* The Municipal Board of Benares in June 1916 served notice on the plaintiff requiring him to remove a certain *chabutra* which it was alleged encroached on a public way The plaintiff replied by giving the Board notice of a suit in which the reliefs to be claimed were (i) a declaration of the plaintiff s title to the land upon which the *chabutra* stood and (ii) an injunction restraining the Board from ordering its demolition The suit was however filed before the expiration of the period of two months provided for by s 3?6 of the United Provinces Municipalities Act 1916 Upon objection taken by the Board as to want of a proper notice the plaintiff amended his plaint but still left the suit as a suit which asked for further relief than a bare injunction and which therefore could not come within the exception provided for by cl (4) of s 3?6 *Held* that the suit could not

UNITED PROVINCES MUNICIPALITIES ACT (U P ACT II OF 1916)—*contd*

——— s 326 (4)—*contd*

be maintained MUNICIPAL BOARD OF BENARES v GAJADHAR (1918) I L R 41 All 162

——— *Suit to obtain refund of octroi duty—Limitation* *Held* that the special rule of limitation laid down by cl (3) of s 326 of the United Provinces Municipalities Act 1916 applies to a suit against a municipal board wherein the plaintiff claim refund of octroi duty which the board has refused to pay him MAKHAN LAL v THE MUNICIPAL BOARD OF AGRA

I L R 42 All 207

UNITED PROVINCES PREVENTION OF ADULTERATION ACT (VI OF 1912)

——— ss 4 6—*Commission agent exposing adulterated article of food for sale* *Held* that a commission agent who exposed for sale (but did not sell adulterated *ghi* was liable to punishment under s 4 of the United Provinces Prevention of Adulteration Act 1912 and could not claim the benefit of s 6 of the Act EMPEROR v KEDAR NATH (1918) I L R 40 All 661

UNITED PROVINCES PUBLIC GAMBLING ACT (I OF 1917)

See PUBLIC GAMBLING ACT III OF 1867 SS 3 AND 10

I L R 42 All 470

UNITED PROVINCES RENT ACT (XII OF 1881)

See NORTH WESTERN PROVINCE AND OUDH RENT ACT I L R 41 All 356

UNITED PROVINCES TENANCY ACT (II of 1901)

See AGRA TENANCY ACT

UNITY OF OBJECT

See MISJOINDER I L R 42 Calc 760

UNIVERSITIES ACT (VIII OF 1904)

See INDIAN UNIVERSITIES ACT

See UNIVERSITY LECTURESHIP

I L R 41 Calc 518

——— ss 21 (1) (c) and (f) 25 (1) and 2 (m)—

See BOMBAY CITY MUNICIPAL ACT (BOM ACT III OF 1888) SS 140 (c) 143 (1) (a) AND (2) (d) I L R 43 Bom 281

——— s 25 *and regulations thereunder—cheating at examination—disqualified student—not competent to sue the University* *Held* that the Senate of a University is under s 25 of the Indian Universities Act empowered to make rules disqualifying a candidate who cheats at an examination from passing it and from appearing at any University examination for a period of two years from the date of his disqualification and that a candidate against whom the rule has been enforced has no remedy of Civil action against the University *In the matter of Darasha Pestonji (I L R ?3 Bom 465)* distinguished. TAJ AHMAD v UNIVERSITY OF THE PUNJAB

I. L. R 2 Lah 197

UNIVERSITY LECTURERSHIP

———————— *Specific Relief Act (I of 1877) s 45—Universities Act (VIII of 1904)—Appointments to Professorships and Lecturerships in the University of Calcutta—Provisional appointment—Sanction by Governor General in Council—If remedy lies against refusal to sanction—Mandamus—University Regulations Chap XI, s 12* The five conditions laid down in the proviso to s 45 of the Specific Relief Act are cumulative and all have to be fulfilled The Senate of the University is only bound by its Resolutions It cannot be held bound by representations made by any individual officer without the sanction or authority of the University Where a person deals with a corporation whose rights are defined by statute he must be deemed to have informed himself of those rights In this case the Resolution of the Senate cannot be interpreted as having appointed the applicant without the sanction of the Governor General or even that it was intended to appoint him without such sanction No legal right can be said to exist because the petitioner had lectured the previous year A rule cannot be granted to try the title to an appointment Such title can only be tried in a properly constituted suit The existence of a legal right is the foundation of every writ of *mandamus* The principle underlying the jurisdiction in these cases is that the proceedings can confer no title not already existing though they may affect the consummation of the relator s title if he had one but it gives him none Whether the sanction required under s 12 Chapter XI of the University Regulations for the appointment of a University lecturer is *ultra vires* or not cannot be determined in summary proceedings of this nature The personal right referred to in *s* 45 of the Specific Relief Act is not a right *in rem* such as every human being in civilized society possesses independently of any act of his own The above dictum in *In re Rustom Jamshed Irani 3 Bom L R 653* dissented from He alone is a competent relator who has some interest other than that of the community at large in the question to be tried *York & North Midland Railway Co v The Queen 1 El & B 858* and *Ex parte Browning In re Marks L R 9 Ch Ap 583* discussed *In re* ABDUL RASUL (1913)
I L R 41 Calc 518

UNIVERSITY OF MADRAS

See SPECIFIC RELIEF ACT (I OF 1877) s 45 **I L R 40 Mad 125**

UNIVERSITY REGULATIONS

———— **Chap XI s 12—**

See UNIVERSITY LECTURERSHIP
I L R 41 Calc 518

UNLAWFUL ASSEMBLY

See JUDGMENT OF APPELLATE COURT CONTENTS OF **I L R 37 Calc 194**

UNLAWFUL RECRUITMENT

See EMIGRATION **I L R 37 Calc 27**

UNLIQUIDATED DAMAGES

See EX PARTE DECREE
I L R 43 Calc 1001

UNNECESSARY MATTER

———— printing of—

See COSTS **L R 46 I A 299**

UNPROFESSIONAL CONDUCT

See PROFESSIONAL MISCONDUCT

1 ———————— *Pleader as litigant—Letter to Munsif threatening legal proceedings to recover costs in execution proceedings incurred owing to the negligence of the Court officer—Legal Practitioners Act (XVIII of 1879) ss 13 (b) and 14—Anonymous communication—Contempt of Court* Where a pleader who was a decree holder in a certain suit associated himself with his co decree holder in a notice to the Munsif threatening legal proceedings to recover costs in an execution proceeding incurred owing to the negligence of the Court officers though the pleader did not sign the notice *Held* that what was done by the pleader was done by an individual in the capacity of a suitor in respect of his supposed rights as a suitor and of an imaginary injury done to him as a suitor and it had no connection whatever with his professional character or anything done by him professionally and that this case was not one within s 13 (*b*) of the Legal Practitioners Act *In re Wallace L R 1 P C 283 In the matter of Jogendra Narayan Bose 5 C W N 48 In re a Pleader 18 Mad L J 14 In the matter of a first grade Pleader I L R 24 Mad 17* and *In the matter of Sarat Chandra Guha 4 C W N 663* referred to *In re* POORNA CHANDRA ADDY (1915)
I L R 43 Calc 685

2 ———————— *Unprofessional conduct—Rules as to receiving instructions and accepting vakalatnamas compliance with—Judge s duty to enforce compliance and take disciplinary measures on breach—One pleader appearing for another—Practice—Court to be informed* Where a pleader who was charged with having filed a petition for revival of a suit without authority alleged in defence that he had been instructed to appear by a clerk of the Muktear of the party and that it had been (erroneously) represented to him that the *vakalatnama* filed in the original suit contained his name *Held* that the pleader had acted in contravention of s 13 cl (*a*) of the Legal Practitioners Act in the matter of receiving instructions That even if the *vakalatnama* did contain the pleader s name mere verbal acceptance of it would not be in compliance with cl (*e*) r 45 Ch XI of the High Court s General Rules and Circular Orders Where a pleader appears for another pleader who is unable at the moment to attend Court he ought to let the Court know that he is so appearing *Per* RICHARDSON J The rule in regard to the acceptance of *vakalatnamas* should be strictly and scrupulously observed in the Subordinate Courts In connection with the enforcement of the rules it is always open to a Judge to refuse to hear a pleader or to refuse to allow a pleader to act who has not accepted a *vakalatnama* in the prescribed manner It is also the duty of the Judge to take such action as may be appropriate in regard to infractions of the rule which escape notice at the time and are brought to light subsequently *In the matter of* JOGESH CHANDRA GUPTA (1913)
20 C W N 283

3 ———————— *Pleader—Altering Court's record to conceal error due to carelessness* Where a property to be sold in execution of a

UNPROFESSIONAL CONDUT—contd

decree was through the carelessness of the pleader for the decree holder and his clerk misdescribed in the application for execution in the warrant of attachment and in the sale proclamation and after they had been presented to Court the clerk actuated by a desire to conceal his and his master s carelessness from the decree holder altered the de scriptions and the alterations were initialled by the pleader *Held* (ordering the pleader s suspension for three months) that to tamper with the Court s records is at all times a serious matter and the pleader had acted without due care and caution and without that sense of responsibility which should govern the conduct of all officers of the Court in matters of such importance *In the matter of* A PLEADER (1916)

20 C W N 1069

UNREASONABLE DELAY

See COSTS I L R 47 Calc 974

UNRECORDED CONFESSIONS

See MISDIRECTION

I L R 45 Calc 557

UNREGISTERED DOCUMENT

See LIMITATION L R 46 I A 285

See REGISTRATION

See TRANSFER OF PROPERTY ACT s 54

I L R 44 Mad 55

UNSETTLED PALAYAM

———— *Alienability of for debts of holder for the time being—Lands held on service tenure alienability of—Enfranchisement of service tenure effect of on alienation prior and subsequent—Regulation XXV of 1802 effect of—Private Police service abolition of by legislation—Military service imposition of on landed proprietors—Abolition of—Limitation Act (IX of 1908) Sch II Art 120 11 and 144—Madras Regulation XI of 1816—Madras Regulation VI of 1831—Madras District Police Act XXIV of 1859—Madras Act III of 1895* Lands held on service tenure are even apart from statute inalienable by the Common Law of India beyond the life time of the holder for the time being *Papaya* v *Ramana I L R 7 Mad 85* and *Palkiam Pillay* v *Seetharama Vadlyar 14 Mad L J 131* followed Abolition of service prior to the alienation renders the alienation valid *Kustoora Koomaree* v *Monohur Deo (1864) W R 39 Ratlojirav bin Tamajirav* v *Balvantrai Venkatesh I L R 5 Bom 437* and *Radhabai and Ramachandra Konher* v *Anantrav Bhagavant Deshpande I L R 9 Bom 198 212* followed Enfranchise ment of the land from service subsequent to an alienation thereof will not validate the alienation *Palapa* v *Swamirao I L R 4 Bom 556* and *Sannamma* v *Radhabhayi I L R 41 Mad 418* followed An unsettled palayam in the Presidency of Madras resembles a zamindari is hereditary in its character and is alienable for the debts of the previous holders and of the holder for the time being so as to bind the successors The only difference between an unsettled palayam and a per manently settled zamindari is that in the latter the Government is precluded for ever from raising the revenue and in the former the Government *may* or *may not* have that power *Oolagappa Chetty* v *Arbuthnot L R 1 I A 268 306* followed *Held* on a review of the facts of the case that the palayam of Kannivadi in Madura district which was permanently settled in 1905 and which was in the eighteenth century liable to render military and police service to the Government of the day was as a fact unconditionally released from such services prior to 1895 and that accordingly a mort gage executed by the grandfather and father of the present zemindar in 1895 for debts incurred by the grandfather prior to that date and a decree and a Court sale held to satisfy the mortgage debt were binding upon the present zemindar and pre cluded him from recovering the zemindari from the auction purchaser That the East India Company had by its Proclamations of 1799 and 1801 suppressed military service once imposed on landed proprietors in Southern India and police service similarly imposed was abolished pursuant to Regulation XXV of 1802 Regulation XI of 1816 Act XXIV of 1859 Act XVII of 1862 and Madras Act III of 1895 Regulation VI of 1831 which restrained the alienation of all public service inams is only partially repealed and replaced by Act III of 1895 as services other than those of village officers had become long ago obsolete *Quære* Whether if the plaintiff s father had debarred himself from suing art 120 of the Limit ation Act was the article applicable in which case the plaintiff would not be barred MIDNAPORE ZEMINDARI COMPANY v APPAYA AMI NAICKER (1918) I L R 41 Mad 749

I L R 44 Mad 575

USAGE

See CUSTOM

See OCCUPANCY RIGHT

I L R 46 Calc 43

See USAGE OF THE PROFESSION

I L R 44 Calc 741

———— *Usage evidence of—Admissibility—Adding to the terms of a written contract—Repugnancy—Whether such usage makes the contract insensible inconsistent or unreasonable—Due date falling on a Sunday—Contract if may be performed on Monday following—European importer* Evidence of well known trade *usage* is admissible to add to the terms of a written con tract when such usage does not make the written contract insensible or inconsistent or unreasonable In a contract to which both parties were Indian for the sale of piece goods imported by a European firm the due date fell on a Sunday *Held* that according to the well known usage in the market the due date would be the Monday follow ing KASIRAM PANIA v HURNUND ROY FULCHAND 26 C W N 355

———— *Held* that various words in written documents which *primâ facie* present no ambiguity may be interpreted by extrinsic evidence of usage and their peculiar meaning when found in connection with the subject matter of the transaction fixed by parole evidence RAJA JOTE KUMAR MUKERJEE v JADUNATH BOSE.

26 C W N 1022

USAGE OF THE PROFESSION

See BARRISTER I L R 44 Cal 741

USER

See TRADE NAME I L R 40 Calc. 570

See USING AS GENUINE A FORGED DOCUMENT I. L. R 39 Calc 463

USING FALSE TRADE MARK

See TRADE MARK I L R 40 Calc 281

USING FORGED DOCUMENT

See FORGERY I L R 38 Calc 75

——————— *Handing over of a forged rent receipt by accused in the course of a criminal trial to his mukhtear—Examination by the mukhtear of a witness thereon—Receipt filed by the Magistrate with the record though not proved—Grant of sanction to landlord s agent not a party to the criminal case—Sanction by successor of Magistrate before whom the forged document was used—Penal Code (Act XLV of 1860) s 471—Criminal Procedure Code (Act V of 1898) s 195* Where the accused, during the course of a criminal trial against him of rioting and theft of crops handed over to his mukhtear a forged rent receipt bearing a counterfeit seal of the landlord to prove his possession and the latter put the same to a witness and questioned to him as to its genuineness but on the witness alleging that it was a forgery the trying Magistrate took it initialled it and placed it on the record *Held* that there was a user of the document within s 471 of the Penal Code *Ambica Prasad Singh* v *Emperor I L R 35 Calc 820* distinguished A sanction granted to the agent of the landlord whose seal was forged is valid though neither was a party to the criminal case in which the forged document was used A sanction granted by the successor of a Magistrate before whom the forged document was used is good in law RATI JHA *v* EMPEROR (1911) I L R 39 Calc 463

USUFRUCTUARY MORTGAGE

See AGRA TENANCY ACT (II OF 1901) SS 142 199 I L R 41 All 369

See CIVIL PROCEDURE CODE (1908) O XXXIV R 14 I L R 41 All 399

See INTEREST I L R 40 Calc 514

See LANDLORD AND TENANT I L R 40 Calc 870

See LIMITATION ACT (IX OF 1908) SCH I ART 109 I L R 39 All 200

See MORTGAGE

See SALE FOR ARREARS OF REVENUE I L R 44 Calc 573

See TRANSFER OF PROPERTY ACT 1882—

SS 65 AND 68 2 Pat L J 490

Ss 54 118 I L R 37 Mad. 423

Ss 58 (*a*) AND (*d*) 67 68 (*c*) I L R 41 Mad 259

S 83 I L R 39 Mad 579

——————— construction of—

See MORTGAGE I L R 44 Calc 388

1 ——————— *Specific Relief Act (I of 1877) s 42—Usufructuary mortgage—mortgagee recorded as tenant—suit by mortgagor for declaration of right of redemption and that mortgagee is not a tenant* Where a usufructuary mortgagee of land had him elf recorded as the tenant of the land covered by the mortgage *held* in a suit by the mortgagor (i) for a declaration that the defendant was not a tenant of the land and (ii) for a declaration that the plaintiff was entitled to redeem the mortgage on re payment of the mortgage debt that the plaintiff was entitled to the first declaration prayed for but not to the second. A mortgagor is not entitled to a declaration of the terms on which he may redeem the mortgaged property when it is open to him to bring a suit for redemption of that property PAM DOUR RAI *v* MAHANTH HARNAM DAS 3 Pat L J 71

2 ——————— *Transfer of Property Act (IV of 1882), s 67—Usufructuary mortgage—Debt payable within a fixed period—Expiry of the period—Mortgagee s right to an order for sale* Where under a usufructuary mortgage the mortgage debt is made payable within a fixed period the mortgage is not purely a usufructuary mortgage and the mortgagee has in the absence of a contract to the contrary the right to an order under s 67 of the Transfer of Property Act (IV of 1882) that the property be sold after the debt has become payable *Mahadaji* v *Joti I L R 17 Bom 495* and *Krishna* v *Hari 10 Bom L R 615* explained DATTAMBHAT RAMBHAT *v* KRISHNABHAT (1910) I L R 34 Bom 462

3 ——————— *Turn of worship in a temple—Transfer of Property Act (IV of 1882) s 59—Mortgage bond creating right to worship whether requires attestation* A turn of worship is not an interest in immoveable property There fore an usufructuary mortgage bond creating an interest in a turn of worship does not require attestation by witnesses under s 59 of the Transfer of Property Act *Eshan Chunder Roy* v *Monmohini Dassi I L R 4 Calc 683* referred to JATI KAR *v* MUKUNDA DEB (1911) I L R 39 Calc 227

4 ——————— *Dispossession of mortgagee by a stranger adverse to mortgagor from the time of his knowledge* Where a trespasser dispossesses a mortgagee in possession and continues in possession asserting a title adverse to the mortgagor also such dispossession will be adverse to the mortgagor from the time the mortgagor has knowledge of the assertion (though he may not be then entitled according to the terms of the mortgage to recover possession from the mortgagee) The onus is on the trespasser to prove not only that he asserted a right adverse to the mortgagor but also that the latter knew it PERIYA AIYA AMBALAM *v* SHUNMUGASUNDARAM (1913) I L R 38 Mad. 903

5 ——————— *Lease of mortgaged property by mortgagee to mortgagor—Sale of equity of redemption to a third party in execution of a decree for arrears of rent—Liability of thekadar for rent* Defendant being the owner of a zemindari share made a usufructuary mortgage of it in favour of the plaintiff On the same date the plaintiff executed a lease of the same property for the term of the mortgage Defendant fell into arrears with his rent and plaintiff sued him and obtained a decree in execution of which he brought to sale defendant s equity of redemption under the mortgage and it was purchased by a third party The purchaser however did not obtain mutation of names in his favour *Held* on a fresh suit brought by the lessor for arrears of rent accruing due after the sale of the equity of redemption that the defendant was still liable for payment of rent as thekadar MITHAN LAL *v* CHHAJU SINGH (1918) I L R 40 All. 429

USUFRUCTUARY MORTGAGE—*concld*

6 ——————— When a puisne usufructuary mortgagee whose bond provides that if he is dispossessed he shall be entitled to sue for repayment of the loan has been dispossessed by purchaser at an execution sale of a prior mortgagee he is entitled to proceed against mortgagor personally on the bond although he has made no attempt to redeem the prior mortgage RAMJANAM SINGH *v* KUNJ BEHARI SINGH
6 Pat L J 670

7 ——————— *Possession by mortgagee as such for more than 12 years—Acquisition of title as mortgagee—Suit for redemption—Liability of mortgagee to account for the whole period of possession* A person in possession of a property as *usufructuary mortgagee* under a void mortgage for more than 12 years acquires by prescription the rights of a mortgagee and is as much accountable to the mortgagor for the rents and profits not only of the last three years preceding the suit for redemption but for the whole period of his possession *Madhava* v *Narayana* (1886) I L R 9 Mad 244 and *Sundara Gurukkal* v *Subramaniya Archakar* (1912) 16 I C 960 followed GOPALA DASU *v* RAMI (1921)
I L R 44 Mad 946

8 ——————— *Suit for redemption of an usufructuary mortgage and for recovery of Surplus profits from the mortgagee—Limitation Act (IX of 1908) Arts 148 and 105 applicability of—Civil Procedure Code (Act V of 1908) Or 34 rr (7) and (9) scope and effect of* A mortgagor brought a suit for redemption of an usufructuary mortgage and alleged that if accounts were taken a large sum would be found due from the mortgagee The mortgagee contended that the claim for recovery of the surplus profits received by him was barred under Art 120 of the Limitation Act *Held*—That having regard to the provisions of Or XXXIV rr (7) and (9) of the Civil Procedure Code the claim for recovery of the surplus profits received by the mortgagee is a relief which is a part of the suit for redemption itself for which the limitation is provided by Art 148 of the Limitation Act Therefore the claim for recovery of the surplus collections was not barred by limitation Art 105 of the Limitation Act applies to cases where the mortgagor has not to bring a suit for redemption but has to sue only for recovery of the surplus collections This was an appeal against the decrees of Babu Apara Prosad Mukherjee Subordinate Judge 3rd Court of Zillah 24 Perganas dated the 2nd of April 1919 affirming the decree of Babu Probodh Chandra Roy Munsif 2nd Court at Basirhat dated the 2nd of April 1918 and 10th May 1918 respectively PROSUNNA KUMAR MONDAL *v* NILAMBAR MONDAL
26 C W N 121

USURIOUS INTEREST

See INTEREST I L R 42 Calc 690

USURIOUS LOANS ACT (X OF 1918)

——— s 3—
See INTEREST I L R 44 Bom 775

USURY

See JURISDICTION I L R 42 Calc 116
See SONTHAL PARGANAS.
L R 41 I A 197

UTTARAYAN

——————— *Abwab of if liable to be taxed* Income derived from illegal abwabs such as Uttarayan is not agricultural income and is not exempt from assessment but must be taxed as income from whatever source derived within the meaning of s 3 of the Income Tax Act 1918 MAHARAJA BIRENDRAKISHORE MANIKYA BAHADUR *v* SECRETARY OF STATE FOR INDIA
25 C W N 81

V

VACATION

See LIMITATION I L R 38 Bom 656

VAKALATNAMA

See CIVIL PROCEDURE CODE SCH II PARA 1 25 C W N 832

See CIVIL PROCEDURE CODE (1908)—

O III R 4 2 Pat L J 259

O XLI R 10 I L R 36 All 46

LEGAL PRACTITIONERS ACT s 13
26 C W N 589

See LIMITATION ACT 1908 s 5
I L R 43 All 392

——————— *Civil Procedure Code (Act V of 1908) O XXIII r 1—Withdrawal application for—Pleader s authority—Vakalatnama—Plaintiff if may object to order as made on insufficient grounds* A vakalatnama executed by the plaintiffs which authorised their pleader to choose arbitrators prefer objections to awards file solenamah or rafanamah when necessary and do all necessary acts in connection with the suit that will be for our benefit gave the pleader authority to make an application under O XXIII r 1 for the withdrawal of the suit *Quære* Whether it is open to the plaintiff to take exception to an order permitting him to withdraw a suit with liberty to bring a fresh suit on the ground that the grounds set out in the application for withdrawal were insufficient KAILASH CHANDRA KAR *v* HARADHAN CHATTERJEA (1912) 16 C W N 932

——————— *Practice—High Court—Mofussil Courts—Vakalatnama acceptance of by pleaders—Endorsement if necessary—Civil Procedure Code (Act V of 1908) O III r 4—High Court General Rules and Circular Orders 1910 Vol I Ch XI r 45 (e)* It is not necessary that the acceptance of a *vakalatnama* should be in writing but the High Court General Rules and Circular Orders 1910 Vol I Ch XI r 45 (*e*) should be fully complied with by the pleader who accepts the *vakalatnama* *Per* D CHATTERJEA J —An appearance or act by a pleader named in the *vakalatnama* (*without his accepting it in writing*) would if allowed by the Court expressly or by implication be valid and operative The High Court rule however was made to be followed and is a salutary rule prescribed for safeguarding the interests of litigants and should certainly be followed in the mofussil in the manner indicated by the contrac

VAKALATNAMA—*contd*

tion placed on the same in the answers to the several references made to this Court It must be fully complied with by the pleader who first accepts the *vakalatnama* and all subsequent acceptances must be made by endorsements made in the presence of the Court or the *Sheristadar* or the Bench officer and dated, provided of course all the pleaders so accepting a *vakalatanama* are named in it Courts in the mofussil must be specially careful in enforcing this rule in cases of compromise and withdrawal of cases and withdrawal of money and documents *Per* BEACHCROFT J — There can be an acceptance by the pleader other than in writing But if this Court has in the exercise of its powers framed certain rules which must be observed by pleaders a pleader who does not conform to those rules ought not to be heard *Quære* Whether after the first endorsement by a pleader accepting a *vakalatanama* a mere endorsement of acceptance by those appearing on the strength of the original *vakalatanama* at subsequent stages of the case is sufficient MAHESH CHANDRA ADDY v PANCHU MUDALI (1915)

I L R 43 Calc 884

———————*Containing name of pleader who does not endorse and accept it—Whether the pleader can act*—Vakalatnama *authorising pleader to withdraw or give up claim of Plaintiff and to do all acts on behalf of Plaintiff —Whether Plaintiff would be bound by the pleader placing a Defendant on special oath and agreeing that his client should be bound by the answers—Indian Oaths Act (X of 1873) ss 8 and 9* One of the Plaintiffs in a suit for recovery of money died and her heirs were substituted in her place On behalf of the original plaintiffs three pleaders *A B* and *C* were engaged The substituted plaintiffs presented a second *vakalatnama* on which only two junior pleaders *B* and *C* made a formal endorsement of acceptance though it contained the name of *A* also *Held* that as senior pleader of the three to *A* was entrusted the management of the case on behalf of all the plaintiffs The two *vakalatnamas* were similar in terms and authorized the pleaders amongst other things to withdraw the suit or to give up the claim of the Plaintiffs to cite and examine witnesses or to refuse to examine the same and provided that all acts done by the pleaders for the benefit of their clients would be accepted by the parties as their own acts At the hearing the Plaintiff No 1 was examined and he stated that he and other Plaintiffs would be bound by the answers given to certain questions by Defendant No 2 on the said Defendant taking a special oath in the manner provided under ss 8 and 9 of the Indian Oaths Act There upon the senior pleader *A* presented an application on behalf of all the Plaintiffs offering this special oath to Defendant No 2 and agreeing on their behalf to be bound by the answers given by the said Defendant to the questions set forth in his application. The Defendant No 2 was therefore examined on special oath and he answered the questions Upon this the Plaintiffs declined to examine any further witnesses and accordingly the suit as a whole was dismissed On appeal the District Judge set aside the decree of the lower Court in so far as it related to Plaintiffs other than Plaintiff No 1 *Held*—That the powers given to the pleader were very wide and when the *vakalatnama* authorized him even to withdraw the suit or to give up the claim of the plaintiffs the authority given and the words used were comprehensive enough to include also the step taken by the pleader in placing one of the defendants on special oath and agreeing that his clients should be bound by the answers given by the witness on such oath MEHERJAN BIBI v SYED KAURUDDIN 24 C W N 385

VAKIL

See LEGAL PRACTITIONERS

See PROFESSIONAL MISCONDUCT

I L R 40 Mad 69

———— duty and status of—

See HIGH COURT JURISDICTION OF

I L R 44 Bom 418

———— power of to enter into compromise—

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XXIII R 3 AND S 96 (5)

I L R 41 Mad 233

————Right of audience in references under s 51 of Income Tax Act—

See INCOME TAX ACT S

25 C W N 80

————————*Vakil's right to appear before a Judge sitting on the Original Side of the High Court—Application to file warrant of attorney—Extraordinary Civil Jurisdiction—Civil Procedure Code (Act XIV of 1882) s 645—Civil Procedure Code (Act V of 1908) ss 119 129* A vakil of the High Court applied before a Judge sitting on the Original Side of the Court claiming a right to file a warrant of attorney in respect of a suit pending before the *Midnapore District Court*, in which a rule had been issued calling upon the plaintiffs to show cause why the suit should not be transferred to the High Court in its Extra ordinary Original Civil Jurisdiction *Held* that having regard to the long continued course of practice during which *vakils* never appeared on the hearing of such applications the present application should be refused *Held* further that the Civil Procedure Code of 1908 has nothing to do with a matter governed by old rules in force before 1909 *In re* A VAKIL'S APPLICATION (1910)

I L R 37 Calc. 853

————————*Vakil right of audience of at hearing of application against order of Presidency Small Cause Court refusing sanction to prosecute before Division Bench appointed for the purpose* An application for sanction to prosecute the plaintiffs was rejected by the Judge of the Court of Small Causes at Calcutta who tried the suit Against this the defendants applied to the Judge of the High Court sitting on the Original Side who remanded the matter to the trial court On an appeal under the *Letters Patent* the order of remand was set aside and the application was remitted to a divisional bench appointed for the purpose for disposal. At the hearing the opposite party was represented by a vakil *Held Per* TEUNON J (CHAUDHURI J *dissenting*) *Per* that the vakil had the right of audience TEUNON J —That the Presidency Small Cause Court is an inferior or subordinate court and in dealing with its judgments or orders the High Court is a superior court exercising not original but appellate or revisional jurisdiction. From this and the provisions of s 4 of the Legal Practi

VAKIL—*contd*

tioners Act it follows that the vakil was entitled to be heard. *Per* CHAUDHURI J —That the power of superintendence direction and control which was possessed by the Supreme Court over the Presidency Small Cause Court appertains to the Original Side of the High Court and all such powers when exercised by the Original Side are exercised in its Original Jurisdiction within the meaning of s 4 of the Legal Practitioners Act BUDHU LAL v CHATTU GOPE (1917)

21 C W N 654

——————Right of audience in references under s 51 of the Income Tax Act 1918 established MAHARAJA BIRENDRAKISHOR MANIKYA BAHADUR v SECRETARY OF STATE

25 C W N 80

—————— *Suit on the Original Side of the High Court—Fees non payment of—Duty of vakil to take necessary steps in the suit—Written statement not filed in time—Refusal of vakil to file because his fees was not paid—Refusal of vakil to consent to transfer of case to another vakil—Application for change of vakil—Order of Court—Delay in filing written statement whether excusable—Rules of Practice Original Side of the High Court rule 48* A vakil engaged in a suit on the Original Side of the High Court is not entitled to refuse to take a necessary step in the suit on the ground that his own fees had not been paid and at the same time refuse his consent to a change of vakalat to another vakil Delay in filing a written statement within the time fixed by the rules of the High Court caused by such refusal on the part of the vakil on the record was excused MUTHU KRISHNA YACHENDRA v NURSE (1921) I L R 44 Mad 978

VALATDANA PATTA

See CONTRACT ACT (IX OF 1872), s 65
I L R 38 Bom 249

VALIDITY OF WAKF

See MAHOMEDAN LAW—WAKF
L R 44 I A 21

VALUABLE CONSIDERATION

See LIMITATION I L R 43 Calc 34

VALUABLE SECURITY

See PENAL CODE ss 30 AND 471

3 Pat L J 386

——— Title page of account book—*Semble*: A title page in an account book containing the names of the partners and the amount of the capital contributed by each is if signed by them a valuable security within s 30 of the Penal Code HARI CHARAN GORAIT v GIRISH CHANDRA SADHUKHAN (1910)

I L R 38 Calc 68

VALUATION OF APPEAL.

See APPEAL

See APPEAL TO PRIVY COUNCIL.
I L R 44 Calc 119

See CIVIL PROCEDURE CODE 1908 s 110

See COURT FEES ACT (VII OF 1878) s. 7 CL. (4) I L. R 39 Mad. 725

VALUATION OF APPEAL—*contd*

See PRIVY COUNCIL
14 C W N 651 872

See SUITS VALUATION ACT

—————— *Court fees Act (VII of 1870) s 5 Sch I Art I and Sch II, Art 17 cl (6)—Valuation of appeal when no amount claimed, but liability of certain properties disputed—Memorandum of appeal—Taxing Officer—Acceptance of court fee by Deputy Registrar finality of* Where the appellant in an appeal against a mortgage decree does not dispute the amount decreed but raises the question of the liability of certain properties the value of the appeal for the purpose of the court fees is the value of such properties Sch II Art 17 cl (6) of the Court fees Act (VII of 1870) has no application to such a case *Kesava rapu Ramakrishna Reddi* v *Kotta Kota Reddi I L R 30 Mad 96 Bunwari Lal* v *Daya Sunker Misser 13 C W N 815* referred to A memorandum of appeal was admitted by the Deputy Registrar of the High Court and no question was raised as to the sufficiency of the court fees At the hearing of the appeal it was objected on behalf of the respondents that the court fee was insufficient *Held* that there having been no decision under s 5 of the Act by the Taxing Officer who was the Registrar of the High Court it was open to the respondents to raise the objection at the hearing of the appeal *Kasturi Chetti* v *Deputy Collector Bellary I L R 21 Mad 269* referred to JUGAL PERSHAD SINGH v PARBHU NARAIN JHA (1910)

I L R 37 Calc 914

VALUATION OF LAND

See ASSESSMENT I L R 42 Bom 692

See LAND ACQUISITION
I L R 41 Calc 967
I L R 33 All. 733

See MUNICIPAL ASSESSMENT
I L R 39 Calc 141

See MUNICIPALITY
I L R 46 Calc 784

See RESUMPTION OF LAND
I L. R 42 Bom. 668

VALUATION OF RESIDENTIAL PROPERTY

—————— *Land Acquisition Act (I of 1894)—Compensation—Valuation of residential property—Elements to be considered—Evidence before Acquisition Officer—Practice* The income of a property whether actual or imaginary is no doubt one of the recognised starting points for a valuation but it is a mistake to think that it is the only element to be taken into consideration In the case of residential property to endeavour to arrive at the market value solely on the basis of an hypothetical rent may work grave injustice to the owner There are commodities which may possess a value in the market not for the return they give on capital invested but for the advantages and enjoyment which accrue from their possession Residential property—in the sense of property which a purchaser wishes to acquire for his own residence—is such a commodity The first question to determine is whether there is a demand and if there is a demand the original cost is the most important element for consideration. It is the duty of legal practitioners attending before the Acquisition Officer to assist him in arriving at a

VALUATION OF RESIDENTIAL PROPERTY —*contd*

valuation by putting before him all the information and materials at their disposal *In the matter of* LAND ACQUISITION ACT *In the matter of* GOVERNMENT AND SUKHANAND (1909)

I L R 34 Bom 486

VALUATION OF SUIT

See ADMINISTRATION SUIT I L R 44 Calc 890

See ADOPTION I L R 37 Calc 860

See APPEAL 14 C W N 343

See CIVIL PROCEDURE CODE 1908

s 115 I L R 39 All 723

O XXI r 63 I L R 38 All 72

r 66 I L R 40 All 505

See COURT FEE

See COURT FEES ACT (VII OF 1870)

See MADRAS CIVIL COURTS ACT (III OF 1873) ss 12 13

I L R 39 Mad 447

See MORTGAGE I L R 37 Mad 420

See PLAINT I L R 48 Calc 110

See SUITS VALUATION ACT

————For purpose of Privy Council Appeal

See CIVIL PROCEDURE CODE 1908 s 110

I L R 2 Lah 297

———— suit to enforce right to share in joint family property

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I L R 2 Lah 114

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1 ———— Valuation in plaint contested— Duty of court—*to decide correct valuation suit for declaration method of valuation—Suits Valuation Act (VII of 1887) s 11* If the valuation of a suit put in the plaint for the purpose of jurisdiction is contested it is the duty of the court to decide what the correct valuation is In a suit for a declaration the value of the suit for the purpose of jurisdiction must be the value of the property in respect of which the declaration is sought MOHINI MOHAN MISSER v GOUR CHANDRA RA

5 Pat L J 397

2 ———— Partition suit—*basis of value of for jurisdiction* The value of a suit for partition for the purpose of jurisdiction is the value of the share claimed by the plaintiff and not the value of the whole property of which partition is sought DUKHI SINGH *v* HARIHAR SHAH

5 Pat L J 540

3 ———— Suit to set aside adoption— *Munsif jurisdiction of—Forum—Practice* According to a long standing practice a suit to set aside an adoption is for the purposes of jurisdiction incapable of valuation and it is competent to the plaintiff in such a suit to value the relief claimed, and that valuation determines the forum to decide the suit *Allemannessa Bibi* v *Mahomed Hatem I L R 31 Calc 849* commented on *Jan Mahomed Mandal* v *Mashar Bibi I L R 34 Calc. 352* referred to PRAHLAD CHANDRA DAS v DWARKA NATH GHOSE (1910)

I L R 37 Calc 860

VALUATION OF SUIT—*contd*

4 ———— Suit for possession of land and mesne profits—*Value changed in the course of the suit—Appeal to the District Court heard and entertained at ealier stage on the basis of original valuation—Application for assessment of the mesne profits—Total claim beyond District Court s appellat jurisdiction—Objection as to jurisdiction not taken in District Court—Objection if may be taken in High Court by way of appeal—Civil Procedure Code (Act V of 1908) s 99—Appeal if lies—Jurisdiction objection to waiver of—Return of memorandum of appeal—Presentation in proper Court out of time—Limitation Act (IX of 1908) s 5—Costs* A suit for recovery of land with mesne profits instituted in the Court of a Subordinate Judge was originally valued at Rs 2 100 Rs 1 725 for the land and Rs 375 as the approximate amount of mesne profits for three years antecedent to the suit The suit was decreed by the Subordinate Judge and the decree affirmed on appeal by the District Judge Plaintiff thereafter appealed for assessment of mesne profits valuing his claim at Rs 7 549 The Subordinate Judge having allowed only Rs 962 the plaintiff appealed to the District Judge valuing his claim in the memorandum of appeal at Rs 2 7-8 his appeal was allowed whilst the defendant s cross appeal against the Subordinate Judge s decree for Rs 962 was dismissed The defendant appealed to the High Court *inter alia* on the ground that the appeal to the District Judge was incompetent *Held* that the real value of the suit was Rs 5 415 (Rs 1 725 and Rs 9[illegible] and Rs 2 [illegible]) and the appeal from the order of the Subordinate Judge lay to the High Court and not to the District Judge That the defendant was not precluded from raising the question of jurisdiction on appeal by the fact that he had omitted to take exception to the District Judge s jurisdiction in his Court and had himself filed a cross objection The principle that parties cannot by consent or by stipulation invest a Court with jurisdiction is applicable to cases wherein the jurisdiction is dependent upon the value of the subject matter in controversy *Merrill* v *Petty 16 Wallace 338* relied on Where there is a total want of jurisdiction over the subject matter in controversy the objection cannot be waived *In re Aylmer 0 Q B D 958 Jones* v *Owen 5 D & L 669 18 L J Q B 8 Mayor of London* v *Cox L R 2 H L 239* relied on That an appeal to the High Court lay against the decree made without jurisdiction by the District Judge Where jurisdiction is usurped by a Court in passing an order against which an appeal would lie if it had been passed with jurisdiction an appeal against the order cannot be defeated on the ground that the order was made without jurisdiction *Bindeswari Charan* v *Lalpat Nath 15 C W N 725* That the principle that no appeal lies where the Court has been constituted an abritrator by the parties had no application to the present case The High Court directed the memorandum of appeal to the District Judge to be returned for presentation in the High Court but as the memorandum of appeal was already in the High Court it was ordered that the memorandum be treated as presented in the High Court on that date and it was ordered in the exercise by the High Court of its discretion under s 5 Limitation Act that the time between the presentation of the appeal in the District Judge s Court and the order for return made by the High

VALUATION OF SUIT—*contd*

Court be deducted. As the objection to jurisdiction was not raised before the lower Appellate Court each party was directed to pay his own costs RAMJIT MISSER v RAMADOR SINGH (1912) 17 C W N 116

5 ——— Investigation as to amount of value of subject matter of suit—*Competence of Court of first instance to remit investigation of dispute to some other officer—Civil procedure Code (Act V of 1908) O XLV r 5—Practice* R 5 O XLV of the Code of Civil Procedure does not empower the Court of first instance to remit the investigation as to amount or value of subject matter of suit to some other officer it must be carried out by that Court HANSMAN JHA v BAHUJI JHA (1915) I L R 43 Calc 225

6 ——— Suit for declaration of title without consequential relief—*Court Fees Act (VII of 1870) Sch II 17 (iii)—Suits Valuation Act (VII of 1887) s 8—Objection to jurisdiction not taken in First Court—Illegal and misconceived practice of valuing suit* The plaintiff (respondent) brought a suit against the appellant for moveable and immoveable property left by one V of whom he claimed to be the adopted son. The property was stated in the plaint to exceed Rs 60 000 and to be in the hands of the Collector (with the exception of a house worth Rs 250) at the instance of the appellant who claimed to be the nearest heir of the deceased The plaint prayed for a declaration (valued at Rs 130) of the respondent s title and for an injunction (valued at R 5) to prevent obstruction by the appellant to the property in the respondent s possession The appellant denied the adoption but he made no objection either in his written statement or in his memorandum of appeal to the District or the High Court to the jurisdiction of the First Class Subordinate Judge to try the suit That Court decided the suit in favour of the respondent From that decision the appellant appealed both to the District Judge and to the High Court and the latter appeal stood over until the former had been decided by the District Judge who on the ground that the valuation of the suit was less than Rs 5 000 reversed the decision of the First Court and made a decree in favour of the appellant but that decree was reversed on appeal to the High Court by the respondent and it was held that the appeal lay not to the District Judge but to the High Court which then heard the appellant s appeal from the original decision of the First Class Subordinate Judge and affirmed his decision By order in Council leave was granted to the appellant for a special appeal to his Majesty in Council on the hearing of which the appellant raised the contention that the value of the subject matter of the suit was a sum not exceeding Rs 5 000 and therefore the decision of the First Class Subordinate Judge had been without jurisdiction and the appeal to the High Court was not competent *Held* that the value of the subject matter of the suit exceeded Rs 5 000 and it was rightly instituted in the Court of the First Class Subordinate Judge in the exercise of his special jurisdiction and the appeal from his decision properly lay to the High Court If any part of the Court fee payable and paid was a fixed fee under s 2 of the Court Fees Act the national value of the property could not displace its real value for the purposes of jurisdiction.

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The objection of the appellant to the First Class Subordinate Judge not having been raised in his Court could not be made at any subsequent stage of the suit A practice of valuing a prayer for a declaratory decree at Rs 130 as being the value on which the fee nearest to Rs 10 would be leviable deprecated as being illegal and misconceived It was contrary to the scheme of the Court Fees Act that there should be any valuation of such a suit RACHAPPA SUBRAO v SHIDAPPA VENKATRAO (1918) I L R 43 Bom 507

VALUE OF PROPERTY

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See CIVIL PROCEDURE CODE 1908 s 20 I L R 42 All 619

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VARTHAMANAM (OR LETTER)

——— *Not stamped—Unconditional undertaking to pay—Promissory note inadmissible in evidence—Evidence Act (I of 1872) s 91—Suit on original liability not maintainable* A *varthamanam* or letter which says Amount of cash borrowed of you by me is Rs 350 I shall in two weeks time returning this sum of rupees three hundred and fifty with interest thereon at the rate of Rupee one per cent per month get back this letter amounts to an unconditional undertaking to repay borrowed money and is therefore a promissory note and not merely an offer to borrow or an acknowledgment of indebtedness *Bharata Pi harodi v Vasudevan Nambudri I L R 27 Mad 1* distinguished. *Tiru pathi Goundan v Rama Peddi I L R 21 Mad 49* doubted When such a document is inadmissible for want of a stamp to allow a suit as one on account for money had and received concealing the real contract of loan which had been reduced to the form of a document would nullify s 91 of the Indian Evidence Act (I 1872) *Pothi Peddi v Valayudasivan I L 10 Mad 94* followed *Chinnappa Pillai Muthuraman Chettiar 9 Mad L T 281 Mallaya v Ramayya 21 Mad L Krishnaji v Rajmal I L R Baij Nath Das v Salig Ram 16* from Doctrines of English C not to be imported into the a document *Per* SPENCER the word *varthamanam* will not deprive the doc of promissory note if its such MUTHU SASTRIGAL v KASANNADHI (1913)

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VARTHAMANAM (OR LETTER)

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VATAN

See BOMBAY HEREDITARY OFFICES ACT (BOM ACT III OF 1874) s 15 I L R 44 Bom. 237

See DEKKHAN AGRICULTURISTS RELIEF ACT s 2 EXPL. (*b*) I. L. R 36 Bom. 151

VATAN—*contd*

See HEREDITARY OFFICES ACT (BOM III OF 1874)—

s 2 I L R 43 Bom. 323

ss. 4, 53 I L R 41 Bom. 677

s 11 I L R 37 Bom 37

ss 25, 36, 63 and 64 I L R 41 Bom 23

See HINDU LAW—INHERITANCE I L R 34 Bom. 321

See INAM LANDS I L R 38 Bom 272

See LIMITATION ACT 1877 ss 22 28 I L R 34 Bom 91

See LIMITATION ACT (IX OF 1908) SCH I ART 152 I L R 43 Bom 376

See RES JUDICATA I L R 37 Bom 224

See SANAD CONSTRUCTION OF I L R 36 Bom 639

See VATAN DESHMUKHI

———Mortgage of Vatan lands—

See LIMITATION ACT 1908 s 20 I L R 44 Bom 500

1 ———*Regulation XVI of 1827—Transfer of Property Act (IV of 1882) s 43—Deshgat Vatan—Mortgage—Subsequent enlargement of the mortgagor s estate—Private property—Mortgagee s claim to hold the property against the mortgagor s heir* A mortgagee of Deshgat Vatan knew that the property which was mortgaged to him was land appurtenant to an hereditary office and inalienable beyond the life time of the incumbent Subsequently to the mortgage the estate of the mortgagor was enlarged so as to be alienable in the life time of the holder After the enlargement, the mortgagee having claimed to hold the property against the heir of the mortgagor *Held* that the mortgagee took only such estate as the holder of the Vatan property was capable of conveying to the mortgagee at the time of the mortgage and that the mortgagee could not claim to retain the property in virtue of the mortgage after the death of the mortgagor GANGABAI *v* BASWANT (1909) I L R 34 Bom 175

2 ——— *Patilki Vatan—Court sale of the vatan lands in execution of decree against holder of vatan—Levy of full assessment by Collector—Character of vatan land not changed by the levy—Suit by next holder of vatan within twelve years of the death of his predecessor—Limitation* The plaintiff's father held the land in dispute as *patilki vatan* which were sold in 1875 to the defendant at a Court sale held in execution of a decree The Collector thereupon levied full assessment on the land and assigned the assessment for remuneration for service The plaintiff's father died in 1905 In 1909 the plaintiff brought a suit against the defendant to recover possession of the land The lower Courts dismissed the suit on the grounds that the land had ceased to be *vatan* and that the suit was brought beyond time The plaintiff appealed *Held* that the land did not lose its character as *vatan* merely because the Collector levied full assessment and altered the mode of remuneration *Held* also that the plaintiff s suit was in time since on the death of the plaintiff's father in 1905 the plaintiff became

VATAN—*concld*

entitled to the land as the next holder of the *vatan* and the defendant s interest in the land as the vendee of the right title and interest of the plaintiff s father came to an end SHIVRAM NARSINGRAO *v* NARAYAN KULKARNI (1912) I L R 37 Bom 81

3 ———*Suit to recover a share in the profits of vatan—Suit for money had and received—Amount of the claim under Rs 500—Small Cause Court nature—No second appeal* A suit for the recovery of a share in the profits of a Kulkarni *vatan* is a suit for money had and received by the defendant for the use of the plaintiff and the claim being under Rs 500 it was of a Small Cause nature in respect of which no second appeal lay BHIKAJI HARI *v* PADHABAI (1913) I L R 37 Bom 700

VATANDAR

See CURATOR S ACT 1841 ss 3 4 14 I L R 34 Bom 115

See HEREDITARY OFFICES ACT BOMBAY ss 25 26 I L R 34 Bom 101

s 67 I L R 36 Bom. 420

——— mortgage by—

See HEREDITARY OFFICES ACT (BOM III OF 1874) s 5 I L R 39 Bom. 587

——— title against by adverse possession—

See HEREDITARY OFFICES ACT (BOM ACT III OF 1874) ss 10 AND 13 I L R 35 Bom. 146

VATANDAR BARBERS

———A Vatandar Barber has the right to perform services as a barber on ceremonial occasions. He is entitled to recover customary fees from another barber who has acted in violation of his rights BHAGOJI GANU *v* BABU BALU I L R 44 Bom 733

VATANDAR JOSHI

———*Right to officiate at marriages—Yajman—Ceremony in Panchakalas Lingayet form—Claim for fees in respect of part of the ceremonial in Hindu form—Ceremony cannot be split up* The question raised in this appeal was whether the ceremonial observed by Lingayets in marriages are to be regarded as a whole in deciding whether or not the village Gramopadhya is entitled to perform the ceremony or whether the ceremony can be split up into parts and if it is found that some part of the ceremonial is similar to the Brahmin ritual the Gramopadhya can insist upon payment of fees in respect of such part of the ceremonial as may have been performed by another *Held* that if the ceremony performed was not a Hindu marriage ceremony as a whole the Joshi or Gramopadhya had no right to demand the fees RANGAPPA *v* VENKANBHAT (1915) I L R 40 Bom 112

———*Observance of non Brahmanical ceremonies—Yajman himself performing the ceremonies—Right to recover fees* The defendants were non Brahmin residents of a village Defendant No 1 s mother having died he with the assistance of defendant No 2 performed over the body certain non Brahmanical ceremonies No fees were paid to the defendant No 2 and the whole

VATANDAR JOSHI—*contd*

conduct of ceremonies was with the defendant No 1 himself The plaintiff a Vatandar Joshi of the village having sued to recover damages for loss of his cu tomary fees *Held* that the plaintiff was not entitled to recover damages as the cere monies performed were other than Brahmanical ceremonies and there was no ground upon which the plaintiff could lawfully exact the payment of his fees *Vithal Krishna Joshi* v *Anant Ram chandra 11 Bom H C R 6 Dinanath Abaji* v *Sadashiv Hari Madhave I L R 3 Bom 9 Raja valad Shivapa* v *Krishnabhat I L R 3 Bom 23* distinguished BALA GENUJI v BALWANT LAXMAN (1918) I L R 42 Bom 613

VEHICLE

See BOMBAY DISTRICT POLICE ACT (BOM IV OF 1890) s 61 CL (b)
I. L R 41 Bom 464

VENDEE

——— payment by—

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 60 AND 91
I L R 38 Mad 310

VENDOR

——— liability of—

See VENDOR AND PURCHASER
I L R 38 Calc 458

———*Duty of vendee to pro tect vendee s title caveat emptor* Where in a suit brought by a third party against a vendor and vendee of immoveable property the former admits the claimants title and the suit is decreed upon that admission he cannot in a subsequent suit for the recovery of the purchase money paid to him by the vendee plead that the former suit was wrongly decided *Per Imam J*—In vernacular conveyancing the expression *sâl saf* means a flowless title BHATTA RAM v GANGA PRASAD GOPE 3 Pat L J 258

VENDOR AND PURCHASER

See AGREEMENT I L R 41 All. 417
See CONTRACT I L R 35 All 325
See CONTRACT ACT 1872 s 65
I L R 42 All 7
See LEASE I L R 42 Bom. 103
See REVIEW I L R 40 Calc 140
See SALE OF GOODS
See SALE OF IMMOVEABLE PROPERTY
See SPECIFIC PERFORMANCE
I L R 43 Calc 990
See TRANSFER OF PROPERTY ACT 1882

———s 41—
ss 54 to 57
I L R 43 All 263

——— rights of—

See MORTGAGE I L R 44 Calc 542

——— vendor s death before completion of sale—

See CONTRACT I L R 45 Bom 434

——— Sale of property in possession of a third person—*Person in possession claiming*

VENDOR AND PURCHASER—*contd*

to be owner—The vendor a benamidar—Negligence The plaintiff purchased a house from a person who had the title deeds of the house made out in his name The house was in the defendant s possession who claimed to be its owner and it appeared that the plaintiff s vendor was only a *benamidar* for the defendant The plaintiff sued to recover possession of the hou e from the defend ant *Held* that the plaintiff could not succeed because he omitted to make the inquiries which he was bound to make to perfect his own title and by his own negligence exposed himself to the risk of purchasing property which in reality belonged not to his vendor but to the defendant VYANKA PACHARYA v YAMANASAMI (1911)
I L R 35 Bom 269

——— Mortgage—*Contract of Sale—Breach by Vendor—Loss of bargain—Liability of vendor—Transfer of Property Act (IV of 1882) s 55 (1) (g)—Measure of damage* The owners of certain immoveable property which was under a mort gage entered into a contract for the sale of the property but subsequently declined to complete the sale on the ground of the existence of the mortgage Thereafter the property was acquired under the land acquisition Act by the Local Government and the compensation paid to the owners including the statutory allowance of 15 per cent far exceeded the contract price On a suit brought by the purchaser for damages for breach of the contract of sale *Held* that the vendors were bound to convey the property free from incumbran ces and the existence of the mortgage was no de fence to the purchaser s action *Engell* v *Fitch L R 4 Q B 659 Day* v *Singleton [1899] 2 Ch 320 Jones* v *Gardiner [1902] 1 Ch 191* referred to *Flureau* v *Thornhill 2 W Bl 1078 Bain* v *Fother gill L R 7 E & I App 158* distinguished *Semble* The ruling in *Bain* v *Fothergill L R 7 E & I App 158* does not apply to India and there is no exception to s 73 of the Indian Contract Act in the case of sale of immoveable property *Ranchhod* v *Manmohan Das I L R 32 Bom 165* and *Pitamber Sundarji* v *Cassibai I L R 11 Bom 272* referred to The measure of damage was the difference between the contract price and the com pensation allowed to the vendors excluding however the statutory allowance of 15 per cent inasmuch as the breach had occurred before the acquisition NABINCHANDRA SAHA PARAMANICK v KRISHNA BARANA DASI (1911)
I L R 38 Calc 458

——— Sale to raise funds for litigation —*Transfer whilst vendor was out of possession—Agreement depending on success of litigation—Transfer of undivided share in joint ancestral property—Interest in property giving right to sue—Vendee and provider of funds made co plaintiffs* The original plaintiffs in the two suits out of which these appeals arose were in one suit the sons and in the other the grandson of the heads and mana gers of two di tinct joint Hindu families, owners of an estate in Oudh by whom alienations of the joint ancestral property had been made in favour of the appellant whom they sued in ejectment to set aside those alienations on the ground that the managing members had no power to make them As they required funds to enable them to pro ecute the suit they entered into agreements with a third person (who was made a co plaintiff in the suits and was now respondent) to the effect

VENDOR AND PURCHASER—*contd*

that in the share of each of them in property he will be a co sharer of a one half share and the remaining one half share will belong to us

He will bear the entire expen es in connexion with the suit and in case of success he will be entitled to proprietary posse sion of the above mentioned one half share or one half of the share which may be decreed which can remain joint or be parti tioned by him as he pleases In the course of the litigation the original plaintiffs comprom ed the suits with the appellant and withdrew from them leaving the respondents to pro ecute them alone *Held* (reversing on this point the deci ion of the Courts in India) that the agreements (which constituted his only right to sue) conferred upon the respondent no pre ent right to the pos ession of any share in the property in suit He would only have the right to possession in case of success and success had not been achieved Until then he was merely a co owner in a certain undivided share of the property There was no pre ent grant or assignment to him of any separate share of the property divided or undivided and he could not therefore maintain the suit *Achal Ram v Ka im Husain Khan I L R 27 All 271 L R 32 I A 113* distinguished BASANT SINGH v MAHABIR PRASAD (1913) I L R 35 All 273

———— Conveyance by executor—*As beneficial owner—Construction of deed of sale—Inconsistency between recitals and operative part of de d—Omission to state expressly that he was conveying the property sold in his capacity of executor* *Held* (reversing the appellate decision of the High Court and restoring that of the first Court) that on the construction of a deed of sale and on the evidence in and under the circumstances of the ca e the title vested in an executor pas ed to the appellants under the deed by which he together with other vendors purported to convey all his estate right title claim and demand whatso ever in the property sold although he did not expressly state therein that he was conveying the property in his capacity as executor The plain legal interpretation of the deed should not be allowed to be affected by speculations as to what particular rights existing in the various vendors were present to the minds of some or all of the parties to the conveyance at the date of its execu tion The deed stated plainly that whatever right or title the vendors possessed was to go to support the conveyance and it is a settled rule that the meaning of a deed is to be decided by the language used interpreted in a natural sense BIJRAJ NOPANI v PURA SUNDARY DASEE (1914) L R 41 I A 189 I L R 42 Calc 56

OVER RULING

I L R 37 Calc 362

———— Conveyance of property by an administratrix—*having a beneficial interest therein —No words of limitation in the agreement to convey specifying wh ther it was qua administratrix or qua beneficial owner—Principle to be applied in ascertaining in what capacity the administratrix acted* Where a person has two estate one larger and the other smaller and purports to convey the entire property without any words or limitation he must be taken to be conveying the highest estate he has that is to say if an executor having a one third personal beneficial interest in the estate purports to convey the whole of it without quali fication or limitation he must be taken to be conveying in his character as executor and not in that of one having a beneficial interest only in a fraction of the whole estate purported to be con veyed *In re Venn & Fur e s Contract [1894] 2 Ch 101* followed No distinction can be main tained in principle between actual conveyance and agreements to convey for the purpo es of apply ing this general rule GANGABAI v SONABAI (1914) I L R 40 Bom 69

———— Title, proof of—*Contract to give a marketable title free from all reasonable doubt —Evidence of discharge of mortgage—Recitals in release—Registration Act (III of 1877)* The que tion in this appeal was whether a vendor had made out a marketable title free from all rea onable doubts which he had contracted to do by a written agreement dated 18th October 1913 to sell certain land in Bombay There had been a mortgage effected on the property on 26th April 1892 in favour of two joint mortgagees by an agreement of charge duly registered under the Regi tration Act (III of 1877) and the depo it of the title deeds of the property with the mort gagees To deduce a good title it became neces sary to prove that the mortgage had been dis charged As proof of that fact the vendor pro duced a certified copy of a release dated 30th September 1902 which had been executed by only one of the joint mortgagees but which recited the death of the other mortgagee the fact that his co mortgagee was his ole heir and the redemp tion of the property from the equitable charge created by the agreement of 26th April 1892 One of the title deeds of the property was not produced by the vendor *Held* (reversing the decisions of the Courts in India) that the recitals in the relea e were not evidence against the joint mortgagee and that the *title contracted for* had not been deduced SHRINIVASDAS BAVRI v MEHERBAI (1916) I L R 41 Bom 300

————Sale of specific Land—*Vendor* Evicted from part—On 16th September 1907 C D and his son M B the predece sors of defendants 3 to 8 sold to the Plaintiff 9 Kanals and 4 marl s of land The property comprised several plots which formed different Khasra numbers specified in the sale deed The price paid wa R 1 000 per kanal Plaintiff asserted they got po e ion of 7o kanal and 4 marlas Defendants 1 and 2 being the true owners of the rest *Held* that under the deed the vendors had sold 79 kanals 4 marlas and it was the duty of the vendors either to make good the deficiency or to pay damages having regard to s 55 of the Transfer of Property Act the measure of damages being the price of the land at the time of eviction JAI KISHEN DAS *v* ARYA PRITI NIDHI SABHA I L R 1 Lab 360

VENDOR AND SUB VENDOR

————Estoppel—*Unpaid Vendor—Appropria tion—Jute trade usage of—Pucca delivery orders—Negotiability—Documents of Title—Indian Con tract Act (IX of 1872) s 108—Transfer of Pro perty Act (IV of 1882) s 137—Damages* A delivery order is recognised as a document of title under s 108 of the Contract Act and s. 137 of the Transfer of Property Act and under a delivery order the transferee acquires a title to the goods to

VENDOR AND SUB VENDOR—*contd*

which it relates By the usage of the jute trade in Calcutta *pucca* delivery orders are issued only on cash payment are passed from hand to hand by endorsement and are sold and dealt with in the market as absolutely representing the goods to which they relate On the 1st March 1909 the defendant company sold to J & Co s principals certain Hessian cloth on the terms that payments were to be made in cash in exchange for delivery order on sellers and delivery of the goods was to be given and taken ready payment against *pucca* delivery order A *pucca* delivery order was issued on the 2nd March by the defendant company in favour of J & Co s principals or order embodying the term ready shipment On the 3rd March J & Co requested the plaintiffs to advance money on the security of the delivery order The plaintiffs on making enquiries at the mills were informed the delivery order was all right On the 4th March J & Co obtained an advance of money from the plaintiffs on the pledge of the delivery order and duly endorsed the delivery order to the plaintiffs On the same date J & Co handed the defendant company a cheque in payment of the goods comprised in the delivery order On the 8th March the defendant company presented the cheque for payment but it was dishonoured The defendant company thereupon refused to give delivery of the goods to the plaintiffs under the delivery order The plaintiffs obtained an absolute release of all J & Co s interest in the delivery order and brought an action against the defendant company for delivery of the goods or their value or damages for conversion. *Held* that the defendant company were estopped from denying that cash had been paid for the goods to which the delivery order related and they could not claim to be entitled to a lien as against the plaintiffs The defendant company were further estopped from denying that they had appropriated goods of the required quantity and description to the delivery order *and that they held these goods for the plaintiffs Goodwin* v *Robart L P 1 A C 476* referred to ANGLO INDIA JUTE MILLS Co v OMADEMULL (1910) I L R 38 Calc 127

VENDOR'S LIEN

See TRANSFER OF PROPERTY ACT 1882 s 55

s 55 (4)

VENDOR'S MARK.

See TRADE MARK I L R 37 Calc 204

VENEREAL DISEASE

See DIVORCE I L R 48 Calc 283

VENUE

See CIVIL PROCEDURE CODE 1908 s 16—21

See JURISDICTION I L R 41 Calc 305
I L R 42 Calc 942

See RAILWAY COMPANY
I L R 41 All. 488

——— *transfer of from one Court to another after decree*—

See JURISDICTION I L R 37 Mad. 4"7

VERBAL APPLICATION

See SANCTION FOR PROSECUTION
I L R 40 Calc 423

VERBAL NOTICE

See EJECTMENT I L R 40 Calc 858

VERDICT OF JURY

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) ss 297 303 304
I L R 36 Mad 585

——— by casting lot —

See JURY TRIAL BY
I L R 40 Calc 693

———*Reference to High Court—Power to question the jury as to their reasons for the verdict—Grounds of reference—Mere disagreement with a verdict not perverse—Interference by High Court when the verdict is not in defiance of the probabilities of the case* It is open to the Judge when he disagrees with the verdict of the jury and intends to make a reference to the High Court under s 307 of the Criminal Procedure Code to question the jury as to the reasons for their verdict *Emperor* v *Annada Charan Thakur I L R 36 Calc 679* referred to It is not in every case of doubt nor in every case in which a view different from that of the jury can be entertained on the evidence that a reference under *s 307 of the Code* is to be made to the High Court but when the verdict is manifestly wrong The High Court will not interfere under s 307 in every case of doubt or in every case in which it may with propriety be said that the evidence would have warranted a different view *Queen* v *Sham Bagdi 13 B L R Ap 19* approved The High Court refused to interfere where the facts on a reasonable hypothesis were not inconsistent with the innocence of the accused and the verdict was not in defiance of the probabilities of the case EMPEROR v SWARNAMOYEE BISWAS (1913) I L R 41 Calc 621

———*Juror speaking to an outsider without the leave of the Court after their retirement to consider the verdict—Legality of the verdict—Criminal Procedure Code (Act V of 1898) s 300* The verdict of the jury is vitiated by the mere fact of one of them having without the leave of the Court and after their retirement to consider the same spoken to or held any communication with a person not a juror It is not necessary for the Court to enquire into the nature of the subject matter of the conversation or communication *Rex* v *Ketteridge [1915] 1 K B 467* referred to BENI MADHAB KUNDU v EMPEROR (1918) I L R 46 Calc 207

VERIFICATION

See CONSPIRACY TO WAGE WAR.
I L R 38 Calc 559

——— of plaint—

See EX PARTE DECREE
I L R 43 Calc 1001

See PLAINT

VERNACULAR GOVERNMENT GAZETTE

See REVENUE SALE.
I L R 41 Calc 276

VESTED INTEREST

See MAHOMEDAN LAW—TRUST
I L R 34 Bom. 604

VESTED INTEREST—*contd*

See TRANSFER OF PROPERTY ACT 1882 s 19

See WILL I L R 43 Bom 88

VESTED RIGHT

See LIMITATION I L R 41 Calc 1125

VESTING ORDER

See UNDISCHARGED BANKRUPT I L R 47 Calc 961

———— effect of—

See INSOLVENCY I L R 42 Calc 72

VEXATIOUS CHARGE

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 250 I L R 37 Bom 376

VIEW OF PREMISES

See PRACTICE I L R 35 Bom 317

VILLAGE

See MADRAS ESTATES LAND ACT (I OF 1908) s 8 I L R 38 Mad 891

———— change of from one district to another—

See RELIGIOUS ENDOWMENTS ACT (XX OF 1863) I L R 39 Mad. 949

————————*Proprietors of who are—Persons who do not pay land revenue but only tirni (grazing) charges if entitled to share on partition of shamilat land* Persons who merely paid *tirni* (grazing dues) to the Government and who did not pay any land revenue assessed on the village were not proprietors of the village and were not as such entitled to a share on partition of the *shamilat* land of the village BAGGA *v* SALEH (1915) 19 C W N 1023

VILLAGE CHAUKIDARI ACT (BENG VI OF 1870)

See CHAUKIDARI ACT

See CHAUKIDARI CHAKRAN LANDS

————————*Held* that the words otherwise than under a temporary settlement in the definition of Chaukidari Chakran Lands refer to a settlement by Government SRI RAJA KIRTIBASH BHUPATI HARI CHANDAN MAHAPATRA *v* SECRETARY OF STATE. 15 C W N 300

———— ss 1 48 to 52 58—

See CHAUKIDARI CHAKRAN LANDS I L R 42 Calc 710

———— s 49—

See CHAUKIDARI CHAKRAN LAND I L R 37 Calc 598

———— s 50—

See CHAUKIDARI CHAKRAN LANDS I L R 44 Calc 841

————ss 50 51—*Legal effect of resumption of chaukidari chakaran lands and subsequent transfer ence thereof to the zamindars whether in such a case the zemindar acquires a new title thereto and whether it is incumbent on the putnidar to ask for a fresh settlement thereof* Where *chaukidari chakaran* land forming part of lands settled in *putni* was resumed by Government under the provisions of the Village Chaukidars Act and was subsequently tran ferred to the zemindar who thereupon settled such lands with the plaintiffs who were third parties *Held* that the zemindar was not com petent to make a settlement with the plaintiffs and that under the grant which the plaintiffs obtained they had acquired no right as against the *putnidars* The *putnidars* were not bound to take a fresh settlement from the zemindar after resumption *Held* also that the transfer of the lands by Government subsequent to resumption did not create a new estate in the zemindar but the estate thus taken by him was in confirmation and by way of continuance of his existing estate SOURENDRO MOHAN SINHA *v* RAJENDRA NATH ROY (1917) 22 C W N 660

VILLAGE CHAUKIDARI ACT (BENG VI OF 1870)—*contd*

———— s 51—

See CHAUKIDARI CHAKRAN LANDS. I L R 45 Calc 515 685 I L R 46 Calc 173

———— ss 58 59 60 61—*Determination by a Commissioner under s 61—Fraud—Review by sub sequent Commissioner—Civil Suit* An order by Commissioner appointed under s 58 of the Village Chaukidari Act determining that certain lands are chaukidari chakran lands is final and conclusive Such orders cannot be reviewed by a second Commis sioner even if the previous order was fraudulently obtained An order under s. 61 of the Village Chaukidari Act may be set aside on proof of fraud or of non compliance with the provisions of the law if at all only in a regular suit by a Civil Court SARADINDU NARAIN ROY *v* BENODE BEHARY MOHATA (1913) 18 C W N 143

———— s 60—*Enquiry nature of—Notice per sons entitled to—Notice absence of effect of—Commissioner s report if final and conclusive—Reg VII of 1822 s 21* *Held* that s 60 of the Chaukidari Chakran Act (VI of 1870 B C.) lays down that in *chaukidari chakran* enquiries the procedure shall be in accordance with Reg VII of 1822 and the absence of notice would render the proceedings of the Commissioner of no effect against a person who was entitled to notice and the Civil Court could interfere although but for such defect the order of the Commissioner would be final and conclusive SARAT CH. RAY *v* SECRE TARY OF STATE FOR INDIA (1916) 21 C W N 238

VILLAGE COMMUNITY

See PROFIT A PRENDRE 2 Pat L J 303

VILLAGE MAGISTRATE

———— information to—Effect of giving—

See BAILABLE OFFENCE I L R 39 Mad. 1006

————Power to confine—

See REGULATION XI OF 1816 (MAD). I L R 44 Mad. 113

VILLAGE POLICE ACT

See BOMBAY VILLAGE POLICE ACT 1867

VILLAGE ROAD

——————*Held* that non joinder of parties in a suit for a declaration of right on a village Road may be fatal HARAN SHEIKH v RAMESH CHANDRA BHATTACHARJEE
25 C W N 249

VINCHUR COURT

See SPECIAL APPEAL
I L R 38 Bom 340

VIS MAJOR

S BOMBAY DISTRICT MUNICIPALITIES ACT (BOM III OF 1901) ss 50 54
I L R 35 Bom 492

VOIDABLE CONTRACT

See PRINCIPAL AND AGENT
I L R 37 Calc 81

See TRUSTS ACT (II OF 1882) s 88
I L R 43 Bom. 173

VOLUNTARY LIQUIDATION

See COMPANIES ACT 1913 s 207
I L R 38 All 407

———— Examination of Directors and Managers—

See COMPANIES ACT 1913 s 215
I L R 44 Bom 459

VOLUNTARILY OBSTRUCTING PUBLIC SERVANTS IN THE DISCHARGE OF PUBLIC FUNCTIONS

See PENAL CODE (ACT XLV OF 1860) s 186 I L. R. 37 Calc 122

VOLUNTARINESS

See CONFESSION I L R 40 Calc 873

VOLUNTARY PAYMENT

See MADRAS IRRIGATION CESS ACT s 2
I L R 34 Mad 295

——————*Suit to recover money paid under decree—Wrongful interference of defendant— Coercion —Contract Act (IX of 1872) ss 15 69 70 72 Illus (b)—Civil Procedure Code 1882 s 278 et seq —Claims to attached property—Money paid under compulsion—Money paid under process of decree against third person* The appellant (plaintiff) stated in his plaint that he was the proprietor of the Delhi Cotton Mills against which the respondent Bank (defendant) had an unsatisfied decree that the respondent on 15th August 1902 applied for the attachment of the property and premises of the mills wrongfully stating that they were the property of the Delhi Cotton Mills Company attached the property on 20th August 1902 knowing that it belonged to the plaintiff and dispossessed him that he has suffered considerable damage by the said acts of the defendant and as he was by such acts practically ousted from all the machinery and mill and could not work them and the whole of such damage would be very considerable and part of it most difficult to prove and it was probable that by objection to such attachment under the Civil Procedure Code a considerable time would elapse before he could obtain an order setting aside the attachment the plaintiff was compelled to pay the balance due to the defendant under the decree

VOLUNTARY PAYMENT—*contd*

against the Delhi Cotton Mills Company under protest on 2 th August 1902 In a suit brought for a return of the money so paid and damages for the alleged illegal acts of the defendant the defence (*inter alia*) was that the suit as framed would not lie and the case was argued on a preliminary issue the proceedings being of the nature of a demurrer *Held* (reversing the decision of the Courts in India) that the plaintiff was entitled to recover the money so paid as being an involuntary payment produced by coercion namely the wrongful interference of the defendant with his full and free enjoyment of his own property *Dulichand v Ram Kishen Singh I L R 7 Calc 648 L P 8 I A 93* followed The fact that the sale was not inevitable in the present case was not relevant The greater or less probability of a sale taking place did not affect the *ratio decidendi* in that case which is that the payment was made under the force of the execution proceedings and that in India as in England such a payment is regarded by the law as being made under compulsion The procedure provided in the Civil Procedure Code referring to claims to attached property (s 278 *et seq*) is merely permissive being analogous to the procedure by interpleader in England But the fact that such a procedure is open to him if he chooses to adopt it in no way interfered with the plaintiff s right to take any other lawful alternative S 72 of the Contract Act (IX of 1872) is not exhaustive The meaning of the word coercion used in that section is not controlled by the definition in s 15 but is used in its general and ordinary sense The definition in s 15 is expressly inserted for the special object of applying to s 14 *i e* to define what is the criterion whether an agreement was made by means of a consent extorted by coercion and does not control the interpretation of coercion when the word is used in other surroundings Ss 69 and 70 of the Contract Act do not refer in any way to remedies against the wrong-doer and are therefore irrelevant to the question raised in this appeal. KANHAYA LAL v NATIONAL BANK OF INDIA LTD (1913)
I L R 40 Calc 598

VOTERS

———— list of—

See MUNICIPAL ELECTION
I L R 46 Calc 132
I L R 39 Calc 598, 7?4

———— qualifications of—

See MUNICIPAL ELECTION
I L R 45 Calc. 950
I L R 38 Calc 501

VRITTI

——————*Recitation of Purans—Conferring hereditary office and granting lands for performance of office—Grant of lands burdened with the performance of service—Resumability of lands* Where an hereditary office *e g* of *vritti* for the reciting of Puran is created and bestowed hereditary upon the grantee from generation to generation and lands are assigned as remuneration therefor the lands so granted are not resumable Where there is an interest in land coupled with a duty and the grant is not forthcoming so that its actual terms may be known, it must always be a matter of great difficulty and no more than a mere conjecture to decide whether the interest

VRITTI—*contd*

was so coupled with the duty that the latter could confidently be said to have been the sole motive and condition of the former In such a case the interest in land is resumable on failure or refusal to perform the duty In cases of grants burdened with service resumable for failure or refusal to perform that service the Court would ordinarily require very strong and conclusive evidence before disturbing the practice which has persisted for a long time MADHWACHARYA v SHRIDHAR NARASINHA (1913) I L R 37 Bom 409

———————— *Alienation in special cases under special conditions—Local usage and custom* As a general rule *vritis* are inalienable They may be alienated in special cases and under special conditions provided that such alienations can be supported by local usage and custom *Rajaram v Ganesh I L R 23 Bom 131* referred to MANJUNATH SUBRAYABHAT v SHANKAR MANJAYA (1914) I L R 39 Bom 26

———————— *Hereditary priest of caste—Right to office—Caste punchas preventing the priest from giving his ministrations—Suit by priest for an injunction—Laches—Civil Court—Jurisdiction* The plaintiff was an hereditary priest of Patidar Gujarathis of Yeola. In 1906 the defendants who were Panch of the caste called upon the plaintiff to distribute the emoluments of the office amongst the members of the priestly family and on the plaintiff s refusal to do so issued an order to their castemen not to allow the plaintiff to officiate in his Vritti and pay perquisites to him In 1916 the plaintiff having sued for an injunction restraining the defendants from prohibiting plaintiff from officiating *Held* that an hereditary office of a priest was in the nature of immoveable property and therefore the plaintiff would ordinarily be entitled to an injunction restraining the defendants from interfering with that immoveable property *Ghelabhai Gaurishankar v Hargowan Ramji (1911) 36 Bom 94* relied on *Held* however that on the facts of the case the plaintiff having acquiesced in the action of the defendant s interfering with his right for over ten years had debarred himself from getting the preventive relief of injunction GIRJASHANKAR DAJI v MURLIDHAR NARAYAN (1920) I L R 45 Bom 234

VYAVAHARA MAYUKHA

See HINDU LAW—MITAKSHARA
I L R 40 Bom 621

See HINDU LAW—STRIDHAN
I L R 41 Bom 618

See HINDU LAW—SUCCESSION
I L R 36 Bom 120

VYAVAHARIKA

See HINDU LAW—DEBT
14 C W N 659

W

WADHWAN CIVIL STATION

———————— *British India—Bombay Ábkari Act (Bombay Act V of 1878) s 43—Bhāng—Importation—Carrying bhang by rail from Wadhwan Civil Station to Viramgam* The accused was charged with having imported into the Presidency of Bombay *bhāng* (an intoxicating drug) an offence

WADHDAN CIVIL STATION—*contd*

punishable under s 43 of the Bombay Ábkari Act (Bombay Act V of 1878) inasmuch as he carried with him twenty tolas of *bhang* from Wadhwan Civil Station to Viramgam by rail *Held* that the Civil Station at Wadhwan was not a part of British India, and the accused was guilty of the offence with which he was charged *Triccam Panachand v The Bombay Baroda and Central India Railway Company I L R 9 Bom 244* not followed *Queen Empress v Abdul Latib valad Abdul Rahman I L R 10 Bom 186* followed EMPEROR v CHIMANLAL (1912)
I L R 37 Bom 152

WAGERING

———————— defence of—

See INTERROGATORIES
I L R 37 Bom 347

See PAKKI ADAT TRANSACTIONS

———————— *Defence of wagering in the case of transactions apparently genuine—Necessity for the defendant to prove that both parties entered into the transaction with the intention of treating it as a wager—Teji mandi transactions* The defendant dealt to a large extent in silver with the plaintiffs buying silver for forward delivery and afterwards settling the plaintiffs claims by selling an equal quantity of silver to the plaintiffs The plaintiffs sued the defendant for balances due on these transactions and also for moneys due on certain *teji mandi* transactions between the parties that is transactions in which the purchaser buys the option to buy or sell goods at a future date but the plaintiffs afterwards relinquished their claim in respect of the *teji mandi* transactions *Held* that the Court will not lightly favour gambling defences In order that a transaction apparently genuine may be set aside as a wagering transaction it must be shown that it was known to be a wager by both the parties to it who acted upon that knowledge with no intention of treating the transaction as anything but a wager *Held* further the general rule in this country is that *teji mandi* transactions must be regarded as wagering transactions and the onus of proving that they are not such would lie heavily on the party so alleging *Kesarichand v Merwanji 1 Bom L R 63* followed JESSIRAM JUGGONATH v TULSIDAS DAMODAR (1912)
I L R 37 Bom 264

WAGERING CONTRACT

See CONTRACT I L R 43 All 585
22 C W N 625
I L R 33 All. 585

See CONTRACT ACT (IX OF 1872) S 30

See PAKKI ADAT TRANSACTION
I L R 39 Bom. 1
I L R 45 Bom. 386

———————— Common intention to wager essential—Speculation not equivalent to wagering—Pakki Adat—Contract Act (IX of 1872) s 10—Bombay Act III of 1865 ss 1 and 2 Speculation does not necessarily involve a contract by way of wager and to constitute such a contract a common intention to wager is essential. Even if one party to a contract were a speculator who never intended to give delivery and that fact was known to the other party yet in the absence of any bargain or understanding express or implied,

WAGERING CONTRACT—*contd*

that the goods were not to be delivered that would not convert a contract otherwise innocent into a wager nor would the mere fact that as to the greater part of the goods there was no delivery but an adjustment of claims vitiate the transaction *Pakki Adat* dealing are well established as a legitimate mode of conducting commercial business in the Bombay market *Held* (reversing the decision of the appellate High Court) that the contracts in suit were not wagering contracts BHAGWANDAS PARASRAM v BURJORJI RUTTONJI (1917) I L R 42 Bom 373

———— Gambling" and " Wagering " distinction between—*Calcutta Police Act (Beng IV of 1866 as amended by Beng Act III of 1897) s 44—Common gaming house—Instruments of gaming—Cotton gambling not a game of contest* Betting must always be on an uncertain event and betting in itself apart from stakes being laid on a particular game or instrument of gaming in a public place is not penal Playing with cards dice or money is penal if done in a public place The offence as created by the Calcutta Police Act is a purely technical one and nothing has ever been done on this side of India to include any form of betting or wagering without instruments in the offence except in the single case of rain gambling without a machine and in order to include this extraordinary legislation has had to be undertaken to make the books and registers in which rain gambling wagers are entered and all other documents containing evidence of such wagers instruments of gaming Gaming is playing at any game sport pastime or exercise lawful or unlawful for money or any other valuable thing which is staked on the result of the game *i e* which is to be lost or won according to the success or failure of the person who has staked *Reg* v *Ashton 1 El & Bl 286 Lockwood* v *Cooper (1903) 2 K B 428* referred to Wagering which includes betting is making a contract on an unascertained event past or future (in which the parties have no pecuniary interest other than that created by the contract) by which the parties are to gain or lose according as the uncertainty is determined one way or the other *Carlill* v *The Carbolic Smoke Ball Co (1892) 2 Q B 484* referred to Cotton gambling is betting pure and simple *Hari Singh* v *Jadu Nandan Singh I L R 31 Calc 542 8 C W N 453* referred to RAM PRATAP NEMANI v EMPEROR (1912) I L R 39 Calc 968

WAGING WAR

See CONSPIRACY TO WAGE WAR I L R 38 Calc 559

See JURY RIGHT OF TRIAL BY I L R 37 Calc 467

See PENAL CODE ss 107—121A. I L R 34 Bom 394

See PENAL CODE ss 121A 123 16 C W N 1105

WAIVER

See BOND I L R 43 All 38

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 80 I L R 38 Mad 625

See CONTRACT ACT 1872

s 65 2 Pat. L. J 520

ss 56 (?) 65 I. L R 40 Bom. 570

WAIVER——*contd*

See CROSS EXAMINATION I L R 37 Calc 236

See EJECTMENT I L R 45 Calc 469

See ESTOPPEL

See INSOLVENCY I L R 47 Calc 56

See INSTALMENTS I L P 35 Bom 511

See JURY RIGHT OF TRIAL BY I L R 37 Calc 467

See LANDLORD AND TENANT I L R 34 Mad 161
I L R 37 Calc 449
I L R 46 Calc 552 1079

See LESSOR AND LESSEE I L R 38 Mad 445

See LIMITATION I L R 38 Mad 374

See MADRAS CIVIL COURTS ACT (III OF 1873) s 17 I L R 38 Mad 531

See MAHOMEDAN LAW—PRE EMPTION I L R 41 Calc 943

See MORTGAGE I L R 47 Calc 770

See NOTICE I L R 40 Calc 503

See RESUMPTION I L R 39 Bom 279

————Evidence of required—

See SALE I L R 43 Calc 790

———— acceptance of rent—

See BOMBAY RENT (WAR RESTRICTIONS) ACT II OF 1918 ss 3 9 AND 12 I L R 45 Bom 535

———— by conduct—

See PRE EMPTION I L R 1 Lah 51

———— of claim to interest—

See BOND I L R 43 All. 38

———— of objection to jurisdiction of Court—

See CIVIL PROCEDURE CODE 1908 s 105 I L R 1 Lah 54

———— of notice—

See COMMON CARRIERS I L R 38 Calc 50

———— of right of priority in favour of second mortgagee—

See TRANSFER OF PROPERTY ACT (IV OF 1882) s. 59 I L R 37 All. 474

———— on behalf of minor—

See MORTGAGE I L R 37 Calc 897

———— Ejectment suit—*With claim for rent whether constitutes waiver* The institution of a suit in ejectment is an unequivocal declaration of an intention to determine the tenancy The mere fact that after service of notice to quit the plaintiffs claimed arrears of rent due prior to the ejectment proceedings does not constitute a waiver of the notice to quit But where future rent is claimed and accepted after the notice to quit has been served and the ejectment proceedings instituted then the claim and acceptance of future rent amounts to waiver of the initial step and the proceedings upon which the right to eject depend. SHAH WALI AHMAD v MUSAMMAT HUSAINI BEGAM 2 Pat L. J 595

WAIVER—*contd*

——— Enhancement of rent—*Bengal Tenancy Act (VIII of 1885) ss 43 108—Chur lands—Right of Occupancy* A took a lease of a certain Government *khas mehal* and executed a *kabuliat* in favour of the Collector by which he (A) covenanted not to raise the rents of raiyats beyond the amounts mentioned in the settlement *jamabundi* The tenants, however subsequently agreed to pay rent at an enhanced rate on the ground that the fertility of the land had been increased Upon a suit for arrears of rent at the enhanced rate against the tenants the defence was that A was bound by the *kabuliat* executed in favour of the Collector and as such he was not entitled to a decree at the rate claimed *Held* that inasmuch as the tenants voluntarily agreed to an enhancement of rent they deliberately waived the benefit of the said covenant and they could not impeach the validity of their own agreement on this particular ground *Zamir Mandal* v *Gopi Sundari Dasi I L R 32 Calc 463 (note)* referred to Under s 180 of the Bengal Tenancy Act a raiyat holding a *chur* land but who has not acquired a right of occupancy is liable to pay such rent for his holding as may be agreed on between him and his landlord irrespective of the provisions of s 43 of the Act JAHANDAR BAKSH MALLIK v RAM LAL HAZRAH (1910) I L R 37 Calc 449

——— Instalment decree—*Default—Instalments subsequently paid with interest accepted—Waiver—Question of law—Second appeal* An instalment decree provided that on the failure of the judgment debtor to pay any instalment the decree holders would be entitled to realise the whole sum with interest at 12 per cent per annum by the sale of the mortgaged property Default was made in the payment of one of the instalments and an application for execution was made but was dismissed for non prosecution Subsequently the judgment debtors by petition put in the sum due on the defaulted instalment with interest and also the sum due on the next instalment specifying the instalments for which the different sums were paid The decree holder withdrew the money Several other instalments specifying the instalment in respect of which each deposit was made were similarly deposited and withdrawn On an application by the decree holder for execution of the entire decree with interest at 12 per cent from the date of the default crediting the amounts received as merely part payments on account of the decretal debt *Held* that the circumstances constituted a waiver of the default and it was no longer open to the decree holder to execute the decree on account of the default The payments made were payments on account of instalments and not part payments of the entire decree Two useful tests may be applied to determine whether there has been an actual waiver viz (i) whether the payment subsequently accepted may be looked upon as a valuable consideration for the renunciation of the decree holder s rights (ii) whether the decree holder has by his conduct intentionally caused the judgment debtors to believe that he had renounced his right The question of waiver is a mixed question of law and fact and the High Court can interfere on this ground in second appeal FASIN KHAN v ABDUL WAHAB SIKDAR (1910) 15 C W N 10

——— *Waiver what is* A waiver must be an intentional act with knowledge A person cannot be barred of his remedy on the ground of waiver unless at the time of the alleged waiver he is shown to have been fully cognizant of his right and of the facts of the case SYAMA CHARAN BAISYA v PRAFULLA SUNDARI GUPTA (1915) 19 C W N 882

——— *Jurisdiction—Leave to sue—Letters Patent 1865 cl 12—Estoppel* Where the plaintiff in his plaint alleges that portion of the cause of action arises outside the local limits of the Ordinary Original Civil Jurisdiction of this Court and fails to take leave under cl 12 of the Letters Patent, the defendant may by appearing and pleading waive the objection to the jurisdiction Where however the plaintiff alleges that the whole cause of action arises within the local limits of the Ordinary Original Civil Jurisdiction thus setting up a complete jurisdiction in the Court and the defendant is called upon to plead to this and does plead but it turns out at the trial that the Court had not complete jurisdiction as portion of the cause of action arose within and portion outside the local limits of the Ordinary Original Civil Jurisdiction the defendant cannot be held bound on the doctrine of estoppel on the ground that he waived the objection of want of jurisdiction *King* v *Secretary of State for India I L R 35 Calc 394* and *Suckan* v *Weiner 17 T L R 494* referred to SHAMA KANTA CHATTERJI AND COMPANY v KUSUM KUMARI (1916) I L R 44 Calc 10

——— *Decree for ejectment—Suit for rent falling due before right to eject accrued whether constitutes waiver* On the 8th April 1911 the landlords obtained a decree against the tenant for arrears of rent for the years 1314 to 1317 amli The decree directed that if the arrears were not paid by the 8th May 1911 the tenant should be ejected The decree was executed on the 13th July 1911 On the 30th April 1911 the landlords also instituted a suit for rent for the year 1318 (i e September 1910 to September 1911) which was payable in advance The tenant had deposited part of the rent in Court on the 10th April 1911 On the 29th January 1912 the tenant instituted the present suit for recovery of possession of the land from which he had been ejected on the ground that the suit instituted on the 30th April 1911 and the proceedings connected therewith amounted to a waiver of the landlords right to eject *Held* that the institution of the suit on the 30th April 1911 coupled with the acceptance of the money deposited for the year 1318 constituted a complete waiver and estopped the landlords from proceeding in ejectment in execution of the decree of the 8th April 1911 *Quaere* Whether the tenant having failed to plead waiver in the proceedings in execution of the ejectment decree was entitled to plead it in a separate suit? MIDNAPORE ZAMINDARI CO LTD v JOYRAM SANTAL 1 Pat L J 185

WAJIB UL-ARZ

See CIVIL PROCEDURE CODE 188 ss 584 585 I L R 34 All 579

See CUSTOM (SUCCESSION) I L R 1 Lah 284

See EVIDENCE I L R 40 All 56

See GROVE LAND I L R 42 All 634

See HINDU LAW (CUSTOM) I L R 32 All 363

WAJIB UL-ARZ—*contd*

See LETTERS PATENT CL. 10
I L R 34 All 13

See LANDLORD AND TENANT
I L R 34 All 545

See MAHOMEDAN LAW

See PENSIONS ACT (XXIII OF 1871) ss 3 4 6 AND 8
I L R 33 All 580

See PRE EMPTION—CUSTOM—RIGHT OF PRE EMPTION—WAJIB UL ARZ

———— value of—

See CUSTOM (ADOPTION)
I L R 2 Lah 346

See OUDH ESTATES ACT (I OF 1869) ss 8 10
I L R 38 All 552

———— Contract or custom—The pre emptive clause of a wajib ul arz ran as follows — *Koi muqadma haq shafa ka dair nahin hua aiyanda ko jari rakhna haq shafa ka ham ko man ur hai* *Held* on a construction of the wajib ul arz that these words did not denote a record of a custom but merely of a contract to take effect in the future *Ta adduq Husain Khan* v *Ali Husain Khan All Weekly Notes (1908) 121* followed *Hazari Lal* v *Durga Prasad I L R 32 All 187* distinguished KANCHAN SINGH *v* MANI RAM (1910) I L R 32 All 201

———— *Value of as evidence as record of traditions* A wajib ul arz in a village administration paper prepared by a village official in which are recorded the statements of persons possessing interests in the village relative to existing rights and customs As such they are of considerable value in the determination of such rights and customs But statements which merely narrate traditions and purport to give the history of devolution in certain families not even of the narrators stand in no better position than any other tradition MUPTAZA HUSAIN KHAN *v* MAHOMED YASIN ALI KHAN (1916)
21 C W N 410
I L R 38 All 552

———— *Authority of as evidence—Its importance in settlement proceedings—Presumption as to its correctness until successfully impugned though not a document creating a title—Dispute between proprietors of two adjacent villages as to the ownership of village common lands—Limitation* The authority of a wajib ul arz or record of rights which is described by Sir Henry Maine in his Village Communities page 7 as a detailed statement of all rights in land drawn up periodically by the functionaries employed in settling the claims of the Government to their shares of the rental and as the most important object of the Settlement Operations not second even to the adjustment of Government revenue is universally recognised *Lala v Murlidhar I L R 28 All 488 L R 33 I A 9* referred to Though a wajib ul arz does not create a title it gives rise to a presumption in its support which prevails until its correctness is successfully impugned In a dispute between the proprietors of two villages Mouzah Dinakki and Mouzah Sher Ali of which the former belonged to the plaintiffs and the latter to the defendants as to the ownership of village common lands measuring upwards of 7 989 acres the plaintiffs contended that these lands belonged to them jointly with the defendants in proprietary right by virtue of the ownership of the two villages and the defendants maintained that they were the exclusive proprietors their Lordships *held* that the final determination of the case depended on the interpretation to be placed on the wajib ul arz in which the final result of the settlement proceedings was recorded and on that document together with the facts of the case the plaintiffs claim to joint ownership failed The statements in the other documentary evidence adduced were ambiguous and not immutable The laches of the plaintiffs in failing to assert their claim after it had been repeatedly and consistently challenged as long ago as 1883 was a circumstance among others very unfavourable for its success apart from the bar of limitation DAKAS KHAN *v* GHULAM KASIM KHAN (1918) I L R 45 Calc 793

WAKF

See CIVIL PROCEDURE CODE 1882 ss 30 AND 539
I L R 33 All 660

See CIVIL PROCEDURE CODE 1908—
s 66 I L R 43 All 416
s 92 I L R 40 Bom 541
I L R 35 All 98 459
I L R 37 All 86
SCH II AND s 92
I L R 32 All 503

See KHOJA MAHOMEDANS
I L R 36 Bom 214

See LIMITATION ACT 1877 SCH II ART 123
I L R 33 Bom 111

See MAHOMEDAN LAW—ENDOWMENT

See MAHOMEDAN LAW—WAKF

See MAHOMEDAN LAW—WORSHIP
I L R 35 All 197

See MUSALMAN WAKF VALIDATING ACT (VI OF 1913) s 3
I L R 39 Bom 563

See RELIGIOUS ENDOWMENT

See SPECIFIC RELIEF ACT (I OF 1877) s 4
I L R 32 All 631

See WAKF VALIDITY OF

See WAQF

———— by dedication or user—

See MAHOMEDAN LAW—ENDOWMENT
I L R 40 Calc 297

See MAHOMEDAN LAW—WAQF
I L R 35 All 68

See WAQF

See WAKF
23 C W N 138

———— contingent dedication—

See MAHOMEDAN LAW—WAKF
I L R 1 Lah 317

———— delivery of po[ssessi]on whether essential—

See MAHOMEDAN LAW (WAQF)
I L R 43 All 487

———— illusory gift to charity—

See MAHOMEDAN LAW—WAKF
24 C W N 306

WAKF—*contd*

——— principle of—

See MAHOMEDAN LAW—ENDOWMENT
I L R 47 Calc 866

——— Residue of income retained by settlor effect of—

See RELIGIOUS ENDOWMENT
6 Pat L J 218

——— suit for declaration of—

See CIVIL PROCEDURE CODE (1908) s 11
I L R 36 All 424

——— validity of—

See MAHOMEDAN LAW—WAKF
I L R 42 Calc 933

See RES JUDICATA
I L R 44 Calc 698

——— Settlement in perpetuity for aggrandisement of the family if valid—*Deed of agreement subsequently entered into between mutawali and members of the family regulating payment of allowances to them under such deed of wakf if enforceable —Mussulman Wakf Validating Act (VI of 1913) if a declaratory statute having retrospective effect* A *wakf* was created for the maintenance of the members of the family of the settlor generation after generation and for the performance of worldly and religious affairs and of charitable acts A suit was subsequently brought against the *mutawali* by some members of the family which was however withdrawn on the execution of a deed of agreement between the parties specifying the amount of monthly allowance payable to each member of the family out of the income of the *wakf* The beneficiaries sued to recover arrears of maintenance on the basis of this agreement *Held*—That the gift to charity being illusory and the chief if not the sole object of the settlor being to create a settlement in perpetuity for the aggrandisement of the family the *wakf* was invalid according to the decisions of the Judicial Committee The test to be applied in cases of this character is whether there is a substantial dedication of the property to charitable uses at some period of time or other *Abdul Fata Mahomed* v *Rasamoy L R 22 I A 76 s c I L R 22 Calc 619 (1894) Mujibunnessa* v *Abdur Rahim L R 28 I A 15 s c I L R 23 All 223 5 C W N 177 (1900)* and *Mahomed Munawar Ali* v *Razia Bibi L R 32 I A 86 s c I L R 27 All 320 9 C W N 625 (1905)* That the Mussalman Wakf Validating Act 1913 is not even in terms a purely declaratory statute in reality it effects a vital alteration in the law and it is not retrospective in operation and *wakfs* invalid in their inception have not been validated by this legislation Statutes which are properly of a merely declaratory character have a retrospective effect because if the statute is in its nature declaratory the argument that it must not be so construed as to take away pre existing rights ceases to be applicable The nature of the statute must be determined from its provisions and the mere fact that the expression it is declared has been used is by no means conclusive as to the true character of the legislation That the *wakf* being pronounced to be invalid the entire scheme relating thereto embodied in the agreement must of necessity be of no avail The assertion of the parties or of their representatives cannot validate illegal *wakfs* and the Court cannot be utilised for the enforcement of a scheme elaborately devised to carry out a plan of family aggrandisement in contravention of the whole policy of the law That the agreement provided for a succession of allowances the amount of which could be varied by the family council from generation to generation in favour of unborn persons and a scheme for family allowances so framed apart from a scheme of valid *wakf* is not recognised by Mahomedan law NAWAB KHAJEH HABIBULLAH SAHEB v KHAJEH SOLEMAN QUADER 24 C W N 18

——— Mahomedan Law—Private trust —*Gift—Essential elements for validity—Power of revocation—General principles—Vested remainder* In 1902 a Shia Mahomedan by deed conveyed certain immoveable property to himself and other trustees for himself for life and after his death for the payment of annuities to his widow and daughter and the balance to certain charities Further clauses provided that on the death of his widow her annuity was to go to certain other charities and that on the death of his daughter a lump sum was to be given to her son A further proviso reserved power to the settlor at any time to revoke all or any of the above trusts In 1908 he revoked the trust and executed a mortgage of the property In 1909 he died and receivers of his estate were appointed His daughter then filed a suit for a declaration *inter alia* that the revocation and subsequent mortgage were invalid and that the original trusts still subsisted *Held* that the conveyance in 1902 was valid Looked at from the standpoint of the Mahomedan law giver a private trust would be no more than a private gift *inter vivos* through the medium of the third party and therefore subject to all the conditions of a valid gift *but quare* whether private trusts were known to Mahomedan law *Mir Abed Ali I L R 32 Bom 172* discussed and distinguished JAINABAI v R D SETHNA (1910) I L R 34 Bom 604

——— Possession—Relations of Mutawali with beneficiaries—Invalidity of wakf—*Evidence Act (I of 1872) ss 115 and 116—Estoppel—Resulting Trust—Limitation Act (IX of 1908) s 10—Life estate—Shafei Mahomedans* On 16th June 1851 F a Shafei Mahomedan lady executed a deed in the nature of a *wakf* whereby she settled certain immoveable property in trust for her grand daughter M for life and thereafter on her decease descendants from generation to generation and in default thereof on the settlor s husband s relatives and their descendants from generation to generation in perpetuity and in default with an ultimate trust for the education of Mahomedan youth The settlor s husband was appointed first trustee or Mutawali and provision was made in the deed for a due succession of Mutawalis The first Mutawali and after his death his executors acting as Mutawalis during the minority of his eldest son S A paid the rents and profits to M and after her death to her son M H and her daughter A in equal shares In 1867 S A attained his majority and took over charge as Mutawali and in or about 1873 handed over charge of the property to the beneficiaries retaining possession of the trust deed M H died in 1892 leaving one son M A, who in his turn shared the rents with A until her death in 1901 when he took the whole until he died in 1905 leaving him surviving his mother and two widows In 1906 the mother and two

WAKF—*contd.*

widows being in possession filed a suit praying for a declaration that the trust deed was void and that they with certain others were entitled to the property The trust deed was held to be invalid and a consent decree was eventually passed to the effect that the property should be divided subject to a small provision for a certain charitable purpose in equal shares between the Mutawali on the one hand and the plaintiffs and others on the other The present plaintiff however who was one of the parties to the above proceedings proved to have been insane at the time and subsequently having regained his sanity filed the present suit claiming the same relief as that claimed by the plaintiffs in the suit in 1906 and upon the same ground namely that M was entitled absolutely to the settled property The suit having been dismissed the plaintiff appealed and the heirs of the original settlor F were brought on the record under cover of the Administrator General who took out letters of administration to F s estate and consented to be bound by all proceedings *Held* that the trust deed was void as being an attempt to create a perpetuity in the nature of a family settlement under the guise of a *wakfnama* *Held* further that those claiming under M had obtained possession of the property from the Mutawali in the guise of beneficiaries and on the footing that the *wakfnama* was a valid document and thus under ss 115 and 116 of the Evidence Act (I of 1872) could not be permitted to deny that the person from whom the possession was claimed had a title to such possession when it was handed over *In re Anderson (1905) 2 Ch 70* distinguished *Held* therefore that for the purposes of this suit as between the parties other than *the administrator of F s estate the wakfnama must* be considered as a valid document and thus when the limitations in favour of M s descendants came to an end on the death of M A in 1905 the remainder for the benefit of the settlor s husband s descendants took effect and the present Mutawali (a direct descendant of the settlor s husband) was entitled to the property both as trustee and as beneficiary *Held* finally that the administrator of F s estate could only claim under a resulting trust in favour of the settlor and as such trust did not in the circumstances fall within the scope of s 10 of the Limitation Act (IX of 1908) the claim had long been barred *Khrodemoney Dossee v Doorgamoney Doss e I L R 4 Calc 455* and *Vundravandas v Cursondas I L R 21 Bom 646* discussed and followed View expressed in *Cassamally Jairajbhai v Sir Currimbhoy Ebrahim I L R 36 Bom 214* not approved *Quære* Whether the principle that Mahomedan law does not recognize life estates applies to Shaffei Mahomedans ? MAHOMED IBRAHIM *v* ABDUL LATIFF (1912)

[I L R 37 Bom 447

———— Application to be appointed Mutawali —*District Judge whether has powers of a Kazi—Petitioner whether to proceed by application or by suit—Civil Procedure Code (Act V of 1908)* An application was made by a person to the District Judge to be appointed Mutawali of an *wakf* property but the District Judge refused to deal with the matter on application on the ground that the petitioner s only course was to proceed by suit under s 92 of the Civil Procedure Code *Held* that it may be conceded that the District Judge has the powers of a Kazi but it does not necessarily follow that the petitioner is entitled to proceed by application or that the District Judge has no power to relegate her to a suit JAMILA KHATUN *v* ABDUL JALIL MIA (1918)

23 C W N 138

———— Res Judicata—*Deference due to previous decision of High Court as authority—Mussalman Wakf Validating Act (VI of 1913) title preamble and s 3 whether retrospective or prospective only—Privy Council decisions and pronouncements on Indian Legislature* Where there had been a previous adjudication by the High Court on the invalidity of a certain *wakf* based on legal grounds (in a subsequent suit between the same parties) *Held* that (i) ordinarily that Court should feel bound not *on the principle of res judicata* but out of the deference which was due to a previous decision of the High Court to follow that authority and (ii) that the previous conclusive decision had not been affected by the remedial operation of the Mussalman Wakf Validating Act of 1913 which was not retrospective in effect but prospective only *Fatimunnissa Bibi v Shaikh Manik Jan 19 C W N 76* approved It is doubtful whether the Governor General in Council would make a legislative pronouncement that the repeated decisions of the Privy Council were erroneous though from its knowledge of the requirements of the country the Legislature may think that in future the law should be otherwise administered MAHOMED BUKTH MAJUMDAR *v* DEWAN AJMAN REJA (1915)

I L R 43 Calc 158

———— Mutawali—*Right of inheritance—* Though a descendant of the founder of a *wakf* property has a preferential claim to the office of the Mutawali he does not become Mutawali by right of inheritance but has to be appointed such by the Qadi who may supersede him if he is not so qualified—No right of inheritance attaches to a religious endowment ATIMANNESSA BIBI *v* ABDUL SOBHAN

I L R 43 Calc 467

———— Suit by matwali *to recover possession of wakf property mortgaged by previous matwali—Limitation Act (IX of 1908) Art 134—Date from which limitation to be reckoned — Date of transfer if date of delivery of possession under the transfer—Nature of suit within the scope of article—Matwali appointment of stranger as—Transfer of wakf property by matwali transferee without notice of trust if protected—Registration if sufficient notice of trust created by registered document—Res judicata* The founder of a *wakf* appointed his sister and brother and the male descendants of the latter *matwalis* in succession after himself On his death the sister who was the then *matwali* and the brother representing themselves to be the secular heirs of their father and the founder joined in executing a mortgage of the *wakf* property The mortgage was ultimately foreclosed and possession was delivered by the Court to the Defendant who was the assignee of the mortgage decree Thereafter on a suit being brought under s 92 C P C the District Judge removed the sister from the office of *matwali* and no one of the founder s family being available appointed the Plaintiff a stranger Within 12 years from the delivery of possession by the Court under the mortgage decree the Plaintiff sued the

WAKF—*contd*

Defendant to recover the property *Held*—That the appointment of the Plaintiff as *matuali* was entirely within the decision of the District Judge as Kazi and in the circumstances of the case it was not without Jurisdiction although the Plaintiff was a stranger *Ismail Arif* v *Moola Dawood* *L R 43 I A 127 s c I L R 43 Calc 1085 20 C W N 1118 (1916)* referred to *Held* on a consideration of the *wakfnama*—That as there was a substantial dedication of the corpus and income to charitable uses within the test laid down by the Privy Council in *Mujibunnessa* v *Abdul Rahim* *L R 28 I A 15 s c 5 C W N 177 (1900)* and *Muta Ramanadan* v *Vaia Levvai* *L R 44 I A 21 s c I L R 40 Mad 116 21 C W N 521 (1916)* the *wakf* was not invalid as being illusory *Held* further—That in the mortgage suit the sister of the founder who executed the mortgage was not in the language of s 11 C P C litigating under the same title as that under which the Plaintiff was litigating for she was sued in her secular capacity not as trustee and that suit did not create the bar of *res judicata* *Held per* RICHARDSON J—That the suit was governed by Art 134 of the Limitation Act and was barred by limitation having been brought more than 12 years from the date of the mortgage from which time limitation began to run and not from the date when the Defendant obtained possession of the property *Per* SHAMSUL HUDA J—That the onus to prove that the suit was within time was on the Plaintiff who failed to discharge that onus and show that the mortgage was not followed by possession and in that view of the case the suit was barred by limitation under Art 134 of the Limitation Act *Per* RICHARDSON J—A suit to which Art 134 applies must be a suit to recover possession The Plaintiff must be out of possession and the Defendant in possession The transfers chiefly contemplated are apparently transfers for value in excess of the limited powers of the trustee or mortgagee In terms the article would apply to a transfer within those powers but in such a case the true defence to a suit to recover possession would be title and not limitation though in some cases limitation might be useful as an alternative defence The date of the transfer is the date on which the property or the title was transferred by the transferor to the transferee and where the transfer is effected by a registered instrument that date is the date of the instrument To construe the date of the transfer as the date on which the transfer is followed by possession is to import into the article words which are not there Where the possession of the trustee is that of a mere manager under a duly constituted trust it is immaterial under the present law whether the transferee takes with or without notice of the trust Under Art 134 of the present Limitation Act the transferee without notice and the transferee with notice are on the same footing Where the transferee is a mere manager he is not the ostensible owner nor has the transferee anything corresponding to the English legal estate to set over against the prior equity of the beneficial owner the legal ownership and the prior equity are generally speaking both in the beneficiary The element of hardship in the case of a transferee without notice is minimised by the system of registration The *matwal* of a *wakf* estate is not the ostensible owner of the estate but a mere manager and in the case of a public charitable endowment the legal ownership is in the Divine Being or in the charity created in His name A transfer by a *matuali* who assume to deal with the trust property as if he were the true owner in breach of her duty and in fraud of the trust reposed in him is *ultra vire* and may be avoided by timely proceedings properly taken for the purpose The vice in the transferee's title whether he takes with or without notice of the trust can only be cured by lapse of time NARAIN DAS v KAZI ABDUR RAHIM **24 C W N 690**

WAKF VALIDATING ACT (VI OF 1913)

——— *If would operate retrospectively* The Wakf Validating Act (VI of 1913) has no retrospective effect PAHIMUNNISSA BIBI v SHAIKH MANIK JAN (1914) **19 C W N 76**

——— s 3—*Act if operates retrospectively* The operation of the Musalman Wakf Validating Act of 1913 is prospective and not retrospective and it did not affect a previous conclusive decision of the Court declaring a wakf to be invalid MAHOMED BUKTH MAJUMDAR v DEWAN AJMON RAJA (1915) **19 C W N 967**

——— *Mutawalli—Matters connected with wakf being religious matters—Descendant of the founder—Preferential claim to mutawalliship—No right of inheritance—Qadi under the Mahomedan law exercising functions in relations to wakfs—His equivalent in the British Indian system of law—Position of the Subordinate Judge—District Judge jurisdiction of* Though a descendant of the founder of a *wakf* property has a preferential claim to the office of the *mutawalli* he does not become *mutawalli* by right of inheritance but has to be appointed such by the Qadi who may supersede him if he is not so qualified No right of inheritance attaches to a religious endowment *Khajeh Salimullah* v *Abdul Khair M Mustafa I L R 37 Calc 263 Sayad Abdula* v *Sayad Zain I L R 13 Bom 555 Moohummud Sadik* v *Moohummud Ali 1 Mac Sel Rep 2? and Shahur Banoo* v *Aga Mohomed L R 34 I A 46 I L R 34 Calc 118* followed *Shama Charan* v *Abdul Kabeer 3 C W N 158 In re Woozatunnessa Bibi I L R 36 Calc 21 In re Halima Khatun I L R 37 Calc 870 Kumar Chand* v *Golam Hossein 1 Bom Calc 1?9 Muhammed* v *Syed Ahamad 1 Bom H C R 18 Jamal* v *Jamal I L R 3 Bom ?? Baba Daud Sha* v *Ismal Sha I L R 18 Bom 103 A C* v *Nassaruddin I L R 18 Bom 401 Kudratulla* v *Abdul Kadir I L R 18 Bom 401 Mahammed* v *Mohini Mohan 4 B L R 134 Saiyd Ali* v *Ahmed Bhai I L R 25 Bom 3?? Muhammad Abdul Ali Jan I L R 35 All 98 Majid* v *Ahmed Saeed 11 All L J 6?3* referred to Under the Mahomedan law that Qadi alone was competent to exercise authority in respect of *wakfs* who was so expressly authorised in his letters patent There was some difference of opinion upon the question whether such express authority was needed where a person was explicitly appointed the Chief Qadi but even here the balance of opinion of jurists favours the view that power should be expressly conferred on the Chief Qadi to validate the administration of *wakfs* by him There is also authority to show that the supreme authority in the State by whom the Qadi

WAKF VALIDATING ACT (VI OF 1913)— *contd*

is appointed need not be a Mahomedan and although there is some divergence of opinion there is also authority to show that the office of Qadi may be held by a non Mu lim for the decision of disputes between non Muslims under Muslim pro tection As this is a matter regarding religious usages and institutions within the meaning of s 1ɔ of Regulation IX of 1793 the rights of the parties must be determined with regard to the provisions of the Mahomedan law on the subject It follows accordingly that a Subordinate Judge who has not been expressly authorised by the Government to exercise functions in connection with the administration of *wakfs* is not compe tent to act in that behalf Whether a District Judge has implied authority to exercise the func tions performed by a Qadi under the Mahomedan law is doubtful In respect of *wakfs* which may be described as trusts created for public purposes of a religious nature within the meaning of sub s (1) of s 92 of the Civil Procedure Code 1908 the District Judge may be assumed to have been authorised to discharge the functions of a Qadi The real difficulty arises in the case of private *wakfs* It is desirable that the Lo al Government should to cover such cases authorise either Di trict Judges or Subordinate Judges or even Judi cial officers of a lower grade if necessary to exer cise the functions of a Qadi ATIMANNESSA BIBI v ABDUL SOBHAN (1915) **I L R 43 Calc 467**

WAQF

See WAKF

WAQF NAMA

———— *Grantor changing pro prietary possession to th t of a mutawali—Appoint ment of trustees without transfer of ownership—Possession as managers and superintendents to pro te t waqf property —Injunction by Deputy Commis sioner in respect of property out of his jurisdiction —Disqualification of registering officer as having interest in objects of endowed property who has acted in good faith—Defect in procedure—Punjab Court of Wards Act (Punjab Act II of 1903) ss 11 and 12—Registration Act (III of 1877) ss 17 87 and r 174 of rules made under s 69* A Muham madan landholder with property partly in Karnal and partly in Muzaffarnagar on the 25th of August 1903 executed a waqfnama or deed of charitable trust dedicating specific property to religious purpo es The terms of the deed were —

I was the lawful owner of the property I had power in every way to tran fer the same By virtue of the said power I divested my elf of the connection of ownership and proprietary posses sion thereof and placed it in the proprietary pos session of God and changed my temporary pos session known as proprietary pos ession into that of a mutawalli (superintendent) The grantor resided at Karnal in the Punjab but finding that the Deputy Commi sioner was about to place him and his property under the Court of Wards he went to Muzaffarnagar out of the jurisdiction of the Deputy Commissioner of Karnal who on the 30th of August 1908 under ss 11 and 12 of the Court of Wards Act 1903 issued an injunction restraining him from executing any deed of aliena tion of his property The waqfnama was not

WAQF NAMA—*contd*

withstanding on the 1st of September 1900 registered by the Sub Registrar of Muzaffarnagar On the 9th of November 1908 the grantor exe cuted a further document appointing trustees to be superintendents after his death of the charity to which his property had been dedicated under the deed of the 25th of August 1908 The grantor died on the 26th of December 1?08 and on the 8th of July 1912 the respondents who were the trustees brought a suit against the appellants the grantor s heirs who had obtained entry of their names in the Revenue Register as defendants alleging that the deceased had duly dedicated his property to the charity and claiming to be the parties named to execute the trust *Held* that the waqfnama inasmuch as it did not purport to transfer to the trustees named in it the ownership of the waqf property but made them merely muta wallis or superintendents for its management and protection did not require registration under the Registration Act III of 1877 The injunction issued by the Deputy Commissioner of Karnal under ss 11 and 12 of the Punjab Court of Wards Act (Punjab Act II of 1903) in respect of property which together with the grantor was at the date of is ue not within his juri diction was held to be invalid and inoperative The Sub Registrar who being a trustee of one of the objects of the waqf nama entitled to the benefit of the trust had regis tered the deed but in so doing had acted in good faith though personally connected with and interested in the document within the meaning of r 174 of the rules made under s 69 of the Regis tration Act III of 1877 was held by his action not to have invalidated its registration as it was a defect in the procedure which s 87 of the Act was intended to remedy MUHAMMAD RUSTAM ALI KHAN v MUSHTAQ HUSAIN **I L R 42 All 609**

WAR

See WAGING WAR

See CONTRACT WITH ENEMY

See TRADING WITH ENEMY

———— effect of—

See BILLS OF EXCHANGE **I L R 46 Calc 584**

See CONTRACT **I L R 41 Mad 225**

See CONTRACT ACT 1872 s 56 **I L R 40 Bom 570**

See DEBTOR AND CREDITOR **I L R 44 Bom 1**

See SALE OF GOOD **I L R 40 Bom 11**
I L R 45 Calc 28

See TRADING WITH THE ENEMY **I. L. R 42 Calc. 1094**

———— effect of, on contracts of affreightment—

See C I F CONTRACTS **I. L. R 42 Bom. 473**

———— effect of on contracts entered into by a manager of an Indian branch of enemy firm prior to war—

See CONTRACT WITH ENEMY **I L R 44 Bom.**

WARD

See GUARDIAN AND WARD

——— alienation by natural guardian of minor—Suit to set aside—

See LIMITATION ACT (IX OF 1908) ART 44 I L R 42 Bom 742

WARNING OF FIRE

See INSURANCE I L R 41 Calc 581

WARRANT

See ARREST WARRANT TO

See ATTACHMENT I L R 40 Calc 849

See CRIMINAL PROCEDURE CODE—

ss 55 56 110 I L R 35 All 407

s 75 2 Pat L J 487
19 C W N 224

See FORM OF WARRANT

See HABEAS CORPUS I L R 39 Calc 164

See WARRANT OF ARREST

——— for search of house—

See CRIMINAL PROCEDURE CODE s 165 I L R 38 All 14

——— legality of—

See PENAL CODE (ACT XLV OF 1860) s 186 I L R 37 Calc 122

——— resistance of execution of—

See PENAL CODE s 183 1 Pat L J 550

——— with alterations—

See MAGISTRATE JURISDICTION OF I L R 39 Calc 403

——— *Witness—Rescuing from lawful custody—Warrant against a witness issued in the first instance without recording reasons in writing—Legality of warrant and arrest—Penal Code (Act XLV of 1860) s 225 B—Criminal Procedure Code (Act V of 1898) s 90 Sch V Form VII—Practice* The issue of a warrant of arrest by a Magistrate against a witness in the first instance drawn up in the terms of Form VII of Sch V of the Criminal Procedure Code but without recording his reasons in writing therefor as required by s 90 of the Code is illegal and a person rescuing the witness arrested on such warrant is not guilty of an offence under s 225 B of the Penal Code SUKHESWAR PHUKAN v EMPEROR (1911) I L R 38 Calc 789

——— *Arrest on a warrant allowing bail without intimating that bail has been allowed legality of—Lawful custody—Rescue from custody* On a warrant which provided for bail a constable arrested one *S* without giving him intimation that bail had been allowed *S* was then rescued by a number of persons who assaulted the constable *Held* that the arrest of *S* was illegal as before actually making the arrest the constable should certainly have said Can you give the required bail? That as *S* was not in lawful custody his rescue did not constitute any offence and the persons who rescued *S* had the right of private defence and as they under the circumstances of the case had not exceeded that right

WARRANT—*contd*

they could not be held guilty of any offence, SHYAMA CHURN MAJUMDAR v THE KING EMPEROR (1911) 16 C W N 549

——— *Warrant issued by Civil Court to bailiff—Bailiff who is—Effect of endorsement by Nazir—Execution by peon beyond time fixed by Nazir but within date when warrant returnable—Peon s custody if lawful—Rescuing from such custody if offence—Indian Penal Code (Act XLV of 1860) s 147—Civil Procedure Code (Act V of 1908) O XXI r 25* Where a warrant issued by a Civil Court was addressed ' to the bailiff and made returnable on the 30th August and the Nazir of the Court endorsed it with a direction to a particular peon to execute it within the 20th August and the peon executed it between the 25th and the 30th August *Held* that the fact that the warrant is addressed to the bailiff shows that it is the person who actually makes the seizure who is authorized by it namely the peon who thus derived his authority from the Court which issued the warrant and not from the Nazir who endorsed it and the execution of the warrant by the peon subsequent to the date fixed by the Nazir and prior to that on which it was made returnable by Court was lawful and the rescuing of property attached from his custody constituted an offence *Per* COXE J —The term bailiff should not be confined to the Nazir O XXI r 25 of the Civil Procedure Code shows that the warrant is referred to the officer entrusted with the execution of process and it is clear from the terms of that section that that officer is not the Nazir *but it is the peon Dharam Chand v Queen Empress I L R 22 Calc 597* distinguished SUBED ALI v KING EMPEROR (1913) I L R 40 Calc 849
17 C W N 941

——— *Validity of warrant—Warrant signed but not sealed—Arrest under such warrant—Rescue and escape from lawful custody—Criminal Procedure Code (Act V of 1898) s 75 (1)—Penal Code (Act XLV of 1860) s 225B* Under s 75 of the Criminal Procedure Code the affixing of the seal of the Court is essential to the validity of a warrant An arrest under a warrant duly signed but not sealed is therefore illegal and a conviction under s 225B of the Penal Code is bad in law MAHAJAN SHEIKH v EMPEROR (1914) I L R 42 Calc 708

WARRANT CASE

See CRIMINAL PROCEDURE CODE 1898

ss 249 258 345 I L R 37 Bom 369

See SUMMARY TRIAL I L R 41 Calc 743

See WARRANT

——— trial of—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 256 I L R 39 Mad 503

WARRANT OF ARREST

See CRIMINAL PROCEDURE CODE s 5 2 Pat L J 487

See PENAL CODE ACT (XLV OF 1860) s 225B I L R 38 All 506

——— *Whether Magistrate s signature is necessary—Warrant directed to officer by*

WARRANT OF ARREST—*contd*

official designation and not by name validity of—Omission to explain to accused the contents of warrant effect of—Code of Criminal Procedure (Act V of 1898) ss 75 77 79 80 537 and 554—Penal Code (Act XLV of 1860) ss 224 225 and 353 Where the Magistrate issuing a warrant for the arrest of an accused person signed the endorsement on the warrant directing that if the accused gave bail for Rs 100 he was to be liberated but only initialled that part of the warrant which directed the arrest of the accused *held* that it was gross carelessness on the part of the Magistrate not to have signed his name in both places but that the omission to do so was not in itself an illegality which vitiated the arrest The *Illustration* to s 537 of the Code of Criminal Procedure 1898 covers a case in which the illegality of the warrant itself is a fact in issue and does not relate merely to a case in which the defence to the substantive charge is that the accused have not been properly brought before the Court A warrant directed in the first place to a police officer by his official designation and without inserting the officer s name is not illegal but where the officer originally entrusted with the execution of a warrant directs it to another officer s 79 of the Code requires the name of the latter officer to appear upon the endorsement Omission on the part of an officer executing a warrant to explain to the accused the particulars of the warrant after showing him the warrant does not invalidate the arrest All that s 80 requires is that the accused shall have a reasonable opportunity of knowing on what charge he is being arrested and before what Court he is to appear so that he may take steps to arrange for his defence Where the constable executing a warrant of arrest showed the warrant to the accused and informed him that he would take bail if it was offered and the accused asserted that no warrant had been issued against him and the constable thereupon took him into custody *held* that the terms of s 80 of the Code had been substantially complied with BANKEY BEHARY SINGH *v* KING EMPEROR 3 Pat L J 493

WARRANT OF ATTACHMENT

———— *Signature of Sheristadar and not of Court issuing it effect of—Evidence (Act (I of 1870) s 114 (e)—Code of Civil Procedure (Act V of 1908) O XXI r 24* Where a warrant of attachment was signed not by the Munsif issuing it but by the *Sheristadar* and did not bear the seal of the Court and the accused were charged with rioting with the common object of illegally rescuing the attached property *Held* (1) that the onus of providing that the *Sheristadar* had no authority to sign the warrant was on the party contesting the validity of the warrant (in this case the accused) (2) that in such a case it is not for the prosecution to prove the authority of the officer signing the warrant (3) that the provisions of O XXI r 24 of the Code of Civil Procedure 1908 being mandatory the omission of the Court s seal on the warrant rendered the attachment illegal (4) that therefore the common object charged was not an unlawful common object and consequently the charge of rioting was not sustainable KHUDIR BUX *v* KING EMPEROR 3 Pat L J 636

WARRANT OF ATTORNEY

———— application to file—

See PRACTICE I L R 37 Calc 853

WARRANT OFFICER

———— of the British Army—

See ARMY ACT (44 & 45 VIC c 58) ss 145 190 I L R 43 Bom 368

WARRANTY

See CONTRACT I L R 37 Calc 334
15 C W N 981

See TRANSFER OF PROPERTY ACT s 55
15 C W N 655

———— sale of goods—Delivery to be given on arrival of steamer—

See CONTRACT I L R 45 Bom 1222

———— sale and purchase of goods to be manufactured by a Mill—

See CONTRACT I L R 44 Bom 907

WASTE

———— ownership of—

See MIRASI VILLAGE
I L R 40 Mad 410

———— *Gift by a life tenant—Bhag property—Interest taken by widow of Mahomedan Bhagdar—Gift by Mahomedan widow for spiritual benefit of her husband—Intention of widow to make gift of her husband s property—Danger to reversion—Receiver appointment of* The gift of a portion of the property of which the donor is a life tenant constitutes waste unless some necessity can be set up by the person making the alienation A Mahomedan widow who according to custom is only a life tenant of the Bhagdari property which belonged to her husband cannot make gifts of the estate as if she were in the position of a Hindu widow who is entitled to make alienations to secure spiritual benefit to her husband The fact that a life tenant is anxious to get the lands transferred to the name of another person does not by itself constitute waste but it might constitute a danger to the interests of the reversioner which a Court might take into consideration on the question whether his interests should be protected by appointing a Receiver AHMED ABDUL MAL *v* BAI BIBI (1919) I L R 44 Bom. 727

WASTE LANDS

See MADRAS ESTATES LAND ACT (I OF 1908) s 8 I L R 38 Mad 891

———— ownership of kudevaram—

See LIMITATION ACT (ACT XV OF 1877) s 22 I L R 40 Mad [illegible]

WASTE LANDS ACT (XXIII OF 1863)

———— s 18—

———— *Procedure under that Act—Sale by Government of land under that Act—Error in advertisement of sale—[illegible] of proclamation ousting jurisdiction of ordinary Courts and constituting a special Court—[illegible] years limit for claims only [illegible] before Special Court—[illegible] lands*

WASTE LANDS ACT (XXIII OF 1863)—*contd*

———— s 18—*contd*

than those only held by Government Great weight had always been given by the Judicial Committee to the accuracy of survey maps they were not conclusive but in the absence of evidence to the contrary they will be presumed to be accurate This appeal aro e out of a suit by the Maharajah of Tipperah to recover possession of certain plots of land in Sylhet from the Government and from certain Tea Companies who in virtue of leases granted by the Government were in possession of the lands in suit There were concurrent findings of fact by the Courts in India that the lands in que tion were *de facto* in the possession of the plaintiff and his predecessors since the beginning of the 19th century and that the dispos ession had taken place within 12 years before suit so as to exclude the plea of limitation and the Judicial Committee substantially upheld the decision of the High Court in favour of the plaintiff One plot however had been sold by the Government as waste land and the sale was not in any way stopped or interfered with by the Rajah and more than three years had elapsed from the date of delivery to the purchaser which was the period provided by s 18 of the Waste Lands Act (XXIII of 1863) after which no claim to any land or to com pensation or damages in respect of any land sold as waste land could be received and it was contended that the suit was barred by s 18 as to that plot *Held* that the Act was one which was drastic in its character and made great in vasion on private rights The defendant who pleaded it must therefore bring the matter strictly within its provisions which clearly pointed to the necessity of proper intimation being given by Government as to the proposed sale and where they had given a misleading notice and had ad vertised a sale of lands in one district when they were situated in another di trict the whole of the sale proceedings failed for want of a proper basis When a claim was allowed under the Act procedure was provided for the issue of a pro clamation which ousted the jurisdiction of the ordinary Courts and constituted a Special Court and no proof had in this case been given that any proclamation was issued The provision as to three years in s 18 was clearly applicable to the proceedings before the Special Court and that Court alone The procedure under the Waste Lands Act is not applicable only to lands belong ing to the Government SECRETARY OF STATE FOR INDIA *v* BIRENDRA KISHORE MANIKYA (1916)
L R 43 I A 303
I L R 44 Calc 328

WATAN

See BOMBAY HEREDITARY OFFICES ACT (BOM III OF 1874) ss 25 36
I L R 40 Bom 55

See VATAN

WATANDAR

See BOMBAY REVENUE JURISDICTION ACT (X OF 1876) s 4 (a)
I L R 45 Bom 1141

WATER

See EASEMENT 15 C W N 259
I L R 42 Calc 164

See FISHERY
I L R 42 Calc 489

WATER—*contd*

See GRANT CONSTRUCTION OF
I L R 38 Mad 424

See RIPARIAN RIGHTS

———— flowing right to—

See MADRAS IRRIGATION CESS ACT (MAD ACT VII OF 1865) s. 1 AND PROVISO ss 1 AND 2 I L R 40 Mad 886

———— for wet lands—

See MADRAS IRRIGATION CESS ACT (VII OF 1865) s 1 I L R 38 Mad 997

———— proprietary rights in—

See MADRAS IRRIGATION CESS ACT (VII OF 1865) I L R 37 Mad. 322

———— right to the flow of—

See EASEMENTS ACT (V OF 1882) ss 2 (c) AND 17 (c) I L R 42 Bom 288

———— rights respective flow of—

See EASEMENT I L R 33 All 619

WATER CESS

See MADRAS WATER CESS ACT (VII OF 1865) I L R 39 Mad 67

WATER CONNECTION

See MUNICIPALITY I L R 47 Calc 426

WATER DUTIES

See NAVIGABLE RIVER I L R 46 Calc 390

WATER COURSE

See MADRAS IRRIGATION WATER CESS ACT

See RIPARIAN RIGHTS

WATERFLOW

———— *Agricultural lands upper and lower owners of—Right of upper owner to drain his water naturally on lower land—Indian Easements Act (V of 1882) s 7 ill (a) and (i)* The ruling in *Mahamahopadhyaya Rangachariar v The Municipal Council of Kumbakonam I L R 29 Mad 539* distinguished An owner of upper agricultural land is entitled to let his water flow in its *natural* cour e without any obstruction by the owner of the lower land and the lower owner is not entitled to raise any bund on his land which will have the effect of seriou ly interfering with the upper owner s cultivation and *Subramaniya Ayyar v Ramachandra Rau I L R 1 Mad 335* and *Abdul Hakim v Ganesh Dutt I L R 12 Calc 323* followed *Sangana Reddiar v Perumal Reddiar (1910) Mad W N 545* di ented from RAMASWAMY *v* RASI (1913)
I L R 38 Mad 149

WATER PASSAGE

See DISPUTE CONCERNING EASEMENT I L R 39 Calc 560

WATER RATE.

———— *Madras Board of Revenue Standing Orders Edition 1908 Ch I App of s D rr 2 and 3— Full water rate meaning of* The words full water rate in r 2 of the Stand ing Orders of the Madras Board of Revenue Ch I App I s D (Ed 1900 p 91) mean full water

WATER RATE—*contd*

rate in respect of wet cultivation and not full water rate in respect of the crop actually raised SECRETARY OF STATE FOR INDIA v SUBBA ROW OF KURNOOL (1910) I L R 34 Mad 436

WATER RIGHTS

See EASEMENTS I L R 37 Mad 304

See MADRAS IRRIGATION CESS ACT 1865 s 1
I L R 40 Mad 886

——— *Surface water—Right of owner of higher land to discharge surface water over adjacent lower land—Inability of the owner of servient tenement to discharge same owing to rise of bed of adjacent stream by silting—His remedy—Dominant owner's right if affected* It is well settled in this country that the owner of higher land is entitled to discharge surface water over adjacent lower land Where owing to the silting up of a stream into which the water thus discharged ultimately flowed the level of the bed of the stream became higher than the adjacent lower land to the inconvenience of the owners thereof *Held* that the increase of burden to the servient owners not being due to anything done by the dominant owners the latter were still entitled to exercise their rights and it was for the servient owners to take such steps as might be advisable to deal with the difficulties created by the rise in the bed of the stream KASISWAR MUKHERJI v JYOTI KUMAR MUKHERJI (1917)
22 C W N 666

WAY

See RIGHT OF WAY

——— *Public way—Public drain when filled up it becomes public way* A public drain does not become a public way merely because it is filled up RAM CHANDRA SIL v PAMANMANI DASI (1916) 20 C W N 773

——— *Suit for declaration of—Whether it is necessary to locate the exact position or to show whether any definite track was used—Plaintiff to establish the termini from and to which the way runs—Plaintiff to enjoy the right in the way pointed out by owners of servient tenement—If not the nearest route* In a suit for a declaration of the plaintiffs right of way it is not necessary to locate the exact position in which the way was enjoyed over the compound of the defendants nor is it necessary to show that any definite marked pathway over the compound was always used If the plaintiffs establish the *termini* from which and to which the way runs the plaintiffs would be entitled to have the right of way and that right would be enjoyed in the way that the owners of the servient tenement point out as being the track over which the way should be enjoyed and if not then the plantiffs would be entitled to enjoy the way by the nearest route LAKHI KANTA ROY v RAJ CHANDRA SHAHA (1918)
22 C W N 922

——— *Held* that a suit for a declaration that a pathway is a village pathway can succeed without proof of special damage HARISH CHANDRA SAHA v PRAN NATH CHAKRABARTI
26 C W N 587

WEEKLY SITTING LIST

——— notes to the—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) ss 491 233 537
I L R 39 Mad 527

WEIGHTS AND MEASURES

——— bye law for—

See BOMBAY CITY MUNICIPAL ACT (BOM ACT III OF 1888) ss 418 461 CL (*o*)
I L R 41 Bom 580

WELL

See EASEMENTS ACT (V OF 1882) ss 13 AND 47 I L R 45 Bom 80

See LANDLORD AND TENANT
I L R 35 All 292

WHIPPING

——— sentence of—

See WHIPPING ACT (IV OF 1909) s 3
I L R 35 Bom 137

WHIPPING ACT (IV OF 1909)

——— s 3—*Criminal Procedure Code (Act V of 1898) s 565—Indian Penal Code (Act XLV of 1860) s 7—Sentence of whipping only passed on accused—Order to accused to notify his residence—Validity of the order* S 565 of the Criminal Procedure Code (Act V of 1898) must be strictly construed The order contemplated by the section can only be made at the time of passing sentence of transportation or imprisonment upon a convict It cannot be made where the Court instead of passing that sentence passes a sentence of whipping EMPEROR v FULJI DITYA (1910)
I L R 35 Bom 137

WIDOW

See BABUANA GRANT
I L R 42 Calc 582

See FRAUD I L R 36 Bom 185

See HINDU LAW—ADOPTION

See HINDU LAW—ALIENATION

See HINDU LAW—DEBT
I L R 39 Bom 113

See HINDU LAW—GIFT
I L R 42 Bom 136

See HINDU LAW—INHERITANCE
I L R 36 Bom 138
I L R 42 Calc 1179

See HINDU LAW—LEGAL NECESSITY
I L R 36 Bom 88

See HINDU LAW—REVERSIONER

See HINDU LAW—WIDOW

HINDU WIDOWS REMARRIAGE ACT 1856

See HINDU LAW—WILL.
I L R 37 All. 422
I L R 35 Bom 279

See LIMITATION ACT (IX OF 1908) SCH. I ARTS 141 144
I. L. R 42 Bom 714

See MAHOMEDAN LAW—DOWER

See MAINTENANCE
I L. R 34 Bom. 2"8
I L. R 36 Bom. 131, 383
I L. R 43 Bom. 66

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——— by Hindu widow—

See HINDU LAW—SUCCESSION
I L R 1 Lah 588

——— Bequest to women—

See EVIDENCE ACT 1872 s 115
1 Pat L J 16

——— construction of—

See CONSTRUCTION OF WILL

See HINDU LAW—ADOPTION
I L R 42 All 266
I L R 37 Bom 107

See HINDU LAW—IMPARTIBLE ESTATE
I L R 37 Mad 199

See HINDU LAW—WIDOW
I L R 47 Calc 466

See HINDU LAW—WILL
I L R 40 Calc 274
I L R 38 All 446

See MAHOMEDAN LAW—ALIENATION
I L R 34 All 213

——— execution of—

See SUCCESSION ACT (I OF 1865) s 50
I L R 40 Mad. 550

——— executed before Hindu Wills Act—

See HINDU LAW—WILL. 23 C W N 826

——— in favour of Hindu female—

See HINDU LAW—WILL
I L R 1 Lah 415

——— in favour of son with gift over on death—

See MAHOMEDAN LAW—WILL
I L R 1 Lah 302

——— in favour of a woman—

See HINDU LAW—WILL
I L R 2 Lah 175

——— joint Will—

See PROBATE I L R 45 Bom 987

——— nomination by—

See MUTT I L R 40 Mad 177

——— of occupancy rights which have ripened into ownership—

See COLONISATION OF GOVERNMENT LANDS (PUNJAB) ACT 1912
I L R 1 Lah 500

——— of Hindu widow—possession of Husband s estate—

See HINDU LAW—WILL
I L R 38 All 446

——— revocation of—

See HINDU LAW—WILL.
I L R 38 Mad 369

——— statement in—

See HINDU WIDOW
I L R 40 Calc 555

WILL—*contd*

——— setting aside a—

See SPECIFIC RELIEF ACT (I OF 1877), s 42
I L R 41 All 15[illegible]

——— signed by some other person by direction of testator—

See SUCCESSION ACT (X OF 1865) s 50
I L R 45 Bom 989

——— signed by two persons—

See PROBATE I L R 45 Bom 987

——— validity of—

See LETTERS OF ADMINISTRATION
I L R 47 Calc 838

See PROBATE I L R 42 Calc 480

CONSTRUCTION

1 ——— Bequest to take effect after deaths of testator and his wife—*Legatee surviving testator but predeceasing wife—Vested or contingent interest* One *S* executed a will whereby he gave all his property after the death of himself and his wife *M* to his daughter *B* and his nephew *D* *D* survived the testator but predeceased *M* *Held* that *D* took a vested interest in the property which was transmissible to his sons *Bhagabati Barmanya* v *Kali Charan Singh I L R 38 Calc 468 8 All L J 433* followed BILASO v MUNNI LAL (1911) I L R 33 All 558

2 ——— Clause for maintenance of daughters—*Succession Act (X of 1865) ss 111 187—Uncertain event —Marriage of daughters—Legatee, right of to sue—Succession Act s 3—Probate of will obtained only after institution of suit—Grant of Probate modified by High Court on appeal* A Hindu died in 1879 leaving a will whereby (among other things) he made provision for his wives and his daughters who survived him The clause providing for the daughters was When they will be married and if they desire to live in separate houses the person in whose management my property will be at the time will make separate houses for them in the vicinity of my house from the income of my property For the maintenance of my daughters I fix an allowance of Rs 600 a year for Srimati Prasanna and Rs 600 for Srimati Sarat As long as the daughters will live in the separate houses in this place they will get the fixed allowance respectively but if the daughters do not live in this place they will get Rs 10 The daughters married in 1888 and 1899 respectively and lived in separate houses In suits for their allowances it was contended that the bequests to them were given in the uncertain event of their marriage and as that event did not happen until after the death of the testator the bequests were void by reason of s 111 of the Succession Act (X of 1865) and never took effect *Held* on the construction of the above clause that the payment of maintenance was not contingent on the daughter s marriages and that therefore s 111 was not applicable At the time the suits were instituted no letters of administration had been granted but pending the suits the widow obtained from the District Judge a grant of letters of administration with the will annexed The grant was on appeal modified by the High Court by limiting it to the realisation of the main

WILL—*contd*

CONSTRUCTION—*contd*

tenance allowance provided by the will for the widow but before the letters of administration could be recalled and altered the widow died and the letters were never formally altered It was contended that the suits could not be maintained with reference to s 187 of the Succession Act which requires that before the right of a legatee can be established probate of the will shall have been granted *Held* that the grant of administration with the will annexed wa within the meaning of s 3 of the Act a grant of probate which was a compliance with the provisions of s 187 The subsequent limitation of the grant was immaterial So long as the compliance with the section was prior to decree the fact that it was after the institution of the suits made no difference and the Court was fully competent to deal with the suits CHANDRA KISHORE ROY v PRASANNA KUMARI DASI (1910) I L R 38 Calc 327
15 C W N 121

3 ———— Rules for devolution of trust if constitutes a will—*Probate of may be granted of an instrument laying down rules for devolution of trust—Partial probate if may be given—Residuary bequest effect of* Where a Mohunt made a will the main body of which simply laid down rules for the devolution of trust property but there was a clause in the following terms the said K shall get and shall be entitled of his own accord to make a gift or sale of any other property that I may earn during my life time *Held* that whether or not there was any such residuary property there was here a valid testamentary disposition which may be admitted to probate though the main body of the will being a deed merely evidencing a devolution of trust would not by itself be testamentary or admissible to probate *Held* further that in the circumstances probate must be granted of the will as a whole leaving it open to any party to establish his title by suit to any property in respect of which there may be a declaration of trust ineffectual as a will and vesting the whole estate in the executor pending determination of title to such property BAISNAV CHARAN DASS BAIRAGI v KISHORE DASS MOHANTA (1911) 15 C W N 1014

3(a) The term Malik when used in a will or other document as descriptive of the position which a devise or donee is intended to hold includes full proprietary rights unless there is something in the context or surrounding circumstances to restrict this meaning MUSAMMAT SASIMAN CHOWDHURAIN v SHIB NARAYAN CHOWDHURY
26 C W N 425

4 ———— Will or family arrangement—*Immediate operation—Irrevocability—Registration—Registration Act (III of 18) s 1—Pleading inconsistency in—Costs—Successful party deprived of all costs* A document executed by the owner of an estate on 3rd May 1884 which was plainly intended to be operative immediately and to be final and irrevocable was held to be a non testamentary instrument *e g* a family arrangement which as regards immoveable property failed of effect because it was not registered as required by s 17 of the Registration Act (III of 18) The appellants in whose favour the above decision was given having set up a will of a later date had started with the case that the instrument in question was a will but the will propounded by them being found not proved they later on attacked the document on the ground stated above Similar inconsistency appeared in the pleadings of their opponents *Held* that in the circumstances the Judicial Committee was not precluded from giving effect to the real character of the instrument but the appellants were deprived of their costs in all the Courts UMRAO SINGH v LACHMAN SINGH (1911) I L R 33 All 344
s c 15 C W N 497
L R 38 I A 104

4 (a) ———— Signature—Proof of—*Handwriting Expert* The Propounder of a will should prove to the satisfaction of the court beyond all possible doubt that the will was executed by the alleged Testator The opinion of a hand writing expert when he was not called as a witness was held inadmissible MUSSAMMAT PADMA PRIYA DEBYA v DHARMA DAS DEB SARMA
15 C W N 728

5 ———— Bequest dividing self acquired property—between testator s two sons with gift over to survivor—*Survivorship whether limited to survivorship during testator s life or extending to period after his death—Period of distribution—Hindu Law* A Hindu resident of Surat in the Presidency of Bombay made a will dated 20th August 1899 by which after appointing his two sons executors heirs and owners of the whole of his property (which was self acquired) and directing them to divide and take equal shares in it with certain exceptions gave each of them a half share of his estate not especially disposed of by the will By clause 9 he made the following bequest I have divided between and given to my two sons the whole of my property as mentioned above But should either of these two sons die without having had (leaving) any male issue the survivor of the said two sons is duly to take the whole of the property appertaining to the share of the deceased son who may have (leave) no male issue (behind him) after undertaking (to defray) the expenses in connection with the maintenance of his widow and marriage of his minor daughter But under these circumstances the heirs of my deceased son Surjalal shall not get any right whatever The testator died on 4th July 1901 leaving him surviving his two sons The elder son died on 2nd January 1903 leaving a widow and a daughter In a suit by the surviving son to enforce the provisions of clause 9 of the will the High Court held that the period of distribution contemplated by the testator was the period of his death at which time half of his estate became vested in each of his sons absolutely and that clause 9 should be read as if the survivorship there provided was limited to survivorship at the death of the testator *Held* (reversing that decision), that the words of clause 9 were not limited to survivorship during the testator s life but clearly pointed to survivorship whenever it should occur and that the surviving son was as such survivor entitled to the estate conveyed by the clause subject to the obligation imposed upon him of maintaining his brother s widow and daughter CHUNILAL PARVATI SHANKAR v BAI SAMRATH (1914) I L R 38 Bom 399

6 ———— Direction to carry on testator s business—*Loss suffered in the course of the business*

WILL—contd

CONSTRUCTION—contd

—*Mortgage—Liability of the executor—Testator's assets liable* One Gordhandas made a will and died leaving him surviving his widow a daughter and her husband and two grandsons by the daughter Under the will the testator appointed his widow and the daughter's husband executrix and executor and directed among other things that in order to perpetuate his name his business should be carried on by the executor so long as it could be carried on at a good profit but should it appear that the trade will suffer so as to destroy his reputation the executor should stop it At the time of his death the testator possessed *inter alia* a cotton ginning factory The executor and executrix carried on the business in the testator's name for some time and having found that large liabilities were incurred in the course of the business the factory was mortgaged to *J* with possession The mortgage was executed by the testator's widow as owner of the firm of Gordhandas and by her daughter The fact of the will was denied in the mortgage conveyance The ladies executed the mortgage by affixing their marks and their names were written by the executor *J* sued the mortgagor ladies and the executor to recover the mortgage debt and obtained a decree The executor died while the suit was pending The mortgage property was sold under *J*'s decree and was purchased by him at the court sale In the meanwhile the beneficiaries under the will that is the two grandsons of the testator and the sons of the deceased executor brought a suit against *J* for a declaration that the property was not liable to be sold under the defendant's mortgage-decree and that the defendant had obtained by his purchase no right as against the plaintiff's rights in the property *Held* dismissing the suit that the mortgage was by one member of the firm with the consent and informal co-operation of the undisclosed partner the executor who had the implied authority of the testator to deal with the factory in the ordinary course of business The mortgage was therefore valid and binding on the executor as principal. *Jugjeewandas Keeka Shah* v. *Ramdas Brijbhookun Das* 2 Moo. I. A. 487 followed A mortgage by a trader under a testamentary trust of the testator's property is referable to his implied authority as a trustee and not to his position as executor *Dowse* v. *Gorton* [illegible] *L. R. Ir.* 45 followed An executor carrying on the trade of his testator under a testamentary trust is liable personally to the trade creditors and is entitled to use as a trader the trade assets of the testator He does not violate his trust by carrying on the trade in conjunction with his co-executor who is not named as a trade trustee. The trustee though personally liable for the debts which he contracts in the course of his business, has a right to be paid out of the specific assets appropriated for that purpose and the trade creditors are not to be delayed of payment so far as the assets so appropriated are concerned JETHABHAI v. CHOTALAL (1909) I. L. R. 34 Bom 209

7 ——————Life estate to daughter—Bequest to daughter's sons—*On failure of the [illegible] the [illegible]* [illegible] *—Failure of the [illegible] daughter's sons—[illegible] case of intestacy—Construction of the bequest in favour*

WILL—contd

CONSTRUCTION—contd

of the testator's cousins—The intention of the testator to retain his estate in his own family that is in the hands of his cousins A testator in his will provided *inter alia* that his daughter should have a life estate of Rs 1 0 and the rent of a house and in the event of her having a male child or male children he or they should take the whole estate of the testator on attaining the age of 18 and then bearing a good character Should the daughter have no male issue then on her death the whole of the testator's estate was to go to his cousins absolutely The daughter having borne no male issue during the life-time of the testator the intended bequest to her male issue failed *Gannendra Mohan Tagore* v. *Jatindra Mohan Tagore* 9 *B L. R.* 377 A question having arisen as to whether the condition of the daughter having a son (at the death of the testator) not being fulfilled there was a case of intestacy *Held* that there was no intestacy The intention of the testator was to give the whole of his property to his grandson (daughter's son) That intention having failed the dominant intention of the testator was to retain the subject to his daughter's life estate to retain the estate in his own family that is to say in the hands of his cousins. NARANDAS TRIBHUVANDAS v. BAI SARASWATIBAI (1914) I. L. R. 38 Bom. 697

8 ——————Bequest by Hindu testator to widow daughter and daughter's [illegible] Where a testator [illegible] (V of 1881), s. 111 [illegible] intended that his wife daughter and daughter's [illegible] should each have an absolute interest in the property and so long as anybody descended from himself was in existence his brother's sons or the latter's descendants should have no interest in the property and where the provisions of his will ran thus— If my wife die before my daughter Gangamoni Debya shall get the property etc *Held* that under the provision of s 111 of the Succession Act the daughter takes only a life interest *Lalit Mohan Lal* v. *Pakhal Das* I. C. L. J 409 *Lakhendra Lal* v. *Pakhal Das* I. L. R. 63 *Tripura* [illegible] [illegible] *Cal* 274 *Sures Chandra Pal* v. *Lalit Lal* [illegible] *Dhas Chowdhury* 21 *C W N* 463, referred to. JAGAT BIJOY BHATTACHARJEE v. TARANATH BHADAN (1916) I. L. R 44 Calc 1S1

9 ——————Gift of Life-estate with power of appointment—*On failure of appointment to next of kin [illegible] and [illegible] [illegible] heirs [illegible] and [illegible]—Testamentary [illegible]—Absolute estate [illegible]. Construction* A testator bequeathed the income of a house to his two sons C R and K R for life the moiety of the corpus to go to such person as each of his two sons shall by will or deed appoint and in default of appointment to their heirs executors and administrators *Held* that the bequest conferred an absolute estate in a moiety to each of the sons C R was declared insolvent in January and in C R was declared in [illegible] the Official Assignee as Assignee of C R's estate for the determination of the effect of the bequest to him and his power of appointment a consent decree was passed declaring that the Official Assignee was only entitled to a half share in the rent of the house during C R's lifetime without prejudice to the rights of his appointees or his heirs executors and administrators. Subsequently C R's adjudication was

WILL—*contd*

CONSTRUCTION—*contd*

annulled *Held* that the consent decree did not operate as *res judicata* to prevent the High Court construing the bequest BALTHAZAR *v* BALTHAZAR (1917) 21 C W N 992

10 ———— **Construction of will—Absolute words and limiting words occurring in one sentence**—*Intention of the testator* A testator made the following provision in his will I appoint by this testament my brother Joaquim Serpes as my only and universal heir of all the immoveable property which I possess and which may hereafter in any manner belong to me with the strict obligation to him not to sell exchange or hypothecate it but only to enjoy the usufruct thereof and at his death to pass over the same to his male children preserving the same as a patrimony of the house The question being raised whether upon a proper construction of the will Joaquim was merely a life tenant or whether he took absolutely *Held* that Joaquim was a mere life tenant ROSE D SOUZA *v* JOSEPH (1916) I L R 41 Bom 70

11 ———— **Wills by Hindu—fundamental principles common to Hindu and English wills**—*Court s duty to give effect to intention as expressed not to add to will—Surrounding circumstances to be looked at as aid to interpretation only—Religious opinion and race in what way relevant—Liberal construction of native wills meaning of Contemporaneous deed referred to in will and interpretation by persons interested if may be referred to—English rules of construction if inapplicable* In construing a will a Court must consider the surrounding circumstances the position of the testator his family relationships the probability that he would use words in a particular sense and many other things including the race and religious opinions of the testator and influences and aims arising therefrom—but all this solely as an aid to ascertaining the meaning of the language used by the particular testator in the particular will Once the right construction is settled the duty of the Court is loyally to carry out the intentions as expressed and none other This duty is universal and is true alike of wills of every nationality and every religion or rank of life The Court is in no case justified in adding to testamentary dispositions If they transgress any legal restrictions they must be disregarded If any eventuality arises which the will leaves unprovided for there will be intestacy This fundamental principle does not clash with the principle that the Court will not necessarily apply English rules of construction to a will of a Hindu like the present nor does it clash in any way with what is sometimes called giving liberal interpretation to native wills That native testators should be ignorant of the legal phrases proper to express their intentions or of the legal steps necessary to carry them into effect is one of the most important of the "surrounding circumstances" which the Court must bear in mind and it is justified in refusing to allow defects in expression in these matters to prevent the carrying out of the testator s true intentions But the intentions must be ascertained by the proper construction of the words he uses and once ascertained they must not be departed from It is legitimate in construing a will to look at contemporaneous document referred to in the will which the testator wrote or caused to be written with the express intent to render clear his wishes with regard to his succession The interpretation placed on the power by the testator s widows was referred to for what it was worth NARASIMHA APPA ROW *v* PARTHASARATHY APPA ROW (1913) 18 C W N 554 I L R 37 Mad 199

12 ———— **Republication**—*Succession Act (X of 1865) ss 105 15—Codicil—Death of testator within one year—Repair of graves—Charitable bequest—Conditions Elections of Deacons Communion Service—Gift over to another charity—Perpetuities* The testator died on the 8th July 1909 leaving as next of kin a nephew and leaving a will dated the 14th April 1884 and four codicils The testamentary dispositions included certain charitable and religious bequests The last two codicils dated the 15th December 1906 and the 19th December 1908 respectively were not deposited according to the provisions of s 105 of the Succession Act they did not however purport to revoke the will but in effect republished the will *Held* that in the circumstances the will as modified by the codicils was operative *Hopwood* v *Hopwood 7 H L Cas 728 In re Moore Long* v *Moore (1907) 1 Ir Rep 315* referred to A direction that the will shall not have any effect (beyond proving the same) for at least two years from the arrival of the news of the testator's death operated merely as a postponing clause, and did not invalidate the will. A direction to trustees to look after and keep in proper repairs certain graves and to pay for the expenses of such repairs in perpetuity out of the estate was not for charitable uses and was void and inoperative *Hoare* v *Osborn L R 1 Eq 585 Mellick* v *The President and Guardians of the Asylum (1821) Jac 180 In re Vaughan Vaughan* v *Thomas L R 33 Ch D 187 In re Rogerson Bird* v *Lee (1901) 1 Ch 715* referred to *In re Tyler Tyler* v *Tyler (1891) 3 Ch 252* distinguished A bequest in favour of the Lower Circular Road Baptist Church was subject to *inter alia* the following conditions (*a*) that no ordained minister or missionary be ever elected as a deacon of the church or be allowed to canvass for votes (*b*) that at communion two cups one of fermented one of unfermented wine should be provided (*c*) that the deacons do not introduce any innovation into the practice of the church In the event of the non fulfilment of the conditions there was a gift over in favour of the Howrah Baptist Church and other charitable and religious institutions *Held* that there was nothing illegal or impossible in the conditions and inasmuch as the conditions had not been fulfilled the gift over came into operation *In re Robinson Wright* v *Tugwell (1897) 1 Ch 85* distinguished An immediate gift to a charity for charitable uses with a gift over on an event which may be beyond the ordinary limit of perpetuities to another charity is not invalid *Christ s Hospitals* v *Grainger 1 Mac & G 460 In re Tyler Tyler* v *Tyler (1891) 3 Ch 252* followed *In re Bowen Lloyd Phillips* v *Davis (1893) 2 Ch 491 In re Strathel n and Campbell (1894) 3 Ch 265 Chamberlayne* v *Brockett L R 8 Ch App 206* distinguished ADMINISTRATOR GENERAL OF BENGAL *v* HUGHES (1912) I L R 40 Calc.

WILL—*contd*

CONSTRUCTION—*contd*

13 ———— Rule of justice equity and good conscience—Devise to eldest son and his lawful male children—*according to law of inheritance—Mortgages made by testator as full owner and mortgages made by son with an estate for life only —Rights of mortgagees—Alternative case set up on appeal—Costs* T S a domiciled resident of the North Western Provinces of India died on the 9th of November 1864 leaving a will dated the 22nd of October 1864 [and therefore before the Indian Succession Act (X of 1865) came into force] whereby he made provisions that certain villages houses and other property should at my demise descend to my *eldest son* T B S *and to his lawful male* children according to the law of inheritance and *in the event of my eldest son* T B S *dying* without lawful male children to my female children or in the event of their death to the female children born in wedlock of my sons in succession The testator had in 1863 mortgaged his property to the extent of Rs 50 000 with interest and his son T B S, after he succeeded to the property further mortgaged it in 1867 1869 and 1872 and in execution of decrees obtained against him on those mortgages the property was sold and his interest therein was acquired by the various auction purchasers T B S died in 1900 without lawful male children and was succeeded by the second son of the testator the present appellant who in 1905 and 1906 brought the present suits for *ejectment against the auction purchasers in* which he prayed for decrees for full proprietary *po session and the suits were dealt with on that* footing in the Courts in India, the High Court however only dismissing the suits because there was no specific claim for redemption On his appeal part of the appellant s case was that the High Court instead of dismissing the suits should have made decrees for possession conditional upon payment of the debts binding on the estate of the testator and during the hearing it was conceded by counsel that on the construction of the will the appellant was only a life tenant of the property *Held* that the regulation of the *succession* under the will was to be determined by the rule of justice *equity* and good conscience that the bequest was to be read in its entirety and together and that so read there was in it no intention that his son T B S should have an absolute ownership the testator intended to regulate the succession after the death of T B S and settle the mode of the subsequent enjoyment of the property and such detailed regulations were only natural necessary and entirely in place if T B S was intended *to be merely a tenant for life Held therefore* that the rights under mortgages granted by T B S ceased at his death and that the appellant as the next male heir was entitled to the enjoyment of the estate for life free from any rights so acquired The case however was very different with regard to the rights acquired under mortgages granted by the testator himself Even if T B S renewed such mortgages the right of the *mortgagees would not be prejudiced thereby* the renewal of a mortgage by a person with a limited interest in the estate not operating as a discharge of debts effectually secured upon the radical right The appellant accordingly was not entitled to possession until full satisfaction had been made of rights of all mortgagees and their successors under mortgages granted by the testator *The appeals* were allowed and the suits remitted to the High Court on that footing The alternative case set up by the appellant on appeal was only permitted by their Lordships to be the ground of judgment because it seemed possible in that way to construct the material for a just decision of *the true rights* of the parties concerned which would be best for the interests of all and prevent *further litigation* SKINNER *v* NAUNIHAL SINGH (1913)

I L R 35 All 211

14 ———— Bequest creating a succession of life interests to illegitimate son *and his issue* (aulad)—*Whether aulad includes illegitimate issue—Marriage of son by birth a Mahomedan to Hindu caste ladies—Intention of testator—Mahomedan brought up as orthodox Hindu* The question in this appeal was as to the construction of *a codicil to the will of* the late Maharaja of Balrampur who was a Hindu of the Chattri caste by which he purported to make provision for *J B* his son by a Mahomedan mistress who as *held* by the Courts below was by birth a Mahomedan He afterwards however, became as far as was possible a Hindu The appellant (plaintiff) was the eldest son of *J B* by a Mahomedan *woman* and the second third and fourth respondents were his brothers and there were *concurrent* findings of both Courts in India that there was no valid marriage between *J B* and *their* mother and that they were consequently illegitimate The first respondent was *the son of J B* by a Hindu lady of the Chhattri caste with whom he had admittedly gone through *a marriage* according to the strict Hindu rites and when that lady died *his father got him married to other lady of the same caste* On the death of *J B* in 1899 *the first respondent* obtained possession of the property in suit and the appellant sued for it the question being whether the appellant was an issue of *J B* within the meaning of the word *aulad* as used in the codicil and as such entitled to inherit *J B's* property The first *respondent* contended that the appellant being illegitimate could not take under the terms of *the codicil* that *J B* had been a Hindu from his boyhood to his death *and that he* (*the first respondent*) being the only son of the first Hindu marriage which was a valid one was the heir of his father and on the true construction of the codicil entitled to the *property* in suit By the codicil dated the 15th of March 1878 the testator after reciting *that* his son *J B* being not born of Khas Mahal was not capable *of the riasat* gaddinashini and the proprietorship of the *riasat*" continued — But he also being born *of my* loins *it is incumbent* on me that such means be provided as would enable him and his issue (*aulad*) *to* support themselves well and with respect Accordingly the settlement is *made* as follows

Rs 4 000 per mensem or Rs 48 000 per annum (the income derived *from certain* villages named) shall be continued to be paid by the *proprietor* of the *riasat* the *locum tenens* of the *gaddinashin* for the time being and that amount shall be paid to *J B* and his issue (*aulad*) for generation after generation so long as the family (*khandan*) of *J B* and his issue (*aulad*) remain in *existence*

(3) for *his life time J B* has a right to spend their money but after his death from among his issue (*aulad*) *one person* (*jisko haq pahunche*) to whom the right may go shall be considered proprietor of this maintenance allowance

WILL—*contd*

CONSTRUCTION—*contd*

without division as a *rais* The other issue of the family of *J B* shall be entitled to get food raiment and other necessaries out of the monthly allowance (4) When there remains no descendant of the family of *J B* at any time the monthly allowance of Rs 4 000 will be resumed and remain in proprietary possession of the proprietor of the *riasat* the *gaddinashin* The Court of the Judicial Commissioner held that *aulad primâ facie* meant legitimate issue and dismissed the suit *Held* (upholding the decision) that the case was not one where a gift is made by will of the *corpus* of a fund or a life interest in a fund to the children of the testator or of another as a class There might be good reason in some such cases for holding that in India the word children includes illegitimate children But here a succession of life interests from generation to generation is intended to be set up the successor or proprietor in each instance being vested with an absolute control of the income subject only to the duty of maintaining the issue (*aulad*) of the family (*khandan*) of the first proprietor *J B* There was nothing on the face of the codicil to suggest that a meaning should be given to the word *aulad* different from its *primâ facie* meaning To include illegitimate issue would bring into the line of succession not only the testator s illegitimate grand children but their illegitimate issue from generation to generation Such a construction would render condition No 4 rather unnecessary and would also defeat the whole purpose and object of the testator in establishing the succession of life interests Nor was there any reason for extending the meaning of the word *khandan* which ordinarily refers to the group of descendants who constitute the family of the proprietor so as to include illegitimate offspring who from the necessities of the case cannot share in the family life or its worship or ceremonials *Held* also that the fair result of the evidence was that *J B* did his utmost to become an orthodox Hindu and to pass as such in the society in which he lived and that his father from boys youth upwards aided and encouraged him in those efforts The testator treated his marriages with the two Chattri ladies as lawful marriages and desired that others should so treat them and consequently resolved to regard and treat the offspring of those unions as legitimate and desired that they should be so treated and regarded by others and that it was in this frame of mind he made the testamentary disposition in dispute Having regard to all the evidence in the case and the provisions of the codicil itself the intention of the testator plainly was to treat the marriages of *J B* with the two women of the Chattri caste as valid marriages and the issue of those marriages as legitimate issue SHER BAHADUR *v* GANGA BAKHSH SINGH (1913)

I L R 36 All 101

14(a) ———————One P died leaving a will by which he directed that certain legacies should be paid out of a fund of Rs 10 000 invested in fixed deposit in the Delhi and London Bank The Bank had during P s lifetime advanced certain sums to his daughter on an undertaking by P that he would stand surety for the loan P was also himself indebted to the Bank *Held* on a suit by the legatees that the executor of P s will was perfectly justified on being satisfied as to the fact of P s relations with the Bank above described in permitting the Bank to realise from the fund in question both the amount of loan to P s daughter and the amount of his own indebtedness HERBERT ARCHIBALD POCOCK *v* THE DELHI AND LONDON BANK LTD

I L R 38 All 219

15 ———— Money belonging to testator but not known to him—Residuary clause not passing by—*Rule of construction of residuary clause in a will made in the town of Madras* A testator in the town of Madras after stating in the preliminary clauses the properties moveable and immoveable to which he was entitled and which he by subsequent clauses in the will bequeathed to various beneficiaries and legatees finally made a bequest in the following terms the sum which may be left after deducting the above mentioned legacies and such other expenses shall be utilised in my name for pooja and other charities in Vytheswarar temple Unknown to the testator there was a sum of Rs 4 000 lying to his credit with the Registrar of the High Court which after his death was paid to his executor on his application In this suit by the widow of the testator for administration of the estate *Held* that the sum of Rs 4 000 was not disposed of even under the above residuary clause of the will that the plaintiff was entitled to it as on an intestacy and that the executor was liable to account for the same from the date of the testator s death on the footing of a wilful default The residuary clause in the form in which it appears in English wills is practically unknown to the ordinary testator in Madras and the rules of construction which have been laid down by English Courts are not applicable KUNTHALAMMAL *v* SURYAPRAKASAROYA MUDALIAR (1915)

I L R 38 Mad. 1096

16 ———— Will of Parsi—Devise to two sons in equal shares—Gift over to son of elder son if he should have one—*Failure of male issue to elder son—Provision for adopted son on failure of natural son—Adoption after testator's death and according to Parsi custom three days after death of father—Gift over to grandson on attaining majority—Elder son surviving testator—Succession Act (X of 1865) s 111* A Parsi having two sons P and J made a will in 1866 in the following terms —Cl 2 stated The said two sons are proprietors half and half alike and in equal (shares) of my whole estate outstandings debts title and interest and both the heirs living together are duly to enjoy the balance which may remain after the Sarkar's assessment In this my testamentary writing I the testator have appointed my two sons as (my) heirs Cl 5 said that P the elder son being in a confused state of mind the management of the estate was entrusted to the younger son J by his true and pure integrity and both the heirs are to equally enjoy half and half alike the whole estate with equanimity with my elder son P in such a way as not to injure his (P s) rights At present my elder son P has no male issue of his body (He) has only a daughter Therefore if my elder son P gets a male issue half of the estate is to be made over to him on his attaining his full age Cl. 11 after prohibiting any alienation of the property continued, my son P does not get to give as P's *palak* (or . All the

WILL—contd

CONSTRUCTION—contd

this will are applicable to the said adopted son If a son be born of the body of P he (shall) on attaining (his) full age be the owner of a half share of the whole of the immoveable and moveable estate belonging to me all the clauses written in this will are applicable to the said son of (his body) The testator died on 21st August 1866 leaving his two sons and J entered upon the management of the estate having obtained probate of the will in 1867 P was twice married but had no son He died in 1897 leaving a widow and other representatives his heirs according to the Parsi Intestate Succession Act (XXI of 1865) who brought a suit to ascertain the rights and interests of the parties in the estate and for partition basing their claim on P s right as the owner of one half of the estate from the date of the testator s death The defendants were J and his son B who was five years old at the death of the testator and who it was alleged had been though not in the testator's life time adopted as the *palak* son of P and as the defendants contended succeeded under the will to the half share of the estate which P had enjoyed though on the terms of the will it had never vested in him *Held* (affirming the decisions of the Courts below) that the proper interpretation of the will in the events that had happened was that the date of distribution was the death of the testator at which date one half of the estate vested in P The destination over to a son who should take upon attaining majority would be using language appropriate to the events of the death of P during the life time of the testator and of his having left a son—the situation also being provided for of that son not having at that time attained majority But when P himself survived the testator there were no words in the will sufficient to cut down the right of P to one half of the estate to a tenancy for life or a less period therein according to the appellant s contention On the contrary the words employed appeared suitable to the case of the entire estate being on the testator s death divided into two portions and of each portion then becoming the absolute property of one of the two sons of the testator The same result was arrived at by the application of s 111 of the Indian Succession Act which their Lordships agreed with the Courts below was applicable JEHANGIR DADABHOY *v* KAIKHUSRU KAVASHA (1914)

I L R 39 Bom 296

16 (a) ———— **Demonstrative Legacy**—Where a testator has bequeathed legacies to several grand children named in the will to be paid for the sale proceeds of a certain house after death of daughter and marriage of grand daughter and it was contested that in as much as there is no specific provision in the Succession Act for payment of interest on demonstrative legacies no interest was payable *Held* that interest is payable on demonstrative legacies even if there is no time for payment fixed and same is payable out of a particular fund and the rate is 4 per cent ADMINISTRATOR GENERAL BENGAL *v* A D CHRISTIANA **I L R 43 Calc 201**

17 ———— **Dedication of property for worship**—*Devisees to divide profits after paying expenses—Trust* A testator who owned two houses left one house to one of his two nephews for his own use and as to the other made by his will the following disposition In the other dwelling house consisting of three sections of Thakurdwaras including the staircase both the executors aforesaid should reside put up pilgrims and attend on them jointly and from the income thereof daily perform the usual worship of the gods Murli Dhar Raj Rajeshri and Mahadeo and the worship on Puranmasi *Panchami Ram Naumi Janam Ashtami Nauratri Shivaratri Dhanurmas* and Sawan festivals and look after its repairs After this is done both the executors should make a receipt and disbursement account of the income annually and after deducting the above expenses should divide the profits between them in half and half and should grant receipts and acquittances as between them live None of the executors shall in any way be entitled to transfer mortgage or sell this house and if they do so it will be utterly null and void *Held* that the will created a trust and the only beneficial interest given under the will to the nephews was the right to take the surplus profit if any after the worship had been performed and the festivals duly observed MURLIDHAR *v* DIWAN CHAND (1916) **I L R 38 All. 214**

18 ———— **Bequest to a person not named in the will—Private directions given by the testator to one of his executors**—*Evidence as to who was intended to have the benefit of the bequest admissibility of—Succession Act (X of 1865) ss 67 68 69* A testator provided by his will as follows — In accordance with directions that I am going to give in private to trustee No 1 out of the trustees appointed by me my trustees should entrust to Haridas Rs 5,000 that may be received from my life policy and the shares of Tata & Co also should be transferred to the person whose name will be disclosed by Haridas In a suit filed by B praying *inter alia* that Haridas should be ordered to disclose the private directions given by the testator and for declaration that she B was the person intended by the testator to have the benefit of the bequest *Held* (i) that Haridas was bound to disclose the private directions given him by the testator and that evidence thereof was admissible (ii) that the second part of the above clause should be read with the first part and that the shares must be transferred to a person whose name was given by the testator to Haridas and that the power conferred on Haridas was therefore not a general but a special one BAYABAI SAKALKAR *v* HARIDAS RANCHHODDAS (1914)

I L R 40 Bom 1

19 ———— **Life interests—Reversionary trust**—*If then living —Vested estate* A Parsi by his will devised a house to his wife for her life and directed that after her decease his executors should hold the house in trust for his son J for life and in the event of J s death in trust for J's widow (as to part if he so appointed) and for J's issue and in default of such issue and subject to such appointment in trust for the testator s son A if then living J died unmarried in the life time of the testator s widow and of K *Held* that upon the death of J the house vested absolutely in A subject to the life interest of the testator s widow CAPADIA *v* CAPADIA (1918)

L R 45 I A 257

WILL—*contd*

CONSTRUCTION—*contd*

20 ——— Bequest to brother's widow and on her death to her daughter—*Successive interest—Absolute estate—Succession Act (X of 1865) s 111* Where in a will a legacy was given in the following words On my death my youngest brother s widow the said Bama Sundari Debya and when she is dead her daughter my niece Kusum Kamini Debi will get one fourth share of all the self acquired immoveable properties which I have other than my aforesaid immoveable properties *Held* upon a construction of the will that the effect of the will was to give to Bama Sundari an interest for life in the self acquired properties of the testator with a gift over on her death of an absolute interest to her daughter Kusum Kamini The gift to Kusum Kamini was not a substitutional gift in the event of her mother Bama Sundari predeceasing the testator but it was one of successive interests and s 111 of the Indian Succession Act had no application to it HARENDRA CHANDRA LAHIRI *v* BASANTA KUMAR MOITRA (1918) **22 C W N 689**

21 ——— Malek Mukhtyar" for life—*Existence indicated in will of special oral direction—Terms of the trust not ascertained or ascertainable—Power executed in professed compliance with authority given—Parol evidence admissible to prove the trust so as to prevent a fraud—Onus of proof—Undistributed share of the property of an intestate—Indian Limitation Act (IX of 1908) Art 123* A Parsee testator by his will made his wife Malek Mukhtyar as to all his property during her life just as the testator was the owner free from question by any of his other heirs representatives relatives and kinsmen with directions that she should protect the children as he had protected them according to their means declaring that if any of his children should not act according to her orders then during her life time the child should not have any claim to any of the testator s property Cl 7 of the will provided that agreeably to what was written above the wife was during her life time to carry on Vahivat (management) in respect of every kind of property and make expenses on auspicious and inauspicious occasions as the testator had been doing The clause further provided and in her life time keeping God and Mehar Davar (the Dispenser of Justice) before her mind my wife shall duly as I have directed her orally and according to the times (i e as circumstances demand) make her will and all my heirs and the heirs of my heirs shall duly act agreeably to the same Cls 8 and 10 of the will provided for interests contingent upon the testator's widow and executrix dying without making a will as mentioned in cl 7 The testator died in 1872 and thereafter his widow as executrix administered the estate until her death in 1906 By her will she purported to dispose of all property both her own and what she had received from her husband and appointed her surviving son her executor The latter died in 1915 leaving a will whereby he appointed his daughter the 1st defendant his executrix The plaintiff a daughter of the original testator s son (who predeceased his mother) filed the suit on the 18th of May 1916 praying *inter alia* that the estate of the testator might be administered by the Court and that it might be declared that the testator s widow had no power to make a will disposing of any part of the testator s estate The 1st defendant contended that the will of the testator s widow was valid and that the plaintiff s claim was barred by limitation *Held* (i) that the testator s widow took only a life estate under the will (ii) that the words shall duly as I have directed her orally and according to the times (i e as circumstances demand) were not consistent with a general testamentary power but indicated the existence of special directions as to the objects in whose favour the power was to be exercised (iii) that there being no direct evidence as to the testator s directions the will made by the widow should not be given effect to and that on her death there was an intestacy as regards all the property of the testator (iv) that Art 123 of the Indian Limitation Act applying to every suit where the plaintiff seeks to recover an undistributed share in the estate of an intestate the suit was not barred by limitation *Per* SCOTT *C J* The Court will not try to compel the execution of a trust where the terms of the trust are not ascertained or ascertainable but where a power in the nature of a trust has been executed in professed compliance with the authority given the onus as it seems to me, of proving that the execution was a fraud on the power should lie on those who seek by challenging the execution to get possession of property in the hands of those benefiting by the act of the donee of the power *Hetley* v *Hetley (1902) 2 Ch 866* referred to *Maung Tun Tha* v *Ma Thit L R 44 I A 42* followed SHIRINBAI *v* RATANBAI (1918) **I L R 43 Bom 845**

21 (a) ——— Equitable estoppel—Oudh Estates Act—*S* by his will bequeathed his taluqdari estate to his great grand on *J* subject to a provision under which *J* was to select particular villages yielding net incomes of stated amounts and grant them in under proprietary right to S s three grandsons *J* made the selection and the grantees accepted *Held* this did not constitute a transfer within s 16 of the Oudh Estates Act and did not require registration and that in any case *J* had no equitable claim to recover the villages from the grantees after delivery of possession and receipt of rent by the grantor LAL JAGADISH BAHADUR SINGH *v* MAHABIR PRASAD **24 C W N 529**

22 ——— Trust for charitable purposes—Gifts over to another charity—*Rule of remoteness—Vesting of the gifts over—Perpetuity rules against how far applicable—English Law—Res Judicata—Proceedings in prior suit—Issue reserved in decree—Heard and finally decided—Succession Act (X of 1865) ss 101 and 10 —Civil Procedure Code (Act V of 1908) s 11* By a will dated the 14th April 1884 and four codicils the testator provided *inter alia* that certain annuities be paid out of his residuary estate and after the death of the last surviving life tenant a charitable and religious bequest be created in favour of the Lower Circular Road Baptist Chapel subject to certain conditions contained in cl 7 of the 2nd codicil In the event of the said conditions being unfulfilled it was directed in the said codicil that there would be a gift over in favour of the Howrah and the Lall Bazar Baptist Churches The testator died on the 8th July 1909 and the last survivor of the

WILL—contd

CONSTRUCTION—contd

annuitants was still alive In a previous suit *Administrator General of Bengal v Hughes I L R 40 Calc 192* for the construction of the said will and codicils and for other reliefs it was admitted that the Lower Circular Road Baptist Chapel had not complied with the said conditions and was not in a position to do so and the Court on the 16th July 1912 held that the gifts over to the Howrah and the Lall Bazar Baptist Churches were valid and that there was no intestacy but in the decree the determination of these questions was expressly reserved The last surviving annuitant having died on the 10th April 1917 a fresh application for the further construction of the said will and codicils was made On this application it was declared that the gifts over were valid that there was no intestacy and that the question could not again be raised On appeal —*Held* that the question of the validity of the gifts over to the two Churches could not be said to have been finally decided within the meaning of s 11 of the Code of Civil Procedure so as to prevent the Court considering the point raised in the subsequent suit in respect of s 101 of the Succession Act and that the decree of 1912 did not finally decide all matters raised in the suit. *Held* also that the language of s 101 was clear and unequivocal and applied to all bequests whether they were of a charitable nature or not *Held* also that the bequests to the Howrah and Lall Bazar Churches would not vest in them until the Lower Circular Road Baptist Chapel had failed to perform the specified conditions that they were within s 101 and that they were not valid on the ground that the vesting of the funds bequeathed to those Churches might be delayed beyond the lifetime of one or more persons living at the testator s decease *Held* also that as regards the *corpus* and income of the residuary funds in question after the death of the last surviving annuitant there was an intestacy J H JONES *v* THE ADMINISTRATOR GENERAL OF BENGAL (1918)

I L. R 46 Calc. 485

23 ———— Cutchi Memons—*Mahomedan law—Document in the nature of instructions as to the disposition of property operating as a will under Mahomedan law—Probate—Probate and Administration Act (V of 1881) s 3* A widow of a Cutchi Memon applied for probate of a document in Gujerati as being the last will and testament of her deceased husband the document according to the official translation being in the following terms — May it be known to Bhai Abdullabhai as follows —In the will which you will get made to morrow and give me be kind not to forget (to add) my Mukhatyari as long as I am alive and after me my wife s Mukhatyari Whatever costs may be incurred I will pay you Written by your servant Mahomed Hassam Haji On the other side of the document were the words Bhai Abdullabhai Mukhatyari in the document meant absolute ownership or full power The document was unattested but was written by the deceased, and given to his brother in law Abdullabhai at a time when the deceased was lying on his death bed suffering from cancer of the tongue and unable to speak properly The deceased died two days after the date of the document *Held* (i) that the document in question was in the nature of instructions by the deceased to his legal advisers or to his relative as to the instruction to be given to the legal adviser as to the disposition of his property (ii) that under the Mahomedan law which governed the execution of wills of Cutchi Memons no attestation was necessary and the document operated as a valid will which might be admitted to probate *In re Aba Satar 7 Bom L R 558* and *Mahomed Altaf Ali Khan v Ahmed Buksh 25 W R 121* referred to SARABAI AMIBAI *v* MAHOMED CASSUM (1918)

I L. R 43 Bom 641

24 ———————In a Will the testator provided that after his death his daughter would be *malik* vested with the power to transfer by sale and gift the entire properties and would enjoy and hold possession of the same down to her son son s son and so on The Will next provided that the daughter should live in the testator s ancestral *bhita* and perform the *pujas* inaugurated by him otherwise she would not be entitled to hold possession or transfer any portion of the property The Will also provided that she would be entitled to transfer the property only if it was unavoidably necessary for the education of her son or if they fell into great calamity In a suit for possession by the son of the daughter the Court of first instance held that the Will conferred an absolute estate on the Plaintiffs mother who having left a maiden daughter still living the Plaintiffs have no title to the property On appeal the Lower Appellate Court held that the questions raised should be decided after taking evidence and remanded the case for trial upon the merit *Held* that the words in the earlier part of the Will without anything to qualify them would no doubt create an absolute estate and there was power of alienation expressly given There is no doubt that if an estate conferred by Will is held to be absolute the conditions as to the mode of its enjoyment are void But considering all the terms of the Will it is clear that the provisions made in the earlier part of the Will are qualified by the provisions made in the other parts of it Three things appear to have been uppermost in the mind of the testator that his daughter and her sons etc should reside in his *bhita* that power of alienation should be given only for meeting the education expenses of her son or in case of great calamity and that she should hold subject to performance of *pujas* She had not an absolute estate SURENDRA NATH CHATTERJEE *v* SAROJBANDHU

26 C W N 893

25 ———— Bequest of estate for life—no express disposal of corpus—Prohibition against alienation—Law of perpetuities — *heir born of the womb meaning of—Hindu Law—Contingent remainder after woman s estate effect of—Life estate whether Hindu can create by Will—Adverse possession under doubtful Will effect of—Legal necessity proof of by recitals in a conveyance* A will recited that if a daughter or son was born to the testator during his life time such son or daughter will be the owner of all the testator s property but if there were no son or daughter his niece *S* was to take a bequest of a lakh of rupees and the rest of the movable and immovable property was to remain in the possession of his wife

WILL—*contd*

CONSTRUCTION—*contd*

until her death After her death it was to remain in the po es ion of his ni ce The remainder was dispose l of in the following words — if on the death of my wife and my niece there be living a son and a daughter born of the womb of my said brother s daughter then two thirds of the movable property will belong to the son and one third to the daughter But as regards the immovable property none shall have the least right of alienation They will of course be entitled to enjoy the balance left after payment of rent etc *Held* (i) That the Will purported to convey an absolute estate ultimately to the son and daughter of the niece and the fact that the *corpus* was not expressly mentioned was not sufficient to justify the inte pretation that the *corpus* did not pas (ii) That the failure of the bequest of the remainder in favour of the niece s son and daughter on the ground that they were unborn at the testator s death did not make the Will itself invalid (iii) That the disposition in favour of the niece s son and daughter was a bequest of the remainder to them and was not a mere description of an estate of inheritance in *S* The word heirs born of her womb could not be interpreted to be a de cription of an estate of ordinary inheritance (iv) That under the Will there was no interest vested in any person other than the widow in the first place and after her the niece The Will therefore contemplated that the estate should be represented first by the testa tor s widow and thereafter by his niece (v) That the estate taken by *S* was an estate such as a woman ordinarily acquires by inheritance under the Hindu Law which she holds in a compl tely representative character but is unable to alienate except in case of legal necessity (vi) That by the provision against alienation the testator had in his mind the ordinary recogni ed restriction upon alienation which would apply independently of any provision in the Will and that he had not in his mind the eventuality of an alienation becom ing necessary either for the purpose of providing maintenance for the niece or for the preservation of his estate Where a mere contingent remainder is created after the woman s estate (as in this case) and not a vested remainder this is an indica tion that the estate created was a woman s estate in the technical sense and not merely a life estate An estate of the kind that a Hindu widow inherits in the case of an intestacy can be created by a Will Where such an estate has been created by Will a condition prohibiting alienation absolutely is void for repugnan y *Obiter dictum*—A Hindu can by Will create an estate for life in the English sense but his intention to do so must be made clear by the term of the Will itself without any importation of English ideas It is doubtful whe ther where a person enters into posse sion of an estate under a Will of uncertain construction an absolute title can be a quired by adverse pos es sion in the absence of an expre s claim to hold an absolute estate Where a conveyance had been executed twenty five years before the institution of the suit re itals made at or about the time of the conveyance were accepted as proof of the existence of legal neces ity RAM BAHADUR *v* JAGAR NATH PRASAD 3 Pat L. J 199

26 ———— Gift to wife for life—Direction to wife to make will—' As I have directed her orally —*General power of appointment* A Parsi by his will after giving to his wife a life interest in his property dire ted as follows And in her life time keeping God and Meher Daver (the Dispenser of Justice) before her mind my wife shall duly as I have directed her orally and according to the t me make her will and all my heir shall duly act agreeably to the same ' —*Held* that the clause did not mean that the testator s wife should dispose of the e tate accord ing to oral directions given by the testator but according to her own di cretion and accordingly that the wife had a valid general power of appoint ment *In re Hefley (1902) 2 Ch 555* di tin guished SHIRINBAI *v* RATANBAI (1921)

I L R 43 Bom 88
I L R 45 Bom 711
25 C W N 896

27 ———— *Construction—Accumulation provision for—Hindu Law* *R* in his will gave and devised the rest and re idue of his property to *B* his widow and executrix for life thereafter to his five sons in equal shares with a direction to make certain payments and for accumulation of the surplus income during the life time of the widow for the benefit of the sons *Held* that the provision for accumulation of the surplus income is not invalid A direction to accumulate with a gift of the accumulation is not fundamentally bad it fails only if it offends some independent rule of Hindu Law *Watkins v Administrator General of Bengal I L R 47 Calc 88 (footnote)* followed *In re Poultney Poultney v Poultney (1902) 2 Ch 541* referred to *Saunders v Vautier (1841) Cr & Ph 240* di tinguished RAM LAL SEN *v* BIDHUMUKHI DASI (1919)

I L R 47 Calc 76

28 ———— Bequest to two brothers with out specification of shares—*Tenancy in common* *Held* that a devise of separate property made by a maternal grandfather in favour of two grandsons without specifying what share each was to take has the effect of creating a tenancy in common and not a joint tenancy *Mankamna Kunwar v Ballishan Das I L R 28 All 38* dissented from *Kishori Dubain v Mundra Dubain I L R 33 All 665* followed *Jageswar Narain Deo v Ram Chandra Dutt I L R 23 Calc 670* and *Gordhandas Soonderdas v Bai Ramcoover I L R 26 Bom 449* referred to RAM PIARI *v* KRISHNA PIARI I L R 43 All 600

29 ———— Absolute estate or life interest A testator by cl 3 of his Will gave his share in an estate to his wife on account of her main tenance and other absolute u e and provided that she was to be at liberty to enjoy the same with powers of al enation by sale etc By cl 4 of the Will he gave his property in general terms to the infant sons of a brother *Held*—That cl 3 gave an ab olute interest in the property to the testator's wife N VARADA PILLAI *v* JEEVARATH NAMAL 24 C W N 346

31 ———— *described as such if necessarily so—Construction of document—Will or gift or a mere statement of an intention to adopt* On the question whether a document was a Will or a non testamentary disposition inte nded to operate *de presenti* *Held*—That it was not a Will. The only words contained in the document

WILL—*contd*

CONSTRUCTION—*contd*

which would support its being regarded as a document of a testamentary character were that in some places it styled itself a Will But calling a document a Will does not make it so and if it had any legal effect whatever it was of the nature of a transaction *inter vivos* though it was very doubtful whether it really purported to be anything more than a declaration of an intention to adopt TIRUGANANA PAL v PONNAMMI NADATTI (P C)

25 C W N 511

32 ———————— *Gift to idol of property if absolute or property given to heirs subject to a charge in favour of the idol—Decision to be made upon the Will as a whole and not upon a portion of it—Inexpediency of applying decisions construing settlements to construe other settlements* *Held* upon the construction of a Will the terms of which raised the issue whether the property conveyed by the Will was an absolute gift to a certain idol or whether the same was truly destined to the testator's own heirs under the Will subject to a charge for the upkeep worship and expenses of the idol that the provision for the worship expenses and annual charges of the idol formed a burden upon the estate but that the property descended according to the destination in the Will and subject to that burden In such cases no fixed and absolute rule can be set up derived alone from the use of particular terms in one portion of the Will The question can only be settled by a conspectus of the entire provisions of the Will *Sonatun Bysack v Sreemutty Juggutsoondree Dossee* 8 M I A 66 (1859) *Ashutosh Dutt v Doorga Charan Chatterjee* L P 6 I A 182 (1879) and *Jadu Nath Singh v Thakur Sita Ramji* L R 44 I A 187 s c I L P 39 All 553 21 C W N 953 (1917) referred to PANDE HARNARAIN RAM v MUSAMAT SURJA KUNWAR

25 C W N 951

33 ———— Bequest dependent on condition—*Condition made impossible of fulfilment by testator—Bequest if can take effect* Where there was a bequest made conditional on the re excavating of a certain tank by the legatee and the condition became impossible of performance by reason of the testator himself re excavating the tank *Held* that the bequest failed and the legatee could not take anything under the Will Where the performance of the condition appears to be the motive of the bequest the impracticability of the performance will be a bar to the claim of the legatee the bequest in such cases does not take effect discharged of the condition *Lowther v Cavendish* 1 Eden 97 *Priestly v Holgate* 3 K & J 286 referred to RAJENDRA LAL GHOSH v MRINALINI DASI

I L P 48 Cal 1100

34 ———————— *Will construction of—Legacy on a condition precedent if takes effect when the condition by reason of subsequent events becomes impossible of performance—Intention of the testator to be the guiding principle* A testator bequeathed a sum of money to some of his relatives asking them to re excavate a tank with the money and take the surplus But the testator himself re excavated the tank before his death *Held* that re excavation of the tank was a condition precedent i e there was no gift intended

WILL—*contd*

CONSTRUCTION—*concld*

unless the condition was fulfilled The ascertainment of the testator's intention shown by the Will cannot be varied by events which occur afterwards That intention must be determined from the terms of the bequest and where the performance of the condition appears to be the motive of the bequest the impracticability of the performance will be a bar to the claims of the legatee In such a case the bequest does not take effect discharged of the condition *Darley v Langworthy* (1) *Gath v Burton* (2) *Wedgwood v Denton* (3) *and Lowther v Cavendish* ( ) and other cases referred to RAJENDRA LAL GHOSE v SRIMATI MRINALINI

26 C W N 378

DEBATTAR

———————— *Debattar created by testator—Shebaits and executors appointed—Compromise in a suit by shebait against executor—Transfer by shebaits of shebait right—Suit by executor disputing the validity of the transfer—Limitation—Indian Limitation Act (IX of 1908) Art 95 91—Property already debattar if pass by will* The testator appointed four persons as *shebaits* of the *debattar* created by him and four other persons as executors who were to be the advisors of the *shebaits* In a suit brought by one of the *shebaits* against the executors a compromise decree was passed in 1899 whereby the *shebaits* became entitled to appoint succeeding *shebaits* of their respective *shebaits* rights by means of will or by any other document Two of the *shebaits* took no part in the *sheba* The other two transferred their *shebaits* rights by two deeds which contained recitals showing that the transfers were for the benefit of the deity to defendants Nos 1 and 2 who were properly qualified persons The executors brought the present suit for recovery of possession of the *debattar* properties and for a declaration that the deeds of transfers of the *shebaits* right were void and illegal more than 14 years after the compromise *Held* that the suit in so far as it sought to nullify the deed of compromise was barred by Art 95 of the Indian Limitation Act and (*semble*) Art 91 governed the suit in so far as it attacked the deeds of transfer *Held* also that possession having been made over by the executors to the *shebaits* the executors became *functus officio* Property which is already *debattar* does not pass by will to the executor MOHENDRA NATH BAGCHI v GOUR CHANDRA GHOSH (1918)

22 C. W N 880

———————— *Construction—Word in a Will meaning of— Family — Cash —Decisions interpreting terms in Will value of—Residuary devise—Shebait if may be validly permitted to reside in the house provided for the accommodation of idols* A provision permitting the *shebait* to reside with his family in a part of a house dedicated to and specially set apart for the accommodation of the idols is a perfectly valid and reasonable provision The word family is elastic and capable of different interpretation but in the Will under construction there was no reason for extending it to include people other than those existing when the testator died Where the Will clearly stated that the revenue and rents of stated properties are to be applied in a certain manner with

WILL—*contd*

DEBATTAR—*contd*

a direction for accumulation of surplus income and then continued with a provision that out of the income of su h fund the *shebait* should have power to celebrate religious ceremonies the words such fund included the added accumulations and was not confined to the original *debutter* fund The decisions which a ign a particular meaning to any woman in a Will only a sign that meaning in connection with the terms of the Will and that meaning is always capable of modification and alteration if it be seen that the limited meaning was not intended *Semble*—The word cash in cl 1. of the Will might have a wider meaning than it ordinarily bears *Held* on the con truction of the Will that no portion of the estate of the te tator was undispo ed of there being valid re iduary gifts in favour of specified per ons GANENDRO NATH DAS v SURENDRA NATH DAS

24 C W N 1026

DEMONSTRATIVE LEGACY

——————— *Succession Act (X of 1865) ss 311 312—Demonstrative legacy—Interest whether payable on a demonstrative legacy—Where no time for payment fixed by will the time from which interest runs* Where a testator had bequeathed legacies to several grand children named in the will to be paid from the sale proceeds of certain house property after the death of a daughter and the marriage of a grand daughter and it was contested that inasmuch as there is no specific provision in the Succession Act for the payment of interest on demonstrative legacies no interest was payable *Held* (a) that interest is payable upon demonstrative legacies and (b) that where there is no time for payment fixed although the amount is expressly made payable out of a particular fund the case is governed by the principle laid down in *Lord v Lord L R . Ch App 8* and s 311 of the Succession Act applies *Held* also that the rate of interest is 4 per cent per annum *Lord v Lord L P 2 Ch App 782 Chinnam Pajamannar v Tadikonda Ramachendra Rao I L R 29 Mad 155 Mullins v Smith 1 Drew & Sm 04* and *In re Walford Kenyon v Walford (1912) 1 Ch 219* referred to and followed ADMINISTRATOR GENERAL OF BENGAL v A D CHRISTIANA (1915)

I L R 43 Calc 201

EXECUTION

1 ——————— *Execution of Will —Proof of capacity of testator to execute Will—Undue influence—Evidence of exercise of such influence—Absence of evidence of any coercion—Que tion of fact whether property was ancestral or acquired—Concurrent decisions on fact* In this case the question was as to the capacity of a testator to execute a will propounded by the appellants and it was alleged that they had exercised undue influence over him in the matter of the execution whilst he was admittedly very seriou ly ill though the evidence was to the effect that he was in po session of his senses and understood what he was doing wh n he signed the will *Held* (reversing the decision of the Chief Court of the Punjab) that so far as the charge of exer i ing undue influence was concerned all that was shown by the re pondents who were attacking the will was that there was motive and opportunity for the

WILL—*contd*

EXECUTION—*contd*

exerci e of such influence by the appellants and that some of them in fact benefited by the will to the exclusion of other relatives of equal or nearer decree Circumstances of that character might suggest suspicion and would certainly lead the Court to scrutinise with special care the evidence of those propounding the will But in order to set it aside there must be clear evidence that the undue influence was in fact exercised or that the illne s of the testator so affected his mental faculties as to make them unequal to the task of di po ing of his property Such evidence was not only lacking in this case but in the opinion of their Lordships of the Judicial Committee the circumstances attending the making and execution of the will were not reasonably consistent with it *Held* also that under the circumstances the evidence as to capacity was not displaced by mere proof of serious illness and of general *intemperance and that the appellants* had discharged the onus which lay on them of proving that the will was duly executed by the testator while in his proper senses The question whether property was ancestral or not was held to be substantially one of fact and therefore subject to the usual practice of their Lordships not to interfere where two Courts had concurrently found it was not ancestral but self acquired BUR SINGH v UTTAM SINGH (1910)

I L R 38 Calc 355

2 ——————— *Signature proof of —Hand writing expert opinion of without examination in Courts if admissible—Will proof of* The propounder of a will should prove to the satisfaction of the Court beyond all po sible doubt that the will was exe uted by the alleged testator and that it was executed in accordance with the law and that the testator at the time of execution was in a fit state of mind and body to execute the will and so fully appreciated what he was doing as to the disposition of the property The opinion of a hand writing expert on a signature when he was not called as a witness and not subjected to cross examination was inadmissible in evidence PADMA PRIYA DEBYA v DHARMA DAS DEB SARMA (1911)

15 C W N 728

3 ——————— *Execution and attestation of will—Proof of genuineness of will—Status of attesting witnesses—Will natural rea onable and proper in its terms—Presumption of will being genuine—Grounds of suspicion not valid—Admission of additional evidence by appellate court —Civil Procedure Code (1882) s 568* In the ca e of a will reasonable natural and proper in its terms it is not in accordance with sound rules of construction to apply to it those canons which demand a rigorous scrutiny of documents of which the opposite can be said namely that they are unnatural unrea onable or tinged with impropriety On the question whether a will made by a Hindu in which he left all his property moveable and immoveable after the death of his widow to his sister s son (one of the appellants) to the entire exclusion of the respondent (a remote relation), was genuine as held by the Subordinate Judge or a forgery as held by the Court of the Judicial Commissioner there were concurrent finding of both courts that the testator had been for years at enmity and on the worst of terms with the

WILL—*contd*

EXECUTION—*concld*

respondent but had regarded the appellant with affection and treated him as his son The will was found to have been duly executed and properly attested by respectable servants in the testator s house whom it was natural to employ for that purpose *Held* that the will was in every respect a natural one and in accordance with the testator s feelings and tenor of life and the presumptions of law were in favour of its being maintained A comment by the Court of the Judicial Commissioner which regarded the will with suspicion to the effect that the witnesses might have been of a better class had no force except upon something on a much higher level than mere suspicion namely proof which would thoroughly satisfy the mind of a Court that those persons had committed both forgery and perjury *Choley Narain Singh* v *Ratan Koer I L R 22 Calc 519*, *L R 22 I A 12 per* LORD WATSON followed Another ground of suspicion was that the paper on which the will was written appeared to be old instead of fresh which was supported by proof that paper was official paper in general use together with evidence that some other people had been in the habit of having forms which they signed in blank and forms were produced signed by people other than the testator and with none of which he had any thing to do *Held* that such evidence was inadmissible as being not relevant to the case and should not have been admitted *Held* further that the course followed by the Court of the Judicial Commissioner during the hearing of the appeal in sending for and (purporting to act under s 568 of the Civil Procedure Code 1882) admitting additional evidence (proceedings of the Municipal Board at Lucknow) to discredit one of the witnesses on a particular point without calling him and affording him an opportunity of making an explanation of the matter and on the ground that his evidence appeared untrue on that point disbelieving all the rest of his testimony as to the will was an improper procedure and not in accordance with s 568 of the Code Their Lordships declined to conclude in the absence of his own evidence on the point that the rest of his testimony otherwise quite unimpeachable was perjury JAGRANI KUNWAR v DURGA PRASAD (1913) **I L R 36 All 93**

4 ———————— *Held* that there is a presumption of due execution of a will where there is a proper attestation clause although no evidence of its due execution is forthcoming WOOLMER v MRS DALY **I L R 1 Lah 173**

EXECUTOR

———————— *Executor acting under —Executor setting up adverse title—Estoppel* An executor under a will who has accepted the office of executor and acted as such is estopped thereby from setting up an adverse title to property disposed of by the will *Srinivasa Moorthy* v *Venkata Varada Ayyangar I L R 29 Mad 239* followed *Per* ARNOLD WHITE *C J* —The fact that an executor has not taken out probate (at any rate where the law does not require him to do so) is immaterial *Per* WALLIS *J* —An executor is not at liberty to set up an adverse title to property which has come to his hands as executor any more than a trustee is entitled to set up an adverse title to property which

WILL—*contd*

EXECUTOR—*contd*

he has taken possession of as trustee The plaintiff s position was altered by his looking on and not opposing the first defendant in the steps taken by the latter to get possession of the assets The fact that an executor has not taken out probate is immaterial *Per* MILLER *J (dissenting)* —It is not clear in this case as it was in *Srinivasa Moorthy* v *Venkata Varada Ayyangar I L R 29 Mad 239* that the executor was let into possession under the will nor in this case was the plaintiff induced to alter his position the principles of estoppel do not therefore apply MUNISAMI CHETTI v MARUTHAMMAL (1910) **I L R 34 Mad. 211**

———————— *Executor—Powers of executor in dealing with the estate of his testator* One P died leaving a will by which he directed that certain legacies should be paid out of a fund of Rs 10 000 invested in fixed deposit in the Delhi and London Bank The Bank had during P s life time advanced certain sums to his daughter on an undertaking by P that he would stand surety for the loan 1 was also himself indebted to the Bank. *Held* on suit by the legatees, that the executor of P s will was perfectly justified on being satisfied as to the fact of P's relations with the Bank above described in permitting the Bank to realize from the fund in question both the amount of the loan to P s daughter and the amount of his own indebtedness *Pocock* v THE DELHI AND LONDON BANK LD (1914) **I L R 36 All 217**

1 ———————— *Civil Procedure Code (Act XIV of 1882) s 103 if applies to probate proceedings—Probate and Administration Act (V of 1881) s 83—Dismissal of application for probate for default—Executor if may propound Will again —Res Judicata—Deterrent costs sufficient remedy against vexatious conduct* A refusal to admit a will to probate is conclusive of the facts necessary to support the decision But if probate has been refused not on the merits but merely by reason of the insufficiency of some matter of form or procedure there is no adjudication that the instrument is not entitled to probate and therefore it may be again propounded If therefore an application for probate by the executor of a will has been dismissed for default that *fact itself* cannot debar an application by any other person claiming an interest under the will and therefore necessarily also, by the executor himself An executor presenting an application for probate of a will cannot be regarded as a plaintiff who brings a suit in respect of a cause of action S 103 of the Civil Procedure Code (Act XIV of 1882) would therefore be in terms inapplicable to such an application. *Ganesh Jagannath* v *Ram Chandra I L R 21 Bom. 563* relied on PAMMANI DEBI v KUMUD BANDHU MOOKERJEE (1910) **14 C W N 924**

2 ———————— *Probate application for—Onus—Testamentary capacity what is—Probate granted by Trial Court reversed by Appellate Court—Appellate Court when should differ from Trial Court s estimate of evidence—Signature genuineness of proof of—Witnesses of competency opinion of value of—Witness important but expected to be hostile how to be examined* Where there appeared a striking resemblance between the signatures on the will and certain admitted signatures of the alleged testator but not that

WILL—*contd*

EXECUTOR—*contd*

absolute identity which in many instances may furnish indications of deliberate imitation by the careful forger the High Court agreed with the Trial Court on the evidence in finding that the signatures were genuine Where from the evidence it appeared that the illness of the testator had caused serious anxiety to his relations at least three days before his death and that on the day of his death his condition was such as to necessitate the attendance of three physicians on five occasions and the will was alleged to have been executed about two hours before his death *Held* that in the circumstances the Court was bound to scrutinise with care and caution the evidence as to his testamentary capacity at the time when he was said to have executed the will That the burden was upon the propounders of the will to show that the testator had testamentary capacity i e capacity to comprehend the nature and effect of his act to discharge this burden it was not enough to show that the testator was conscious when he executed the will or that he was able to maintain an ordinary conversation and to answer familiar and easy questions It must be shown that he was able to dispose of his property with understanding and reason that he was able to realise his position to appreciate his property and to form a judgment with respect to the parties whom he decided to benefit The opinion of witnesses as to competency is entitled to little regard unless supported by good reasons founded on facts which warrant them Where the propounders of a will had reason to suppose that an important witness could not be trusted to tell the truth they might have asked the Court to summon him with liberty to both parties to cross examine him if necessary A Court will not reject a will merely because its terms appear extraordinary against clear evidence of due execution by a competent testator But where the terms are unusual and the evidence of testamentary capacity doubtful the vigilance of the Court will be roused and before pronouncing for the will the Court will require to be satisfied beyond all reasonable doubt that the testator was fully cognizant of its contents and in a condition to exercise and did exercise, thought judgment and reflection respecting the act he was doing *Bulli Kunwar* v *Bhagirathi 9 C W N 649 Sefton* v *Hopwood 1 F F 579 Marsh* v *Tyrrell Hagg Ecc Rep 84 1? Dufaur* v *Croft 3 Moo P C 136* and *Harwood* v *Baker 3 Moo P C 28* referred to The principle that a Court of Appeal should be extremely slow to disagree with the primary Court on a question of appreciation of oral evidence embodies a general rule but is not of universal application Where the Trial Court had found in favour of the will but its decision was vitiated by its failure to test the evidence from the standpoint of the fundamental principle that the testator must be of sound and discerning mind and memory so as to be capable of making a disposition of his property with sense and judgment in reference to the situation and amount of such property and to the relative claims of different persons who were or might be the objects of his bounty the High Court on appeal reversed that decision not so much because it formed a different estimate of the credibility of the witnesses for the propounders but because it differed in its estimate of the effect of their statements on the assumption that they had spoken the truth This evidence in the opinion of the High Court was insufficient to discharge the onus that rested on the applicants for probate The nature of this onus discussed *Baker* v *Batt 2 Moo P C 317* and *Panton* v *Williams 2 Curt 530 2 Notes of Cases Sup 21* referred to SUSIL KUMAR BANERJEE v ARSANI DEBI (1914)

18 C W N 826

3 ——————— *Probate—Issue of citations object of—Citation of infant effect of—Citation to infant and his mother a minor—No opposition to grant of probate—Competency of infant for revoking probate—Testator testamentary capacity of—Onus of proof upon the executor—Probate and Administration Act (V of 1881)* Where one *J* died in 1901 leaving a widow *S* aged 14 years and a son *D* aged 2 months and it was alleged that *J* executed a will on the day previous to his death by which his three brothers *G B* and *M* were appointed successive executors and on *G*'s application for probate of the will citations were issued on *B* and *M* as also upon *S* and *D* and there was no opposition and probate was granted to *G* in 1902 and in 1911 *D* still an infant applied through his mother *S* for the revocation of the probate on the ground that the alleged will had not been executed by his father *J* and the District Judge without formally revoking the probate called upon the executor to prove the will in the presence of the objector and held upon the evidence that the original grant should not be revoked *Held* that service of notice upon the infant *D* and his mother *S* a minor was no proper service upon them and was useless for the protection of the interest of the infant and as such *D* was competent to apply for revocation of probate through his mother The object of the issue of the citation is that all persons whose interests are or may be adversely affected by the decree of the Probate Court shall have notice of the proceedings and an opportunity should they choose to avail themselves of it of intervening for the protection of their interests *Held* that this purpose was not achieved merely by issue of citations to infants and that in the circumstances of the present case the appointment of an officer of the Court as guardian of the infant would not have afforded him any protection. *Rebells* v *Rebells 2 C W N 100 Shoroshibala* v *Ananda moyee I C W N 6* and Mortimer on Probate p 535 referred to A party who is cognizant of the proceedings and might have intervened is bound by their result and cannot be allowed to re open them *Komol Lochan Dutta* v *Nilruttun Mundle I L R 4 Calc 360 Brinda Chowdhurani* v *Radhica Chowdhurani I L R 11 Calc 49? Nistarini Dabia* v *Brahmomoyi I L R 18 Calc 45 In the goods of Bhuggobutty Das I L R ?7 Calc 9? Durgagati Debi* v *Sourabini Debi 10 C W N 995 s c I L R ?? Calc 1001 Newell* v *Weeks 2 Phill 4 Ratcliff* v *Barnes ? Sw & Tr 486 Wolterley* v *Andrews L R 2 P D 3* and *Bell* v *Armstrong 1 Add. 3?* referred to *Held* that this rule of law did not apply to the circumstances of the present case Even in cases where a party has upon notice failed to appear and contest the proceedings the Court may for sufficient reason, allow the proceedings to be re opened *Young* v *Holloway (1895) P 87*,

WILL—*contd*

EXECUTOR—*concld*

Peters v *Tilly* 11 P D 145 and *Ritchie* v *Malcolm* (1902) 2 I R 403 referred to *Held* also that the District Judge ought to have revoked the grant in the first instance and then called upon the executor to prove the will *Brindaban* v *Suresuar* 10 C L J 263 and *Durgagati* v *Sourabini* 10 C W N 995 s c I L R 33 Calc 1001 relied on *Held* further on the evidence that the testator had no testamentary capacity at the time when he was alleged to have executed the will The High Court in this view revoked the grant on the probate *Held* also that the onus was upon the executor to establish that the deceased had sound and disposing mind at the time when he was said to have executed the will *Waring* v *Waring* 6 Moo P C 355 referred to DWIJENDRA NATH SARMA PURKAYASTHA v GOLOKE NAT SARMA PURKAYASTHA (1914) **19 C W N 747**

4 ———————— *Grandfather s daughter s son s son if has* locus standi *to contest grant when propounder a stranger to family—Dayabhaga law of inheritance——Sakulyas and Samanodakas who are —Mitakshara principles of application to cases not provided for by Dayabhaga—Order that caveator has no locus standi if appealable—Civil Procedure Code (Act V of 1908) s 115* An application for the probate of a Will was opposed by the daughter s son s son of the grandfather of the testator while the propounder was a perfect stranger to the family The District Judge held that the caveators had no locus standi *Held*—That the order of the District Judge was not appealable but could be revised by the High Court under s 115 C P C That in the circumstances the caveators had some interest in appearing and opposing the application for probate and it should be disposed of in their presence *Quære* —Whether grandfather s daughter s son s son is an heir under the Hindu law RADHA RAMAN CHOWDHURY v GOPAL CHANDRA CHUCKERBUTTY **24 C W N 316**

5 ———————— *Legatee long in possession in terms of will* Where a will has been propounded and proved the Probate Court should grant probate even though it should appear that there were no debts due to or by the testator another legatees have been in possession in accordance with the direction of the will for a long time it being absolutely necessary for the legatees to establish their title by proving the will The Probate Court cannot go into the question whether the legatees have acquired independent title by adverse possession ADWAIT CHARAN MONDAL v KRISHNADHONE SIKKAR **21 C W N 1129**

PROOF

1 ———————— *Will of which probate has not been taken whether can be proved—Succession Act (X of 1865) s 187—Proper representation of testator s estate where no probate taken* *Sarbamongola Debi* v *Mahendro Nath Nath* I L R 4 Calc 509 is authority for holding that a will of which probate has not been taken may be proved in a proceeding other than a proceeding under the Probate Act But a will uncovered by a probate or letters of administration cannot prove that any body named therein has title to the estate of the testator A legal heir of a testator in possession of his general estate can maintain a suit for the benefit of the estate so long as any other claimant

WILL—*contd*

PROOF—*contd*

does not establish his right to the same under the will *Prosunno Chandra Bhattacharya* v *Krista Chaitanya Pal* I L R 4 Calc 342 *Choony Lal Boose* v *Osmond Bibee* I L R 30 Calc 1044 referred to BASUNTA KUMAR CHUCKERBUTTY v GOPAL CHUNDER DAS (1914) **18 C W N 1176**

2 ———————— *Proof of execution and due attestation—Attesting witnesses turned hostile—Court may find execution proved from other evidence—Proof that testator saw att sting witnesses sign and latter saw testator sign if necessary where will regular on its face—Presumption of due execution* The mere fact that attesting witnesses to a will have repudiated their signature does not invalidate the will if it can be proved by evidence of a reliable character that they have given false testimony When the evidence of the attesting witnesses is vague doubtful or even conflicting upon some material point *the Court may take* into consideration the circumstances of the case and judge from them collectively whether the requirements of the Statute were complied with in other words the Court may on consideration of the other evidence or of the whole circumstances of the case come to the conclusion that their recollection is at fault that their evidence is of a suspicious character or that they are wilfully misleading the Court and accordingly disregard their testimony and pronounce in favour of the will It is no necessary under the law that affirmative evidence hould be forthcoming that the testator did as a matter of fact see the attesting witnesses put heir signatures or that the attesting witnesses did actually ee the testator si n the document It is enough if the circumstances show that they might have relative position was such that they might have seen the execution and the attestation respectively Every presumption will be made in favour of due execution and attestation in the case of a will regular on the face of it and apparently duly executed BRAHMADAT TEWARI v CHAUDAN BIBI (1914) **20 C W N 192**

3 ———————— *Proof—Execution in unusual circumstances—Will not inofficious—Witnesses such as were reasonably to be expected to be available in the circumstances not to be disbelieved merely because their position socially inferior—Beneficiary under will recited as being testator s adopted son—Caveator if may question adoption—Judge if may refuse to frame an issue as to adoption whilst admitting evidence thereon—Relevancy on the question of genuineness of will—Note of evidence to be given by witness refusal to produce if should prejudice party—Privilege* K a Hindu gentleman of means and resident of a place called Surajnd went accompanied by his two wives and some of his servants and dependants to attend the bathing fair at Sonepur on 10th November 1905 Cholera having broken out at the fair it was broken up by Government order but K who had been suffering from dysentery and had been made nervous about the state of his health by the outbreak of cholera (it was alleged) executed the disputed will on 1 th November 190 and died at 3 A M of 16th November 1905 The will was proved by such of the attesting witnesses as were available and other witnesses The genuineness of the will was challenged *inter alia* on the ground that the witnesses to the execution were not of a superior position The will however appeared to be one which a Hindu gentleman in K s position might reasonably

PROOF—contd

and naturally have made and the attesting witnesses were such as one would reasonably expect to be available on the occasion *Held* that there being nothing in the case to suggest that the will had been forged or that the witnesses who gave evidence as to the preparation and as to the due execution of the will had committed perjury the contention that the will should not be accepted as genuine because the witnesses to its execution were not of a superior position was not sound and was contrary to the view of the law as expressed in *Choley Narain Singh v Ratan Koer* L R 22 I A 24 and *Jagrani Koer v Koer Durga Parshad* L R 41 I A 80 s c 18 C W N 1 That something more than mere suspicion is necessary in such a case to make convincing an argument based on the social position of the witnesses One of the beneficiaries under the will was C a boy who the will recited had been adopted according to Hindu rites by K as his son The caveators questioned the *factum* of the adoption *Held* that the trial Judge was right upon an application for probate in declining to frame an issue as to the alleged adoption though the matter had to be considered as bearing on the question of the genuineness of the will and the caveators were not precluded from questioning the adoption and were rightly allowed to cross examine the propounder's witnesses on that subject and to call evidence to prove that C was not adopted For the purposes of the propounder's brief a note had been obtained from a witness (subsequently examined at the trial) of the evidence that he could give *Held* that the note was privileged from production and the caveators were not entitled to see it and the Judges should not have allowed their minds to be influenced in considering the evidence by the fact that the note was not produced in Court for the information of the caveators CENDA KUNWAR v HARNANDAN SINGH (1916)

20 C W N 617

4 ———————— *Proof of genuineness—Clear and trustworthy evidence of attesting witness if to be rejected because appearance of document suspicious—Court if in such a case may speculate as to what would have been a proper will for the testator* Proof of the genuineness of a will depended mainly upon the testimony of a doctor who attested on the last page of the will the signature of the deceased and who deposed that at the time the will was executed the deceased was perfectly capable of understanding a business transaction The will on examination showed that the writing on the last page was inconveniently crowded above the signature of the testator and on the last page but one the writing at the foot was so placed as to lend colour to the suggestion that the page had been filled up after the signature had been attached Upon this the Trial Judge built the theory that the will had been written in blank pages over signatures of the testator previously obtained *Held* that the doctor's evidence if believed and which the Judicial Committee did believe) completely destroyed this theory and that the High Court was right in pronouncing in favour of the genuineness of the will That it would be most unsafe and most undesirable in circumstances such as these to try to spell out from the peculiar form in which a document written in the vernacular appears a hypothetical answer to the clear distinct and trustworthy evidence of the doctor who witnessed the will Where a will has once been made and is apparently in perfect form and the evidence of the attesting witness is to be trusted few things can be more dangerous than to attempt to re create the kind of will that the man ought in the opinion of the Court to have made Once the man's mind is free and clear and is capable of disposing of his property the way in which it is to be disposed of rests with him and it is not for any Court to try and discover whether a will could not have been made more consonant either with reason or with justice ARUNACHELLAM CHETTY v RAMASWAMI CHETTI (1916)

20 C W N 673

5 ———————— *Testamentary capacity proof of—Onus—serious illness and general intemperance not sufficient to rebut prima facie case made out by evidence—Undue influence must be proved by evidence—Opportunity to use such influence and benefits derived not enough for rebuttal* The onus of proving testamentary capacity is on those who propound a Will In this case they had discharged that evidence by obligation by evidence which went to establish a strong *primâ facie* case in favour of the Will Proof of serious illness and of general intemperance was not enough to displace this evidence Proof of on the part of those attacking the Will that there was motive and opportunity for the exercise of undue influence by the defendants and that some of them in fact benefited by the Will to the exclusion of other relatives of equal or nearer degree Circumstances of this character may sometime suggest suspicion and in the present case would lead the Court to scrutinise with special care the evidence of those who propounded the Will But in order to set it aside there should have been clear evidence that the undue influence was in fact exercised or that the illness of the testator so affected his mental faculties as to make them unequal to the task of disposing of his properties *Held* that in this case such evidence was not only lacking but the circumstances attending the making and execution of the Will were not reasonably consistent with it BUR SINGH v UTTAM SINGH

15 C W N 177

6 ———————— *Will challenged as forgery—Suspicion alone such ground for refusing probate—Presumption against misconduct operation of—Evidence Act (I of 1872) ss 3 45 101 135—Order in which witnesses to be tendered discretion of Council and Court's power—Expert medical examination of to test value of evidence of attending physician—Expert in Bengali language and legal term examination of—Document put to witness right of opposing counsel to inspect* If a party writes or prepares a will under which he takes a benefit that circumstance in itself ought generally to excite suspicion of the Court and calls upon it to be vigilant in examining the evidence in support of the instrument in favour of which it ought not to pronounce unless the suspicion is removed and it is judicially satisfied that the paper propounded does express the true will of the deceased *Barry v Butlin* 2 Moo P C 480 referred to and the rule in *Tyrrell v Painton* (1894) P D 151 explained *Per* JENKINS C J The suspicion which by itself would be ground for the Court not pronouncing in favour of an alleged will must be one

WILL—contd

PROOF—concld

inherent in the nature of the transaction it elf and not the doubt that may arise from a conflict of testimony which becomes apparent on an investigation of the transaction *Per* WOODROFFE J The rule in *Tyrell* v *Painton (1891) P D 151* applies to cases where the circumstances of suspicion arise from the nature of the case as put forward by the propounder in which case the propounder must remove the suspicion Where, however the alleged suspicion against a will arises from facts which form part of the impugnant s case then the Court must see whether the facts which are said to give rise to suspicion are proved or whether the propounder s case is proved The rule therefore does not apply where the question is simply which set of witnesses should be believed In this case the trial Judge having decided against the genuineness of the will on the ground that the evidence of the witnesses whom the propounder had called to support her case was not so unimpeachable so absolutely trustworthy in itself as by its own merit to dispose of all objections and to allay all doubt and suspicion *Held per* JENKINS C J that the standard of proof required by the Judge was higher than the law (as contained in s 3 of the Indian Evidence Act) prescribes *Per* WOODROFFE J —A probate case is not singular as regards the application of the general principles of proof as contained in ss 3 and 101 of the Indian Evidence Act *Per* JENKINS C J —The Evidence Act by which in matters of proof the Courts in this country must be guided has in conformity with the general tendency of the day adopted the requirements of the prudent man as an appropriate concrete standard by which to measure proof The Evidence Act is at the same time expressed in terms which allow full effect to be given to circumstances or conditions of probability or improbability so that where as in this case forgery comes in question in a civil suit the presumption against misconduct is not without its due weight as a circumstance of improbability though the standard of proof to the exclusion of all reasonable doubt required in a criminal case may not be applicable *Cooper* v *Slade 6 H L Cas 746* and *Deo d Devine* v *Wilson 10 Moo P C 502 531* referred to This probability gains in strength where the character and position of the individual impugned is apart from the particular case above reproach *In the goods of* GOPESSUR DUTT *v* BISSESSUR DUTT (1911)

16 C W N 265

7 ———————— A holograph Will executed in India by a person of Scotch domicile is a valid testamentary document On such document being propounded the Court declined to admit in evidence a treatise on Scotch Law but accepted the opinion of a writer to the signet attested before a notary *In re* the goods of Mac Intyre **I L R 41 All 248**

8 ———————— *Will proof of—Succession Act (X of 1865) s 50—Evidence Act (I of 1872) s 68—Examination of one attesting witness in Probate Court if sufficient to prove will* Under s 50 of the Indian Succession Act there must be two attesting witnesses to a will but under s 68 of the Evidence Act the will can be proved in the Court of Probate by one of the attesting witnesses RAMMOL DAS KOCH *v* HAKOL KOLI KOCHINI (1917) **22 C W N 315**

WILL—contd

REVOCATION

1 ———————— *Will in s 19 of the Probate and Administration Act if means original document —Existence of will up to testator s death if necessary to be proved—Revocation pleading and proof of—Presumption of destruction of will when arises—Loss of will if operates as revocation —Destruction of will when operates as revocation—S 24— Since the testator s death scope and effect of—Delay in applying for Letters of Administration with will annexed* Where the testator did not appoint an executor and the residuary legatee applied for letters of administration with the will annexed 12 years after the death of the testator and the objector did not plead revocation but set up non execution of the will *Held* that the execution of the will in the manner required by law having been proved it lay upon the objector to plead and prove revocation and no such plea having been taken it could not be held that the will was revoked *Per* RAY J That the application for letters of administration was not liable to dismissal on the ground that the petitioner did not prove that the will was in existence up to the time of the testator s death That in s 19 of the Probate and Administration Act the word will does not mean the original document but has been obviously used to mean the disposition When a will is shown to have been in the custody of the testator and is not found at his death the well known presumption arises that the will has been destroyed by the testator for the purpose of revoking it This rule of law bears only on revocation when it is an issue in the suit and then the presumption may be rebutted by the facts The loss of a will does not operate as revocation to establish which destruction of the will by the testator must be shown In s 24 of the Probate and Administration Act the words since the testator s death qualify the word mislead and have no reference to the word lost or to the succeeding clause of the sentence The delay in making the application under s 19 was not a material fact in this case SARAT CHANDRA BASAK *v* GOLAP SUNDARI DASYA (1913)

18 C W N 527

2 ———————— *Revocation—Will lost—Presumption that it has been revoked how to be applied in India—Finding that will was revoked based on presumption upset in second appeal—Proof of will by copy taken from Registrar s office without objection in the first Court—Objection on appeal that conditions for admission of secondary evidence not fulfilled if admissible* In view of the habits and conditions of the people of India the rule laid down in *Welch* v *Phillips 1 Moo P C 299* that when a will is traced to the possession of the deceased and is not forthcoming at his death the presumption is that he has discharged it must be applied with considerable caution Where in such circumstances the first Appellate Court held that the will had been revoked or cancelled but on second appeal the Chief Court held that there was no sufficient evidence of revocation and that the more reasonable presumption was that the will was mislaid or lost or else stolen by one of the defendants after the death of the deceased *Held* that it was perfectly within the competency of the Chief Court to come to that finding There was nothing definite to show that deceased who was a very old man and towards

WILL—*contd*

REVOCATION—*contd*

the end of his life imbecile had any motive to destroy the will or was mentally competent to do so whilst on the other hand there were circumstances which favoured the view that the will was either mislaid or stolen *Held* also that the first Appellate Court should not have treated a copy of the will taken from the Registrar's office which was filed and admitted in evidence in the first Court without objection as inadmissible on the ground that no sufficient foundation was laid for the admission in the first Court of secondary evidence—as if such objection had been taken in the first Court that Court would probably have seen that the deficiency was supplied PADMAN *v* HANWANTA (1915) **19 C W N 929**

3 ———— *Will revocation of —Locus standi of persons seeking revocation* A person who is entitled to a much greater benefit under a will alleged to have been revoked by another will has *locus standi* as having sufficient interest to oppose grant of probate and to apply for revocation of the probate of the later will on the ground of non service of citation It is not necessary to obtain probate of the earlier will in order to be competent to apply for revocation of the probate of the later will DRAUPADI DASSYA *v* RAJKUMARI DASSYA (1917) **22 C W N 564**

4 ———— *Mutual and joint wills—Power of survivor of joint will to revoke—Survivor can revoke unless he derives some benefit under the will* Where two persons agree to make mutual wills and one of them dies the survivor can revoke his will unless he has taken some benefit under the will of the deceased testator *Stone* v *Huskins (1905) P 194* referred to MINAKSHI AMMAL *v* VISWANATHA AIYAR (1909) **I L R 33 Mad 406**

5 ———— *Will in testator's possession—Will not forthcoming on testator's death —Presumption of revocation* When a person who is known to have executed a will and to have had that will in his possession dies and the will is not found after his death a presumption arises that he has revoked the will during his life time *Allan* v *Morrison (1900) A C 604* relied on *Anwar Hossein* v *Secretary of State for India (1904) 31 Calc 885* disapproved ADITRAM *v* BAPULAL (1920) **45 Bom 906**

VALIDITY

———— **rules for desolution of a trust if constitute a will—**

See WILL (CONSTRUCTION)

15 C W N 1014

———— **what is sufficient for in the case of cutchi memons—**

See WILL (CONSTRUCTION)

I L R 43 Bom 641

1 ———— **Test**—*Signature on one page out of several pages of a Will* If an instrument is on the face of it of a testamentary character the mere circumstance that the testator calls it irrevocable does not alter its quality the principle test as to whether the instrument is a will is whether the disposition made takes effect during the life time of the executant of the deed or whether it takes effect after his death *Rammoni* v *Ram gopal 12 C W N 942* relied on *Sita Koer* v *Deonath 8 C W N 614 Chaitanya* v *Dayal 9 C W N 1021* distinguished One signature made with the intention of authenticating the whole instrument is sufficient though a will be contained in several sheets of paper SAGORE CHANDRA MONDOL *v* DIGAMBAR MONDOL (1909)

14 C W N 174

2 ————**Caveat**—*Caveators withdrawing on propounders agreeing to pay an allowance—Personal liability of executors—Settlement of bonâ fide dispute —Enforcement of agreement if opposed to public policy—Registration* Where on the executors propounding a will the widows of the deceased entered caveat but before the case came on for hearing the parties settled their differences and the caveators withdrew their objections on the executors undertaking *inter alia* to pay them a fixed monthly allowance for performing religious acts although the will purported to provide for grants of money for purposes only out of the surplus income *Held* affirming Doss J that the agreement having been entered into an order to settle a *bonâ fide* dispute was enforcible and as the liability which the executors undertook appeared to be a personal one the fact that the agreement was not registered or that the terms went beyond those of the will were no bar to its enforcement SURJA PRASAD SUKUL *v* SHYAMA SUNDARI DEBI (1909) **14 C W N 967**

3 ————**Minor**—*Capacity to make will—Indian Majority Act (IX of 1875) s 3—Hindu Law* A Hindu minor who has not attained majority as provided in the Indian Majority Act, 18 is not competent to make a will of his or her property BAI GULAB *v* THAKORELAL (1912) **I L R 36 Bom 622**

4 ———— **Civil Courts jurisdiction to declare Mohamedan Will of which probate has been granted invalid**—*As opposed to Mahomedan law—Revocation of probate if may be made on such a ground—Decree form of in such suit* The grant of probate of the will of a deceased Mahomedan does not preclude the Civil Court from making a declaration that one or more provisions of the will are inoperative as being opposed to the provisions of Mahomedan law The Probate Court would have no jurisdiction to revoke the probate on such a ground and it is not one of the just causes set out in s 50 of the Probate and Administration Act It is for the Probate Court to determine whether the will has been duly executed and it is for the Civil Courts to determine what effect is to be given to the will after probate has been granted PENU MIA *v* SABIDA KHATOON (1918) **23 C W N 658**

5 ———— **Direction to pay fixed deposit to another after death of depositor**—*Whether a will* A person depositing money with a fund filled in a form provided by the fund whereby he nominated another as the person entitled to receive the money after his death *Held* that this amounted to a will and if made in the town of Madras the nominee could not recover the deposit unless the nomination was duly executed and attested as a will and probate thereof obtained *Per* KRISHNAN J —The direction created neither a charge nor a trust in favour of the

WILL—*contd*

VALIDITY—*contd*

nominee or a contract on which he could sue *Towers v Hogan (1889) 23 I R Ir 53* and *In re Williams (1914) 1 Ch 1* followed *Florino Martices v Pinto (1917) 33 M L J 476* distinguished NANA TAWKER v BHAWANI BOYEE (1920) **I L R 43 Mad 728**

6 ———— **Testator of sound mind when giving instructions for a will—presumption that he was when executing it**—*Testator must be of sound disposing mind—testator suffering from paralysis—Medical certificate of soundness of mind 26 days after execution of will—whether admissible and relevant—Indian Evidence Act I of 1872 s 32 (2)—letters by testator speaking of his relations with his wife the sole legatee—whether admissible* *Held* that there is a presumption of due execution of a will where there is a proper attestation clause although no evidence of its due execution is forthcoming *Brahmadat Tewari v Chaudan Bibi (34 Indian Cases 686)* and Halsbury s Laws of England Volume XXVIII page 505 Jarman on Wills 6th Edition page 105 and Abdur Rahim s Law of Undue Influence Chapter XXI on Wills referred to *Held also* that where a testator is of sound mind when he gives instructions for a will he must be deemed to be of sound mind when it is executed even though he is not able to follow its provisions then *Susil Kumar Banerjee v Apsari Debi (27 Indian Cases 276 281)* dictum of Lord Macnaghten in *Perera v Perera* quoted herein referred to *Held further* that a medical certificate of testator s soundness of mind made 26 days after the execution of the will is admissible in evidence under section 32 (2) of the Evidence Act and is relevant but that letters by the testator speaking of his relations with his wife in whose favour he subsequently made the will are not admissible *Held lastly* that a testator suffering with paralysis even if it has affected his mental capacity to some extent may still be able to execute a will of a simple character *Sajid Ali v Ibad Ali (I L R 23 Calc 1 P C)* *Sayad Muhammad v Fatteh Muhammad (I L R 22 Calc 324 334 P C)* and *Bur Singh v Uttam Singh (21 P R 1911 P C)* referred to also Halsbury s Laws of England Volume XXVIII page 532 *Tayammaul v Sasha Challa Naiker (10 Moo I A 429)* *Lachho Bibi v Gopi Narain (I L R 23 All 472)* *Woomesh Chandra v Rash Mohini Dassi (I L R 21 Calc 279)* *Pandit Indar Narain v Pandit Onkar Lal (20 P R 1912)* *Musst Kewati v Chandu Lal (123 P R 1916)* and *Raj Bachan Singh v Shitranji (47 Indian Cases 963)* distinguished WOOLNER v MRS DALY **I L R 1 Lah 173**

7 ———— **Execution of—Proof**—*Story of preparation of draft suspicious if ground for refusing probate when evidence of execution believed—Witnesses present but not examined by Court from pressure of work and not examined later on through no fault of propounder* It is not safe to assume that a case must be a false case if some of the evidence in support of it appears to be doubtful or is clearly untrue There is on some occasions a tendency amongst litigants in India as else where to back up a good case by false or exaggerated evidence In this case the Judicial Committee held that the suspicion which attached to the evidence as to the preparation of the draft of the Will sought to be probated viz that it had not been prepared beforehand but had been made from the Will itself did not destroy the evidence as to the execution of the Will The Judicial Committee did not consider the non examination of all the attesting witnesses as destructive of the case of the propounder of the Will most of them having been present to give their evidence on one or more of the dates fixed for the recording of evidence but were not examined owing to pressure of work in the Court none appearing to be persons living near the Court and there being nothing to suggest that any of them were intentionally kept out of the witness box by the propounder BANKIM BIHARI MAITI v SRIMATI MATANGINI DASI **24 C W N 626**

8 ———— **Depriving heirs proof of—Onus**—In a suit by legal heirs of a deceased Hindu for a declaration that a Will propounded by the Defendants as the Will of the deceased was a forgery the onus lay on the Defendants to prove without reasonable doubt that it was the Will of the deceased *Held* on the evidence that the Will in this case had not been satisfactorily proved BINDESHRI PRASAD v MUSSAMMAT BAISAKHA BIBI **24 C W N 674**

9 ———— **standard of proof requisite**—*Examination of attesting witnesses—Testamentary capacity appellate courts duty in respect of findings of fact* *Held* upon the terms of the Will in question they were not inofficious and unnatural and therefore were not calculated to excite suspicion as to the genuineness of the disposition It is not enough to suggest doubts as to the veracity of a witness The *standard of proof to establish a will required by the Indian Statutes* is that of a prudent man and not an absolute and conclusive one Also that it was a salutary rule that the findings of fact of the trial judge should not be lightly disregarded When the issue is simple but it is otherwise where the question depends not only on assertions of witnesses but upon surrounding facts and circumstances PRASANNAMAYI DEBYA v BAIKANTHA NATH CHATTORAJ **25 C W N 7/9**

10 ———— **Hindu testator—Creation of estates unknown to Hindu law**—*Invalidity of bequests—Indian Succession Act (X of 1865) s 118* A Hindu made his will whereby he bequeathed his property successively to the three sons of his sister in the following manner In the first place it was to go to one of the sons absolutely subject to the condition that if he died without male issue surviving it was to go to the second The latter was also given an absolute estate similarly liable however to be defeated if he in his turn died without leaving male issue in which event the property was to go to the third son subject to a similar condition Ultimately the property was devised in favour of charity The first two sons having died without male issue surviving the third son sued for construction of the will and for a declaration of his right to the property in the events that had happened —*Held* that although the testator might have defeated the absolute estates which he gave to the first son by a gift over to the second son in accordance with the provisions of s 118 of the Indian Succession Act he could not attach a condition to the gift over and thus further restrict the devolution of the estate in a manner unknown to Hindu law

WILL—*contd*

VALIDITY—*contd*

by directing that the second son was not to take an absolute estate but what would be in the language of the English law of real property an estate in tail male *Held* further that the estates which were intended to be created by the testator being thus in fact a succession of estates in tail male the original gift over was bad in its creation and failed absolutely and the first son took an absolute estate which on his death would go to his daughter as his heiress A Hindu may create a life estate or successive life estates But *a series of absolute estates defeasible in succession* on the happening of an uncertain event cannot be considered as a succession of life estates It can only be considered as an attempt to create a state of inheritance which is not recognised by Hindu law BAI DHANLAXMI v HARIPRASAD UTTAMRAM (1920) **I L R 45 Bom 1038**

11 ———— **Execution**—*Probate—Testamentary capacity—Onus probandi—Attesting witness—Hostile animus—Discrediting testimony of adverse witness—Evidence on commission—Duty of commissioner—Effect of improper cross examination not remediable in the Trial Court—Unattested alterations in a will—Presumption of Law—Duty of Trial Court in respect of intervention with questions during examination and cross examination of witnesses—Counsel's duty not to anticipate opinion of Judge—Evidence Act (I of 1872) ss 153 and 154* The *onus probandi* lies in every case upon the party propounding a will and he must satisfy the conscience of the Court that the instrument so propounded is the last will of a free and capable testator *Barry* v *Butlin 2 Moo P C 480* referred to The burden of proof cast upon the propounder is in general discharged by proof of capacity and the fact of execution and when these have been proved the Court will under ordinary circumstances assume from them the knowledge of and assent to the contents of the instrument by the deceased and without requiring further evidence will pronounce for the will Mere ability to sign one's name does not necessarily imply the possession of the full mental powers requisite for a valid disposition of the property Nor is it sufficient to show that the testator was conscious when he executed the instrument It is sufficient that there is enough mental power left to enable the testator clearly to discern and discreetly to judge of all those things which enter into the nature of a rational fair and just testament *Earl of Sefton* v *Hopwood 1 F & F 578 Marsh* v *Tyrrell Hagg 84 Burdett* v *Thompson L R 3 P & D 72 Boughton* v *Knight L R 3 P & D 64 Harwood* v *Baker 3 Moo P C 8 Woomesh Chander Biswas* v *Rashmohini Dassi I L R 21 Calc 279 Rashmohini Dassi* v *Umesh Chander Biswas I L R 25 Calc 824 Susil Kumar Banerjee* v *Apsara Debi 20 C L J 501 19 C W N 866 Marquis of Winchester's Case 6 Coke 3 Combe's Case Moo K B 759 Banks* v *Goodfellow L R 5 Q B 567* and *Ayrey* v *Hill 2 Add 206* referred to S 154 of the Evidence Act provides that the Court may in its discretion permit the person who calls a witness to put any questions to him which might be put in cross examination by the adverse party There is in this respect no distinction on principle between an attesting witness whom a party is obliged to call and any other witness whom he may cite of his own choice; but the Court may in the exercise of its discretion be more easily persuaded in the former case than in the latter case *Bowman* v *Bowman 2 Mood & Rob 501 Jackson* v *Thompson 1 B & S 745 Coles* v *Coles L R 1 P & M 71 Gill* v *Gill (1909) P 157 Jones* v *Jones 24 T L R 839 Price* v *Manning 42 Ch D 372* and *Phillips* v *Davis Times 13th December 1907* referred to Two points must be borne in mind *first* that *a witness is considered adverse where in the* opinion of the Judge he bears a hostile *animus* to the party calling him and not merely when his testimony contradicts his proof and *secondly* when a witness is treated as hostile and cross examined by the party calling him this must be done to discredit the witness altogether and not merely to get rid of part of his testimony *Coles* v *Coles L R 1 P & M 71* and *Faulkner* v *Brine 1 F & F 254* referred to The principles laid down under s 153 of the Indian Evidence Act must be regarded in the examination and cross examination of witnesses on commission and the commissioner cannot exercise the discretion vested in the Court under s 154 of that Act The mischief due to improper cross examination cannot remedied in the Trial Court Although where an instrument requiring attestation is subscribed by several witnesses it is in general sufficient to *call only one of them (Indian Evidence Act s 68)* in the case of wills it is desirable that all capable of being called should be examined to remove all suspicion of fraud *McGregor* v *Tophan 3 H L C 132 Andrew* v *Motley 12 C B N S 514* and *Hindson* v *Kersey 4 Bur Ec L 116* referred to Where unattested alterations occur in a will the presumption of law is that such alterations were made after the execution of the will and in the absence of evidence rebutting the presumption probate will be granted of the will in the original state omitting the alteration *Cooper* v *Cooper 4 Moo P C 419 Greville* v *Tylee 7 Moo P C 320 In the goods of Sykes L R 3 P & D 26 In the goods of Adamson L R 3 P & D 253* and *Pandurang Hari Vaidya* v *Vinayak Vishnu Kane I L R 16 Bom 65* referred to The presumption may be rebutted not merely by direct proof but also by internal evidence and by inference drawn from the condition of the will *In the goods of Hindmarch L R 1 P & D 30 In the goods of Cadge L R 1 P & D 543* and *In the goods of Tonge 66 L T 60* referred to The intervention of the trial Judge with questions during the examination and cross examination of witnesses misleading counsel and leaving him under the impression that the Court was not prepared to accept the statements made by the witnesses concerned is obviously not a matter which can be set right on appeal unless indeed it is established that the intervention of the learned Judge with questions with a view to clear up obscurities to fill up *lacunae* to supplement deficiencies and generally to elicit the truth exceeded the bounds of even the comprehensive provisions of s 165 of the Indian Evidence Act and so impeded the legitimate work of counsel engaged in the cause as to amount to a mistrial leading to a failure of justice But it is manifest that during the

WILL—*concld*

VALIDITY—*contd*

progress of the trial it is not wise for counsel to anticipate the final opinion of the Judge even as to the veracity of a witness which may have to be judged not solely from his individual statements but from his testimony taken in conjunction with all the other facts brought out in the course of the litigation SURENDRA KRISHNA MONDAL *v* RANI DASSI (1920) **I L R 47 Calc 1043**

——————Where a Will is prepared under circumstances which raise a well grounded suspicion that it does not express the mind of the testator the Court ought not to pronounce in favour of it unless the suspicion is removed but this suspicion must be one inherent in the transaction itself and not the doubt that may arise from a conflict of testimony which becomes apparent on an investigation of the transaction SREEMUTTY SAROJINI DASSI *v* HARI DAS GHOSE **26 C W N 113**

WILL AND CODICIL

—————— *Oudh Talukdar's estate—Assets partly taluk and partly personal property—Codicil raising the amount of legatee's allowance if should be construed as a textual amendment of the will—Codicil conforming to conditions fulfilled in the case of the will which would make it binding on taluqdari properties—Effect—Codicil directing allowance to be paid from this date if to be construed as a conveyance* Where an Oudh Taluqdar executed a will bequeathing *inter alia* a monthly sum of Rs 500 to his widow from the estate the said allowance being further made a charge upon the estate which the person in possession of the taluqa was bound to discharge and later on executed a codicil but without conforming (as he did in the case of the will) to the conditions which would make it binding on the taluqdari estate by which he purported to raise the amount payable to the widow from Rs 500 to Rs 1 000 and it appeared that the taluqdar had left other properties which would be bound by wills and other testamentary instruments made with regard to such conditions *Held* that the codicil could not be construed as merely textually altering the terms of the will so as to indicate that the increment in the allowance was to be paid from the same source as the bequest in the will no source having in fact been indicated by the codicil. The direction in the codicil that the amount of Rs 1 000 was to be paid to the widow from this date should be construed as a wish that the allowance should begin to run at once after death the idea that the donee was creating an annuity during his own life by *inter vivos* conveyance being opposed to the whole circumstances surrounding the execution of the document DEPUTY COMMISSIONER OF KHERI *v* RANI BIJAI RAJ KOER (1917) **22 C W N 305**

WINDING UP

See COMPANIES ACT (VI OF 1882)—

ss 28 45 61 **I. L. R 36 Bom. 557**

s 45 AND 58 **I. L. R 42 Bom. 595**

ss 61 125 151 **I. L. R 38 All. 347**

See COMPANIES ACT (VII OF 1913)

s 153 **I. L. R. 41 All. 563**

WINDING UP—*contd*

s 162 **I L R 39 All. 334**

s 169 **I. L. R. 33 All. 641**
I L R. 35 All. 177

See COMPANY **I L R 47 Calc. 654**
I L R 35 All. 538
I L R 39 Bom 16 47 331
I L R 40 All. 45

—————— examination of directors—

See COMPANIES ACT 1913 s. 215

—————— order passed in—

See CO OPERATIVE SOCIETIES ACT 1912 s 42 **I. L. R. 44 Bom 582**

—————— *Sale in execution of decree pending winding up proceedings validity of* A sale held in execution of a decree against a Company while the Company is being wound up is in contravention of s 171 of the Companies Act 1913 unless the leave of the court under which the winding up is proceeding has been obtained and is voidable at the instance of the official liquidator *Per* CHAMIER, *C J*—If the court executing the decree becomes aware of the winding up proceedings before the sale in execution of the decree is confirmed it should refuse to confirm the sale until the leave of the court under which the winding up is proceeding has been obtained. BALDEO NARAIN SINGH *v* THE UNITED INDIA BANK LIMITED **2 Pat. L J 77**

WINDING UP PETITION

—————— *Petitioner a creditor for amount not immediately payable—General financial position of company—Indian Companies Act (VI of 1882) ss 128 129 130 and 131—Scheme of arrangement—Practice* The definition of debt in s. 130 of the Indian Companies Act (VI of 1882) is quite distinct from the meaning of the word creditor A creditor is a person to whom money is owed by the Company Whether he can claim immediate payment of that debt or his right to demand payment is deferred by his agreement with the Company to a future time he still remains a creditor If the petitioners can satisfy the Court that the Company on a general perusal of its balance sheet cannot pay its debts in other words that its assets are not sufficient to satisfy its liabilities that will enable the Court to order its winding up If an arrangement can be arrived at between the Company and its creditors it would be desirable that an attempt should be made to give effect to that arrangement But any scheme or proposal by the Company to keep itself afloat cannot be discussed with any chance of success unless the winding up order is made It is only after the winding up order is made that a three fourths majority of the creditors is able to bind the minority Otherwise any one creditor can come in and upset any arrangement which has appeared satisfactory to the rest of his co-creditors *In the matter of* INDIAN COMPANIES ACT *In the matter of the* BOMBAY MANUFACTURING COMPANY and *In the matter of* PATILAL KARSONDAS (1909) **I L R 34 Bom 533**

WIRE-FENCE

See BOMBAY DISTRICT MUNICIPALITIES ACT (BOM III OF 1901) s. 3 CL ( ).
I. L. R 41 Bom. 563

WITHDRAWAL OF CASE

See COMPANY I L R 46 Calc 854

WITHDRAWAL OF PARDON

See PARDON I L R 37 Calc 845
I L R 42 Calc 756

WITHDRAWAL OF PROSECUTION

———— *Consent of Court given w hout recording reasons—Duty of the Court to give reasons and to examine the grounds of withdrawal stated by Public Prosecutor—Improper exercise of discretion in according consent—Revision—Criminal Procedure Code (Act V of 1898) s 494* An order according consent under s 494 of the Criminal Procedure Code is a judicial one and the reasons therefor should be stated in order to enable the High Court on revision to determine the propriety of the exercise of its discretion by the lower Court *Umesh Chandra Roy* v *Satish Chandra Roy* 2- C W N 69 followed Where on a commitment under ss 344 and 366 I P C the Public Prosecutor sought to withdraw the case on the ground of absence of evidence of the use of force by the accused —*Held* that the Sessions Judge should have before accepting and acting on the reason stated by the Public Prosecutor satisfied himself on the point by examining the commitment record The consent of the Sessions Judge to the withdrawal of the prosecution was *held* to have been improperly accorded when there was evidence of the employment of force on the record sufficient for the consideration of a jury and further when he could have added charges under ss 497 and 498 I P C on the husband s complaint to the Magistrate and proceeded with the trial on such charges RAJANI KANTA SHAHA *v* IDRIS THAKUR (1921) I L R 48 Calc 1105

WITHDRAWAL OF RIGHTS

See ACT OF STATE
I L R 39 Calc 615

WITHDRAWAL OF SUIT

See CIVIL PROCEDURE CODE 1882 s 373
I L R 38 Mad 643

See CIVIL PROCEDURE CODE 1908—
O O XXIII XLI R 11
I L R 35 Bom 261

O XXIII R 1

See JURISDICTION
I L R 48 Calc 138

See JURISDICTION OF HIGH COURT
I L R 44 Calc 454

See LETTERS PATENT 1865 CL 15
I L R 45 Bom 377

See PRACTICE I L R 41 Calc 632

See RES JUDICATA

———— whether inability to produce evidence justifies—

See CIVIL PROCEDURE CODE 1908—
O XXIII R 1 6 Pat. L. J 113

———— *Permission to institute fresh suit—No finding of formal defect—Power of High Court to interfere with order—Code of Civil Procedure (Act V of 1908) s 115 and O XXIII*

WITHDRAWAL OF SUIT—*contd*

r 1 In allowing a suit to be withdrawn with permission to institute a fresh suit it is not sufficient that the trial Court should say or suggest *that there is a formal defect* but the existence of such a defect is a condition predecent to the exercise of jurisdiction under O XXIII r 1 of the Code of Civil Procedure 1908 NATHUNI RAM *v* MUSAMMAT SHEO KOER 3 Pat L J 460

———— *Procedure—withdrawal with permission to bring fresh suit on payment of costs—costs of first suit paid after institution of second suit whether the second suit maintainable* Where a plaintiff is allowed to withdraw a suit with permission to bring a fresh suit on payment of the defendant s costs in the first suit and no limit of time is provided within which such costs are to be paid the second suit is maintainable even though the costs of the first suit are not paid until after the institution of the second suit The Court should therefore limit the time *Semble* that the second suit would be maintainable even though the period of limitation expired before the *institution of the second suit inasmuch as the first* suit would be pending until the costs had been paid KULDIP SINGH *v* KULDIP CHAUDHURI 3 Pat L J 63

———— *Grounds for—Code of Civil Procedure (Act V of 1908) O XXIII r 1 A suit may only be withdrawn with permission to* bring a fresh suit when the Court is satisfied that the suit must fail by reason of some formal defect or that there are other sufficient grounds for allowing the plaintiff to institute a fresh suit. The sufficient ground contemplated in the second clause of O XXIII r 1 of the Code of Civil Procedure 1908 should be ground analogous to the ground given in the first clause It is not sufficient for the Court merely to record a vague opinion *that there is a defect which may materially affect* the decision MAHENDRA RAM *v* SINGI LAL 3 Pat L J 561

———— *Duty of court to state reason for allowing withdrawal of suit—Power of High Court to interfere with order of withdrawal passed by Small Cause Court Judge* Where a suit has been allowed to be withdrawn by a Small Cause Court and no reasons have been recorded *for permitting such withdrawal the High Court* will set the order aside in the exercise of its powers under s 107 of the Government of India Act 1915 LUCHI RAI *v* RAGHUBIR DUBE 2 Pat L. J 682

———— *Suit for redemption—Permission to withdraw on condition fresh suit brought within years* The plaintiff filed a suit to redeem a mortgage but not wishing to proceed with the suit he was allowed to withdraw it with permission *to bring a fresh suit provided it was* brought within 2 years for the date of the order The new suit was brought eight years after the order for withdrawal of suit It was dismissed by the lower Courts on the ground that the plaintiffs had not complied with the conditions imposed by the order On appeal to the High Court *Held* that the order for withdrawal of suit imposing a limitation of two years was erroneous and it would not affect the plaintiff's right to redeem during the period of Limitation allowed by the Limitation Act RAMCHANDRA KOLAJI *v* HANMANTA (1920) I L R 44 Bom. 939

WITNESS

See ATTESTATION OF INSTRUMENT I L R 37 All 350

See BAR COUNCIL, RESOLUTIONS OF I L R 40 Calc 898

See CIVIL PROCEDURE CODE (1908) O XLI r 27 I L R 38 All 191

See COMMITMENT I L R 42 Calc 608

See CRIMINAL PROCEDURE CODE 1898
s 339 I L R 37 All 331
s 428 3 Pat L J 632

See DEPOSITION I L R 46 Calc 895

See DISPUTE CONCERNING LAND I L R 38 Calc 24

See EVIDENCE ACT (I OF 1872)—
ss 21 157 I L R 34 Bom 599
ss 118 TO 134
s 132 I L R 43 All 92
I L R 40 All 271

See FACT 15 C W N 717

See LEGAL PRACTITIONERS I L R 44 Mad 911

See PAUPER SUIT I L R 46 Calc 651

See PENAL CODE s 467 15 C W N 565

See PERJURY I L R 42 Calc 240

See POLICE DIARIES 3 Pat L J 568

See PRIVATE DEFENCE 3 Pat L J 419

See PUBLIC PROSECUTOR I L R 42 Calc 422

See WARRANT I L R 38 Calc 789

———— Called by Court—CROSS EXAMINATION OF—

See CRIMINAL PROCEDURE CODE ss 435 439 25 C W N 609

———— commission to examine—

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XXVI r 1 I L R 42 Bom 136

———— counsel accepting Retainer when likely to be a witness—

See BAR COUNCIL RESOLUTIONS OF I L R 40 Calc 898

———— cross examination of—

See CHARGE I L R 42 Calc 957

See CROSS EXAMINATION I L R 37 Calc 233

See MAHOMEDAN LAW—GIFT I L R 38 All 627

———— evidence of deceased—

See EVIDENCE ACT 1872 s 33 I L R 42 All 24

———— examination of—

See INSOLVENCY I L R 8 Calc 1089

See CRIMINAL PROCEDURE CODE 1898 s 263 I L R 39 Calc 931

See WILL I L R 47 Calc 1043

WITNESS—*contd*

———— In insolvency proceedings—Costs of—

See COSTS I L R 46 Calc 795

———— privilege of—

See EVIDENCE ACT (I OF 1872) s 126 I L R 41 All 125

———— prosecution of for contradictory statements—

See SANCTION FOR PROSECUTION I L R 37 Calc 618

———— questions put to by Court—

See EVIDENCE ACT 1872 s 33 I L R 42 All 25

———— right of accused to summon—

See CRIMINAL PROCEDURE CODE ss 244 540 I L R 36 All 16

———— statement of—

See PENAL CODE (ACT XLV OF 1860) s 499 I L R 36 Mad 216

———— suit—whether an attesting—

See EVIDENCE ACT 1872 s 68 1 Pat L J 129

1 ———— Witness if party to suit—Witnesses examined in a suit or proceeding are not to be considered parties to the suit or proceeding *Emperor* v *Chan ham Singh* I L R 32 *All* 74 referred to DEBI LAL v DHAJADHAR GASHAI (1911) 15 C W N 565

2 ———— *Attendance of*—A servant of the Municipality was summoned at the plaintiff's instance to produce certain document which the plaintiff maintained would support his case of adverse possession of the land in dispute but he failed or declined to attend and the plaintiff's application for a warrant to compel his attendance was rejected without good reason The suit was dismissed on the ground amongst other that plaintiff was not in possession for 12 years *Held* on second appeal that there should be a re hearing after compelling the witness to attend and produce the documents UPENDRA NATH GHOSE v THE CHAIRMAN OF THE CALCUTTA CORPORATION (1911) 16 C W N 116

3 ———— Competency of a person accused as witness against another implicated therein but separately tried—*Admissibility of the deposition of a witness against himself on a subsequent trial—Evidence Act (I of 1872) s 118—Oaths Act (X of 1873) s 5—Criminal Procedure Code Act (V of 1898) s 34 (1)* S 5 of the Oaths Act (X of 1873) and s 34 (1) of the Criminal Procedure Code apply only to the accused actually under trial at the time Such person cannot therefore be sworn as a witness and no accused jointly tried is a competent witness for or against the co accused But when accused persons are tried separately each one though implicated in the same offence is a competent witness at the trial of the other *Reg* v *Narayan Sundar* 5 *Bom H C* I 13 and *Empress* v *Durant* I L R 23 *Bom* followed *Banu Singh* v *Emperor* I L R 33 *Calc* 1353 and *Amrita Lal Hazra* v *Emperor* I L R 42 *Calc* 957 approved *Queen Empress* v *Mona Puna* I L R 16 *Bom* 661

WITNESS—*contd*

Subrahmania Ayyar v *King Emp ror I L R 25 Mad 61* and *Queen Empress* v *Hussein Haji I L R 25 Bom 42'* referred to A previous deposition is admissible against the witness on his subsequent trial unless he has brought himself within the protection of the proviso to s 132 of the Evidence Act *King Emperor* v *Nanda Gopal Roy 20 C W N 11'S* explained and distinguished AKHOY KUMAR MOOKERJEE v EMPEROR (1917) **I L R 45 Calc 720**

4 ——————**Competency of accused as witness**—*Withdrawal of prosecution jointly by private vakil conducting the prosecution and the Court sub inspector—Legality of the withdrawal and consequent discharge of the accused—Competency of accused as witness thereafter —Criminal Procedure Code (Act V of 1898) s 494—Evidence of cocaine and gambling cases prior to the conspiracy charged—Statem nt of an accu ed made after arre t not amounting to a confession— Admissibility of statement—Evidence Act (I of 1872) ss 10 30 and 54—Conspiracy to cheat—Penal Code (Act XLV of 1860) ss 120 B and 420* Where the pro ecution again t an accu ed was withdrawn with the con ent of the Court after the opening of th Crown case by an application purporting to be signed by the Court sub inspector ard a private vakil who was not appointed a public prosecutor by the Governor General in Council or the Local Government but was acting un ler the directions of the public pro e cutor duly appointed for the district and the a cused was thereupon discharged urder s 494 (a) removed from the dock and examined as a pro e cution witness —*Held* that the withdrawal was legal as the Court sub inspector who was a public prosecutor within s 494 of the Criminal Procedure Code ha l igned the petition filed for the purpose *Akhoy Kumar Mookerjee* v *Emperor I L R 45 Calc 720* applied Eviden e that some of the accused ran cociane and gambling den long before the existence of the con pira y which was the subject of the charge was *held* admissible the prosecution case being that some of the accused were first thrown together by frequenting or running such dens and that they continued to meet at such places for the purpo es of the conspiracy charged The evidence of an excise sub inspector of raids on the dens was a lmissible as leading up to the admissions made to him The statement of an accused made after arrest and not amounting to a confession is not admissible in evidence against a co accused either under s 10 or s 30 of the Evidence Act but only against him elf The error does not however affect the conviction when no stre s was laid on such statement by the Trial and Appellate Court *Emperor* v *Abani Bhushan Chuckerbutty I L R 38 Calc 169 Pulin Behari Das* v *King Emperor 15 C L J 517* followed SITAL SINGH v EMPEROR (1918) **I L R 46 Calc 700**

5 ——— **enforcing attendance of**—*witnesses named in the l st given to the Magistrate and summoned for the trial— Appl cat on made at the la t moment after examination of defence witne es present—Refusal by the Judge of the application on the ground of delay—Materiality of the ev dence of the absent witnesses—Proper course to be followed by the Judge—Criminal Procedure Code (Act V of 1898) s 91* Where after the examination of the defence witne ses present had concluded and the case was ready for arguments an application was made to the Court to enforce the attendance of certain witne ses who e names had been entered in the list given by the accused to the Committing Magistrate and who had been summoned but failed to attend and it further appeared from the petition of appeal to the High Court that their evidence was material *Held* that the refu al of the Judge to enforce the attendance of the witnesses based not on the ground of their evidence being immaterial but of delay in the application was not justifiable and that the conviction ought therefore to be set aside and a retrial ordered Steps should be taken by the Se sions Judge to ensure an early application by the parties with regard to the attendance of their witne e FAIJUDDI v EMPEROR (1920) **I L R 47 Calc 758**

6 ——— **Hostile witness**—A witness is considered adverse when in the opinion of the Judge he bears a hostile animus to the party calling him and not merely when his te timony contradicts his proof When a witne s is treated hostile and cro s examined by the party calling him this mu t be done to discredit the witness altogether and not merely to get rid of part of his testimony SURENDRA KRISHNA MONDAL v SM PANEE DASSI **24 C W N 860**

7 —————— Where a witness was called by Court not examined by it but cro s examined by both ide —Impropriety of procedure discussed GANGADHAR COALA v REGINALD WILLIE LEMON PEPD **25 C W N 609**

WOMEN

See PLEADER **I L R 44 Calc 290**

See HINDU LAW—WOMAN S ESTATE

——— **beneficiaries under will of a Hindu**—

See HINDU LAW—WILL
I L R 1 Lah 415
I L R 2 Lah 175

——— **disqualification of to perform duties of archaka**—

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XXIII R 3
I L R 38 Mad. 850

——— **right to inherit**—

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XXIII R 3
I L R 38 Mad 850

WORDS AND PHRASES

——— **A large proportion of the landlords'** —

See ULTRA VIRES BENGAL TENANCY ACT s 101 **I L R 40 Calc 123**

——— **"Accused person'** —

See CRIMINAL PROCEDURE CODE ss 145 5-6 **I L R 34 All. 533**

——— **"Act together"**—

See BENGAL TENANCY ACT s 188
I L R 38 Calc. 270

——— **"Addition to embankment'** —

See EMBANKMENT **I L R 38 Calc. 413**

WORDS AND PHRASES—*contd*

—— "betterment"—

See RECOUPMENT
I L R 45 Calc 343

—— "Bohras"—

See LIBEL I L R 41 All 329

—— "building"—

See BOMBAY DISTRICT MUNICIPALITIES ACT (BOM ACT III OF 1901)—

s 3, CL. (7) I L R 41 Bom 563

s 96 I L R 35 Bom 412

—— "business"—

See EXCESS PROFIT DUTY
I L R 48 Calc 844

See RECEIVER I L R 40 Calc 678

—— "by means thereof"—

See CHARGE I L R 42 Calc 957

—— "Calcutta Gazette"—

See SALE FOR ARREARS OF REVENUE
I L R 46 Calc 255

—— "Capable of instituting suits"—

See LIMITATION L R 43 I A 113

—— "Case"—

See CIVIL PROCEDURE CODE 1908—

ss 16 AND 115 I L R 42 All 409

s 115 I L R 40 Bom 86

See CRIMINAL PROCEDURE CODE s 193
I L R 37 All 286

—— "Cause of Action"—

See CIVIL PROCEDURE CODE 1908 O II R 2 I L R 38 All 217

See PARTITION I L R 36 Mad 151

—— Caveat emptor —

See VENDOR 3 Pat L J 358

—— "Charitable purposes"—

See BOMBAY CITY MUNICIPAL ACT (BOM ACT III OF 1888) ss 140 (c) 143 (1) (a) AND 2 (d) I L R 43 Bom 281

—— "Child —

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 488 (1)
I L R 37 Mad 565

—— "Christian —

See CHRISTIAN MARRIAGE ACT (XV OF 1872) ss 3 AND 68
I L R 40 All 393

—— "Circumstances and Property"—

See MUNICIPALITY—ASSESSMENT
I L R 41 Calc 168

—— "Circumstances and Property within the Municipality —

See ASSESSMENT I L R 48 Calc 443

—— "Claim arising under the mortgage"—

See CIVIL PROCEDURE CODE, 1908 O XXXIV R. 14
I L R 41 All 399

—— "Claim of right"—

See TEMPORARY INJUNCTION
I L R 46 Calc 1001

—— "Claiming under"—

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 11 I L R 40 Bom 679

—— "Collector"—

See MAMLATDARS COURTS ACT (BOM II OF 1906) s 23
I L R 39 Bom 552

—— "Common carrier"—

See CONTRACT ACT ss 56 AND 65
I L R 40 Bom 529

See RAILWAY COMPANY
I L R 4" Calc 6

—— "Common gaming house"—

See PUBLIC GAMBLING ACT (III OF 1867) ss 1 3 I L R 38 All 47

—— "Company's sicca Rupees"—

See SUIT FOR RENT
I L R 46 Calc 347

—— Compelled to answer —

See FALSE EVIDENCE
I L R 37 Calc 878

—— "Complaint"—

See CRIMINAL PROCEDURE CODE—

ss 4 195 (1) I L R 35 All 8

ss 4 476 I L R 38 All 32

See SANCTION FOR PROSECUTION
I L R 43 Calc 1152

See WORKMAN'S BREACH OF CONTRACT ACT (XIII OF 1859) ss 1 AND 2
I L R 41 All 322

—— "Composition deed"—

See REGISTRATION ACT (III OF 1877) s 17 CL (e) I L R 38 Bom 576

—— "Compromise"—

See COMPROMISE

See CRIMINAL PROCEDURE CODE ss 48 345 20 C W N 1209

—— "*Conclusive proof*"—

See AGRA TENANCY ACT (II OF 1901) s 9 I L R 34 All 285

—— Consideration —

See DEBTOR OR CREDITOR.
I L R 41 Calc 137

See PENAL CODE (ACT XLV OF 1860) s 423 I L R 37 Mad. 47

—— "Contentious suit —

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 52 I. L. R 38 Mad. 450

—— "Conveyance"—

See OPIUM ILLEGAL POSSESSION OF
I. L. R 37 Calc. 24

—— "Costs to abide the result"—

—— "Costs to follow the event"—

See COSTS I. L. R. 39 Mad. 476

WORDS AND PHRASES—*contd*

———— "Court"—

See Civil Procedure Code 1908, O XXI, rr 89 92
I L R 40 All 425

See Criminal Procedure Code (Act V of 1898 s 195
I L R 37 Bom 365

See Court

See Limitation Act 1877 s 14
I L R 35 Bom 139

See Partition I L R 45 Calc 873

See Press Act (I of 1908) s 3 (1) Proviso I L R 39 Mad 1164

See Professional Misconduct
I L R 44 Calc 639

See Sanction for Prosecution
I L R 45 Calc 585

———— "Credible information"—

See Criminal Procedure Code s 54 (1)
I L R 36 All 6

See Habeas Corpus
I L R 44 Calc 76

———— "Criminal case"—

See Criminal Procedure Code ss 145 526 I L R 34 All 533

See Transfer I L R 41 Calc 719

———— "Criminal trial"—

See Letters Patent (24 and 25 Vict C 104) s 15 I L R 39 Mad 539

———— "Crops or other products"—

See Agra Tenancy Act 1901 ss 74 76
I L R 32 All 458

———— "Dasi"—

See Hindu Law—Inheritance
I L R 48 Calc 643

———— "dâsyadisudraputra —

See Hindu Law—Inheritance
I L R 48 Calc 643

———— "date of decree"—

See Civil Procedure Code 1908 O XLV r 7 14 C W N 420

See Execution of Decree
I L R 46 Calc 1032

———— "dayada"—

See Hindu Law—Stridan
I L R 36 Bom 424

———— "debt"—

See Contract Act (IX of 1872) s 25
I L R 40 Mad 31

See Succession Certificate
I L R 42 Calc 10

———— "debtor and creditor"—

See Winding up petition
I L R 34 Bom 533

———— "debt and liability"—

See Chota Nagpur Encumbered Estate Act 1876 s 3 3 Pat L J 156

WORDS AND PHRASES—*contd*

———— "decision"—

See Bengal Tenancy Act ss 106 107
18 C W N 604

———— "decree"—

See Appeal I L R 41 Calc 160

See Civil Procedure Code (1908)—

s 2 I L R 39 All 393

ss 2 104 148 I L R 35 All 582

See Second Appeal 3 Pat L J 645

———— "decree holder"—

See Civil Procedure Code (Act V of 1908) O XXI r 89
I L R 37 Bom 387

———— "decree in the suit"—

See Dekkhan Agriculturists Relief Act I L R 34 Bom 158

———— "default"—

See Execution of Decree
I L R 38 Calc 482

———— "defaulter"—

See Madras Revenue Recovery Act ss 3 35 I L R 33 Mad 41

See Madras Estates Land Act 1908 s 146
I L R 44 Mad 534

———— "delay"—

See Sanction for Prosecution
I L R 43 Calc 597

———— "denatured spirit"—

See Excise I L R 41 Calc 694

———— "deposit" (in art 60 of the Limitation Act—

See Limitation Act (IX of 1908) —
Arts 59 and 60
I L R 39 Mad 1081

———— "desperate and dangerous"—

See Security for good behaviour.
I L R 46 Calc 215

———— "destined"—

See Trading with the Enemy
I L R 42 Calc 1094

———— "directly over or indirectly under"—

See Bombay City Municipal Act (Bom Act III of 1888) s 201 cl. (a)
I L R 34 Bom 496

———— "discharged"—

See Criminal Procedure Code 119
I L R 35 Bom 401

————"Disciple"—

See Hindu Law—Inheritance
I L R 44 Mad 704

———— "dishonestly and fraudulently"—

See Forgery I L R 38 Calc. 75
14 C W N 1076

———— "dishonour"—

See Bills of Exchange.
I L R 46 Calc. 584

———— "dispossession"—

See Limitation I L R. 41 Calc. 52

WORDS AND PHRASES—*contd*

———— "Full water rate"—

See WATER RATE
I L R 34 Mad 436

———— "Gambling" and "Wagering"—

See COTTON GAMBLING
I L R 39 Calc 968

———— "Gaming"—

See MADRAS TOWNS NUISANCE ACT (MAD III 1889) s 3 (10)
I L R 40 Mad 556

———— "Ghosis"—

See BUNDELKHAND ALIENATION OF LAND ACT (II OF 1903) ss 3 4 6 9
I L R 41 All 294

———— "Good faith"—

See LIMITATION ACT (IX OF 1908) s 5
I L R 45 Bom 607

See PENAL CODE (ACT XLV OF 1860) ss 52 191 AND 193
I L R 36 All 362

———— "Government established by law in British India"—

See PRESS ACT 1 OF 1910—

ss 3 (i) 4 (ii) 17 19 20 22
I L R 39 Mad 1085

s 4 I L R 42 All 233

———— "Grant of a definite share of a village"—

See BOMBAY LAND REVENUE CODE (BOM ACT V OF 1879) ss 83 216 (*b*) AND 217
I L R 44 Bom 566

———— "hatred" or "contempt"—

See PRESS ACT (1 OF 1910) ss 3 (1) 4 (*1*) 17 19 20 22
I L R 39 Mad 1085

———— "heir next in succession"—

See MATADARS ACT (BOM VI OF 1887) ss 9 10 I L R 39 Bom 478

———— "heirs born of the womb"—

See WILL 3 Pat L J 199

———— "Hindu"—

See SUCCESSION ACT s 2
15 C W N 158

———— "holder —"

See BOMBAY LAND REVENUE ACT ss 3 109 197
I L R 36 Bom 315

———— "holder of alienated land"—

See BOMBAY LAND REVENUE CODE (BOM ACT V OF 1879) ss 3 74 76
I L R 45 Bom 898

———— "holder of Property"—

See CHOTA NAGPUR ENCUMBERED ESTATES ACT 1876 3 Pat L J 1.6

———— holding"—

See ASSESSMENT EXEMPTION FROM
I L R 37 Calc 697

———— "holds office"—

See MADRAS DISTRICT MUNICIPALITIES ACT (IV OF 1884) ss 53 AND 60
I L R 38 Mad 879

WORDS AND PHRASES—*contd*

———— "immovable property"—

See GENERAL CLAUSES ACT (X OF 1897) s 3 (25) I L R 35 All 156

———— "import into Bengal"—

See EVIDENCE I L R 41 Calc 545

———— "income"—

See INCOME TAX ACT (II OF 1886) PART IV, SCH II s 3 CL (5)
I L R 39 Mad 885

———— "injury to the person"—

See PROVINCIAL SMALL CAUSE COURTS ACT I L R 36 Bom 443

———— "instrument—"

See STAMP ACT (II OF 1899) s 2 (14) SCH I ART 5 I L R 36 All 21

———— "instrument of partition"—

See STAMPS ACT (II OF 1899) s 59
I L R 35 Bom 75

———— "integral"—

See PRE EMPTION I L R 33 All 104

———— "investigation"—

See LEGAL PRACTITIONERS ACT s 14
15 C W N 269

———— "irreparable injury"—

See TEMPORARY INJUNCTION
I L R 46 Calc 1001

———— irrigation by percolation—

See MADRAS IRRIGATION CESS ACT 186 s 1 I L R 40 Mad 58

———— "jama abadharita and dhariya"—

See RENT I L R 47 Calc 133

———— "judgment"—

See APPEAL
I L R 41 Calc 323
I L R 42 Calc 735
I L R 43 Calc 857
I L R 45 Calc 818
I L R 47 Calc 1104

See APPEAL RIGHT OF
I L R 44 Calc 804

See ARBITRATION I L R 34 Bom 1

See LETTERS PATENT CL. 15
I L R 44 Bom 272
I L R 45 Bom. 377

———— "Judicial Act"—

See PRESS ACT (1 OF 1910) s 3 (*1*) PROVISO I L R 39 Mad 1164

———— "Judicial Proceeding"—

See CRIMINAL PROCEDURE CODE ss 195 476 I L R 34 All 602

See MAGISTRATE POWER OF
I L R 37 Calc. 72

See SANCTION FOR PROSECUTION
I L R 43 Calc 1152

———— "jurisdiction"—

See APPEAL I L R 41 Calc 323

———— "Just Antecedent Debt"—

See CUSTOM (ALIENATION)
I L R 1 Lah. 472

WORDS AND PHRASES—*contd*

——— "price"—

See TRANSFER OF PROPERTY ACT (IV OF 1882) ss 54 118
I L R 37 Mad 423

——— "proceeding"—

See PROVINCIAL INSOLVENCY ACT (III OF 1907) s 47 I L R 39 All 267

——— "process"—

See EXCISE I L R 41 Calc 694

——— "produced"—

See SANCTION FOR PROSECUTION
I L R 44 Calc 1002

——— "promulgated"—

See PENAL CODE s 188
I L R 39 Mad 543

——— "proper courts"—

See LIMITATION ACT (IX OF 1908) ART 19? EXP II I L R 45 Bom 453

——— "property"—

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XL R 4
I L R 39 Mad 584

See HINDU LAW—REVERSIONER
I L R 48 Calc 536

See MINOR I L R 48 Calc 802

See PENAL CODE (ACT XLV OF 1860) s 185 I L R 3? All 128

——— "property of any ward"—

See UNITED PROVINCES COURT OF WARDS ACT s 48 I L R 36 All 331

——— "proprietor"—

See AGRA TENANCY ACT (II OF 1901) s 150 I L R 40 All 656

See NORTH WESTERN PROVINCES AND OUDH LAND REVENUE ACT (XIX OF 1873) ss 146 148 167
I L R 35 All. 190

——— "protected interest"—

See BENGAL TENANCY ACT s 160
18 C W N 349

See LANDLORD AND TENANT
I L R 39 Calc 138

——— "public charitable and religious purposes"—

See CIVIL PROCEDURE CODE 188_ s 539 I L R 34 All 468

——— "public place"—

See MADRAS CITY POLICE ACT (III OF 1888) s 75 I L R 39 Mad 886

See MADRAS TOWNS NUISANCE ACT (MAD III OF 1889) s. 3 (10)
I L R 40 Mad 556

——— "public purpose"—

See PRESUMPTION I L R 39 Bom 279

——— "publication"—

See TORT I L R 39 Mad. 433

——— "punyaha"—

See LIMITATION 23 C W N 336

——— "purchaser" "certified purchaser"—

See REVENUE SALE LAW s 37
15 C W N 706

——— "putra"—

See HINDU LAW—INHERITANCE
I L R 37 All 604

——— "putra pautradi"—

See JAGIR I L R 42 Calc 305
I L R 46 Calc 683

——— "railway"—

See RAILWAY PASSENGER
I L R 44 Calc 279

——— "railway administration"—

See LOSS OF GOODS
I L R 44 Calc 16

——— "raiyat"—

See BENGAL TENANCY ACT (VIII OF 1885) ss 103B and 104H
I L R 46 Calc 90

——— "ready goods"—

See CONTRACT I L R 47 Calc 458

——— "reasonable suspicion"—

See HABEAS CORPUS
I L R 44 Calc 76

——— "receipt"—

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XXI R 89 (b)
I L R 39 Mad 429

——— "recognised or authorised to act"—

See BENGAL TENANCY ACT s 188
15 C W N 74

——— "re erection"—

See BUILDING I L R 39 Calc 84

——— "refused to take"—

See PRACTICE I L R 35 Bom 213

——— "relates to the suit" "construction of"—

See CIVIL PROCEDURE CODE 1882 s 3 ?
I L R 33 Mad 102

——— "release"—

See STAMP ACT (II OF 1889) s 59
I L R 35 Bom 75

——— "religious assembly"—

See PENAL CODE (ACT XLV OF 1860) s 296 I L R 34 All 78

——— "reside"—

See DIVORCE ACT (IV OF 1869) s 3
I L R 32 All. 203

See LUNACY I L R 43 Calc 5?7

See SUBSTITUTED SERVICE
I L R 38 Calc 394

——— "resides"—

See CIVIL PROCEDURE CODE 1908 O V R. 1? 15 C W N 393

———"Restraint of Princes and Rulers"—

See BILL OF LADING
I L R 44 Mad. 14

WORDS AND PHRASES—*contd*

——— "rights to sue"—

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 92 AND 93
I L R 38 Mad 1064

——— "rikhta"—

See HINDU LAW—STRIDHAN
I L R 36 Bom 424

——— "risk note"—

See CONTRACT I L R 39 All 418

——— "river belonging to Government"—

See MADRAS IRRIGATION CESS ACT (VII OF 1865) I L R 37 Mad 322

——— "rolling stock"—

See RAILWAY PASSENGER
I L R 44 Calc 279

——— "Samanodaka"—

See HINDU LAW—INHERITANCE
I L R 40 Mad 654

——— "same act or transaction"—

See CIVIL PROCEDURE CODE 1908 O I r 3 I L R 34 Bom 358

——— "same judgment-debtor"—

See CIVIL PROCEDURE CODE 1882 s 295
I L R 33 Mad 465

——— "same transaction"—

See CHARGE I L R 42 Calc 957

——— "sanctioned"—

See BOMBAY SURVEY AND SETTLEMENT ACT s 25 I L R 36 Bom 290

——— "santan"—

See HINDU WILL ACT 21 C W N 854

——— "sarkhat"—

See LANDLORD AND TENANT
I L R 41 All 654

See STAMP ACT (II OF 1899) s 12 SCH I ARTS I 5 I L R 41 All 169

——— "seaworthiness"—

See BILL OF LADING
I L R 38 Mad 941

——— "secundum all gata et probata"—

See SPECIFIC RELIEF ACT (I OF 1877) s 39 I L R 39 Bom 149

——— "secured creditor"—

See PROVINCIAL INSOLVENCY ACT (III OF 1907) s 31 I L R 37 All 383

——— "series of acts of transaction"—

See CIVIL PROCEDURE CODE 1908 O I r. 3 I L R 34 Bom 358

——— "shawls"—

See RAILWAY ACT 1890 s 75 SCH II (m)
I L R 39 Calc 1029

——— "single transaction"—

See POWER OF ATTORNEY
I L R 38 Mad 134

——— "slavery bond"—

See CONTRACT 3 Pat L J 412

——— "sole risk"—

See LOSS OF GOODS
I L R 46 Calc 56

——— "son"—

See HINDU LAW—ADOPTION
I L R 43 Calc 944

——— "standard rent"—

See BOMBAY RENT (WAR RESTRICTIONS) ACT (BOM II OF 1918) s 2 (I), cls (a) (c) (d) I L R 45 Bom 744

——— "stating the grounds of its opinion"—

See FORFEITURE I L R 41 Calc 468

——— "stream"—

See MADRAS IRRIGATION CESS ACT s 2
I L R 34 Mad 295

——— "street"—

See BOMBAY CITY MUNICIPAL ACT (BOM ACT III OF 1888) s 305
I L R 43 Bom 122

See LAND ACQUISITION
I L R 44 Calc 219

——— "strict proof"—

See LIMITATION ACT (IX OF 1908) ss 5 14 I L R 42 Bom 295

See REVIEW I L R 42 Calc 830

——— "subject matter"—

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XXIII r 1
I L R 42 Bom 155

——— "submission to Court"—

See ARBITRATION I L R 46 Calc 721

——— "subsequent transferee"—

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 53 I L R 39 Bom. 507

——— "succeeded by another Magistrate"—

See RIOTING I L R 39 Calc 781

——— "successor"—

See AGRA TENANCY ACT (II OF 1901) s 158 I L R 33 All 553

——— "sufficient cause"—

See COURT FEES ACT 1870 ss 4 6 28
3 Pat L J 74

See LAND ACQUISITION
I L R 45 Bom. 725

See LIMITATION I L R 45 Calc. 94

——— "suit for land"—

See LETTERS PATENT (AMENDED) OF THE BOMBAY HIGH COURT CL. 12.
I L R 37 Bom. 491

——— "suit for land or other immoveable property"—

See JURISDICTION I L R 42 Calc. 942

——— "suit or other legal proceeding"—

See PRESIDENCY TOWN INSOLVENCY ACT (III OF 1909) ss. 17, 103 104
I L R 35 Bom. 63

WORDS AND PHRASES—*contd*

——— "Taluqdar"—

See OUDH ESTATES ACT (I OF 1869) ss 2 3 8 10 22
I L R 35 All 391

——— "Taluqdari Estate"—

See GUJRATH TALUQDARS ACT s 31
I L R 34 Bom 55

——— "Taluqdari Settlement officer"—

See GUJRATH TALUKDARS ACT ss 28 29
I L R 34 Bom. 142

——— Taluqdari Tenure"—

See GUJRATH TALUQDARS ACT (BOM ACT VI OF 1888) s 31
I L R 35 Bom 97

——— "Tavazhi"—

See MALABAR LAW
I L R 38 Mad 48

——— "tenant"—

See BOMBAY RENT (WAR RESTRICTIONS) ACT (BOM II OF 1918) s 2 (*1*) CLS (*a*) (*c*) (*d*) I L R 45 Bom 744

——— "tenure holder"—

See BENGAL TENANCY ACT (VIII OF 1885) ss 103 B and 104 H
I L R 46 Calc 90

——— "trade"—

See RECEIVER I L R 40 Calc 678

——— 'trade mark"—

See PENAL CODE (ACT XLV OF 1860) ss 478 482 I L R 39 All 123

——— trading"—

See TRADING WITH THE ENEMY
I L R 42 Calc 1094

——— "tried again'—

See AUTREFOIS ACQUIT
I L R 41 Calc 1072

——— 'true value'—

See RAILWAYS ACT (IX OF 1890) s. 75 (*1*) (*2*) AND (*3*)
I L R 43 Bom 386

——— unable'—

See GUJRAT TALUQDARS ACT (BOM ACT VI OF 1888 AS AMENDED BY BOM ACT II OF 1905) ss 29 29 B (*1*) (*2*) (*3*) AND 29 E I L R 38 Bom 604

——— "unable to maintain itself"—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 488
I L R 39 Mad 957

——— "unlawfully and judiciously"—

See CHARGE I L R 42 Calc 957

——— "until"—

See CONTRACT FOR SALE.
I L R 45 Calc 481

——— "up to"—

See CONTRACT FOR SALE.
I L R 45 Calc 481

——— "useless or inoperative"—

See LETTERS OF ADMINISTRATION
I L R 40 Calc 50

——— "using"—

See PENAL CODE (ACT XLV OF 1860) s 471 I L R 33 Mad 392

——— 'value"—

See RAILWAYS ACT (IX OF 1890) *s* 75 (*1*) (*2*) AND (*3*) I L R 43 Bom 386

——— valuable security"—

See PENAL CODE ACT (XLV OF 1860) s 30 467 I L R *38 All. 430*

——— "violence"—

See JURY TRIAL BY
I L R 40 Calc 367

——— "Wanta lands"—

See GUJRAT TALUQDARS ACT (BOM ACT VI OF 1888) s 31
I L R 35 Bom 97

——— "where there has been an appeal or review"—

See LIMITATION ACT 1908 SCH I ART 182 *3 Pat L J 119*

——— "wilful default"—

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XL R 4
I L R 39 Mad 584

——— "withdrawal"—

See CRIMINAL PROCEDURE CODE ss 248 345 20 C W N 1209

——— without issue"—

See HINDU LAW—ADOPTION
I L R 43 Calc 944

——— witnesses for the defence"—

See JURISDICTION OF MAGISTRATE.
I L R 39 Calc 885

——— "words which are likely or may have a tendency directly or indirectly whether by inference suggestion allusion metaphor implication or otherwise" [in s 4, (1)]—

See PRESS ACT (I OF 1910) ss 3 (*1*) 4 (*1*) 17 19 20 22
I L R 39 Mad. 1085

——— "youthful offender'—

See REFORMATORY SCHOOLS ACT (VIII OF 1897) s 31 I L R 39 All. 141

WORK CALCULATED TO DEPRAVE MORALS

See OBSCENE PUBLICATION
I L R 39 Calc 377

WORKMAN

See WORKMEN'S BREACH OF CONTRACT ACT (XIII OF 1859).
I L R 35 All. 61 and 143
I L R 41 Mad. 182

WORKMAN'S BREACH OF CONTRACT ACT (XIII OF 1859)

1 ——— *Procedure*—
Special procedure under the Act not applicable to ordinary loans between master and workman. Held that the special procedure provided by Act XIII of 1859 for the recovery of money advanced in the circumstances therein described, is not applicable

WORKMAN'S BREACH OF CONTRACT ACT (XIII OF 1859)—*contd*

where money is advanced to a workman not for the purpose of assisting him to complete a specific piece of work but as an ordinary loan to be repaid out of the workman s wages *In the matter of Anusoori Sanyasi I L R 28 Mad 37* referred to GIGA v MUHAMMAD AMIN (1912)

I L R 35 All 61

2 ———————— *Magistrate not competent to take proceedings under unless moved by the employer* The provisions of Act XIII of 1859 can only be applied at the instance of the employer A magistrate has no jurisdiction *suo motu* to pass orders under that Act as an alter native to taking action under the Indian Penal Code CHHEDI v MUHAMMAD ALI (1913)

I L R 35 All 143

3 ———————— *Bandsman not an artificer labourer or workman* A bandsman is not an artificer labourer or a workman within the meaning of those words in the Workman s Breach of Contract Act (XIII of 1859) *Re* ROSARIO QUADROS (1913) **I L R 38 Mad 551**

4 ———————— *Scope of the Act—Act applicable not merely to fraudulent breaches of contract* The provisions of Act No XIII of 1859 are not applicable merely to fraudulent breaches of contract but can and must be enforced in res pect to any breach of a contract within the scope of the Act *Emperor* v *Bakhtawar I L R 40 All 282* followed AZIZ UR RAHMAN *v* HANSA (1918) **I L R 40 All 670**

5 ———————— *Scope of the Act—' Workman meaning of—Status of accused proof of—Duty of complainant to prove—Absence of proof* The accused received an advance of Rs 2 500 and contracted to supply coolies to a rubber estate Under the contract he was to receive a commis sion of 10 per cent on the wages of the Kol maistris and coolies and an additional Rs 25 a month if he contract he was proceeded against under the Workman s Breach of Contract Act On a difference of opinion between SADASIVA AYYAR and PHILLIPS JJ as to whether the accused was a workman within the meaning of the Act *Held* by AYLING J agreeing with SADASIVA AYYAR J —(i) That the accused was not a workman within the meaning of the Act and (ii) that the word workman means a person who engages in manual labour of some kind whether skilled or unskilled *Gilby* v *Subbu I L R 7 Mad 100 Calarum* v *Chengappa I L R 13 Mad 351 Manubeari In re 27 M L J 392* and *Re Rosario Quadros I L R 38 Mad 551* followed *Powson* v *Hanama Mestri I L P 1 Mad 280* and *High Court Proceedings dated 13th July 1867 3 Mad H C R App XXV* disapproved KUNHI MOIDIN v CHAMU NAIR (1917) **I L R 41 Mad 182**

6 ———————— *Compositor an artificer—Contract to gradually work out advance from wages a contract under the Act* A composi tor is an artificer if not a workman within Act XIII of 1859 An agreement by which an advance given to an artificer is to be repaid by him by periodical deductions from his wages does not merely create a relation of debtor and creditor but is a contract between master and workman within the meaning of the Act SOMANNA v CHELLAPATHI RAO (1921) **I L R 44 Mad 53**

WORKMAN'S BREACH OF CONTRACT ACT (XIII OF 1859)—*contd*

———— s 1—

See PENAL CODE s 211

I L R 43 Mad 443

———— ss 1 2—*Criminal Procedure Code s 250—Complaint of employer dismissed—Order for compensation to be paid to workman* It is not competent to a Magistrate when dismissing as groundless a complaint under s 1 of the Work man s Breach of Contract Act 1859 to proceed under s 250 of the Code of Criminal Procedure and order the employer to pay compensation JAMIL AHMAD v MUHAMMAD ISHAQ (1919)

I L R 41 All 322

———— ss 1, 2 4—**Indefinite contract**—*Advance of money to workman to be paid off out of wages at employer s option—Slavery— Contract for term certain or for specified work or otherwise mean ing of—Scope of the Act* Where an advance of money made by an employer to a workman was agreed to be repaid out of the workman s wages not when the borrower chose to pay but when the em ployer chose to realise it *Held* that the contract was indefinite and sanctioned a species of slavery and was not enforcible under the provi ions of Act XIII of 1859 *Proceedings 17th Dec 1873 7 Mad H C R Rl xxx* and *Ram Prasad* v *Dirgopal I L R 3 All 774* followed The advance was made as a loan and not on account of work con tracted to be performed within the meaning of s 1 of the Act S 4 of the Act which purports to bring within its operation all contracts and agreements whether by deed or written or verbal and whether such contract be for a term certain or for specified work or otherwise is controlled by s 1 which pro vides that the advance should have been made to the workman on account of any work which he shall have contracted to perform The Act does not cover breaches of all kinds of contract between (speaking generally) employer and work man GOBINDA RAJWAR v H J APKAR (1910)

15 C W N 15

———— s 2—

———————— *Order under—Right of appeal from the order—Proper orders to be made under s 2* No appeal lies to the Sessions Court from the order of the Magistrate under s 2 of Act XIII of 1859 The Magistrate while making an order under s 2 of Act XIII of 1859 cannot make an order of imprisonment in default but such an order could be made after there has been non compliance with the order of re payment or carrying out the contract ATUKUL CHANDRA ROY v KAMAR ALI SIRDAR (1913)

18 C W N 1271

———————— *Advance given by em ployer on agreement by workmen to work for him for a certain specified period—Breach of agreement* A workman living in Cawnpore took an advance of Rs 10 from his employer and entered into an agreement to work for him for ten months on the understanding that one rupee was to be deducted from his wages each month *Held* that such a contract contained nothing repugnant to Act No XIII of 1859 and was capable of bein enforced under the provisions of ss 2 and 3 of that Act *Lucas* v *Ismail Singh* Criminal Revision No 235 of 1910 decided on the 21st July 1910 followed EMPEROR v BAKHTAWAR (1918)

I L R 40 All 282

WORKMAN'S BREACH OF CONTRACT ACT (XIII OF 1859)—*concld.*

——— s. 2—*contd*

——— *Summary trial—Offence—Criminal Procedure Code s 260 1 (o)* A case under s 2 of the Workmen s Breach of Contract Act 1859 is triable summarily under the provisions of s 260 of the Code of Criminal Procedure *Queen Empress v Indarjit I L R 11 All 262* referred to *Emperor v Dhondu I L R 33 Bom. 22* and *Emperor v Balu Saluji I L R 23 Bom 25* dissented from *Pollard v Mothial I L R 4 Mad 234* and *Queen Empress v Kattayan I L R 20 Mad 235* distinguished ABDUS SAMAD v YUSUF I. L. R 43 All. 281

——— *High Court s power to interfere under ss 435 and 439 of the Criminal Procedure Code (Act V of 1898)—Contract to carry logs of timber for long distances—Contract does not fall under the Act* The High Court has power under ss 435 and 439 of the Criminal Procedure Code 1898 to revise an order passed by a Magistrate directing either return of the advance or specific performance of the contract under para 1 of s 2 of the Workmen s Breach of Contract Act 1859 The accused entered into an agreement with the complainant engaging to remove 100 logs of timber from a forest to a forest depôt a distance of 25 miles and received an advance of Rs 440 The accused having failed to carry out the contract was tried under s 2 of the Workmen s Breach of Contract Act 1859 and was ordered to repay the advance On application under criminal revisional jurisdiction —*Held* that the contract in question was not a contract of an artificer workman or labourer and did not fall within the purview of the Act EMPEROR v DEVAPPA PAMAPPA (1918)
I L R 43 Bom 607

——— ss 2 3—*Contract between master and workman containing covenant for compensation for breach of agreement by workman—Operation of Act not thereby excluded* An employer of labour is not precluded from availing himself of the provisions of Act No XIII of 1859 merely because in the contract of service between himself and his workmen there is a stipulated penalty capable of enforcement by a civil suit in the event of breach of the contract on the part of the workmen which penalty has admittedly not been enforced nor payment of the same tendered on the part of the workmen *Queen Empress v Indarjit I L R 11 All 232* referred to *Emperor v Muhammad Din 22 Indian Cases 74* and *Emperor v Khuda Bakhsh 27 Indian Cases 901* not followed EMPEROR v RAM LAL (1919)
I L R 41 All 390

WORSHIP

——— turn of—

See TURNS OF WORSHIP

See USUFRUCTUARY MORTGAGE
I L R 39 Calc 227

——— right to worship a deity according to one s own belief—

See CIVIL PROCEDURE CODE 1908 s 9
I L R 44 Bom. 410

——— of image—

See HINDU LAW—ENDOWMENT
I L R 41 Calc. 57

WORSHIP—*contd.*

——— Worshippers' right of, suit of—

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 9. I. L. R 40 Mad. 212

WRIST-WATCH BAND

See DESIGN I. L R 45 Calc. 606

WRIT

See HABEAS CORPUS
I L. R 44 Calc 459

——— of possession—

See BAILIFF I. L. R 42 Calc 313

See PENAL CODE s 323
19 C W N 273

WRITTEN STATEMENT

See CHARGE I. L. R 42 Calc 957

See CRIMINAL PROCEDURE CODE s 145
14 C W N 80

See PENAL CODE s 80
19 C W N 1043

——— refusing application to file—

See APPEAL I L R 45 Calc 818

——— *filing of by accused* The practice of filing written statements on behalf of accused persons condemned DEPUTY LEGAL REMEMBRANCER v MATUKDHARI SING (1915)
20 C W N 128

——— *Practice* Though written statements may be accepted from the accused in accordance with the universal practice in the Courts under the Calcutta High Court they do not take the place of evidence nor of such examination of the accused as is contemplated by s 342 of the Code of Criminal Procedure *Emperor v Insuiya (1903) All W N 1* dissented from AMRITA LAL HAZRA v EMPEROR (1915)
I L R 42 Calc 957

WRONGFUL ACTS

See MORTGAGE I L R 44 Calc 388

WRONGFUL ATTACHMENT

See APPEAL I L R 37 Calc 426

WRONGFUL CONFINEMENT

See MISJOINDER OF PARTIES
I L. R 42 Calc 760

See PENAL CODE (ACT XLV OF 1860) s 343 I L R 42 Bom 181

——— *Detention of suspended police officer in lock up under an illegal Circular order of the Commissioner of Police published in the Calcutta Police Gazette—Mistake of fact and not of law—Good faith—Penal Code (Act XLV of 1860) ss 76 79 and 34 —Revision of orders of acquittal—Criminal Procedure Code (Act V of 1898) ss 423 439* Where a Deputy Commissioner of Police sent a head constable placed under suspension to the lock up without malice and in conformity with a Circular order of the Commissioner of Police published in the *Calcutta Police Gazette* the property of the Government of Bengal and the medium of communication of all orders and regulations ordinarily having the sanction of law issued by the Commissioner for the guidance of police

WRONGFUL CONFINEMENT—*contd*

officers and carried out by them which Circular order had been consistently followed for 18 months but was invalid as not having been approved of by the Bengal Government under s 9 of the Calcutta Police Act (Beng IV of 1866) of which fact however the accused Deputy Commissioner was not aware *Held* that he was justified in assuming that the said Circular order had received the sanction of the Government of Bengal and that as he by reason of a mistake of fact and not of law in good faith believed himself to be bound by law to obey the instructions of the Commissioner of Police and to be justified by law in sending the head constable to such custody he was protected by ss 76 and 79 of the Penal Code The High Court does not on revision interfere with an order of acquittal unless such interference is urgently demanded in the interest of public justice *Faujdar Thakur v Kasi Choudhury I L R 42 Calc 612* referred to PRAMATHA NATH BARAT v P C LAHIRI (1920)
I. L. R 47 Calc 818

WRONGFUL DISMISSAL.

See DISMISSAL.

See DAMAGES L. R. 46 I. A. 314

——— Suit for wrongful dismissal against Crown, if lies—*Dismissal—Government service for commercial undertakings—Agreement of service—Notice in terms of agreement—Payment of wages for period under notice—Crown power of dismissal of Government servants civil and military —21 and 22 Vic c 106 s 65* A servant who had received his notice of dismissal and got his wages for the remainder of the term covered by the notice cannot maintain an action for wrongful dismissal. The Crown in the absence of Statutory provisions can dismiss any servant in its civil or military employ exactly as the East India Company could under s 75 of 3 and 4 Will IV Ch 85 and therefore a suit for wrongful dismissal at the instance of a dismissed servant does not lie against the Secretary of State for India in Council under s 65 of 21 & 22 Vict Ch 106 KING v SECRETARY OF STATE FOR INDIA (1908)
15 C W N 486

WRONGFUL POSSESSION

See SHEBAIT I. L. R 42 Calc. 244

WRONGFUL RESTRAINT

See PENAL CODE (ACT XLV OF 1860), ss 341 109 I. L. R. 43 Bom. 531

WRONGFUL SEIZURE.

See ARREST OF SHIP
I. L. R. 42 Calc. 85

Y

YAJMAN

See HINDU LAW—HEREDITARY PRIEST
I. L. R. 38 Bom. 94

See VATANDAR JOSHI.
I. L. R. 40 Bom. 112

YATI.

See HINDU LAW—ADOPTION
I. L. R. 40 Mad. 846

Z

ZAMINDAR

See MADRAS ESTATES LAND ACT (I OF 1908) ss. 6 SUB s (6), 8.
I. L. R. 39 Mad. 944

——— engagement by with Government—

See MADRAS IRRIGATION CESS ACT (MAD. VII OF 1865) s 1 PROVISOS 1 AND 2
I. L. R. 40 Mad. 886

——— grant by—

See MINES AND MINERALS
I. L. R. 47 Calc. 95

——— grant by to his wife and minor son—

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 10
I. L. R. 38 Mad. 867

——— liability of, for unlawful acts of his servants—

See SECURITY FOR GOOD BEHAVIOUR.
I. L. R. 38 Calc. 150

——— rights of—

See NAVIGABLE RIVER.
I. L. R. 46 Calc. 390

——— service to—

See MADRAS REGULATION (XXV OF 1802) s. 4 I. L. R. 38 Mad. 620

ZAMINDAR AND INAMDAR

——— pre-emption as to—

See MADRAS ESTATES LAND ACT (I OF 1908) s. 8
I. L. R. 38 Mad. 608

ZAMINDAR OR MITTADAR.

——— right of, to a charge—assignment of Jodi—

See INAMDAR I. L. R 40 Mad. 93

ZAMINDARI

——— impartible—

See HINDU LAW—JOINT FAMILY
I. L. R. 41 Mad. 778

See HINDU LAW—ADOPTION
I. L. R. 38 Mad. 1105

——— sale of—

See EXECUTION OF DECREE.
I. L. R. 38 All. 59

——— settled at Permanent Settlement—

See MADRAS IRRIGATION CESS ACT (MAD. VII OF 1865) s 1 AND PROVISO 1 AND 2
I. L. R. 40 Mad. 886

ZAMINDARI LANDS

See MADRAS ESTATES LAND ACT (I OF 1908), ss. 6 SUB s (6), 8.
I. L. R. 39 Mad. 944

See MADRAS WATER CESS ACT (VII OF 1865) I. L. R. 39 Mad. 6[illegible]

ZAMINDARI RIGHTS.

See KUNJPURA STATE OF
I. L. R. 39 Calc. 711

ZAMINDARI SALE.

———— in execution—*Whether entire zamindari or only zamindar's life estates sold—Mixed question of law and fact depending on entire evidence in the case—State of then law as to the zamindar's interest therein not conclusive—Conduct of parties important evidence* A question as to whether the entire estate in a zamindari and not only the life interest of the zamindari was sold in execution and brought by the purchaser is a question of mixed law and fact to be determined by the evidence in each case All that *Abdul Ali Khan* v *Appaya sami Naicker I L R 27 Mad 131 142* decided in reference to the above question was that the state of the law as understood at the time of sale as to the rights of the zamindar in regard to the zamindari was evidence to be considered along with other evidence in the case it is not alone conclusive on the question In determining the question of what the Court intended to sell and the purchaser understood he bought evidence as to how the parties affected by the transaction themselves viewed it at the time is of much greater value than evidence which may be procurable some twenty years after the transaction took place On the evidence in the case their Lordships held that the sale which took place in 1880 was of the whole zamindari and that the purchaser bought the whole zamindari in execution *Veera thadra Aiyar* v *Marudaga Nachiar I L R 34 Mad 188* referred to *Veera Soorappa Nayani* v *Errappa Naidu I L R 29 Mad 484 490* explained ALAGARAYA GOUNDER *v* RAMANUJA NAIDU (1911) I L R 37 Mad 22

ZAMINDARS AND RAJAS

———— rights of waters of rivers passing through their lands—

See MADRAS IRRIGATION CESS ACT (VII OF 1865) I L R 37 Mad 322

ZERAIT

See LANDLORD AND TENANT
I L R 38 Calc. 432

ZINA

See MAHOMEDAN LAW—LEGITIMACY
I L R 34 Bom 111

ZURPESHGI LEASE

See BENGAL TENANCY ACT s 5 (5),
15 C W N 345

See LANDLORD AND TENANT
I L R 38 Calc 432

See MORTGAGE 16 C W N 505

———— *Occupancy right raiyati interest acquisition of—Previous possession as raiyat—Subsequent zurpeshgi lease effect of* The plaintiff's suit was for recovery of possession of land which had been given in zurpeshgi to the defendant for a term of 15 years from 1301 to 1315 F S the terms of the zurpeshgi being as follows It is desired that the said sahib ticcadar should take possession of the said land make proper cultivation himself or get it cultivated by others grow indigo seeds or any other indigo crop by using the land as his *khas zerait* or by settling the same with tenants according to his own desire and shall continue appropriating the proceeds thereof till the term of the ticca He shall year by year deduct the said fixed *jama* in payment of the principal and interest of his zurpeshgi as per account given below and shall pay the remainder the amount of lessor's rights payable to us towards the end of the term of the ticca on taking receipts therefor from us He shall conveniently cut and recover the indigo crops grown and standing on any quantity of land in 1315 F S when the term of the ticca pottah comes to an end and shall pay ten annas rent for 1916 F S at Rs 6 3 0 per bigha and shall give up possession of the said land *Held* that the zurpeshgi pottah did not create any raiyati interest in the defendant far less a right of occupancy and on the expiry of the term of the pottah the plaintiffs were entitled to get *khas* possession That a raiyat by taking a zurpeshgi lease of land of which he was previously in possession as a raiyat does not lose his raiyati status or divest himself of his right to acquire a right of occupancy in the land LAL BAHADUR SAHI *v* MACKENZIE (1913) 19 C W N 229

WRONGFUL CONFINT

officers and carried out l order had been consi ten l but was invalid as not l by the Bengal Coverni Calcutta Police Act (B fact however the acci was not aware *Held* t assuming that the said Or the sanction of the Cov as he by reason of a m law in good faith belie law to obey the instruct of Police and to be pr the head constable to tected by ss 76 and 7 High Court does not ei an order of acquittal n urgently demanded in justice *Faujdar Tha I L R 42 Calc 61* NATH BARAT v P C LA

WRONGFUL DISMISSAL

See DISMISSAL

See DAMAGE

———— Suit for wro **Crown, if lies**—*D tice for commercial servtice—Notice in term of wages for period und dismissal of Governm ent —21 and 22 Vict c 10* had received his noti c wages for the remainder the notice cannot main n dismissal The Crown m t provisions can dismiss military employ exac ly pany could und r s 7 of and therefore a suit for w instance of a dismissed serv the Secretary of State for I s 65 of 21 & 22 Vict (I TARY OF STATE FOR INDIA (

WRONGFUL POSSESSIO

See SHEBAIT I

WRONGFUL RESTRAINT

See PENAL CODE (ss 341 109 I

WRONGFUL SEIZURE

See ARREST OF SHI I

Y

YAJMAN

See HINDU LAW—

See VATANDAR I

I

YATI.

See HINDU LAW

I

ZAMINDARI SALE.

——— in execution—*Whether entire zamindari or only zamindar's life estates sold—Mixed question of law and fact depending on entire evidence in the case—State of then law as to the zamindar's interest therein not conclusive—Conduct of parties important evidence* A question as to whether the entire estate in a zamindari and not only the life interest of the zamindari was sold in execution and brought by the purchaser is a question of mixed law and fact to be determined by the evidence in each case All that *Abdul Azi Khan* v *Appaya sami Naicker I L R 27 Mad 131 142* decided in reference to the above question was that the state of the law as understood at the time of sale as to the rights of the zamindar in regard to the zamindari was evidence to be considered along with other evidence in the case it is not alone conclusive on the question In determining the question of what the Court intended to sell and the purchaser understood he bought evidence as to how the parties affected by the transaction themselves viewed it at the time is of much greater value than evidence which may be procurable some twenty years after the transaction took place On the evidence in the case their Lordships held that the sale which took place in 1880 was of the whole zamindari and that the purchaser bought the whole zamindari in execution *Veera thadra Aiyar* v *Marudaga Nachiar I L R 34 Mad 188* referred to *Veera Soorappa Najani* v *Errappa Naidu I L R 29 Mad 484 490* explained ALAGARAYA GOUNDER v RAMANUJA NAIDU (1911) I L R 37 Mad 22

ZAMINDARS AND RAJAS

——— rights of waters of rivers passing through their lands—

See MADRAS IRRIGATION CESS ACT (VII OF 1865) I L R 37 Mad 322

ZERAIT

See LANDLORD AND TENANT
I L R 38 Calc. 432

ZINA

See MAHOMEDAN LAW—LEGITIMACY
I L R 34 Bom 111

ZURPESHGI LEASE

See BENGAL TENANCY ACT s 5 (5)
15 C W N 345

See LANDLORD AND TENANT
I L R 38 Calc 432

See MORTGAGE 16 C W N 505

——— *Occupancy right raiyati interest acquisition of—Previous possession as raiyat—Subsequent zurpeshgi lease effect of* The plaintiff's suit was for recovery of possession of land which had been given in zurpeshgi to the defendant for a term of 15 years from 1301 to 1315 F S the terms of the zurpeshgi being as follow It is desired that the said sahib ticcadar should take possession of the said land make proper cultivation himself or get it cultivated by others grow indigo seeds or any other indigo crop by using the land as his *khas zerait* or by settling the same with tenants according to his own desire and shall continue appropriating the proceeds thereof till the term of the ticca He shall year by year deduct the said fixed *jama* in payment of the principal and interest of his zurpeshgi as per account given below and shall pay the remainder the amount of lessor's rights payable to us towards the end of the term of the ticca on taking receipts therefor from us He shall conveniently cut and recover the indigo crops grown and standing on any quantity of land in 1315 F S when the term of the ticca pottah comes to an end and shall pay ten annas rent for 1916 F S at Rs 6 3 0 per bigha and shall give up possession of the said land *Held* that the zurpeshgi pottah did not create any raiyati interest in the defendant far less a right of occupancy and on the expiry of the term of the pottah the plaintiffs were entitled to get *khas* possession That a raiyat by taking a zurpeshgi lease of land of which he was previously in possession as a raiyat does not lose his raiyati status or divest himself of his right to acquire a right of occupancy in the land LAL BAHADUR SAHI v MACKENZIE (1913) 19 C W N 229

WORDS AND PHRASES—*contd*

——— "Taluqdar"—

See OUDH ESTATES ACT (I OF 1869) ss 2 3 8 10 22
I L R 35 All 391

——— "Taluqdari Estate"—

See GUJRATH TALUQDARS ACT s 31
I L P 34 Bom 55

——— "Taluqdari Settlement officer"—

See GUJRATH TALUKDARS ACT ss 28 29
I L R 34 Bom. 142

——— Taluqdari Tenure"—

See GUJRATH TALUQDARS ACT (BOM ACT VI OF 1888) s 31
I L. R 35 Bom 97

——— "Tavazhi"—

See MALABAR LAW
I L R 38 Mad 48

——— "tenan"—

See BOMBAY RENT (WAR RESTRICTIONS) ACT (BOM. II OF 1918) s 2 (*1*) CLS (*a*) (*c*) (*d*) I L R 45 Bom 744

——— "tenure holder"—

See BENGAL TENANCY ACT (VIII OF 1885) ss 103 B and 104 H
I L. R 46 Calc 90

——— "trade"—

See RECEIVER I L R 40 Calc 678

——— 'trade mark"—

See PENAL CODE (ACT XLV OF 1860) ss 478 482 I L R 39 All 123

——— trading"—

See TRADING WITH THE ENEMY
I L. R 42 Calc 1094

——— "tried again"—

See AUTREFOIS ACQUIT
I L R 41 Calc 1072

——— ' true value"—

See RAILWAYS ACT (IX OF 1890) s. 75 (*1*) (*2*) AND (*3*)
I L R 43 Bom 386

——— "unable'—

See GUJRAT TALUQSDARS ACT (BOM ACT VI OF 1888 AS AMENDED BY BOM ACT II OF 1905) ss 29 29 B (*1*) (*2*) (3) AND 29 E I L R 38 Bom 604

——— 'unable to maintain itself'—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 488
I L. R 39 Mad 957

——— unlawfully and judiciously"—

See CHARGE I L R 42 Calc 957

——— "until"—

See CONTRACT FOR SALE.
I L. R 45 Calc 481

——— "up to'—

See CONTRACT FOR SALE.
I L. R 45 Calc 481

——— "useless or inoperative"—

See LETTERS OF ADMINISTRATION
I L. R 40 Calc 50

WORDS AND PHRASES—*concld*

——— "using"—

See PENAL CODE (ACT XLV OF 1860) s 471 I L R 33 Mad 392

——— ' value"—

See RAILWAYS ACT (IX OF 1890) s 75 (*1*) (*2*) AND (*3*) I L R 43 Bom 386

——— valuable security"—

See PENAL CODE ACT (XLV OF 1860) ss 30 467 I L R 38 All 430

——— "violence"—

See JURY TRIAL BY
I L R 40 Calc 367

——— "Wanta lands"—

See GUJRAT TALUQDARS ACT (BOM ACT VI OF 1888) s 31
I L R 35 Bom 97

——— "where there has been an appeal or review"—

See LIMITATION ACT 1908 SCH I ART 182 3 Pat L J 119

——— "wilful default"—

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XL R 4
I L R 39 Mad 584

——— "withdrawal"—

See CRIMINAL PROCEDURE CODE ss 248 345 20 C W N 1209

——— without issue —

See HINDU LAW—ADOPTION
I L R 43 Calc 944

——— witnesses for the defence"—

See JURISDICTION OF MAGISTRATE
I L R 39 Calc 885

——— words which are likely or may have a tendency directly or indirectly whether by inference suggestion, allusion metaphor implication or otherwise" [in s 4 (1)]—

See PRESS ACT (I OF 1910) ss 3 (*1*) 4 (*1*) 17 19 20 22
I L R 39 Mad 1085

——— "youthful offender"—

See REFORMATORY SCHOOLS ACT (VIII OF 1897) s 31 I L. R 39 All. 141

WORK CALCULATED TO DEPRAVE MORALS

See OBSCENE PUBLICATION
I L. R 39 Calc 377

WORKMAN

See WORKMEN'S BREACH OF CONTRACT ACT (XIII OF 1859)
I L R 35 All. 61 and 143
I L R 41 Mad 182

WORKMAN'S BREACH OF CONTRACT ACT (XIII OF 1859)

1. ——— *Procedure—Special procedure under the Act not applicable to ordinary loans between master and workman* *Held* that the special procedure provided by Act XIII of 1859 for the recovery of money advanced in the circumstances therein described is not applicable

WORDS AND PHRASES—*contd*

——— "rights to sue"—

See Civil Procedure Code (Act V of 1908) ss 92 and 93
I L R 38 Mad 1064

——— "rikhta"—

See Hindu Law—Stridhan
I L R 36 Bom 424

——— "risk note"—

See Contract I L R 39 All. 418

——— "river beloging to Government"—

See Madras Irrigation Cess Act (VII of 1865) I L R 37 Mad 322

——— "rolling stock"—

See Railway Passenger
I L R 44 Calc 279

——— "Samanodaka"—

See Hindu Law—Inheritance
I L R 40 Mad 654

——— "same act or transaction"—

See Civil Procedure Code 1908 O I r 3 I L R 34 Bom 358

——— "same judgment debtor"—

See Civil Procedure Code 1882 s 295
I L R 33 Mad 465

——— 'same transaction"—

See Charge I L R 42 Calc 957

——— "sanctioned"—

See Bombay Survey and Settlement Act s 25 I L R 36 Bom 290

——— "santan"—

See Hindu Will Act 21 C W N 854

——— "sarkhat"—

See Landlord and Tenant
I L R 41 All 654

See Stamp Act (II of 1899) s 12 Sch I Arts 1 5 I L R 41 All 169

——— "seaworthiness"—

See Bill of Lading
I L R 38 Mad 941

——— "secundum all gata et probata"—

See Specific Relief Act (I of 1877) s 39 I L R 39 Bom 149

——— secured creditor"—

See Provincial Insolvency Act (III of 1907) s. 31 I L R 37 All 393

——— "series of acts of transaction"—

See Civil Procedure Code 1908 O I r. 3 I L R 34 Bom. 358

——— "shawls"—

See Railway Act 1890 s 75 Sch II (*m*)
I L R 39 Calc 1029

——— 'single transaction"—

See Power-of Attorney
I L R 38 Mad 134

——— "slavery bond'—

See Contract 3 Pat L J 412

——— "sole risk"—

See Loss of Goods
I L R 46 Calc 56

——— "son"—

See Hindu Law—Adoption
I L R 43 Calc 944

——— "standard rent"—

See Bombay Rent (War Restrictions) Act (Bom II of 1918) s. 2 (*1*) cls (*a*) (*c*) (*d*) I L R 45 Bom 744

——— "stating the grounds of its opinion"—

See Forfeiture I L R 41 Calc 466

——— "stream"—

See Madras Irrigation Cess Act s 2
I L R 34 Mad. 295

——— "street"—

See Bombay City Municipal Act (Bom Act III of 1888) s 305
I L R 43 Bom. 122

See Land Acquisition
I L R 44 Calc 219

——— "strict proof"—

See Limitation Act (IX of 1908) ss 5 14 I L R 42 Bom 295

See Review I L R 42 Calc 830

——— "subject matter"—

See Civil Procedure Code (Act V of 1908) O XXIII r 1
I L R 42 Bom. 155

——— "submission to Court"—

See Arbitration I L R 46 Calc 721

——— "subsequent transferee"—

See Transfer of Property Act (IV of 1882) s 53 I L R 39 Bom. 507

——— "succeeded by another Magistrate"—

See Rioting I L R 39 Calc. 781

——— "successor"—

See Agra Tenancy Act (II of 1901) s 158 I L R 33 All. 553

——— "sufficient cause"—

See Court Fees Act 1870 ss 4 6 28
3 Pat L J 74

See Land Acquisition
I L R 45 Bom. 725

See Limitation I L R 45 Calc. 94

——— "suit for land"—

See Letters Patent (Amended) of the Bombay High Court cl. 12
I L R 37 Bom. 491

——— "suit for land or other immoveable property"—

See Jurisdiction I L R 42 Calc. 912

——— "suit or other legal proceeding"—

See Presidency Town Insolvency Act (III of 1909) ss. 17 103 104
I L R 35 Bom. 63

WORDS AND PHRASES—*contd*

——— "Taluqdar"—
See OUDH ESTATES ACT (I OF 1869) ss 2 3 8 10 22
I L R 35 All 391

——— "Taluqdari Estate"—
See GUJRATH TALUQDARS ACT s 31
I L R 34 Bom 55

——— "Taluqdari Settlement officer"—
See GUJRATH TALUKDARS ACT ss 28 29
I L R 34 Bom. 142

——— Taluqdari Tenure"—
See GUJRATH TALUQDARS ACT (BOM ACT VI OF 1888) s 31
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I L R 38 Mad 48

——— "tenan"—
See BOMBAY RENT (WAR RESTRICTIONS) ACT (BOM. II OF 1918) s 2 (1) CLS (a) ( ) (d) I L R 45 Bom 744

——— "tenure holder'—
See BENGAL TENANCY ACT (VIII OF 1885) ss 103 B and 104 H
I L R 46 Calc 90

——— "trade"—
See RECEIVER I L R 40 Calc 678

——— 'trade mark"—
See PENAL CODE (ACT XLV OF 1860) ss 478 482 I L R 39 All 123

——— trading"—
See TRADING WITH THE ENEMY
I L P 42 Calc 1094

——— "tried again"—
See AUTREFOIS ACQUIT
I L R 41 Calc 1072

——— "true value'—
See RAILWAYS ACT (IX OF 1890) s. 75 (1) (2) AND (3)
I L R 43 Bom 386

——— 'unable'—
See GUJRAT TALUQDARS ACT (BOM ACT VI OF 1888 AS AMENDED BY BOM ACT II OF 1905) ss 29 29 B (1) (2) (3) AND 29 E I L R 38 Bom 604

——— unable to maintain itself"—
See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 488
I L R 39 Mad 957

——— unlawfully and judiciously"—
See CHARGE I L R 42 Calc 957

——— until'—
See CONTRACT FOR SALE.
I L R 45 Calc 481

——— up to"—
See CONTRACT FOR SALE.
I L R 45 Calc 481

——— "useless or inoperative"—
See LETTERS OF ADMINISTRATION
I. L. R. 40 Calc. 50

WORDS AND PHRASES—*concld*

——— "using"—
See PENAL CODE (ACT XLV OF 1860) s 471 I L R 33 Mad 392

——— value"—
See RAILWAYS ACT (IX OF 1890) s 75 (1) (2) AND (3) I L R 43 Bom 386

——— valuable security"—
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——— "violence"—
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I L R 40 Calc 367

——— "Wanta lands"—
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I L R 35 Bom 97

——— "where there has been an appeal or review"—
See LIMITATION ACT 1908 SCH I ART 182 3 Pat L J 119

——— "wilful default"—
See CIVIL PROCEDURE CODE (ACT V OF 1908) O XL r 4
I L R 39 Mad. 584

——— "withdrawal"—
See CRIMINAL PROCEDURE CODE ss 248 345 20 C W N 1209

——— 'without issue —
See HINDU LAW—ADOPTION
I L R 43 Calc 944

——— witnesses for the defence"—
See JURISDICTION OF MAGISTRATE
I L R 39 Calc 885

——— words which are likely or may have a tendency directly or indirectly whether by inference suggestion, allusion metaphor implication or otherwise" [in s 4 (1)]—
S PRESS ACT (I OF 1910) ss 3 (1) 4 (1) 17 19 20 22
I L R 39 Mad. 1085

——— youthful offender"—
See REFORMATORY SCHOOLS ACT (VIII OF 1897) s 31 I L R 39 All. 141

WORK CALCULATED TO DEPRAVE MORALS

See OBSCENE PUBLICATION
I L R 39 Calc 377

WORKMAN

See WORKMAN'S BREACH OF CONTRACT ACT (XIII OF 1859)
I L R 35 All. 61 and 143
I L R. 41 Mad. 182

WORKMAN'S BREACH OF CONTRACT ACT (XIII OF 1859)

1. ——— *Procedure—Special procedure under the Act not applicable to ordinary loans between master and workman Held* that the special procedure provided by Act XIII of 1859 for the recovery of money advanced in the circumstances therein described, is not applicable

WORKMAN'S BREACH OF CONTRACT ACT (XIII OF 1859)—*contd*

where money is advanced to a workman not for the purpose of assisting him to complete a specific piece of work but as an ordinary loan to be repaid out of the workman s wages *In the matter of Anusoori Sanyasi I L R 28 Mad 37* referred to GIGA v MUHAMMAD AMIN (1912)

I L R 35 All 61

2 ——— *Magistrate not competent to take proceedings under unless moved by the employer* The provisions of Act XIII of 1859 can only be applied at the instance of the employer A magistrate has no jurisdiction *suo motu* to pass orders under that Act as an alter native to taking action under the Indian Penal Code CHHEDI v MUHAMMAD ALI (1913)

I L R 35 All 143

3 ——— *Bandsman not an artificer labourer or workman* A bandsman is not an artificer labourer or a workman within the meaning of those words in the Workman s Breach of Contract Act (XIII of 1859) *Re* ROSARIO QUADROS (1913) **I L R 38 Mad 551**

4 ——— *Scope of the Act—Act applicable not merely to fraudulent breaches of contract* The provisions of Act No XIII of 1859 are not applicable merely to fraudulent breaches of contract but can and must be enforced in res pect to any breach of a contract within the scope of the Act *Emperor* v *Bakhtawar I L P 40 All 282* followed AZIZ UR PAHMAN v HANSA (1918) **I L R 40 All 670**

5 ——— *Scope of the Act—Workman meaning of—Status of accused proof of—Duty of complainant to prove—Absence of proof* The accused received an advance of Rs 2 500 and contracted to supply coolies to a rubber estate Under the contract he was to receive a commis sion of 10 per cent on the wages of the Kol maistris and coolies and an additional Rs 25 a month if he contract he was proceeded against under the Workman s Breach of Contract Act On a difference of opinion between SADASIVA AYYAR and PHILLIPS JJ as to whether the accused was a workman within the meaning of the Act *Held* by AYLING J agreeing with SADASIVA AYYAR J —(i) That the accused was not a workman within the meaning of the Act and (ii) that the word workman means a person who engages in manual labour of some kind whether skilled or unskilled *Gilby* v *Subbu I L R 7 Mad 100 Calarum* v *Chengappa I L P 13 Mad 351 Manubcari In re 27 M L J 392* and *Pe Rosario Quadros I L R 38 Mad 551* followed *Powson* v *Hanama Mestri I L P 1 Mad 280* and *High Court Proceedings dated 13th July 1867 3 Mad H C R App XXV* disapproved KUNHI MOIDIN v CHAMU NAIR (1917) **I L R 41 Mad 182**

6 ——— *Compositor an artificer—Contract to gradually work out advance from wages a contract under the Act* A composi tor is an artificer if not a workman within Act XIII of 1859 An agreement by which an advance given to an artificer is to be repaid by him by periodical deductions from his wages does not merely create a relation of debtor and creditor but is a contract between master and workman within the meaning of the Act SOMANNA v CHELLAPATHI RAO (1921) **I L R 44 Mad 53**

WORKMAN'S BREACH OF CONTRACT ACT (XIII OF 1859)—*contd*

——— s 1—

See PENAL CODE, s 211

I L R 43 Mad 443

——— ss 1 2—*Criminal Procedure Code s 250—Complaint of employer dismissed—Order for compensation to be paid to workman* It is not competent to a Magistrate when dismissing as groundless a complaint under s 1 of the Work man s Breach of Contract Act 1859 to proceed under s 250 of the Code of Criminal Procedure and order the employer to pay compensation JAMIL AHMAD v MUHAMMAD ISHAQ (1919)

I L R 41 All 322

——— ss 1 2 4—**Indefinite contract**—*Advance of money to workman to be paid off out of wages at employer s option—Slavery— Contract for term certain or for specified work or otherwise mean ing of—Scope of the Act* Where an advance of money made by an employer to a workman was agreed to be repaid out of the workman s wages not when the borrower chose to pay but when the em ployer chose to realise it *Held* that the contract was indefinite and sanctioned a sp cies of slavery and was not enforcible under the provisions of Act XIII of 1859 *Proceedings 12th Dec 1873 7 Mad H C R Rl xxx* and *Ram Prasad* v *Dirgopal I L R 3 All 774* followed The advance was made as a loan and not on account of work con tracted to be performed within the meaning of s 1 of the Act S 4 of the Act which purports to bring within its operation all contracts and agreements whether by deed or written or verbal and whether such contract be for a term certain or for specified work or otherwise is controlled by s 1 which pro vides that the advance should have been made to the workman on account of any work which he shall have contracted to perform The Act does not cover breaches of all kinds of contract between (speaking generally) employer and work man COBINDA RAJWAR v H J APKAR (1910)

15 C W N 15

——— s 2—

——— *Order under—Pight of appeal from the order—Proper orders to be made under s 2* No appeal lies to the Sessions Court from the order of the Magistrate under s 2 of Act XIII of 1859 The Magistrate while making an order under s 2 of Act XIII of 1859 cannot make an order of imprisonment in default but such an order could be made after there has been non compliance with the order of re payment or carrying out the contract ANUKUL CHANDRA ROY v KAMAR ALI SIRDAR (1913)

18 C W N 1271

——— *Advance given by em ployer on agreement by workmen to work for him for a certain specified period—Breach of agreement* A workman living in Cawnpore took an advance of Rs 10 from his employer and entered into an agreement to work for him for ten months on the understanding that one rupee was to be deducted from his wages each month *Held* that such a contract contained nothing repugnant to Act No XIII of 1859 and was capable of being enforced under the provisions of ss 2 and 3 of that Act *Lucas* v *Jaman Singh* Criminal Revision No 234 of 1910 decided on the 21st July 1910 followed EMPEROR v BAKHTAWAR (1918)

I L R 40 All 282

WORKMAN'S BREACH OF CONTRACT ACT (XIII OF 1859)—concld

——— s. 2—contd

——— *Summary trial—Offence—Criminal Procedure Code s 260 4 (o)* A case under s 2 of the Workmen s Breach of Contract Act 1859 is triable summarily under the provisions of s 260 of the Code of Criminal Procedure *Queen Empress v Indarjit I L R 11 All 262* referred to *Emperor v Dhondu I L R 33 Bom 22* and *Emperor v Balu Saluji I L R 23 Bom 25* dissented from *Pollard v Mothial I L R 4 Mad 234* and *Queen Empress v Kattayan I L R 20 Mad 235* distinguished ABDUS SAMAD v YUSUF **I L R 43 All 281**

——— *High Court s power to interfere under ss 435 and 439 of the Criminal Procedure Code (Act V of 1898)—Contract to carry logs of timber for long distances—Contract does not fall under the Act* The High Court has power under ss 435 and 439 of the Criminal Procedure Code 1898 to revise an order passed by a Magistrate directing either return of the advance or specific performance of the contract under para 1 of s 2 of the Workmen s Breach of Contract Act 1859 The accused entered into an agreement with the complainant engaging to remove 100 logs of timber from a forest to a forest depôt a distance of 22 miles, and received an advance of Rs 440 The accused having failed to carry out the contract was tried under s 2 of the Workmen s Breach of Contract Act 1859 and was ordered to repay the advance On application under criminal revisional jurisdiction —*Held* that the contract in question was not a contract of an artificer workman or labourer and did not fall within the purview of the Act EMPEROR v DEVAPPA RAMAPPA (1918)
I L R 43 Bom 607

——— ss 2 3—*Contract between master and workman containing covenant for compensation for breach of agreement by workman—Operation of Act not thereby excluded* An employer of labour is not precluded from availing himself of the provisions of Act No XIII of 1859 merely because in the contract of service between himself and his workmen there is a stipulated penalty capable of enforcement by a civil suit in the event of breach of the contract on the part of the workmen which penalty has admittedly not been enforced nor payment of the same tendered on the part of the workmen *Queen Empress v Indarjit I L R 11 All 237* referred to *Emperor v Muhammad Din 52 Indian Cases 742* and *Emperor v Khuda Bakhsh 27 Indian Cases 901* not followed EMPEROR v RAM LAL (1919)
I L R 41 All. 390

WORSHIP

——— turn of—

See TURNS OF WORSHIP

See USUFRUCTUARY MORTGAGE
I L R 39 Calc. 227

——— right to worship a deity according to one's own belief—

See CIVIL PROCEDURE CODE 1908 s 9
I L R 44 Bom. 410

——— of image—

See HINDU LAW—ENDOWMENT
I L R 41 Calc 57

WORSHIP—contd.

——— Worshippers' right of suit of—

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 92 **I L R 40 Mad 212**

WRIST WATCH BAND

See DESIGN **I L R 45 Calc 606**

WRIT

See HABEAS CORPUS
I L R 44 Calc 459

——— of possession—

See BAILIFF **I L R 42 Calc 313**

See PENAL CODE s 323
19 C W N 273

WRITTEN STATEMENT

See CHARGE **I L R 42 Calc 957**

See CRIMINAL PROCEDURE CODE s 145
14 C W N 80

See PENAL CODE s 80
19 C W N 1043

——— refusing application to file—

See APPEAL **I L R 45 Calc 818**

——— *filing of by accused* The practice of filing written statements on behalf of accused persons condemned DEPUTY LEGAL REMEMBRANCER v MATUKDHARI SING (1915)
20 C W N 128

——— *Practice* Though written statements may be accepted from the accused in accordance with the universal practice in the Courts under the Calcutta High Court they do not take the place of evidence nor of such examination of the accused as is contemplated by s 342 of the Code of Criminal Procedure *Emperor v Ansuiya (1903) All W N 1* dissented from AMRITA LAL HAZRA v EMPEROR (1915)
I L R 42 Calc 957

WRONGFUL ACTS

See MORTGAGE **I L R 44 Calc 388**

WRONGFUL ATTACHMENT

See APPEAL **I L R 37 Calc 426**

WRONGFUL CONFINEMENT

See MISJOINDER OF PARTIES
I L R 42 Calc 760

See PENAL CODE (ACT XLV OF 1860) s 343 **I L R 42 Bom. 181**

——— *Detention of suspended police-officer in lock up under an illegal Circular order of the Commissioner of Police published in the Calcutta Police Gazette—Mistake of fact and not of law—Good faith—Penal Code (Act XLV of 1860) ss 76 79 and 34 —Revision of orders of acquittal—Criminal Procedure Code (Act V of 1898) ss 423 439* Where a Deputy Commissioner of Police sent a head constable placed under suspension to the lock up without malice and in conformity with a Circular order of the Commissioner of Police published in the *Calcutta Police Gazette* the property of the Government of Bengal and the medium of communication of all orders and regulations ordinarily having the sanction of law issued by the Commissioner for the guidance police

WRONGFUL CONFINEMENT—*contd*

officers and carried out by them which Circular order had been consistently followed for 18 months but was invalid as not having been approved of by the Bengal Government under s 9 of the Calcutta Police Act (Beng IV of 1866) of which fact however the accused Deputy Commissioner was not aware *Held* that he was justified in assuming that the said Circular order had received the sanction of the Government of Bengal and that as he by reason of a mistake of fact and not of law, in good faith believed himself to be bound by law to obey the instructions of the Commissioner of Police and to be justified by law in sending the head constable to such custody he was protected by ss 76 and 79 of the Penal Code The High Court does not on revision interfere with an order of acquittal unless such interference is urgently demanded in the interest of public justice *Faujdar Thakur* v *Kasi Chowdhury* *I L R 42 Calc 612* referred to PRAMATHA NATH BARAT v P C LAHIRI (1920)
I L R 47 Calc 818

WRONGFUL DISMISSAL

See DISMISSAL

See DAMAGES L R 46 I A 314

———— **Suit for wrongful dismissal against Crown, if lies**—*Dismissal—Government service for commercial undertakings—Agreement of service—Notice in terms of agreement—Payment of wages for period under notice—Crown power of dismissal of Government servants civil and military —21 and 22 Vict c 106 s 65* A servant who had received his notice of dismissal and got his wages for the remainder of the term covered by the notice cannot maintain an action for wrongful dismissal The Crown in the absence of Statutory provisions can dismiss any servant in its civil or military employ exactly as the East India Company could under s 75 of 3 and 4 Will IV Ch 85 and therefore a suit for wrongful dismissal at the instance of a dismissed servant does not lie against the Secretary of State for India in Council under s 65 of 21 & 22 Vict Ch 106 KING v SECRETARY OF STATE FOR INDIA (1908)
15 C W N 486

WRONGFUL POSSESSION

See SHEBAIT I L R 42 Calc 244

WRONGFUL RESTRAINT

See PENAL CODE (ACT XLV OF 1860) ss 341 109 I L R 43 Bom. 531

WRONGFUL SEIZURE

See ARREST OF SHIP
I L R 42 Calc. 85

Y

YAJMAN

See HINDU LAW—HEREDITARY PRIEST
I L R 36 Bom. 94

See VATANDAR JOSHI
I L R 40 Bom. 112

YATI

See HINDU LAW—ADOPTION
I L R 40 Mad. 846

Z

ZAMINDAR

See MADRAS ESTATES LAND ACT (I OF 1908) ss 6 SUB S (6) 8
I L R 39 Mad. 944

———— **engagement by with Government**—
See MADRAS IRRIGATION CESS ACT (MAD. VII OF 1865) s 1 PROVISOS 1 AND 2
I L R 40 Mad. 886

———— **grant by**—
See MINES AND MINERALS
I L R 47 Calc. 95

———— **grant by, to his wife and minor son**—
See TRANSFER OF PROPERTY ACT (IV OF 1882) s 10
I L R 38 Mad. 867

———— **liability of for unlawful acts of his servants**—
See SECURITY FOR GOOD BEHAVIOUR
I L R 38 Calc 156

———— **rights of**—
See NAVIGABLE RIVER
I L R 46 Calc 390

———— **service to**—
See MADRAS REGULATION (XXV OF 1802) s 4 I L R 38 Mad 620

ZAMINDAR AND INAMDAR

———— **pre emption as to**—
See MADRAS ESTATES LAND ACT (I OF 1908) s 8 I L R 38 Mad. 608

ZAMINDAR OR MITTADAR

———— **right of to a charge—assignment of Jodi**—
See INAMDAR I L R 40 Mad. 93

ZAMINDARI

———— **impartible**—
See HINDU LAW—JOINT FAMILY
I L R 41 Mad. 778

See HINDU LAW—ADOPTION
I L R 38 Mad. 1105

———— **sale of**—
See EXECUTION OF DECREE
I L R 38 All. 59

———— **settled at Permanent Settlement**—
See MADRAS IRRIGATION CESS ACT (MAD. VII OF 1865) s 1 AND PROVISOS 1 AND 2
I L R 40 Mad. 886

ZAMINDARI LANDS

See MADRAS ESTATES LAND ACT (I OF 1908) ss. 6 SUB S (6) 8.
I L R 39 Mad. 944

See MADRAS WATER CESS ACT (VII OF 1865) I L R 39 Mad. 67

ZAMINDARI RIGHTS

See KUNSPURA STATE OF
I L R 39 Calc. 711

ZAMINDARI SALE.

———— in execution—*Whether entire zamindari or only zamindar's life estates sold—Mixed question of law and fact depending on entire evidence in the case—State of then law as to the zamindar's interest therein not conclusive—Conduct of parties important evidence.* A question as to whether the entire estate in a zamindari and not only the life interest of the zamindari was sold in execution and brought by the purchaser is a question of mixed law and fact to be determined by the evidence in each case. All that *Abdul Aziz Khan* v *Appayasami Naicker I L R 27 Mad 131 142* decided in reference to the above question was that the state of the law as understood at the time of sale as to the rights of the zamindar in regard to the zamindari was evidence to be considered along with other evidence in the case; it is not alone conclusive on the question. In determining the question of what the Court intended to sell and the purchaser understood he bought, evidence as to how the parties affected by the transaction themselves viewed it at the time is of much greater value than evidence which may be procurable some twenty years after the transaction took place. On the evidence in the case their Lordships held that the sale which took place in 1880 was of the whole zamindari and that the purchaser bought the whole zamindari in execution. *Veerabhadra Aiyar* v *Marudaga Nachiar I L R 34 Mad 188* referred to. *Veera Soorappa Nayani* v *Errappa Naidu I L R 29 Mad 484 490* explained. ALAGARAYA GOUNDER *v* RAMANUJA NAIDU (1911) I L R 37 Mad 22

ZAMINDARS AND RAJAS

———— rights of, waters of rivers passing through their lands—

See MADRAS IRRIGATION CESS ACT (VII OF 1865) I L R 37 Mad 322

ZERAIT

See LANDLORD AND TENANT I L R 38 Calc. 432

ZINA

See MAHOMEDAN LAW—LEGITIMACY I L R 34 Bom 111

ZURPESHGI LEASE

See BENGAL TENANCY ACT s 5 (5) 15 C W N 345

See LANDLORD AND TENANT I L R 38 Calc 432

See MORTGAGE 16 C W N 505

———— *Occupancy right raiyati interest acquisition of—Previous possession as raiyat—Subsequent zurpeshgi lease effect of.* The plaintiff's suit was for recovery of possession of land which had been given in zurpeshgi to the defendant for a term of 15 years from 1301 to 1315 F S, the terms of the zurpeshgi being as follow: "It is desired that the said sahib ticcadar should take possession of the said land, make proper cultivation himself or get it cultivated by others, grow indigo seeds or any other indigo crop by using the land as his *khas zerait* or by settling the same with tenants according to his own desire and shall continue appropriating the proceeds thereof till the term of the ticca. He shall year by year deduct the said fixed *jama* in payment of the principal and interest of his zurpeshgi as per account given below and shall pay the remainder the amount of lessor's rights payable to us towards the end of the term of the ticca on taking receipts therefor from us. He shall conveniently cut and recover the indigo crops grown and standing on any quantity of land in 1315 F S when the term of the ticca pottah comes to an end, and shall pay ten annas rent for 1916 F S at Rs 6 3 0 per bigha and shall give up possession of the said land." *Held* that the zurpeshgi pottah did not create any raiyati interest in the defendant, far less a right of occupancy, and on the expiry of the term of the pottah the plaintiffs were entitled to get *khas* possession. That a raiyat by taking a zurpeshgi lease of land of which he was previously in possession as a raiyat does not lose his raiyati status or divest himself of his right to acquire a right of occupancy in the land. LAL BAHADUR SAHI *v* MACKENZIE (1913) 19 C W N 229

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